UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Plaintiffs,

v.

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota,

Defendants.

Civil No. 09-1775 (DWF/FLN)

FINAL APPROVAL ORDER FOR STIPULATED CLASS ACTION SETTLEMENT AGREEMENT

M. Ann Mullin, Esq., Mark R. Azman, Esq., and Shamus P. O'Meara, Esq., Johnson & Condon, PA, counsel for Plaintiffs.

P. Kenneth Kohnstamm and Steven H. Alpert, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

This matter came duly on for a Fairness Hearing on December 1, 2011, before the Honorable Judge Donovan Frank upon Plaintiffs' Petition for Final Approval of Stipulated Class Action Settlement Agreement (Doc. No. [104]), and Application for Attorneys' Fees and Costs (Doc. No. [122]). All parties appeared through counsel.

The Court being duly advised in the premises, having heard the arguments of counsel, and considered all filings of record hereby makes the following:

ORDER

1. Plaintiffs' Petition for Final Approval of Stipulated Class Action Settlement Agreement (Doc. No. [104]), and Application for Attorneys' Fees and Costs (Doc. No. [122]) is hereby **GRANTED**.

2. The certification of the Settlement Class is hereby ratified and the Settlement Agreement ("Agreement"), attached as "Final Approval Order Exhibit A" and expressly incorporated herein, is approved and its terms adjudged to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, and it is hereby ordered that the parties are directed to consummate the Agreement in accordance with its terms, and this Court hereby reserves continuing jurisdiction for the time period set forth in the Agreement to enforce compliance with the provisions of the Agreement and the Judgment, as well as assuring proper distribution of the Settlement payments.

3. This Action, and all claims released in the Agreement against the State and its agencies as well as Defendants Douglas Bratvold and Scott TenNapel, in their official and individual capacities, are hereby **DISMISSED WITH PREJUDICE**, and without costs to any party.

4. Pursuant to Paragraph XIV.B. of the Stipulated Class Action Settlement Agreement, incorporated herein as Final Approval Order Exhibit A, and this Court's Order governing the Final List of Opt-Outs (Doc. No. [129]), the Settlement Amount of $3,000,000 is hereby reduced by $23,600, for a reduced Settlement Amount of $2,976,400.

5. By separate Order, the Court shall determine how the reduced Settlement Amount, minus attorneys' fees and costs awarded below, shall be apportioned amongst Plaintiffs and those Class Members who submitted Claim Forms, and further determine how any remaining amounts shall be distributed in accordance with the terms of the Agreement.

6. Settlement Class Members and Plaintiffs are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Claims which are settled and/or released in the Agreement.

7. The Court finds and concludes that, both legally and as a matter of equity and fairness, the individual settlement amount being awarded to each individual class member is not a resource for eligibility purposes and, consequently, an individual settlement amount will not affect, in any way, a Class Member's eligibility for disability

benefits or other related benefits, or otherwise jeopardize the Class Member's benefits or programming.

This provision contemplates that if any agency, entity, or individual, private or public, disputes the Court's jurisdiction to make this finding, both as a matter of law and equity; or, contends that a Class Member's eligibility should be affected, the entity or individual must file a motion and come before this Court to address the claim. The Court also incorporates into this paragraph its remarks off the bench at the December 1, 2011 hearing.

8. Settlement Class Counsel shall be paid $992,133.33, representing one-third (1/3) of the $2,976,400 reduced Settlement Amount as reasonable attorneys' fees and costs. The Court finds that a one-third contingent fee is a fair and reasonable fee considering the complexity of the issues and the substantial efforts of Settlement Class Counsel in this matter, and considering the significant benefits the Settlement affords to the Class and all people with developmental disabilities in the state of Minnesota. With respect to the Court's finding and conclusion that the attorneys' fees are fair and reasonable, the Court also incorporates into this paragraph its remarks off the bench on December 1, 2011.

9. Defendants shall pay the entire $2,976,400 reduced Settlement Amount to Settlement Class Counsel's trust account within fourteen (14) days of this Order and entry of Judgment approving the Class Action Settlement Agreement. Settlement Class Counsel is authorized to pay itself $992,133.33 from the reduced Settlement Amount for approved attorneys' fees and costs.

LET JUDGMENT BE ENTERED ACCORDINGLY FORTHWITH.

Dated: December 5, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated, Plaintiffs, vs. Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota, Defendants.	Court File No.: 09-CV-1775 DWF/FLN **STIPULATED CLASS ACTION SETTLEMENT AGREEMENT**

FINAL APPROVAL ORDER EXHIBIT A

This Stipulated Class Action Settlement Agreement ("Agreement" or "Settlement Agreement") is entered into by and between Plaintiffs James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; and Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs (collectively, "Plaintiffs"), on their own behalf and as representatives of the Settlement Class, and Defendants Minnesota Department of Human Services, an agency of the State of Minnesota ("DHS" or "Department"); the State of Minnesota ("State"); Douglas Bratvold, individually and in his former official capacity ("Bratvold") and Scott TenNapel, individually and in his former official capacity ("TenNapel") (collectively, "Defendants").

RECITALS

1. The State developed and operates Minnesota Extended Treatment Options ("METO") to provide treatment and care for persons with developmental disabilities.

2. Plaintiffs Bradley J. Jensen, Thomas M. Allbrink, Jason R. Jacobs and others similarly situated were residents of METO.

3. In their Amended Complaint, Plaintiffs contend *inter alia* that the State and DHS unlawfully and unconstitutionally permitted METO to routinely impose seclusion and mechanical restraints upon residents, including Plaintiffs and others similarly situated, for which Plaintiffs claim damages and injunctive relief, including attorneys' fees and costs, resulting from Defendants' alleged conduct.

4. All Defendants deny Plaintiffs' allegations in their entirety.

5. In order to avoid the burdens of litigation and resolve the claims in the above referenced lawsuit in a mutually agreeable manner, it is the intent and desire of the Parties to enter into this Agreement, contingent upon approval by the Court.

6. Plaintiffs' counsel have conducted substantial investigations and negotiations and, considering the benefits of the settlement and the risks of litigation, have concluded that it is in the best interest of the Plaintiffs and the Class Members to enter into this Agreement. The Plaintiffs believe that this settlement is fair, reasonable and adequate with respect to the interests of the Plaintiffs and the Class Members, and should be approved by the Court pursuant to Federal Rule of Civil Procedure 23. As set forth below, the parties do not object to approval by the Court pursuant to Federal Rule of Civil Procedure 23.

7. The State of Minnesota further declares, as a top concern, the safety and quality of life of the Residents of the Facility. The State agrees that its goal is to provide these residents with a safe and humane living environment free from abuse and neglect. The State also agrees that its goal is to utilize the Rule 40 Committee and Olmstead Committee process described in this Agreement to extend the application of the provisions in this Agreement to all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes.

8. The State engaged the services of Defendant TenNapel in various capacities at METO either by employing him directly or by contracting with his employers, Provide

Care, Inc. and Karcher Foster Services, Inc., for his services. Defendant Bratvold was employed directly by the State at all relevant times, but has recently retired. The Parties agree that Defendants TenNapel and Bratvold currently have no official capacity with the State of Minnesota. As such, the provisions of this Agreement which call for commitments and modifications regarding either the operations of METO, including closure and transfers, or commitments to modify the rules governing aversive and deprivation procedures in Minnesota, bind the State, DHS and the Plaintiffs, and it is agreed that upon final approval of this Agreement, the Agreement imposes no duty on Defendants TenNapel and Bratvold with respect to implementing or enforcing those terms.

NOW THEREFORE, in consideration of the above Recitals and the respective covenants, promises, agreements and releases contained herein, which the parties agree constitute good and valuable consideration, and on the motion of the Plaintiffs for Court Approval of this Agreement, it is hereby STIPULATED AND AGREED as follows:

I. INCORPRATION OF RECITALS

Each and every Recital set forth above is incorporated herein by this reference as if set forth in their entirety.

II. JURISDICTION AND VENUE

A. The Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and related law, and has original jurisdiction over this matter pursuant to 28 U.S.C. § 1343(a)(3). Plaintiffs have commenced this action pursuant to 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation

Act, and related federal laws to recover damages, including the costs of this suit and reasonable attorneys' fees, claimed by Plaintiffs and the Class Members resulting from Defendants' alleged violations of federal law and for injunctive relief.

B. The Court has supplemental jurisdiction over the claims in this matter that arise under state law pursuant to 28 U.S.C. § 1367(a) because Plaintiffs' state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

C. Venue in the District of Minnesota is appropriate pursuant to 28 U.S.C. § 1391, as the conduct alleged herein occurred in this District.

III. DEFINITIONS

A. *Agreement or Settlement Agreement*: Agreement or Settlement Agreement means this Stipulated Class Action Settlement Agreement.

B. *Facility*: Facility means the Minnesota Extended Treatment Options ("METO") program, its Cambridge, Minnesota successor, and the two new adult foster care transitional homes to which residents of METO have been or may be transferred.

C. *Resident*: Resident means a person residing at the Facility.

D. *Other Definitions:* Other definitions are set forth in this Agreement and its Attachments A, B and C.

E. *Best Practices:* Best practices means generally accepted professional standards.

F. *Scope:* The scope of DHS obligations regarding people with developmental disabilities in this Agreement pertain only to the residents of the Facility

, with the exception of the provisions of Recitals, Paragraph 7, and Section X, "Systemwide Improvements."

IV. CLOSURE OF THE METO PROGRAM

The METO program will be closed by June 30, 2011. Any successor to METO shall: (1) comply with the U.S. Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999); (2) utilize person centered planning principles and positive behavioral supports consistent with applicable best practices including, but not limited to the Association of Positive Behavior Supports, *Standards of Practice for Positive Behavior Supports* (http://apbs.org) (February, 2007); (3) be licensed to serve people with developmental disabilities; (4) only serve "Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety" pursuant to METO's original statutory charge under Minn. Stat. § 252.025, subd. 7; and (5) notify parents and guardians of residents, at least annually, of their opportunity to comment in writing, by e-mail, and in person, on the operation of the Facility.

V. PROHIBITED TECHNIQUES

A. Except as provided in subpart V. B., below, the State and DHS shall immediately and permanently discontinue the use of mechanical restraint (including metal law enforcement-type handcuffs and leg hobbles, cable tie cuffs, PlastiCuffs, FlexiCuffs, soft cuffs, posey cuffs, and any other mechanical means to restrain), manual restraint, prone restraint, chemical restraint, seclusion, and the use of painful techniques to induce changes in behavior through punishment of residents with developmental disabilities. Medical restraint, and psychotropic and/or neuroleptic medications shall not

be administered to residents for punishment, in lieu of adequate and appropriate habilitation, skills training and behavior supports plans, for the convenience of staff and/or as a form of behavior modification.

B. **Policy.** Notwithstanding subpart V. A. above, the Facility's policy, "Therapeutic Interventions and Emergency Use of Personal Safety Techniques," Attachment A to this Agreement, defines manual restraint, mechanical restraint, and emergency, and provides that certain specified manual and mechanical restraints shall only be used in the event of an emergency. This policy also prohibits the use of prone restraint, chemical restraint, seclusion and time out. Attachment A is incorporated into this Agreement by reference.

C. **Seclusion and Time Out from Positive Reinforcement.**

1. The Facility's use of seclusion is prohibited.

2. Seclusion means the placement of a person alone in a room from which egress is:

a. noncontingent on the person's behavior; or

b. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

3. The Facility's use of Room Time out from positive reinforcement is prohibited.

4. Time out means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified

in the individual program plan for reduction or elimination. Room time out means removing a person from an ongoing activity to a room (either locked or unlocked).

D. **Chemical Restraint.** The Facility shall not use chemical restraint.

1. A chemical restraint is the administration of a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition.

2. Orders or prescriptions for the administration of medications to be used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement shall not be written as a standing order or on an as-needed basis (PRN).

E. **Third Party Expert.** The Department shall establish a protocol to contact, on a rotating basis, a qualified Third Party Expert from a list of at least five (5) qualified Third Party Experts pre-approved by Plaintiffs and Defendants. The costs for the Third Party Expert shall be paid by the Department. This consultation shall occur as soon as reasonably possible upon the emergency presenting but no later than thirty (30) minutes after an emergency use of restraint consistent with the Facility's policy, *Therapeutic Interventions and Emergency Use of Personal Safety Techniques*, Attachment A to this Agreement. The Facility staff shall consult with the Third Party Expert in order to obtain professional assistance to abate the emergency condition, including the use of positive behavioral supports techniques, safety techniques, and other best practices. If the scheduled qualified Third Party Expert is not immediately available, DHS shall then utilize the Medical Officer Review protocol as described in subpart V. F, below. If the

parties cannot develop the qualified list of Third Party Experts within 30 days of final approval of this Agreement, DHS shall utilize the Medical Officer Review described in subpart V. F, below.

F. **Medical Officer Review.** No later than thirty (30) minutes after an emergency use of restraint begins, the responsible supervisor shall contact the Department's medical officer on call in order that the medical officer may assess the situation, suggest strategies for de-escalating the situation, and approve of or discontinue the use of restraint. The consultation with the medical officer shall be documented in the resident's medical record.

G. **Zero Tolerance for Abuse and Neglect.** The State affirms its commitment to comply with the reporting requirements relating to abuse of vulnerable persons pursuant to Minn. Stat. § 626.557 *et seq.* The State's goal is to achieve "zero tolerance" for abuse (including verbal, mental, sexual, or physical abuse) and neglect, whether from other residents or from staff. Any staff member who has committed staff on resident abuse or neglect shall be disciplined pursuant to DHS policies and the collective bargaining agreement, if applicable. Where appropriate, the State shall refer matters of suspected abuse or neglect to the county attorney for criminal prosecution.

VI. RESTRAINT REPORTING AND MANAGEMENT

A. METO Form 31032 (Attachment C "Documentation of Implementation of Controlled Procedures") shall be completed by the end of the shift during which use is made of manual or mechanical restraint. Attachment C is incorporated into this Agreement by reference.

B. DHS shall undertake reasonable efforts to submit within twenty four (24) hours, but no later than one (1) business day, the completed METO Form 31032 by electronic means, fax or personal delivery, to the following:

a. Office of Health Facility Complaints ("OHFC");

b. Ombudsman for Mental Health and Developmental Disabilities;

c. DHS Licensing;

d. DHS Internal Reviewer;

e. Client's family and/or legal representative;

f. Case manager;

g. Plaintiffs' counsel.

C. The reporting requirements in this Section VI shall not replace any other applicable requirement for incident reporting, investigation, analysis and follow up.

VII. INTERNAL AND EXTERNAL REVIEW OF THE USE OF RESTRAINTS

In order to monitor the Facility's use of manual and mechanical restraints, the Department will utilize one of its qualified employees as an internal reviewer and shall fund the costs of the external reviewer within the Office of Health Facility Complaints.

A. **Internal Reviewer.**

1. The Department shall designate one employee with responsibility for monitoring the Facility's use of restraints ("internal reviewer"). Presently this is Richard S. Amado, Ph.D., Director of the Department's Office for Innovation in Clinical

and Person Centered Excellence, whose duties include a focus on the elimination of restraints.

2. The Facility shall complete METO Form 31032 and provide it to the internal reviewer, and all others listed in Section VI. B., above, within twenty four (24) hours of the use of manual or mechanical restraint.

3 The internal reviewer shall consult with staff at the Facility in order to assist eliminating the use of manual and mechanical restraints.

B. **External Reviewer.**

1. The external reviewer will be approved by Plaintiffs and Defendants before hire and will be an employee of the Office of Health Facility Complaints, Minnesota Department of Health and shall have full enforcement authority consistent with the Office of Health Facility Complaints, as set forth in Minn. Stat. § 144A.53, *et. seq.*

2. DHS will fund the costs of the external reviewer.

3. The external reviewer will have the following credentials:

   a. Ph.D. in psychology, education, clinical social work, or a related field;

   b. Certification or eligible for certification as a Board certified Behavior Analyst at the Doctoral level;

   c. Experience in person centered planning;

   d. Experience using the integration of diagnostic findings, assessment results and intervention recommendations across disciplines in order to create an individual program plan;

e. Experience and demonstrated competence in the empirical evaluation of mood and behavior altering medications.

4. Every three (3) months, the external reviewer shall issue a written report informing the Department whether the Facility is in substantial compliance with this Agreement and the policies incorporated herein. The report shall enumerate the factual basis for its conclusion and may make recommendations and offer technical assistance. The external reviewer shall provide Plaintiffs and the Department with a draft report. The Plaintiffs and the Department will have fifteen (15) business days to provide written comment. The external reviewer's final report shall be issued to Plaintiffs and the Department thereafter.

5. The external reviewer shall issue quarterly reports to the Court for the duration of this Agreement. The reports shall describe whether the Facility is operating consistent with best practices, and with this Agreement. The external reviewer's reports shall be filed on the Court's public electronic court filing system, or any successor system, with appropriate redaction of the identities of residents or other personal data information that is statutorily protected from public disclosure.

6. The external reviewer shall not be a "Special Master" nor "Court Appointed Monitor." The external reviewer shall have full enforcement authority consistent with the Office of Health Facility Complaints' authority set forth in Minn. Stat. § 144A.53, *et. seq.*

7. In addition to the external reviewer's authority described above, the following shall have access to the Facility and its records, including the medical records

of residents for the purpose of ascertaining whether the Facility is complying with this Agreement:

a. The Office of Ombudsman for Mental Health and Developmental Disabilities, consistent with its authority under Minn. Stat. § 245.94. This Settlement Agreement shall be deemed adequate basis for the Office of Ombudsman to exercise its powers under Minn. Stat. § 245.94, subd. 1.

b. The Disability Law Center, consistent with its authority under 42 U.S.C. § 15043. This Settlement Agreement shall be deemed adequate basis for the Disability Law Center, as the designated Protection and Advocacy organization in Minnesota, to exercise its authority under 42 U.S.C. § 15043.

c. Plaintiffs' counsel, upon notice to and coordination with, the Minnesota Attorney General's Office and pursuant to the Protective Order in this case.

VIII. TRANSITION PLANNING

The State shall undertake best efforts to ensure that each resident is served in the most integrated setting appropriate to meet such person's individualized needs, including home or community settings. The State shall actively pursue the appropriate discharge of residents and provide them with adequate and appropriate transition plans, protections, supports, and services consistent with such person's individualized needs, in the most integrated setting and where the individual does not object. Each resident and the resident's family and/or legal representative shall be permitted to be involved in the team evaluation, decision making, and planning process to the greatest extent practicable, using whatever communication method he or she prefers. To foster each resident's self-determination and independence, the State shall use person centered planning principles at each stage of the process to facilitate the identification of the resident's specific interests, goals, likes and dislikes, abilities and strengths, as well as support needs. Each

resident shall be given the opportunity to express a choice regarding preferred activities that contribute to a quality life. The State shall undertake best efforts to provide each resident with reasonable placement alternatives. It is the State's goal that all residents be served in integrated community settings with adequate protections, supports, and other necessary resources which are identified as available by service coordination. This paragraph shall be implemented in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

IX. OTHER PRACTICES AT THE FACILITY.

A. The Facility treatment staff shall receive training in positive behavioral supports, person centered approaches, therapeutic interventions, personal safety techniques, crisis intervention, and post crisis evaluation. The training is explained more fully in Attachment B which is incorporated into this Agreement by reference. All training shall be consistent with applicable best practices, including but not limited to the Association of Positive Behavior Supports, *Standards of Practice for Positive Behavior Supports* (http://apbs.org) (February, 2007).

B. 1. Staff at the Facility shall receive the specified number of hours of training subsequent to September 1, 2010 and prior to December 31, 2011:

Therapeutic interventions	8
Personal safety techniques	8
Medically monitoring restraint	1

Staff at the Facility shall not be eligible to impose restraint until the above specified training has been completed, and then only certain restraints in an emergency as

set forth in Attachment A to this Agreement, Therapeutic Interventions And Emergency Use Of Personal Safety Techniques."

2. Staff at the Facility shall receive the specified number of hours of training subsequent to September 1, 2010 and prior to March 31, 2012:

Person centered planning and positive behavior supports (at least sixteen (16) hours on person centered thinking/planning)	40
Post Crisis Evaluation and Assessment	4

C. **Visitor Policy.** The State and DHS shall permit residents unscheduled and scheduled visits with immediate family and/or guardians, at reasonable hours, unless the Interdisciplinary Team (IDT) reasonably determines the visit is contraindicated. Visitors shall be allowed full and unrestricted access to the resident's living areas, including kitchen, living room, social and common areas, bedroom and bathrooms, consistent with all residents' rights to privacy. Residents shall be allowed to visit with immediate family members and/or guardians in private without staff supervision, unless the IDT reasonably determines this is contraindicated.

D. Upon Court approval of this Agreement, the State and DHS will discontinue any marketing of, recruitment or publicity inconsistent with the mission of the Facility.

E. Pursuant to Minn. Stat. § 144.652, subd. 1, the Facility shall continue to post the Health Care Bill of Rights, the name and phone number of the person within the Facility to whom inquiries about care and treatment may be directed, and a brief

statement describing how to file a complaint with the Office of Health Facility Complaints, including the address and phone number of that office.

X. SYSTEM WIDE IMPROVEMENTS.

A. Expansion of Community Support Services.

1. The provisions below on long term monitoring, crisis management, and training represent the Department's goals and objectives; they do not constitute requirements. State Operated Community Support Services ("CSS") will be expanded in an effort to deliver the right care at the right time in the most integrated setting for individuals with developmental disabilities. The expansion of this service will allow for the provision of assessment, triage, and care coordination to assure persons with developmental disabilities receive the appropriate level of care at the right time, in the right place, and in the most integrated setting in accordance with the U.S. Supreme Court decision in *Olmstead v. L.C*, 527 U.S. 582 (1999).

a. **Long term monitoring**. CSS will identify and provide long term monitoring of individuals with clinical and situational complexities in order to help avert crisis reactions, provide strategies for service entry changing needs, and prevent multiple transfers within the system. Approximately seventy five (75) individuals will be targeted for long term monitoring.

b. **Crisis management**. Intervention and technical assistance will be provided where the consumer lives, strengthening the capacity for the clinic to serve clinically complex individuals in their homes. CSS mobile wrap-around response teams will be located across the state for proactive response to maintain living

arrangements. The maximum time for CSS to arrange a crisis intervention will be three (3) hours from the time the parent or legal guardian authorizes CSS' involvement. CSS will partner with Community Crisis Intervention Services to maximize support, complement strengths, and avoid duplication. CSS will provide augmentative training, mentoring and coaching.

c. **Training**. CSS will provide staff at community based facilities and homes with state of the art training encompassing person centered thinking, multi-modal assessment, positive behavior supports, consultation and facilitator skills, and creative thinking. Mentoring and coaching as methodologies will be targeted to prepare for increased community capacity to support individuals in their community.

2. Expansion of CSS will begin in February of 2011 with an estimated completion date of June 30, 2011. This increase will be an additional fourteen (14) full time equivalent positions which will equate to fifteen (15) people. The proposed positions are as follows:

Two (2) Behavior Analyst 3 positions;

One (1) Community Senior Specialist 3;

Two (2) Behavior Analyst 1;

Five (5) Social Worker Specialist positions; and

Five (5) Behavior Management Assistants.

Total cost of salaries for these staff is estimated by DHS to be eight hundred twenty three thousand dollars ($823,000). The estimated cost of equipment and space is estimated by DHS to be one hundred seven thousand eight hundred dollars ($107,800).

The term "behavior analyst" refers to individuals with requisite educational background, experience, and credentials recognized by national associations such as the Association of Professional Behavior Analysts.

B. ***Olmstead* Plan**

1. Within sixty (60) days of the Court's approval of this Agreement, the Department will establish an *Olmstead* Planning Committee which will issue its public recommendations within ten (10) months of the Court's Order approving this Agreement. Within eighteen (18) months of the Court's approval of this Agreement, the State and the Department shall develop and implement a comprehensive *Olmstead* plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and is consistent and in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

2. The Olmstead Planning Committee must be comprised of no less than fifteen (15) members with demonstrated understanding of the spirit and intent of the *Olmstead* decision, best practices in the field of disabilities, and a longstanding commitment to systemic change that respects the human and civil rights of people with disabilities. The Committee must be comprised of stakeholders, including parents, independent experts, representatives of the Department, the Ombudsman for Mental Health and Developmental Disabilities, Minnesota Governor's Council on Developmental Disabilities, Minnesota Disability Law Center, Plaintiff's counsel, and others as agreed upon by the parties.

C. **Rule 40.**

1. Within sixty (60) days from the date of the Order approving this Agreement , the Department shall organize and convene a Rule 40 (Minn. R. 9525.2700-.2810) Advisory Committee ("Committee") comprised of stakeholders, including parents, independent experts, DHS representatives, the Ombudsman for Mental Health and Developmental Disabilities, the Minnesota Governor's Council on Developmental Disabilities, Minnesota Disability Law Center, Plaintiffs' counsel and others as agreed upon by the parties, to study, review and advise the Department on how to modernize Rule 40 to reflect current best practices, including, but not limited to the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the "most integrated setting" and "person centered planning, and development of an '*Olmstead* Plan'" consistent with the U.S. Supreme Court's decision in *Olmstead v. L.C.,* 527 U.S. 582 (1999). The Committee's review of best practices shall include the Arizona Department of Economic Security, Division of Developmental Disabilities, Policy and Procedures Manual, Policy 1600 Managing Inappropriate Behaviors.

2. Within sixty (60) days from the date of the Court's approval of this Agreement, a public notice of intent to undertake administrative rule making will be issued.

3. DHS will not seek a waiver of Rule 40 for the Facility.

D. **Minnesota Security Hospital.**

1. Within sixty (60) days upon Court approval of this Agreement, the State shall undertake best efforts to ensure that there are no transfers to or placements at the Minnesota Security Hospital of persons committed solely as a person with a developmental disability. No later than July 1, 2011, there shall be no transfers or placements of persons committed solely as a person with a developmental disability to the Minnesota Security Hospital. This prohibition does not apply to persons with other forms of commitment, such as mentally ill and dangerous, mentally ill, chemically dependent, psychopathic personality, sexual psychopathic personality and sexually dangerous persons. Nor does this prohibition pertain to persons who have been required to register as a predatory offender under Minn. Stat. § 243.166 or 243.167 or to persons who have been assigned a risk level as a predatory offender under Minn. Stat. § 244.052.

2. There shall be no change in commitment status of any person originally committed solely as a person with a developmental disability without proper notice to that person's parent and/or guardian and a full hearing before the appropriate adjudicative body.

3. No later than December 1, 2011, persons presently confined at Minnesota Security Hospital who were committed solely as a person with a developmental disability and who were not admitted with other forms of commitment or predatory offender status set forth in paragraph 1, above, shall be transferred by the Department to the most integrated setting consistent with *Olmstead v. L.C.,* 527 U.S. 581 (1999).

E. **Anoka Metro Regional Treatment Center.**

s committed solely as a person with a developmental disability may be AMRTC only if they have an acute psychiatric condition. Within thirty the Court's approval of this Agreement, any AMRTC resident committed solely as a person with a developmental disability who does not have an acute psychiatric condition will be transferred from AMRTC. The transfer shall be to the most integrated setting consistent with *Olmstead v. L.C.*, 527 U.S. 581 (1999).

F. DHS shall substitute the term "developmental disabilities" for the term "mental retardation" where it appears in any DHS policy, bulletin, website, brochure, or other publication, at the next printing or revision of the publication, provided the change does not directly conflict with federal law, je eipt of federal funds, or impair the health care billing process. DHS also agrees to draft a bill for the Minnesota Legislature that will require the replacement of terms such as "insane," "mentally incompetent," "mental deficiency," and other similar inappropriate terms that appear in Minnesota statutes and rules.

XI. CLASS CERTIFICATION

A. For settlement purposes only, Plaintiffs may request and Defendants do not object to the Court entering a Hearing Order (attached as Class Action Exhibit 4 and incorporated into this Agreement by reference) granting provisional certification of the Settlement Class, subject to final findings and ratification in the proposed Judgment (attached as Class Action Exhibit 5 and incorporated into this Agreement by reference), and appointing Plaintiffs' Counsel as Class Counsel and representatives of the Settlement Class.

B. Plaintiffs and Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate this Agreement. If this Settlement Agreement is terminated or voided pursuant to its terms, the Order certifying the Settlement Class and all preliminary and/or final findings regarding the Court's provisional class certification order shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement, and the Action shall proceed as though the Settlement Class had never been certified and such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis.

C. "Plaintiffs' Counsel," "Settlement Class Counsel," and/or "Class Counsel" mean the following:

Shamus P. O'Meara, Attorney at Law;
as well as the law firm of
Johnson & Condon, P.A.
7401 Metro Blvd. Suite 600
Minneapolis, MN 55439

D. Plaintiffs agree to recommend approval of this Agreement by the Court and to recommend participation in the settlement by Class Members. Plaintiffs and Defendants agree to undertake their best efforts, including all steps and efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Agreement and to secure the Court's approval.

E. The "Class," "Class Member" or "Settlement Class" shall be defined as follows:

> All individuals who were subjected to the use of any aversive or deprivation procedures, including restraints or seclusion while a resident at the Minnesota Extended Treatment Options program at any time(s) from July 1, 1997 through May 1, 2011. Settlement Class or Class Member does not include any individual who has properly and effectively requested exclusion from the Settlement Class.

F. The Class Period is from July 1, 1997, through May 1, 2011.

XII. ENTRY OF HEARING ORDER AND NOTICES TO THE SETTLEMENT CLASS.

A. Promptly upon execution of this Settlement Agreement, the Parties in the Action shall apply to the Court for entry of a Hearing Order ("Hearing Order") substantially in the form of Class Action Exhibit 4 (attached and incorporated into this Agreement by reference):

1. Approving the form of the Notice of Pendency and Proposed Settlement of Class Action, Request for Exclusion ("Opt-Out"), and Claim Form (attached as Class Action Exhibits 1, 2, and 3 respectively), and ordering that these documents be disseminated substantially in the manner set forth in the Hearing Order;

2. Finding that the requirements for certification of the Settlement Class have been provisionally satisfied, provisionally appointing the Plaintiffs as

representatives of the Settlement Class and the attorneys listed at Section XI. C. as Settlement Class Counsel, and preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class;

3. Approving the form of Judgment substantially in the form of Class Action Exhibit 5 (attached and incorporated into this Agreement by reference);

4. Providing that each member of the Settlement Class who does not, in accordance with the terms of the Settlement Notice, file a valid and timely Request for Exclusion from the Settlement Class, be bound by the Judgment dismissing the Action on the merits and with prejudice;

5. Finding that the form and method of the Notice of Pendency and Proposed Settlement of Class Action and Claim Form be given in accordance with the terms of the Hearing Order; that the notice provided for constitutes the best notice practicable under the circumstances and constitutes valid, due and sufficient notice to all members of the Settlement Class, complying fully with the requirements of the Rule 23 of the Federal Rules of Civil Procedure and the Constitutions of the State of Minnesota and the United States, and any other applicable law.

6. Providing that upon entry of the final Court Judgment, DHS will reimburse Settlement Class Counsel for the reasonable costs associated with the notice and publication of the proposed Settlement to the Class Members, in the form approved by the Court, as required by Federal Rule of Civil Procedure 23(e). In that regard, Plaintiffs and Defendants will recommend to the Court that notice of the proposed Settlement Agreement will be provided by sending written notice by United States certified mail (return card requested), to all Class Members, their guardians, if any, and, a contact person or family member, if known, at the addresses found on the individual Class Members' records in the possession of METO and DHS, electronic verification of which has been provided to Plaintiffs' Counsel, or other address provided by the Post Office, the Class Member, or otherwise as described in relevant records.

7. Scheduling a hearing (the "Fairness Hearing") to be held by the Court to consider and determine whether the requirements for certification of the Settlement Class have been met, whether the proposed final Settlement Agreement should be approved as fair, reasonable and adequate; whether Settlement Class Counsel's request for attorneys' fees and reimbursement of costs and disbursements incurred in this case should be approved and

whether the Judgment approving the settlement and dismissing the Action on the merits and with prejudice should be entered;

8. Providing that the Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those members of the Settlement Class who file timely and valid objections), be continued or adjourned by order of the Court;

9. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class or to file comments on the fairness of the Settlement with the Court;

10. Providing that any objections by any Settlement Class Member to: (i) the certification of the Settlement Class, the proposed Settlement Agreement described in the Settlement Notice, and/or the petition for payment of attorneys' fees and reimbursement of costs and disbursements, and/or (ii) entry of the Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before the date (or dates) to be specified in the Hearing Order, such objector verifies that he/she is a Settlement Class Member, states in writing the specific basis for such objection(s), and mails copies of the foregoing and all other papers in support of such objections to the Court and to counsel for the parties identified in the Settlement Notice by the date set by the Court in the Hearing Order; and

11. Establishing a date (or dates) by which Plaintiff and Defendants shall file and serve all papers in support of or opposition to the application for final approval of the settlement, the petition for payment of attorneys' fees and expenses, and/or in response to any valid and timely objections received by the designated counsel for the parties identified in the Settlement Notice.

B. Settlement Class Counsel shall provide the Notice of Pendency and Proposed Settlement of Class Action and Claim Form in accordance with the Hearing Order, substantially in the form of Class Action Exhibits 1 to 3 to the Settlement Agreement, by sending written notice by United States certified mail (return card requested), to all Class Members, their guardians, if any, and, a contact person or family member, if known, at the addresses found on the individual Class Members' records in

the possession of METO and DHS, electronic verification of which has been provided to Plaintiffs' Counsel, or other address provided by the Post Office, the Class Member, or otherwise as described in relevant records.

C. The Notice of Pendency and Proposed Settlement of Class Action shall provide Settlement Class Counsel's website address, e-mail address and links to the Notice of Pendency and Proposed Settlement of Class Action, Request for Exclusion ("Opt-Out") and Claim Form, as well as the Settlement Agreement.

XIII. ENTRY OF THE JUDGMENT.

A. If, at or after the Fairness Hearing, the Settlement Agreement is finally approved by the Court, Settlement Class Counsel shall promptly submit to the Court the Judgment ("Judgment") (attached at Class Action Exhibit 5):

1. Ratifying the certification of the Settlement Class and approving the Settlement Agreement, judging its terms to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, directing its consummation in accordance with its terms, and retaining jurisdiction for the time period set forth in Section XVIII below to enforce compliance with the provisions of the Settlement Agreement and the Judgment;

2. Dismissing this Action and all claims released in the Agreement against the state and its agencies as well as Defendants Douglas Bratvold and Scott TenNapel, in their official and individual capacities, with prejudice and without costs to any party.

3. Permanently barring and enjoining Settlement Class Members, or Plaintiffs from asserting, commencing, prosecuting or continuing any of the claims which were brought or could have been brought.

B. After notice is provided to the Class as described above, and the time period for Class Member opt-outs, objections and comments has expired, Plaintiffs will

petition the Court for final approval of this Agreement, and Plaintiffs and Defendants will use their best efforts to obtain such approval. If any person objects to this Agreement, the parties will use their best efforts to meet such objection. If any person appeals the Court's order of final approval of the Agreement, the parties will use their best efforts to defeat the appeal.

C. The terms of this Agreement are subject to the Court's final approval and, in the event the Court's order granting final approval is appealed, the approval of all applicable appellate courts. If the Court or any appellate court enters an order altering this Agreement in a way that materially and adversely affects a Party, that party may void the Agreement within ten (10) business days from the date the trial court or appellate court enters such an order by giving written notice of intent to void the settlement to the opposing parties' counsel.

XIV. SETTLEMENT AMOUNT

A. As a compromise settlement of this lawsuit, and in exchange for the releases and covenants described in this Agreement, the State, DHS and Scott TenNapel agree to pay a total of Three Million and No/100 Dollars ($3,000,000), which includes attorneys' fees, costs, and disbursements, in full settlement of all claims (collectively, "Settlement Amount"). Of the Settlement Amount, the State and DHS shall pay Two Million Eight Hundred Thousand and No/100 Dollars ($2,800,000), and Scott TenNapel shall pay, in accordance with Section XVII, Two Hundred Thousand and No/100 Dollars ($200,000). The Settlement Amount includes attorneys' fees associated with the administration of the Class. However, DHS agrees to reimburse Class Counsel for the

reasonable costs and disbursements associated with the notice and publication of the proposed settlement to the Class Members, in a form approved by the Court, as required by Federal Rule of Civil Procedure 23(e), as well as appointment of a Special Master, if deemed necessary by the Court, to recommend apportionment of individual Class Member settlement amounts. The Settlement Amount may be paid as follows:

1. Subject to Court approval, Plaintiffs James and Lorie Jensen, collectively, as parents, guardians and next friends of Bradley J. Jensen shall be apportioned a minimum of Seventy-Five Thousand Dollars ($75,000.00) in total; James Brinker and Darren Allen, collectively, as parents, guardians and next friends of Thomas M. Allbrink shall be apportioned a minimum of Seventy-Five Thousand Dollars ($75,000.00) in total; and Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs, shall be apportioned a minimum of Seventy-Five Thousand Dollars ($75,000.00) in total. These payments are compensation for serving as class representatives as well as compensation to Plaintiffs' children for damages.

2. Subject to Court approval, Settlement Class Counsel may request the sum of one million dollars ($1,000,000) be paid to Plaintiffs' Counsel as combined fees and costs. From this amount Plaintiffs' Counsel, serving as Settlement Class Counsel, will pay all of the class costs, including the costs incurred in preparing and adjudicating the lawsuit, including any appeals, the costs incurred in providing staff to answer inquiries from Class Members and interested parties, and the costs of disbursing the settlement proceeds to all persons making a claim. The attorneys' fees and costs herein is the total amount that will be paid by Defendants for all attorneys' fees and costs in connection with the above entitled lawsuit and this Agreement, regardless of whether any Class Member or other person engages separate or additional legal counsel or incurs separate or additional attorneys' fees or costs.

3. After payment as set forth in subparts 1 and 2, above, the Court shall apportion an amount from remaining settlement proceeds to individual Class Members, taking into account the documented total based upon the following schedule:

Number of Documented Times Restrained/Secluded:	Apportioned Amount
1-25	$ 200 to $ 5,000
26-50	$ 5,000 to $10,000
51-75	$10,000 to $15,000
76-100	$15,000 to $20,000
101-150	$20,000 to $30,000
151-200	$30,000 to $40,000
201-250	$40, 000- $50,000
251 or more	$50,000 to $300,000

The Court may also utilize other factors for apportionment which in the interest of justice it believes should be considered, including, but not limited to, demonstrated serious physical injury.

4. To the extent any portion of the Settlement Amount, less amounts for attorneys fees, costs and disbursements, are not distributed to the Plaintiffs and the Class, such portion shall be distributed equally to three programs for people with developmental disabilities and their families, to be jointly recommended to the Court by Colleen Wieck, Executive Director, Minnesota Governor's Council on Developmental Disabilities, and Anne Barry, Deputy Commissioner, DHS.

B. The Settlement Amount paid pursuant to Section XIV will be reduced by an amount equal to two hundred dollars ($200) multiplied by the number of uses of restraint and/or seclusion documented in DHS records for all individuals who timely request exclusion from the Settlement Class pursuant to the procedures for exclusion specified in the Settlement Notice approved by the Court.

C. This Agreement is not intended to affect the rights of Plaintiffs or Class Members for any disability benefits or related benefits or funding they are receiving or for which they may qualify. The parties agree that the Court's order approving this Agreement will include a provision that to the extent of this Court's authority, the Settlement Amount paid to Plaintiffs and Class Members shall not jeopardize any disability benefits or related benefits or funding they are receiving or for which they may qualify.

D. The parties agree that the Court's order approving this Agreement shall preclude the State and DHS from seeking to recover any of the Settlement Amount from Plaintiffs and the Class Members for cost of care charges for residing at METO or participation in any other State program involving people with developmental disabilities, or any other attempt by the State or DHS to recover any of the Settlement Amount from Plaintiffs or Class Members, and that the State and DHS shall be relieved of any obligations to initiate any proceedings to recover any of Settlement Amount from Plaintiffs and Class Members.

E. For any class member that is receiving a payment pursuant to this Agreement and who claims to have sustained a personal injury as a result of any restraint or seclusion covered by the scope of this Agreement, the state Defendants, based on the class member's notice of claim and other available information known to the state Defendants, shall identify any class member whose treatment for those injuries was covered and paid for by the Medicare program, 42 U.S.C. § 1395. As to any such class member, the settlement payment shall be deposited in trust with the Court and shall be

released only after the Court determines that any lien, obligation, or claim of any kind or nature relating to Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b) of the Social Security Act, and corresponding federal regulations, 42 C.F.R. 411.20, *et seq.*, or any obligation of any kind to establish or fund a Medicare Set-Aside or similar arrangement, has been satisfied or extinguished, whether pursuant to an administrative proceeding afforded by Medicare which is exercised by such class member, or otherwise. Settlement payments deposited with the Court pursuant to this paragraph XIV. E. shall not be released without prior notice and an opportunity for all parties to be heard.

F. In order to further assure that class members do not lose eligibility for any government benefits to which they may be entitled, class members scheduled to receive three thousand dollars ($3,000) or more shall have their settlement amounts deposited with the Court. Before said funds are released, the Court will ascertain whether the class member or legal guardian has taken appropriate steps to safeguard eligibility for government benefits satisfactory to the Court including consideration of financial accounting and estate or trust planning issues involved. Upon the Court's request, the parties shall submit the names of one or more attorneys or law firms whom they know to specialize in government benefits involving people with developmental disabilities, special needs trusts or pooled trusts. The Court may hire one or more of such counsel for the purpose of advising class members and the Court. The Court may pay such advising counsel from the settlement proceeds up to fifty thousand dollars ($50,000) total for this purpose.

G. The Settlement Amount shall be due within 14 days of the Court's entry of the Final Order and Judgment in the form set forth in the Class Action Exhibit no. 5. The Settlement Amount shall be paid to plaintiffs' counsel who shall pay, deposit and administer it in accordance with this section XIV.

XV. RELEASE.

In consideration of the terms and conditions of this Agreement, including but not limited to the payment of the Settlement Amount, the sufficiency of which is hereby

acknowledged, upon final approval of this Agreement, Plaintiffs and Class Members hereby fully and forever release and unconditionally discharge Defendant Bratvold, Defendant TenNapel, the State of Minnesota and its agencies, or any alleged agencies, including, but not limited to, the Minnesota Department of Human Services, State Operated Services, METO, and all of their respective present and former employees, officials, agents and attorneys, in their official and individual capacities, which agents include Defendant TenNapel's employers, Provide Care, Inc. and Karcher Foster Services, Inc., and their respective insurers, Riverport Insurance Co. and Colony Insurance Co (referred to as "Releasees") from all claims, liability, actions, causes of action, and demands for all known or unknown, foreseen or unforeseen, contemplated or uncontemplated mental, emotional, or bodily conditions or injuries, and consequences thereof, including unforeseen consequences of known or unknown conditions or injuries whether alleged or that could have been alleged by Plaintiffs and Class Members arising out of, in consequence, or on account of the allegations in Plaintiffs' Amended Complaint, or the use of restraints and/or seclusion of any kind for any reason on Plaintiffs and Class Members at the Facility from July 1, 1997 through the date of this Agreement. Further, the Plaintiffs and Class Members release all claims, as against the Releasees, for attorneys' fees, expenses, interest and costs and disbursements, and for actual, compensatory, consequential, punitive and exemplary damages for injuries of any kind, all claims for services, loss of services or consortium and all derivative claims and causes of action which currently exist and/or could exist now or in the future, which in any way arise out of or relate to the allegations in Plaintiffs' Amended Complaint, or the

use of restraints and/or seclusion of any kind for any reason on Plaintiffs and Class Members at the Facility from July 1, 1997 through the date of this Agreement whether or not any such claim is known to Plaintiffs and Class Members.

XVI. RELEASES AMONG DEFENDANTS

A. In consideration of the terms and conditions of this Section, Defendant TenNapel and his affiliated entities, including Provide Care, Inc., Karcher Foster Services, Riverport Insurance Co. and Colony Insurance Co. ("the TenNapel Affiliates") hereby release and forever discharge the Minnesota Department of Human Services, METO and the State of Minnesota and its agencies, and all of their respective affiliated entities, present and former employees, officials, agents and attorneys, in their official and individual capacities (hereinafter referred to as "State Defendants") from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation of every known kind and nature that the TenNapel Affiliates could assert against the State Defendants arising from *Jensen v. METO*, or in any other action, including any demands for contribution, indemnification and defense or arising from the State Defendants' demand that the TenNapel Affiliates contribute to the Settlement Award, whether or not such claim is known to the TenNapel Affiliates. This release does not apply to any claim for contribution, defense or indemnification which the TenNapel Affiliates may have against the State or which the State may assert against the TenNapel Affiliates, arising from and limited to claims asserted by members of the putative class who opt out. Provided that this release shall not apply if the Court, pursuant to Section XVII, voids the participation of Defendant TenNapel.

B. In consideration of the terms and conditions of this Section, the State Defendants hereby release and forever discharge the TenNapel Affiliates and all of their respective affiliated entities, present and former employees, officials, agents and attorneys, in their official and individual capacities, from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation of every known kind and nature that the State Defendants could assert against the TenNapel Affiliates arising from *Jensen v. METO*, or in any other action, including any claim or request for indemnification, defense or contribution, whether or not such claim is known to State Defendants. This release does not apply to any claim for contribution, defense or indemnification which the State may have against the TenNapel Affiliates, or which the TenNapel Affiliates may assert against the State, arising from and limited to claims asserted by members of the putative class who opt out. Provided that this release shall not apply if the Court, pursuant to Section XVII, voids the participation of the State Defendants.

XVII. CONTRIBUTIONS AND COURT MODIFICATIONS.

A. The parties recognize that Defendant TenNapel's engagement as Clinical Director at METO changed during the period pertaining to the claims, that he held positions at METO through various defined arrangements with DHS, and that the contributions under sections (B) and (C) below are premised upon a full and complete release from all claims, whether held by the Plaintiffs, the State Defendants or putative Class members.

B. On behalf of Defendant Scott TenNapel and his former employer Provide Care, Inc., Riverport Insurance Co. will contribute one hundred thousand dollars ($100,000) toward the Settlement Award, unless the Court modifies this contribution pursuant to section (F) below;

C. On behalf of Defendant Scott TenNapel and his former employer Karcher Foster Services, Inc., Colony Insurance Co. will contribute one hundred thousand dollars ($100,000) toward the Settlement Award, unless the Court modifies this contribution pursuant to section (F) below;

D. The contributions at (B) and (C) are conditional. If none of the putative class exercise the right to opt out of the Settlement, the contributions under (B) and (C) and all provisions of this Settlement Agreement regarding Defendant TenNapel become final.

E. If any individuals exercise the right to opt out from this Settlement, then within seven (7) days of any opt-out notification, the State Defendants shall provide to Defendant TenNapel, under the Protective Order approved by the Court in this action,

access to the treatment files and information pertaining to the restraint or seclusion of each opt-out claimant, if that evidence has not been produced to Defendant TenNapel previously. Defendant TenNapel and his counsel hereby agree to and shall abide by the Protective Order.

F. Plaintiff's counsel shall alert the parties and Court to any Requests for Exclusion as they are received. After the Court has an opportunity to discuss the Settlement with any individual who returns a Request for Exclusion ("Opt-Out"), the Court will ascertain the final list of Opt-Outs and provide the final list to the parties. Within thirty days thereafter, Defendant TenNapel may move the court, consistent with non-dispositive motion briefing under the local rules, for an Order under section (1) below, to modify his obligations under this Settlement Agreement or under section (2) below to void his participation in this Settlement Agreement.

(1) Motion for Reduction: Defendant TenNapel may move for an Order which reduces, but does not eliminate, either or both of the contributions that would otherwise be made on his behalf under sections (B) and (C). In evaluating any requested reduction, the Court shall balance the interests of, and consider the fairness and reasonableness to, all settling parties. The Court shall consider whether the requested reduction may be attained by allocating a portion of the carve-out at Section XIV. B. to Defendant TenNapel's contributions and the extent to which Defendant TenNapel was involved in the care and treatment of the individual(s) who opt out. Any named party may oppose Defendant TenNapel's Motion for Reduction.

(2) Motion to Void Participation: In the alternative, Defendant TenNapel may move the Court for an Order to remove him from the Settlement and render null and void all provisions of the Settlement Agreement which establish his rights or obligations, including those requiring contributions on his behalf and those which provide releases pertaining to the TenNapel Affiliates. For the purpose of Defendant TenNapel's motion, the September 13, 2010 Mediated Settlement Agreement is not superseded, integrated or merged into this Settlement Agreement. The Court shall determine whether Dr. TenNapel is required by the terms of the September 13, 2010 Mediated Settlement Agreement to participate in and agree to the terms of this Settlement Agreement. Any named party may oppose Defendant TenNapel's Motion.

G. Should Defendant TenNapel move to void participation under subsection F (2) above, the State Defendants may move the Court for an Order to render null and void all provisions of the Settlement Agreement which obligate the State Defendants to pay damages and attorneys' fees to Plaintiffs, Class Members and their counsel and which obligate State Defendants to pay contribution or provide releases. However, the State may not seek the termination of its obligations to provide prospective relief. For the purpose of the State's motion, the September 13, 2010 Mediated Settlement Agreement is not superseded, integrated, or merged into the Settlement Agreement. The Court shall determine whether the State is required by the terms of the September 13, 2010 Mediated Settlement Agreement to participate in and agree to the terms of this Settlement Agreement. Any named party may oppose the State Defendants' motion. Plaintiffs may oppose the State Defendants' Motion, or, alternatively, move the Court for an order

rendering null and void all provisions of the Settlement Agreement and all obligations of Plaintiffs and Plaintiffs' counsel thereunder and returning the action to the Court's calendar for timely adjudication.

H. Any motion brought under Section XVII shall be heard by the trial judge and brought consistent with the rules for non-dispositive motion briefing under the local rules, except that the Movant shall serve and file the Motion and moving papers twenty one (21) days before the hearing, and any opposing party shall serve and file their response within fourteen (14) days thereafter, and reply briefs may be served and filed three (3) days before the day of the hearing. The motion must be preceded by a meet and confer amongst counsel at which the parties attempt to resolve their differences.

I. In the event that the Court grants the request of Defendant TenNapel to void the Settlement Agreement as to him and the State Defendants do not seek to void this Settlement Agreement, all provisions as between Plaintiffs and the State Defendants shall remain in full force and effect, including the State's payment of two million eight hundred thousand dollars ($2.8 million) and Plaintiffs shall provide the State Defendants a *Pierringer* release in the form shown in Attachment D (attached and incorporated into this Agreement by reference) which shall include the discharge of any State liability for the conduct of Defendant TenNapel.

XVIII. DISMISSAL AND RETENTION OF JURISDICTION

A. If no named party gives notice of intent to void the settlement, the parties to this Agreement shall execute the Stipulation for Entry of Final Order, proposed Final

Order, and Judgment (attached as Class Action Exhibit 5 and incorporated into this Agreement), and file the same with the Court.

B. The Court shall retain jurisdiction over this matter for two (2) years from its approval of this Agreement for the purposes of receiving reports and information required by this Agreement, or resolving disputes between the parties to this Agreement, or as the Court deems just and equitable. Should Plaintiffs believe a pattern and practice of substantial non-compliance with Attachment A exists, the State and Plaintiffs shall meet and confer in an effort to resolve any such concerns. The meet and confer shall be held no later than sixty (60) days prior to the two year anniversary of the Court's approval. Should Plaintiffs continue to believe a pattern and practice of substantial non-compliance with Attachment A exists, Plaintiffs may, within thirty (30) days thereafter, file a motion with the Court to extend the reporting requirements to the Court under this Agreement for an additional one (1) year. The motion shall be filed consistent with the local federal rules for dispositive motions, with notice to the Attorney General's Office and copies of all submissions consistent with the local federal rules.

C. The August 2, 2010 Protective Order in the above-entitled action shall remain in effect according to its terms until final dismissal of this action.

D. Plaintiffs shall provide the Minnesota Attorney General's Office written notice at least twenty one (21) days prior to any filing or court hearing of any enforcement proceeding. The notice shall specify the section of the Agreement subject to the enforcement action, the factual basis for the action and the relief being sought. At least seven (7) days prior to any court hearing of an enforcement action, plaintiffs'

counsel shall make a good faith effort to confer with defense counsel and resolve the matter without court action.

E. This Agreement shall terminate at the same time as the court's jurisdiction ends under paragraph B above, provided that the Department shall continue to fund the fifteen (15) Community Support Services positions, the External (OHFC) Reviewer and the Third Party Experts through Fiscal Year 2015 (ending June 30, 2015) and provided further that the releases contained herein shall remain in effect, except to the extent any party's participation is voided by the court pursuant to a defendant's Motion to Void Participation under either Section XVII. F. 2 or XVII. G., or a plaintiff's Motion to render null and void all provisions of the Settlement Agreement under Section XVII. G.

XIX. REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Plaintiffs and Defendants represent and warrant as follows:

A The parties have each received independent legal advice from their respective attorneys with respect to the advisability of executing this Agreement.

B. Prior to the execution of this Agreement by the parties, each party or its attorneys reviewed the Agreement at length and made all desired changes.

C. This Agreement is the result of negotiations between the parties, each of which has participated in the negotiating and drafting of this Agreement through their respective attorneys. The language of this Agreement shall not be presumptively construed in favor of or against any of the parties.

D. Except as expressly stated in this Agreement, the parties have not made any statement or representation to any other party to this Agreement regarding any fact

relied upon by such other party in entering into this Agreement, and the parties specifically do not rely upon any statement, representation, or promise of any other party in executing this Agreement, except as expressly stated in this Agreement.

E. There are no other agreements or understandings between the parties relating in any way to the claims or this Agreement except as stated in this Agreement.

F. The parties, together with their attorneys, have made such investigation of the facts pertaining to this Agreement and its provisions as they deem necessary.

G. The parties have been represented by their respective attorneys during the negotiation, drafting and execution of this Agreement.

H. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely and voluntarily, and without inducement, threat or promise, by each person executing this Agreement.

I. Each party to this Agreement has duly authorized the execution and performance of this Agreement by all appropriate and necessary action. Each signatory to this Agreement has the power and authority to enter into and perform this Agreement.

J. Each party to this Agreement agrees that such party will not take any action which would interfere with the performance of this Agreement by any other party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.

XX. SEVERABILITY

It is understood and agreed by the parties that if any of the provisions hereof should contravene applicable law, or be held void, voidable, unenforceable, or invalid,

the remaining portions hereof shall remain in full force and effect, and shall be construed as if not containing the particular provision or provisions held to be in contravention of applicable law, or void, voidable, unenforceable or invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

XXI. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and enforced in accordance with applicable federal and Minnesota laws.

XXII. INTEGRATION

This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by the parties, except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement, except as expressly provided herein.

XXIII. SUCCESSORS

This Agreement shall be binding and enforceable upon the successors and assigns of the parties.

XXIV. EXECUTION IN COUNTERPARTS

A. Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement.

B. Originals. The parties shall execute five (5) originals of this Agreement, with one fully executed and complete original being provided to each Plaintiff, the State/DHS, Scott TenNapel, Douglas Bratvold and to the Court.

XXV. LANGUAGE OF THE AGREEMENT

The use of the singular in this Agreement includes the plural, and vice versa.

XXVI. ADMISSIONS

A. It is understood that by agreeing to this settlement, Defendants in no way admit fault or liability of any kind to Plaintiffs. Nothing in this Agreement shall be construed as an acknowledgement, admission or evidence of liability of the Defendants and nothing in this Agreement may be used as evidence of liability in any administrative, civil or criminal proceeding.

XXVII. MODIFICATION

This Agreement may only be modified with the written consent of the parties, such consent not to be unreasonably withheld.

XXVIII. EFFECTIVE DATE

This Agreement shall become effective upon final approval by the Court.

XXIX. NOTICE TO U.S. DEPARTMENT OF JUSTICE

Within ten (10) days of final approval of this Agreement, Plaintiffs' counsel shall send a letter to the United State Department of Justice, Civil Rights Division, stating that a class action settlement has been reached in the above-entitled lawsuit, and providing a copy of the executed Agreement and Court Order(s) approving the Agreement.

Dated: June 3 2011

James Jensen
Plaintiff

Dated: June 3, 2011

Lorie Jensen
Plaintiff

Dated: 6-1-2011

James Brinker
Plaintiff

Dated: 6-1-2011

Darren Allen
Plaintiff

Dated: 6-1-11

Elizabeth Jacobs
Plaintiff

Defendants State of Minnesota
and Minnesota Department of
Human Services

Dated: June 16, 2011

Anne Barry
Deputy Commissioner

Dated: _____

_____
Douglas Bratvold
Defendant

Defendants State of Minnesota
and Minnesota Department of
Human Services

Dated: _____

_____
Anne Barry
Deputy Commissioner

Dated: 6-16-11

_____
Douglas Bratvold
Defendant

Dated: June 17, 2011

Scott TenNapel
Defendant

Except for the releases to and by it in Sections XV and XVI, and the contribution made on behalf of Defendant TenNapel in Section XVII. C., Colony Insurance Co. is not a party to this Agreement, but executes this Agreement with respect to those releases and contribution.

COLONY INSURANCE CO.
By _____
Its Sr. Claims Examiner
Date 6/20/11

Except for the releases to and by it in Sections XV and XVI, and the contribution made on behalf of Defendant TenNapel in Section XVII. B., Riverport Insurance Co. is not a party to this Agreement, but executes this Agreement with respect to those releases and contribution.

RIVERPORT INSURANCE CO.
By Robert A. Weisbrod
Its Vice President-Claims
Date 6/20/11

Except for the releases to and by it in Sections XV and XVI, Provide Care, Inc. is not a party to this Agreement, but executes this Agreement with respect to those releases.

PROVIDE CARE, INC.
By _____
Its C.F.O
Date 6-20-2011

Except for the releases to and by it in Sections XV and XVI, Karcher Foster Services, Inc. is not a party to this Agreement, but executes this Agreement with respect to those releases.

KARCHER FOSTER SERVICES, INC.
By _____
Its President
Date 6-20-2011

AG: #2839111-v1

Issue Date: November 1, 2010 Effective Date: December, 2010 Procedure Number: 3503

CLIENT CARE

THERAPEUTIC INTERVENTIONS AND EMERGENCY USE OF PERSONAL SAFETY TECHNIQUES

SOS REFERENCE POLICY NUMBER: _6260_____

BACKGROUND:
METO uses positive behavior support strategies as its core means for encouraging alternate behaviors in place of behaviors that inhibit a client's ability to live sustainably in the community. Essential to this approach is fostering and sustaining an environment in which positive behavior support (PBS) strategies are utilized, as well as alternate modalities and methods of communication to assist clients to better meet their needs and have more control over the behaviors that inhibit a client's ability to live sustainably in the community. METO prohibits the use of any aversive or deprivation procedures as interventions in a client's Individual Program Plan or equivalent treatment plan documentation.

PURPOSE:
Even within the framework of positive behavior support programming in the Treatment Plan, there are emergencies in which less restrictive behavioral support strategies are ineffective in sustaining safety. When an emergency occurs, it is incumbent on staff to assure the individual's and others' safety in the moment. METO defines these emergencies as situations where the client's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Client refusal to receive/participate in treatment shall not constitute an emergency.

The *only* time a restraint will be used at METO, will be as a safety measure when treatment has failed and an emergency results. The only type of emergency restraint permitted at METO is certain specified manual restraint and the use of Velcro soft cuffs and fabric ankle straps. METO shall use the least amount of intervention necessary to safely physically manage an individual, only when less restrictive behavioral support strategies have been ineffective in sustaining safety, and only concurrent with the uncontrolled behavior. These procedures will be continued for the least amount of time necessary to bring the individual's behavior under control and be appropriate to the situation to ensure safety.

Whenever possible, staff shall first attempt to de-escalate these emergencies by implementing the client's Treatment Plan with specific references to less restrictive alternatives that are known to help that client de-escalate, as well as through negotiation, redirection, distraction, and modifications to the environment all of which are likely to assist the client to utilize alternate behaviors to meet their needs. Restraint shall not be used for disciplinary purposes, for the convenience of staff, or as a substitute for treatment, nor shall restraint be used to compel clients to receive/participate in treatment. METO has a zero tolerance for misuses of emergency risk reduction procedures and will take appropriate corrective and/or disciplinary action when such misuses are identified.

DEFINITIONS:
A. Client: An individual receiving treatment at METO.

B. Responsible Supervisor: Home Supervisor, Work Supervisor, Administrator on Duty (AOD), or Lead Worker on Duty.

C. Staff Certified in Therapeutic Intervention and Personal Safety Techniques: A staff member who has successfully completed the State Operated Services standardized and facility approved "Therapeutic Intervention" and "Personal Safety Technique" courses within the past year or taken a "Therapeutic Intervention" and "Personal Safety Technique" refresher classes within the last year.

D. Therapeutic Interventions: A form of intervention which consists of early identification of potential emergencies; prevention of emergencies through verbal, non-verbal, and non-physical methods; diversion by providing choices to clients or alternate activities, environments or personal contacts. Prevention is predicated on identification of individual client needs, planning to meet those needs, and the use of specific de-escalation techniques in the client's Treatment Plan.

E. Personal Safety Techniques (PST): Application of external physical control by employees to clients only when clients cause an emergency despite the preventive therapeutic intervention strategies attempted. Physical control is based on the principle of using the least amount of force necessary to prevent injury and protect life and physical safety when positive behavior programming and other less restrictive prevention strategies have failed.

F. Manual Restraint: "Manual restraint" means physical intervention intended to hold a client immobile or limit a person's movement by using body contact as the only source of physical restraint. It is any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. The term ***does not mean*** physical contact used to: facilitate the client's completion of a task or response when the client does not resist or the client's resistance is minimal in intensity and duration; conduct necessary to perform medical examination or treatment; response blocking and brief redirection used to interrupt an individual's limbs or body without holding a client or limiting his or her movement; or holding an individual, with no resistance from that individual, to calm, or comfort.

G. Mechanical Restraint: "Mechanical restraint" means the use of a device to limit a person's movement or hold a person immobile as an intervention precipitated by a person's behavior. The only approved mechanical restraints at METO are Velcro soft cuffs and fabric ankle straps. The term does not apply to devices used to treat a person's medical needs to protect a person known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a person with physical disabilities in a manner specified in the person's Treatment Plan.

H. Emergency: Situations when the client's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Client refusal to receive/participate in treatment shall not constitute an emergency.

I. Expanded Interdisciplinary Team: Expanded interdisciplinary team means a team composed of: the client receiving treatment from METO; his or her case manager; his or her legal representative and advocate, if any; representatives of providers of residential, day training

and habilitation, and support services identified in the person's Treatment Plan; a health professional, if the client has overriding medical needs; mental health professionals (e.g. Psychologist, Psychiatrist, Counselor) if the client has overriding mental health needs; and a designated coordinator. The designated coordinator must have at least one year of direct experience in assessing, planning, implementing, and monitoring a plan that includes a behavior intervention program.

J. Treatment Plan: A plan developed by the Expanded Interdisciplinary Team, outlining positive behavior support strategies as the course of treatment intervention intended to encourage alternate behaviors in place of those behaviors that inhibit a client's ability to live sustainably in the community. This plan is developed using the information garnered from a thorough assessment of the function of the undesired behaviors, as well as person centered planning principles consistent with *Olmstead v. L.C.*, 527 U.S. 582 (1999), in order to assist the Expanded Interdisciplinary Team in creating treatment interventions that will effectively help the client get his or her needs met by alternate methods.

K. Prone Restraint: "Prone restraint" means any restraint that places the individual in a face-down position. Prone restraint does not include brief physical holding of an individual who, during an incident of physical restraint, rolls into a prone or supine position, when staff restore the individual to a standing, sitting, or side-lying position as soon as possible.

L. Restraint means the use of manual, mechanical, prone, or chemical restraint.

M. Chemical restraint is the administration of a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition. Orders or prescriptions for the administration of medications to be used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement shall not be written as a standing order or on an as-needed basis (PRN).

N. Seclusion means the placement of a person alone in a room from which egress is:
a. noncontingent on the person's behavior; or
b. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.

O. Time out means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified in the individual program plan for reduction or elimination. Room time out means removing a person from an ongoing activity to a room (either locked or unlocked).

RESPONSIBILITIES & PROCEDURES:

A. Assessments

1. Development of the Treatment Plan: Following admission, the Designated Coordinator for the client's Expanded Interdisciplinary team, with the assistance of all

other team members will obtain information about the client that could help minimize the use of restraint by identifying the following:

a. Techniques that would help the individual control his or her behavior.
b. The client's need for methods or tools to manage his or her behavior.
c. Pre-existing medical conditions or any physical disabilities and limitations that would place the individual at greater risk during the use of restraint (see section on "Admission History and Physical and Annual History and Physical assessments").
d. Any history of sexual or physical abuse or other trauma that would place the individual at greater psychological risk during restraint.
e. Techniques identified by the client or his or her family that would help minimize the use of restraint.

2. Admission History and Physical and Annual History and Physical assessments: METO RN's shall ensure that all METO clients are assessed by a physician or advanced practice RN (APRN) or nurse practitioner (NP) during the admission physical and at least annually thereafter to determine whether the client has a physical condition, i.e., obesity, asthma, etc., which would make implementation of any restraint medically contraindicated. The physician's statement regarding contraindication of these procedures shall be included in the admission history and physical report, the doctor or APRN's admitting orders (treatments, diagnostic procedures, and administration of medications that must be carried out by a nurse upon written order), and annual physical examination report. Alternatives and/or means under which restraint might be used when there is a medical contraindication will be written as an identifiable treatment order on the client's medical record physician order sheet.

B. Staff Training on Therapeutic Interventions and Emergency Restraint

1. Upon employment, all METO staff members shall complete the full SOS Therapeutic Interventions and Personal Safety Techniques (TI/PST) course and Positive Behavior Supports course. This training will consist of:

a. Staff are trained in early detection of escalation by an individual during the 12 or more hours of training per year on Positive Behavior Supports (varying based on the length needed to complete computer based portions and test outs of the training).

b. Upon start of employment, a 16 hour orientation training with mandatory skill check-off and certification. This includes 8 hours of training in therapeutic intervention (including boundaries and negotiation) and 8 hours of training in personal safety techniques. This curriculum includes therapeutic boundaries and risk reduction negotiation techniques. Semi-annually thereafter, 8 hours (4 hours in therapeutic intervention, including boundaries and negotiation, and 4 hours of training in personal safety techniques), with mandatory skill check-off and certification.

i. Required level of proficiency: Employee will be able to accurately and independently demonstrate in role play use of

therapeutic interventions as documented by a SOS certified TI/PST instructor.

ii. Recommended SOS certified TI/PST instructor to student ratio for refresher training is 2 to 15.

iii. All training of employees in Therapeutic Intervention shall be conducted by SOS certified therapeutic intervention instructors.

iv. All employees shall complete a therapeutic intervention course at minimum annually and optimally semi-annually or more often if assigned by supervisor.

c. Staff are trained in early detection of escalation for a particular individual, through client specific training on their treatment plans and what positive behavior support strategies are known to assist a particular client in de-escalation. The Designated Coordinator is responsible for assuring this client specific training occurs every time the EIDT modifies the client's Treatment Plan.

C. Implementation of Therapeutic Interventions and Emergency Restraint:

1. When staff perceive warning signs of a potential emergency they should:

a. attempt to utilize Therapeutic Intervention techniques, positive behavior support strategies that are known to work for the individual, or other alternatives or de-escalation strategies to reduce the need for restraint. The focus of the therapeutic interventions is in early detection of escalation of risk taking behavior. Staff will then utilize positive behavior support techniques known to assist a particular client to de-escalate according to their Treatment Plan

b. ensure, if possible, a 4'x6'mat and a mat for the client's head area is available and used to provide safeguard to the client during those restraints that have a client lay on the floor. Mats are located and available in all areas of the campus where client activities occur. Since these mats are located in areas where they are readily available and staff are trained in early detection of escalation by an individual through the annual Positive Behavior Supports training, training on the use of Therapeutic Interventions, or by specific training on a client's Treatment Plan and what techniques are known to assist a particular client in de-escalation, it is likely that these mats will be ready for use in emergency situations. If staff are unable to guide the client directly onto the mat or the mat is not readily available, once the client is immobilized, the mat will be placed under their body or they will be rolled into a side lying position onto the mat. The small mat will be placed under the client's head if their head is not on the larger mat.

c. only initiate the use of restraint if trained in its use, and use only facility approved physical intervention techniques and holds.

d. Prone restraint is prohibited because positional asphyxiation is a risk factor. The prone restraint (face down) position will only be used at METO as a

transitory take down portion of a manual restraint procedure. The client should be rolled into a side-lying position or seated position as quickly as is possible. In addition, it is considered a transitory prone facing portion of a restraint if during a brief physical holding of an individual he or she rolls into a prone facing position, when staff restore the individual to a standing, sitting, or side-lying position as soon as possible. Applying back pressure while a client is in the prone position is prohibited.

e. Notify the RN and/or Lead Worker On Duty immediately.

f. Notify the responsible supervisor immediately.

g. Make sure a METO Form #31032 (Documentation for Implementation of Controlled Procedure) is initiated as soon as is possible following initiation of restraint.

h. During the use of a restraint, continuously monitor the client's physical condition closely for signs of distress (cardiac, respiratory, circulation, choking, seizure onset) and take immediate action to discontinue restraint and provide emergency first aid (including calling 911) if distress is noted. Take vital signs if directed by RN. Document the results of this monitoring every 15 minutes on METO Form #31032.

i. As soon as reasonably possible upon the emergency presenting, but no later than 30 minutes after the emergency begins, the responsible supervisor shall contact a Third Party Expert from a pre-approved list. The expert shall be consulted in order to obtain professional assistance to abate the emergency condition, including the use of positive behavioral support techniques, safety techniques, and other best practices. If the scheduled qualified Third Party Expert is not immediately available, the responsible supervisor shall contact the Department's medical officer on call in order that the medical officer may assess the situation, suggest strategies for de-escalating the situation, and approve of or discontinue the use of restraint. The consultation with the Third Party Expert or medical officer shall be documented in the resident's medical record

j. During the use of a restraint, timing of checks, prompts, and additional procedural steps begin with the point in time at which the client is immobilized. At this point, staff will inform the client of the release criteria. Release criteria for emergency restraint are sixty (60) seconds wherein (1) the client is physically calm, and (2) without verbal threats/indication of intent to resume imminent risk of physical harm to self or others.

k. Efforts to lessen or discontinue the restraint must be made at least every 15 minutes unless contraindicated and these efforts must be documented. METO Form #31032 must be used to document these efforts at release. At fifteen (15) minutes following application of restraints, staff will speak with the client and attempt to ascertain whether the client will safely comply with staff

efforts to release the ankle restraint. If the client indicates a willingness to comply, as evidenced by no struggling and no verbal threats, staff will release the ankle restraint. If the client indicates unwillingness to comply safely with the attempt to loosen the restraint, staff will continue the restraint and document the unsuccessful attempt on METO Form #31032 (Use of Controlled Procedure Form).

l. Restraint will be continued for the least amount of time necessary to bring the client's behavior under control. The maximum duration for a single episode of restraint without opportunity for mobility or exercise is 50 minutes. If after three (3) consecutive 15-minute offers to discontinue restraint the client continues to struggle and/or verbalize intent to resume behavior which creates an imminent risk of physical harm, staff will nonetheless remove the mechanical restraints or discontinue use of manual restraint. If and only if the client's conduct again constitutes an emergency, staff will reinitiate the restraint. Verbal threats alone are insufficient reason to reinitiate restraint. If the client appears calm for 60 seconds, staff will speak with the client and attempt to ascertain whether the client will safely comply (i.e. verbalizes he or she does not intend to engage in imminent risk of physical harm to self or others) with release from restraint. If the client indicates a willingness to comply, as evidenced by no struggling and no verbal threats to cause imminent risk of physical harm to self or others, staff will release from restraint. If the client re-escalates and again engages in behavior constituting an emergency, staff will re-apply restraint per the above procedures. If restraint is reimposed, the Third Party Expert must again be consulted. The client must be given an opportunity for release from the manual or mechanical restraint and for motion and exercise of the restricted body parts for at least ten (10) minutes out of every sixty (60) minutes.

m. If at any time during use of a restraint staff believe the health or safety of either the client or staff is in jeopardy because of the restraint, staff shall immediately release the client. If it looks like the restraint may last longer than 15 minutes, the responsible supervisor shall be asked to conduct an immediate assessment and will do so in consultation with the on call Medical Director or on call Administrator for the program. The responsible supervisor with training/experience working with developmentally disabled adults with co-morbid mental health conditions, will assess whether the client's mental health condition is causing him or her to engage in imminent risk of physical harm to self or others and subsequently if there is a need to contact a physician to request a consideration of the use of psychotropic medication to manage the client's mental health symptoms more effectively and minimize the need for further restraint to keep the individual safe (METO Procedure #3601).

n. Following the client's release from the use of restraint, staff should:
   (1) Provide immediate care for any client injuries incurred.
   (2) Assume the occurrence of using restraint may have been traumatic for the individual and debrief with them as he or she permits.

(3) Try to get the client integrated back into his or her normal routine as quickly as possible.
(4) Complete required documentation including METO form #31032.

o. The Facility shall not use Chemical Restraint.

p. The Facility shall not use Seclusion or Time Out.

q. The Facility shall not use Mechanical Restraint except Velcro soft cuffs and fabric ankle straps may be used only when an emergency

r. Medical restraint, and psychotropic and/or neuroleptic medications shall not be administered to clients for punishment, in lieu of adequate and appropriate habilitation, skills training and behavior supports plans, for the convenience of staff and/or as a form of behavior modification.

D. Reporting and reviewing emergency use.

Any use of restraint must be reported and reviewed as specified in the following items:

1. Staff member who implemented the procedure:
   a. Complete required documentation including METO Form #31032. This form must be completed before the end of each person's shift.
   b. A client Incident Report (see METO Procedure #3303) shall be completed if the client experienced any physical injury.

2. Nursing/Designee:
   a. Review and complete designated nursing sections of METO Form #31032.
   b. Ensure that the completed METO Form #31032 summarizes the opinions of the private vendor who was consulted.
   c. Review and complete designated nursing section of METO client incident report and submit to supervisor/AOD/Lead Worker on Duty.

3. Supervisor/AOD/Lead Worker on Duty:
   a. Review and complete designated supervisory sections of METO Form #31032.
   b. Ensure that the completed METO Form #31032 summarizes the opinions of the private vendor who was consulted.
   c. Ensure that the completed original of form #31032 is delivered to the HIMS collection area before the end of the shift on which the restraint occurred.
   d. Complete an Employee Injury/Illness Notification Form (See METO Protocol #1402) if any staff experience an injury and deliver to Human Resources by the end of the shift.
   e. Review and complete a client incident report if the client experienced any injury and route to the HIMS collection area before the end of the shift on which the injury occurred.

4. HIMS

a. Scan form #31032 and send copies to the METO Director/Operations Manager, Facility Clinical Supervisor, and the client's treatment team. A reasonable effort must be made to submit it within 24 hours, but in no event later tban the next business day.

b. The completed METO form 31032 shall be submitted electronically, faxed or personally delivered to the following offices or persons. A reasonable effort must be made to submit it within 24 hours, but in no event later than the next business day

(1). Office of Health Facility Complaints;

(2). Ombudsman for Mental Health and Developmental Disabilities;

(3). DHS Licensing;

(4). DHS Internal Reviewer;

(5). Client's family and/or legal representative;

(6). Case manager;

(7). Plaintiffs' counsel.

c. **Within 14 calendar days** after the use of restraint, members of the EIDT must confer to discuss the following (HIMS has 7 days to submit to county case manager, and county case manager has 7 days after receiving the report to confer):

1) The incident that necessitated the use of restraint
2) A description of the imminent risk of physical harm to self or others and the plan for reduction or elimination of this behavior in observable and measurable terminology
3) Identify the antecedent or event that gave rise to the imminent risk of physical harm to self or others
4) Identify the perceived function the imminent risk of physical harm to self of others served
5) Determine what modifications should be made to the existing Individual Program Plan to reduce the need for future use of an emergency manual restraint.
6) Documentation of attempts to use less restrictive alternatives.

d. The Designated Coordinator will document any recommendations the EIDT makes in regards to 1-6 above on METO Form #31025 and submit the completed form to HIMS. The HIMS department shall then forward the original to the Operations Center for filing in the client's permanent medical record and to the Behavior Management Review Committee.

e. The Designated Coordinator will identify in the client's Treatment Plan any recommendations the EIDT makes in regards to 1-6 above.

f. Submit a copy of the Emergency Use of Controlled Procedure Report to the BMRC, the DHS internal reviewer, and as otherwise required by law within five working days after the EIDT review of the emergency use of restraint.

g. The Designated Coordinator shall ensure that the plan for reducing the behavior that caused the emergency, as well as changes made to the adaptive skill acquisition portion of the plan are incorporated into the Treatment Plan within 15 calendar days after the EIDT review above. The Designated Coordinator shall document the decisions of the EIDT in the client's permanent record. During this time, the Designated Coordinator shall document all attempts to use less restrictive alternatives including:
   (1) strategies that were not successful in reducing the client's engagement in imminent risk of physical harm to self or others;
   (2) attempts made at less restrictive procedures that failed and why they failed; and
   (3) rationale for not attempting the use of other less restrictive alternatives.

h. The Designated Coordinator for each client shall be responsible to monitor the repeated use of restraint. When restraint occurs more than twice in 30 days for an individual client, it must be reviewed by the EIDT, METO Director, facility Clinical Supervisor or designee, and the DHS internal reviewer to determine if any modifications or adjustments to the treatment plan would be warranted.

5. Behavior Management Review Committee (BMRC)
The BMRC reviews completed METO Forms #31025 and #31032 at its regularly scheduled meeting and identifies any concerns they might have regarding the use of restraint and document them in the BMRC minutes.

6. Critical Action-Review of Experience (CARE)
Any time additional staff are needed for intensive negotiations or use of restraint, a CARE meeting will be attempted. Attendance at the CARE meetings is voluntary, confidential and will be used only for information gathering. Facilitators for these meetings are volunteer Human Services Support Specialist and clinical staff. Information will be gathered on what went well during the critical action (so this can be replicated) and identify where staff were not as effective, so that the program can determine alternative prevention measures that can be applied across the program, determine if additional staff training is needed, and provide a communication channel and suggestions for the involved staff to METO Administration. Completed CARE information will be submitted to the METO Director and assigned CARE review team for review and follow up with the respective METO treatment teams, SOS Therapeutic Intervention instructors, or the internal Behavior Management Review Committee.

7. HIMS shall maintain statistics on the use of restraints. For each use of restraint it shall record: the client's name, the date of the restraint, the type of restraint used, and the length of time the restraint was used. This information shall be provided to the Director (or Facility Operations Manager), facility Clinical Supervisor, and DHS [Internal Reviewer] monthly.

DATA PRIVACY: Staff must ensure compliance with state and federal data privacy regulations.

REFERENCES:
A. State Operated Services Policy 6260, Therapeutic Intervention

CANCELLATIONS: This procedure supersedes METO Procedure #3503 dated 2/2009.

REVIEWER: FACILITY Director/ Facility Operations Manager

AUTHENTICATION SIGNATURES:

_____
Facility Director/ Facility Operations Manager

SETTLEMENT AGREEMENT ATTACHMENT A

AG: #2720693-v1

STAFF TRAINING

Staff training program for the Facility will be as follows:

Pre-Crisis (Person Centered Planning and Positive Behavior Supports) - All employees will be trained in person centered approaches in working with clients. The focus of this training is getting to know the client, working with the client in building natural and positive supports, observing and learning client likes and dislikes, incorporating this knowledge into building and developing tools with the client which assists them in reaching their desired goals. All staff will receive training in specific person centered planning tools and positive behavior supports tools. The faculty must have knowledge and experience in person centered approaches and Positive Behavior Supports.

In addition, all employees will be trained in the area of Therapeutic Interventions. This training will focus on safety, connecting with the client, understanding of the client, and awareness of client behavior as well as the client environment. The faculty must have knowledge and experience in Therapeutic Interventions.

Crisis Intervention - In addition, each staff member will receive Personal Safety Techniques Training. This training will be specific to the concepts of client and staff movement, balance, disengagement (blocks and releases) and physical engagement (escorts and restraint). The faculty must have knowledge and experience in Personal Safety Techniques.

The second training strategy is teaching observance of what is occurring during the use of crisis intervention procedures. Observing and understanding what and how the client reacted to the intervention is critical knowledge for future training and working successfully with the client. In addition, all staff who are trained in personal safety management will be trained to physically monitor a person during the use of restraints to minimize the medical impact of the restraints. Specific training on indications of physical distress, restraint asphyxiation, trauma and other medical impacts will be delivered by an SOS Registered Nurse, Advanced Practice Nurse, Physician, or other qualified medical staff prior to staff being allowed to use physical procedures.

Post Crisis Evaluation and Assessment - Training will occur in how the team that is working with the client can evaluate the circumstances that resulted in the use of restraints. Staff will identify contributing and triggering factors, medical issues, relationship issues, etc., and they will be trained to use the findings to modify the treatment/support plan. This training is more than debriefing; in addition to the debriefing, it also includes identifying the factors that contributed to the situation and using that information to modify the individual program plan to be more effective. This knowledge allows the team to build on success and continually improve in assisting the clients in self-managing their own behaviors. The faculty must have knowledge and experience in Post Crisis Evaluation and Assessment.

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Measurement of Training - All training will be documented in individual personnel training files. Staff will be required to pass knowledge tests upon completion of training. Knowledge tests might include didactic as well as practical application items. The results of the tests will be in personnel files. Any new staff person who does not pass the test will not be allowed to work with clients until demonstrating competency with the procedures. All current staff will be trained by June 30, 2011 and new staff will be trained as part of new employee orientation. New staff must demonstrate competence in Therapeutic Interventions and Personal Safety Techniques prior to working with clients. New employees who do not demonstrate competence in the procedures will not be certified in their positions. Performance deficiency correction tools will be used to address the issue of existing employees who do not demonstrate competency in the procedures. Data will be available on the percentage and number of staff trained. Staff who successfully pass the competence exam by demonstrating the skills taught in the course will be held accountable for using the skills on the job.

Definition of Terms:

Therapeutic Interventions are used every day to prevent escalation of situations and maintain a therapeutic milieu. Maintaining safety in a therapeutic environment is provided when staff is practicing connecting, understanding, awareness of self, awareness of others, awareness of the environment, and safety.

- Connecting includes: greeting people, interacting, being interested, asking questions, finding common interests/goals, listening, using humor, building trust and being respectful.
- Understanding includes: active listening, empathy, clarifying, being non-judgmental, being genuine, learning how culture or past trauma impacts this moment, finding out what is important to them and their goals.
- Awareness of self includes: knowing your hot buttons, moods, attitudes, and biases that impact your work. Knowing personal body language, tone of voice or use of humor and what it looks like to others. Dressing professionally and safely. Knowing personal strengths and limitations.
- Awareness of others: The others we need to be aware of include the people being supported at the site, co-workers, family members, other team members like social worker or guardian. Providing a therapeutic environment requires knowing their history, what sets them off, what calms them down, how to communicate successfully, their likes/dislikes and what is currently happening for them (health, social, psychological) in this moment.
- Awareness of environment includes: scanning for weapons or other hazards, modifying for effectiveness, knowing effects of noise, lighting, heat/cool, and weather conditions. Knowing what resources are available and what policies/procedures provide guidance. Knowing how to call for help and where the exits are.
- Safety: Includes communication to team, vigilance/pay attention, getting assistance, flexible thinking, planning, and documentation. Trust your instincts and tell teammate if they are unsafe. Using safety equipment, locking what needs locking, doing maintenance and being fully trained.

Personal Safety Techniques

Balance: Proper balance maximizes safety and control, while minimizing the effort needed. The Basic Stance is a posture of readiness incorporating concepts of balance.

Movement: Moving the body while maintaining a balanced posture to allow quick and easy movement in most directions; to be able to move in and out of a potentially dangerous situation, to avoid being struck or grabbed by an aggressive individual.

Disengagement:

- Blocks are deflective moves used to redirect the movement of a person aggressively attempting to strike or grab the staff. These techniques provide effective protection for staff in the event of an attempted blow, kick, or aggressive grasp.
- Releases are techniques that may be used to affect a release from aggressive grasp. They are used when aggressive acts include contact to pull, control, or injure the employee or other person. Examples include being grabbed at the wrist, hair or torso, being choked or bit.

Engagement: Techniques used when all less intrusive means have failed. To physically engage with people for the following purposes:

- Immediately prevent an unsafe situationwhere the consumer's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety.
- Restore safety and order to a situation that is out of control and unsafe
- To provide supportive physical assistance when a person is requesting, showing a need for, or, agreeing to without resistance, due to their immediate need for such physical assistance, e.g. helping them off the ground or with ambulating.

Escorts: Techniques used to move people when there is an emergency.

Restraint: Techniques used to prevent injury by manual or mechanical restraint of the person when all less intrusive interventions will not work.

☐ **Emergency Restraint**

Type of Procedure: ☐ **Manual Restraint** ☐ **Mechanical Restraint** ☐ **Removal of item/ property** ☐ **Other** *(Specify)*:

Date: _____
Time:
Start: _____
End: _____
Total: _____ minutes

Initiator of Intervention *(Full name)*: _____

Assisting Staff *(full names)*
1) _____ 4) _____
2) _____ 5) _____
3) _____ 6) _____
7) _____

RN Notified:
_____ *(Name)*
Time: _____

1. **Type of Risk necessitating intervention:** ☐ Harm to Self ☐ Harm to Others

2. **Specify personal safety technique used in intervention, if any:** *(check all that apply)* ☐ None
   - ☐ Escort
   - ☐ Basic come-along
   - ☐ Arm-bar come-along
   - ☐ Group takedown
   - ☐ Prone hold (only to be used in transition to another position)
   - ☐ Sidelying hold (If not used, explain rationale below)
   - ☐ Other *(specify)*:

Rationale for not using sidelying hold:

3. **Specify equipment used in intervention, if any:** *(check all that apply)*
   ☐ None ☐ Mat ☐ Other *(specify)*:

4. **Specify personal property removed, if any:** ☐ None

5. **Detailed description of the incident leading up to the use of intervention (describe with observable and measurable terms)** *(e.g., conflict with family, peers, or staff, difficulty accepting limits, physical discomfort, mental health symptoms, misunderstanding/confusion)*:

6. **Specific Alternatives Considered and Tried (describe with observable and measurable terms)** *(e.g., offered alternative activity, restructure environment, sensory integration, talk to/listen, active negotiation)*:

7. **Specific behaviors creating risk to client or others necessitating use of intervention (describe with observable and measurable terms):**

8. **Specific behavioral outcome that was a result from the intervention (describe with observable and measurable terms)** *(e.g., cessation of behavior creating risk to self or others, reduction of target behavior per program criteria)*:

9. **What is the likelihood that the behavior necessitating intervention use will recur?**

10. **MANUAL/MECHANICAL RESTRAINT PROCEDURE: Efforts to Lessen or Discontinue Restraint at least every 15 minutes)**

Time of Attempted Release	Pulse Respiration	Color, Motion, Sensation	Client Response *(e.g., verbal aggression, physical agitation)*	Staff Signature

Staff Signature: **Date:** **Time:**

Send form to Op Center before end of shift

Distribution of Copies
RN Supervisor *Designated Coordinator* *Treatment Director* *BAI*
Social Worker *Bldg Supervisor* *DT&H SDS* *Primary RN*

Resident Name
Num.
MRE#:
Birthdate:
Gender
Home:

METO # 31032 (04/11) Side 1 of 2

Documentation for Implementation of Controlled Procedures

RN/Designee Assessment *(check all that apply)*: **SOS Medical Director Notified** *(within ½ hour of initiation)* **Date:** **Time:**

☐ No physical injury apparent ☐ No emotional distress apparent ☐ Moderate distress, slight agitation
☐ Physical injury (describe below): ☐ Mild upset, distress, no agitation ☐ Severe agitation

Plan, if any:

Third Party Expert Consulted *(as soon as reasonably possible but within ½ hour of initiation)*

Name of Consultant: **Date:** **Time:**

Summarize consultant's advice on how to resolve the emergency or write "unavailable."

RN Signature: **Date:** **Time:**

Client Debriefing

1. **Reason for intervention explained to client:** ☐ Yes ☐ No
If no, explain:

2. **Client's suggestions regarding how to avoid future need for intervention:**

3. **Client request for help in dealing with after effects of current intervention:** *(check all that apply)* ☐ None
☐ Notify family ☐ Notify other team member ☐ Talk to staff ☐ Talk to others ☐ Time alone ☐ File complaint/grievance
☐ Other *(explain)*:

4. **Client engaged in active programming or other appropriate activity within 15-30 minutes:** ☐ Yes ☐ No
If no, explain:

Administrative Review **

1. **Is controlled procedure documented in Progress Notes?** ☐ Yes ☐ No
2. **Comments:**

Area Supervisor/AOD Signature: **Date:** **Time:**

NOTIFICATIONS

** *Notified via E-mail/Scan [within 24 hours of use]*

☐ Dr. Rick Amado ☐ DHS Licensing
☐ OHFC ☐ Ombudsman
☐ Case Manager ☐ Legal Rep

Signature of Responsible Supervisor or Delegate *Date*

Designated Coordinator Review
(within 7 days of EUCP)

☐ Yes ☐ No _____
Date

Mailed Notifications *(by HIMS) (within 7 days of use)*

☐ **Interdisciplinary Team** _____ *Date*
☐ **BMRC** _____ *Date*
☐ **Legal Representative** *(If no e-mail/fax notice)* _____ *Date*
☐ **Case Manager** *(If no e-mail/fax notice)* _____ *Date*

Send form to Op Center before end of shift

Distribution of Copies
RN Supervisor *Designated Coordinator* *Treatment Director* *BAI*
Social Worker *Bldg Supervisor* *DT&H SDS* *Primary RN*

Patient Name
MR#
Birthdate
Gender
Home

METO # 31032 (04/11) Side 2 of 2

Documentation for Implementation of Controlled Procedures

It is understood and agreed that the purpose, intent and legal effect of the Plaintiffs' release of the State is to extinguish the entire liability of the State to the Plaintiffs, arising out of or connected with their seclusion or restraint at METO. To effectuate this purpose and intent, the Plaintiffs' release of the State is subject to the following:

A. It is the intention of the parties that the release between the Plaintiffs and the State contained herein shall be construed in accordance with the principles set forth in *Pierringer v. Hoger*, 21 Wis.2d 182, 124 N.W.2d 106 (1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978). The Plaintiffs' receipt of the settlement funds provided for hereunder is not intended as full compensation for the damages claimed by the Plaintiffs relating to the accident. However, by its release of the State, the Plaintiffs agree to settle and satisfy that percentage of its damages arising out of the accident that shall by further trial or other disposition of this action or any other action be determined to be the percentage of causal fault or causal responsibility for the Plaintiffs' damages attributable to the State. It is the intention of the Plaintiffs to extinguish any potential liability on the part of the State for contribution or indemnification that might be claimed by any other party or entity related to the Plaintiffs' claims or the Plaintiffs' damages arising out of the accident.

B. It is the intention of the State that the Plaintiffs may continue to pursue and prosecute any and all claims that it may have against any person or entity other than the State related to the accident, and that the Plaintiffs may collect all damages for such claims from any other person or entity, except such fraction, portion or percentage of the Plaintiffs' damages that are attributable to the State.

C. It is understood and agreed that the purpose, intent and legal effect of these provisions regarding a *Pierringer* release is to extinguish the entire liability of the State to the Plaintiffs arising out of or connected with the accident, and to bar forever any recovery by way of contribution or indemnity against the State by any third party. If the Plaintiffs make or continue to make any claim against a third person, which claim is related to or arises out of the accident, then the Plaintiffs shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the State from any claims for contribution or indemnity for the Plaintiffs' damages by such third party.

D. It is expressly agreed and understood that these *Pierringer* provisions encompass any and all claims based on the amount of any subsequent judgment determined to be uncollectible in accordance with Minn. Stat. § 604.02, and reallocated.

SETTLEMENT AGREEMENT ATTACHMENT D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Plaintiffs,

v.

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota,

Defendants.

Civil No. 09-1775 (DWF/FLN)

ORDER CONFORMING REVISION TO ORDER OF DECEMBER 11, 2013

Margaret Ann Santos, Esq., Mark R. Azman, Esq., and Shamus P. O'Meara, Esq., O'Meara Leer Wagner & Kohl, PA, counsel for Plaintiffs.

Steven H. Alpert and Scott H. Ikeda, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

The Court issued its Order of December 11, 2013 (Doc. No. 257), accepting the parties' agreed revision to the MSHS-Cambridge restraint policy. *See* Court Monitor, *Report to the Court: Recommended Revision to MSHS-Cambridge Restraint Policy* (December 6, 2013), (Doc. No. 256). The order's Attachment A, the revised policy, is marked with a December 4, 2013 effective date.

The Court Monitor's report noted that the Department of Human Service's response to the draft report provided that, "The time for exercise [while in manual restraint] would be changed to 5 minutes out of every *20 minutes*." The Court Monitor stated, "The Monitor assumes that the 20 minutes is intended to mean *15 minutes* and this will be corrected." (emphasis added in both sentences).

MSHS-Cambridge did make that correction, and adopted a superseding policy effective December 20, 2013, marked in Attachment A to this filing at page 6. The Court Monitor recently received this corrected policy.

For clarity in the docket, and to avoid confusion in implementation, the Court Monitor requested the Court to approve and adopt the revision to conform to the expectations in the Court Monitor's report.

ORDER

Upon consideration of the Court Monitor's suggested confirming revision of the Order of December 11, 2013 (Doc. No. [257]),

IT IS HEREBY ORDERED that ATTACHMENT A hereto is **SUBSTITUTED** for the ATTACHMENT A to the said order.

Dated: March 7, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

Minnesota Specialty Health System – Cambridge

CLIENT CARE

THERAPEUTIC INTERVENTIONS AND EMERGENCY USE OF PERSONAL SAFETY TECHNIQUES

DCT REFERENCE POLICY NUMBER: 6260

BACKGROUND:
MSHS-Cambridge uses positive behavior support strategies as its core means for encouraging alternate behaviors in place of behaviors that inhibit a client's ability to live sustainably in the community. Essential to this approach is fostering and sustaining an environment in which positive behavior support (PBS) strategies are utilized, as well as alternate modalities and methods of communication to assist clients to better meet their needs and have more control over the behaviors that inhibit a client's ability to live sustainably in the community. MSHS-Cambridge prohibits the use of any aversive or deprivation procedures as interventions in a client's Individual Program Plan or equivalent program plan documentation.

PURPOSE:
Even within the framework of positive behavior support programming in the Program Plan, there are emergencies in which less restrictive behavioral support strategies are ineffective in sustaining safety. When an emergency occurs, it is incumbent on staff to assure the individual's and others' safety in the moment. MSHS-Cambridge defines these emergencies as situations where the client's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Client refusal to receive/participate in treatment shall not constitute an emergency.

The *only* time a restraint will be used at MSHS-Cambridge, will be as a safety measure when treatment has failed and an emergency results. The only type of emergency restraint permitted at MSHS-Cambridge is certain specified manual restraints. MSHS-Cambridge shall use the least amount of intervention necessary to safely physically manage an individual, only when less restrictive behavioral support strategies have been ineffective in sustaining safety, and only concurrent with the uncontrolled behavior. These procedures will be continued for the least amount of time necessary to bring the individual's behavior under control and be appropriate to the situation to ensure safety.

Whenever possible, staff shall first attempt to de-escalate these emergencies by implementing the client's Program Plan with specific references to less restrictive alternatives that are known to help that client de-escalate, as well as through negotiation, redirection, distraction, and modifications to the environment all of which are likely to assist the client to utilize alternate behaviors to meet their needs. Restraint shall not be used for disciplinary purposes, for the convenience of staff, or as a substitute for treatment, nor shall restraint be used to compel clients to receive/participate in treatment. MSHS-Cambridge has a zero tolerance for misuses of emergency risk reduction procedures and will take appropriate corrective and/or disciplinary action when such misuses are identified.

DEFINITIONS:
Client: An individual receiving treatment at MSHS-Cambridge.

Responsible Supervisor: Home Supervisor, Work Supervisor, Administrator on Duty (AOD), or Lead Worker on Duty.

Designated Coordinator the Designated Coordinator is responsible for much of the rest of the intake documentation. The Designated Coordinator collaborates with other team members to produce the client's IPP, under the supervision of a Qualified Developmental Disabilities Professional, (QDDP).

Staff Certified in Therapeutic Intervention and Personal Safety Techniques: A staff member who has successfully completed the State Operated Services standardized and facility approved "Therapeutic Intervention" and "Personal Safety Technique" courses within the past year or taken a "Therapeutic Intervention" and "Personal Safety Technique" refresher classes within the last year.

Therapeutic Interventions: A form of intervention which consists of early identification of potential emergencies; prevention of emergencies through verbal, non-verbal, and nonphysical methods; diversion by providing choices to clients or alternate activities, environments or personal contacts. Prevention is predicated on identification of individual client needs, planning to meet those needs, and the use of specific de-escalation techniques in the client's Program Plan.

Personal Safety Techniques (PST): Application of external physical control by employees to a client only when a client causes an emergency despite the preventive therapeutic intervention strategies attempted. Physical control is based on the principle of using the least amount of force necessary to prevent injury and protect life and physical safety when positive behavior programming and other less restrictive prevention strategies have failed.

Manual Restraint: "Manual restraint" means physical intervention intended to hold a client immobile or limit a client's movement by using body contact as the only source of physical restraint. It is any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. The term *does not mean* physical contact used to: facilitate the client's completion of a task or response when the client does not resist or the client's resistance is minimal in intensity and duration; conduct necessary to perform medical examination or treatment; response blocking and brief redirection used to interrupt an individual's limbs or body without holding a client or limiting his or her movement; or holding an individual, with no resistance from that individual, to calm, or comfort.

Mechanical Restraint: Mechanical restraints are prohibited. "Mechanical restraint" means the use of a device to limit a client's movement or hold a client immobile as an intervention precipitated by a client's behavior. The term does not apply to devices used to treat a client's medical needs to protect a client known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness, or to position a client with physical disabilities in a manner specified in the client's Program Plan.

Emergency: Situations when the client's conduct poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety. Client refusal to receive/participate in treatment shall not constitute an emergency.

Interdisciplinary Team: Interdisciplinary team means a team composed of: the client receiving treatment from MSHS-Cambridge; his or her case manager; his or her legal representative and advocate, if any; representatives of providers of residential, day training and habilitation, and support services identified in the client's Program Plan; a health professional, if the client has overriding medical needs; mental health professionals (e.g. Psychologist, Psychiatrist, Counselor) if the client has overriding mental health needs; and a designated coordinator. The designated coordinator must have at least one year of direct experience in assessing, planning, implementing, and monitoring a plan that includes a behavior intervention program.

Program Plan: A plan developed by the Interdisciplinary Team, outlining positive behavior support strategies as the course of treatment intervention intended to encourage alternate behaviors in place of those behaviors that inhibit a client's ability to live sustainably in the community. This plan is developed using the information garnered from a thorough assessment of the function of the undesired behaviors, as well as person centered planning principles consistent with *Olmstead v. L.C.*, 527 U.S. 582 (1999), in order to assist the Interdisciplinary Team in creating treatment interventions that will effectively help the client get his or her needs met by alternate methods.

Prone Restraint: Prone restraints are prohibited. "Prone restraint" means any restraint that places the individual in a facedown position. Prone restraint does not include brief physical holding of an individual who, during an incident of physical restraint, rolls into a prone or supine position, when staff restore the individual to a standing, sitting, or side-lying position as soon as possible.
Restraint: Means the use of manual, mechanical, prone, or chemical restraint.

Chemical Restraint: Chemical restraints are prohibited. Is the administration of a drug or medication when it is used as a restriction to manage the client's behavior or restrict the client's freedom of movement and is not a standard treatment or dosage for the client's condition. Orders or prescriptions for the administration of medications to be used as a restriction to manage the client's behavior or restrict the client's freedom of movement shall not be written as a standing order or on an as-needed basis (PRN).
Seclusion: Seclusion is prohibited. Means the placement of a client alone in a room from which egress is:

a. non-contingent on the client's behavior; or
b. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the client from leaving the room.

Time Out: Means removing a client from the opportunity to gain positive reinforcement and is employed when a client demonstrates a behavior identified in the individual program plan for reduction or elimination. Room time out means removing a client from an ongoing activity to a room (either locked or unlocked).

RESPONSIBILITIES & PROCEDURES:

A. Assessments

1. Development of the Program Plan: Following admission, the Designated Coordinator for the client's Interdisciplinary team, with the assistance of all other team members will obtain information about the client that could help minimize the use of restraint by identifying the following:
   a. Techniques that would help the individual control his or her behavior.
   b. The client's need for methods or tools to manage his or her behavior.
   c. Pre-existing medical conditions or any physical disabilities and limitations that would place the individual at greater risk during the use of restraint (see section on "Admission History and Physical and Annual History and Physical assessments").
   d. Any history of sexual or physical abuse or other trauma that would place the individual at greater psychological risk during restraint.
   e. Techniques identified by the client or his or her family that would help minimize the use of restraint.
2. Admission History and Physical and Annual History and Physical assessments: MSHS-Cambridge RN's shall ensure that all MSHS-Cambridge clients are assessed by a physician or advanced practice RN (APRN) or nurse practitioner (NP) during the admission physical and at least annually thereafter to determine whether the client has a physical condition, i.e., obesity, asthma, etc., which would make implementation of any restraint medically contraindicated. The physician's statement regarding contraindication of these procedures shall be included in the admission history and physical report, the doctor or APRN's admitting orders (treatments,

diagnostic procedures, and administration of medications that must be carried out by a nurse upon written order), and annual physical examination report. Alternatives and/or means under which restraint might be used when there is a medical contraindication will be written as an identifiable treatment order on the client's medical record physician order sheet.

B. Staff Training on Therapeutic Interventions and Emergency Restraint

1. Upon employment, all MSHS-Cambridge staff members shall complete the full SOS Therapeutic Interventions and Personal Safety Techniques (TI/PST) course and Positive Behavior Supports course. This training will consist of:
   a. Upon start of employment and annually thereafter, staff are trained in early detection of escalation by an individual during the 12 or more hours of training per year on Positive Behavior Supports (varying based on the length needed to complete computer based portions and test outs of the training).
   b. Upon start of employment, each staff must complete a16 hour orientation training with mandatory skill check-off and certification. This includes 8 hours of training in therapeutic intervention (including boundaries and negotiation) and 8 hours of training in personal safety techniques. This curriculum includes therapeutic boundaries and risk reduction negotiation techniques.
   c. Semi-annually thereafter, or more often if assigned by supervisor, each staff must complete 8 hours of training (4 hours of training in therapeutic intervention, including boundaries and negotiation, and 4 hours of training in personal safety techniques), with mandatory skill check-off and certification.
      (1) Recommended SOS certified TI/PST instructor to student ratio for refresher training is 2 to 15.
2. Required level of proficiency: Employee will be able to accurately and independently demonstrate in role play use of therapeutic interventions as documented by a SOS certified TI/PST instructor.
3. All training of employees in Therapeutic Intervention shall be conducted by SOS certified therapeutic intervention instructors.
4. Staff are trained in early detection of escalation for a particular individual, through client specific training on their program plans and what positive behavior support strategies are known to assist a particular client in de-escalation. The Designated Coordinator is responsible for assuring this client specific training occurs every time the IDT modifies the client's Program Plan.

C. Implementation of Therapeutic Interventions and Emergency Restraint:

1. When staff perceive warning signs of a potential emergency they should:
   a. Attempt to utilize Therapeutic Intervention techniques, positive behavior support strategies that are known to work for the individual, or other alternatives or de-escalation strategies to reduce the need for restraint. The focus of the therapeutic interventions is in early detection of escalation of risk taking behavior. Staff will then utilize positive behavior support techniques known to assist a particular client to de-escalate according to their Program Plan
   b. Ensure, if possible, a 4'x6'mat and a mat for the client's head area is available and used to provide safeguard to the client during those restraints that have a client lay on the floor. Mats are located and available in all areas of the campus where client activities occur. Since these mats are located in areas where they are readily available and staff are trained in early detection of escalation by an individual through the annual Positive Behavior Supports training, training on the use of Therapeutic Interventions, or by specific training on a client's Program Plan and what techniques

are known to assist a particular client in de-escalation, it is likely that these mats will be ready for use in emergency situations. If staff are unable to guide the client directly onto the mat or the mat is not readily available, once the client is immobilized the mat will be placed under their body or they will be rolled into a side lying position onto the mat. The small mat will be placed under the client's head if their head is not on the larger mat.

c. Only initiate the use of restraint if trained in its use, and use only facility approved physical intervention techniques and holds.

d. Prone restraint is prohibited because positional asphyxiation is a risk factor. The prone restraint (face down) position is only allowed as a transitory position if a client rolls into such position. If a client rolls face down during a restraint they must immediately be moved to a side lying position or restored to a standing position. Applying back pressure while a client is in the prone position is prohibited.

e. Notify the RN and/or Lead Worker On Duty immediately.

f. Notify the responsible supervisor immediately.

g. Make sure a #DHS 3654 (Documentation for Emergency Use of Manual Restraint and Notification of Incident) is initiated as soon as is possible following initiation of restraint.

h. During the use of a restraint, continuously monitor the client's physical condition closely for signs of distress (cardiac, respiratory, circulation, choking, seizure onset) and take immediate action to discontinue restraint and provide emergency first aid (including calling 911) if distress is noted. Take vital signs if directed by RN. Document the results of this monitoring every 15 minutes on #DHS 3654 form.

i. As soon as reasonably possible upon the emergency presenting, but no later than 30 minutes after the emergency begins, the responsible supervisor shall contact a Third Party Expert from a pre-approved list. The expert shall be consulted in order to obtain professional assistance to abate the emergency condition, including the use of positive behavioral support techniques, safety techniques, and other best practices. If the scheduled qualified Third Party Expert is not immediately available, the responsible supervisor shall contact the Department's medical officer on call in order that the medical officer may assess the situation, suggest strategies for de-escalating the situation, and approve of or discontinue the use of restraint. The consultation with the Third Party Expert or medical officer shall be documented in the client's medical record.

j. During the use of a restraint, timing of checks, prompts, and additional procedural steps begin with the point in time at which the client is immobilized. At this point, staff will inform the client of the release criteria. Release criteria for emergency restraint are sixty (60) seconds wherein (1) the client is physically calm, and (2) without verbal threats/indication of intent to resume imminent risk of physical harm to self or others.

k. Efforts to lessen or discontinue the restraint must be made at least every 2 minutes unless contraindicated and these efforts must be documented. #DHS 3654 form must be used to document these efforts at release. Staff will speak with the client immediately upon application of the procedure, and continually at intervals not to exceed 2 minutes and attempt to determine whether the client will cooperate with staff to enable the safe release of the restraint. If the client indicates a willingness to cooperate, as evidence by no struggling and no verbal threats, staff will release the restraint. If the client indicates unwillingness to comply safely with the attempt to loosen the restraint, staff will continue the restraint and document the unsuccessful attempt on #DHS 3654 (Documentation for Emergency Use of Manual Restraint and

Notification of Incident).

l. Restraint will be continued for the least amount of time necessary to bring the client's behavior under control. The maximum duration for a single episode of restraint without opportunity for mobility or exercise is fifteen (15) minutes. If after fifteen minutes and continuous offers at least every 2 minutes to discontinue restraint the client continues to struggle and/or verbalize intent to resume behavior which creates an imminent risk of physical harm, staff will nonetheless discontinue use of manual restraint. If and only if the client's conduct again constitutes an emergency, staff will reinitiate the restraint. Verbal threats alone are insufficient reason to reinitiate restraint. If the client appears calm for 60 seconds, staff will speak with the client and attempt to ascertain whether the client will safely cooperate (i.e. verbalizes he or she does not intend to engage in imminent risk of physical harm to self or others) with release from restraint. If the client indicates a willingness to cooperate, as evidenced by no struggling and no verbal threats to cause imminent risk of physical harm to self or others, staff will release from restraint. If the client re-escalates and again engages in behavior constituting an emergency, staff will re-apply restraint per the above procedures. If restraint is re-imposed, the Third Party Expert must again be consulted and the same protocols for communicating with the client and the same release procedures will be applied. The client must be given an opportunity for release from the manual restraint and for motion and exercise of the restricted body parts for at least five (5) minutes for every fifteen (15) minutes of restraint.

m. If at any time during use of a restraint staff believe the health or safety of either the client or staff is in jeopardy because of the restraint, staff shall immediately release the client. If it looks like the aggregate time of restraints may exceed 15 minutes, the responsible supervisor shall be asked to conduct an immediate assessment and will do so in consultation with the on call Medical Director or on call Administrator for the program. The responsible supervisor with training/experience working with developmentally disabled adults with comorbid mental health conditions, will assess whether the client's mental health condition is causing him or her to engage in imminent risk of physical harm to self or others and subsequently if there is a need to contact a physician to request the use of a previously prescribed psychotropic medication to manage the client's mental health symptoms more effectively and minimize the need for further restraint to keep the individual safe (MSHS-Cambridge Procedure #15904).

n. Following the client's release from the use of restraint, staff should:
   (1) Provide immediate care for any client injuries incurred.
   (2) Assume the occurrence of using restraint may have been traumatic for the individual and debrief with them as he or she permits.
   (3) Try to get the client integrated back into his or her normal routine as quickly as possible.
   (4) Complete required documentation including #DHS 3654 form.

o. The Facility shall not use Chemical Restraint.

p. The Facility shall not use Seclusion or Time Out.

q. The Facility shall not use Mechanical Restraint.

r. Medical restraint and psychotropic and/or neuroleptic medications shall not be administered to clients for punishment, in lieu of adequate and appropriate habilitation, skills training and behavior supports plans, for the convenience of staff and/or as a form of behavior modification.

D. Reporting and reviewing emergency use.

Any use of restraint must be reported and reviewed as specified in the following items:

1. Staff member who implemented the procedure:
   a. Complete required documentation including #DHS 3654 form. This form must be completed before the end of each staff's shift.
   b. A client Incident Report (see SOS Policy 2020 Incident Reporting and Management) shall be completed if the client experienced any physical injury.
2. Nursing/Designee:
   a. Review and complete designated nursing sections of #DHS 3654 form.
   b. Ensure that the completed #DHS 3654 form summarizes the opinions of the private vendor who was consulted.
3. Supervisor/AOD/Lead Worker on Duty:
   a. Review and complete designated supervisory sections of #DHS 3654 form.
   b. Ensure that the completed #DHS 3654 form summarizes the opinions of the private vendor who was consulted.
   c. Ensure that the completed original of #DHS 3654 form is delivered to the HIMS collection area before the end of the shift on which the restraint occurred.
   d. Complete an Employee Injury/Illness Notification Form if any staff experience an injury and deliver to supervisor/supervisor on-call by the end of the shift.
   e. The completed # DHS 3654 from shall be submitted electronically, faxed or personally delivered (through the United States Postal Service [USPS]) to the following offices or persons. A reasonable effort must be made to submit it within 24 hours, but in no event later than the next business day. See I:\Programs\MSHS-Cambridge\GEN\Forms\Client Medical Record\Client Medical Record (DHS Forms)\ Notification Info-EUCP, PRN Use, 911 Calls/.
      - DHS Internal Reviewer
      - DHS Licensing
      - Ombudsman for Mental Health & Developmental Disabilities
      - Office of Health Facility Complaints
      - Plaintiff's Counsel
      - Legal Representative
      - County Case Manager
      - Court Monitor
      - Director of Operations Support
      - Compliance Office, Special Projects
      - CEO, State Operated Services
      - MSHS-Cambridge Site Director
      - Commissioner's Office, Jensen Compliance Officer
      - Attorney General (2)
   f. If it is discovered that information has been sent to the wrong e-mail address, fax number or USPS mailing address, you must report the error immediately.
      (1) Notify DHS Data Privacy Official – (651) 746-4743
      (2) Notify SOS Health Information Management Services (HIMS).
         (a) SOS HIMS Director at (651) 295-2302; and
         (b) SOS Assistant HIMS Director at (612) 390-5626
      (3) Include the following details in the notification:
         (a) Who the e-mail, fax or letter was sent to
         (b) What documents or information were sent
         (c) The date the e-mail, fax or letter was sent
         (d) The date it was discovered
         (e) If the e-mail was successfully recalled

(4) Complete the DHS Privacy - Security Complaint or Incident Report Form 2008 (available on the iNET under Forms/SOS (non-Medical Record) Policy Forms. Submit the form to the DHS Data Privacy Official, SOS HIMS Director and SOS Assistant HIMS Director.

g. This procedure and referenced process have been reviewed by SOS HIMS personnel and have been deemed to meet HIPAA requirements for privacy.

4. Scan form #DHS 3654 and send copies to the MSHS-Cambridge Director and the client's program team. A reasonable effort must be made to submit it within 24 hours, but in no event later than the next business day.

a. Submit a copy of the Emergency Use of Controlled Procedure Report to the Internal Review Committee (IRC), the DHS internal reviewer, and as otherwise required by law within five working days after the IDT review of the emergency use of restraint.

5. Designated Coordinator:

a. **Within five (5) working days, or fewer,** after the use of restraint, members of the IDT must confer to discuss the following:

1) The incident that necessitated the use of restraint
2) A description of the imminent risk of physical harm to self or others and the plan for reduction or elimination of this behavior in observable and measurable terminology
3) Identify the antecedent or event that gave rise to the imminent risk of physical harm to self or others
4) Identify the perceived function the imminent risk of physical harm to self of others served
5) Determine what modifications should be made to the existing Individual Program Plan to reduce the need for future use of an emergency manual restraint.
6) Documentation of attempts to use less restrictive alternatives.

b. The Designated Coordinator will document any recommendations the IDT makes in regards to 1-6 above on MSHS-Cambridge Form #DHS 3653 and submit the completed form to HIMS. The HIMS department shall then forward the original to the client's permanent medical record and to the Internal Review Committee.

c. The Designated Coordinator will identify in the client's Program Plan any recommendations the IDT makes in regards to 1-6 above.

d. The Designated Coordinator shall ensure that the plan for reducing the behavior that caused the emergency, as well as changes made to the adaptive skill acquisition portion of the plan are incorporated into the Program Plan no later than two (2)working days after the IDT review above. The Designated Coordinator shall document the decisions of the IDT in the client's permanent record. During this time, the Designated Coordinator shall document all attempts to use less restrictive alternatives including:

(1) strategies that were not successful in reducing the client's engagement in imminent risk of physical harm to self or others;
(2) attempts made at less restrictive procedures that failed and why they failed; and
(3) rationale for not attempting the use of other less restrictive alternatives.

e. The Designated Coordinator for each client shall be responsible to monitor the repeated use of restraint. When restraint occurs more than twice in 30 days for an individual client, it must be reviewed by the IDT, MSHS-Cambridge Director or designee, and the DHS internal reviewer to determine if any modifications or adjustments to the program plan would be warranted.

5. Internal Review Committee (IRC) The IRC reviews completed #DHS 3653 and #DHS 3654 forms at its regularly scheduled meeting and identifies any concerns they might have regarding the use of restraint and document them in the IRC minutes.
6. Critical Action-Review of Experience (CARE) Any time additional staff are needed for intensive negotiations or use of restraint, a CARE meeting will be attempted. Attendance at the CARE meetings is voluntary, confidential and will be used only for information gathering. Facilitators for these meetings are volunteer Human Services Support Specialist and clinical staff. Information will be gathered on what went well during the critical action (so this can be replicated) and identify where staff were not as effective, so that the program can determine alternative prevention measures that can be applied across the program, determine if additional staff training is needed, and provide a communication channel and suggestions for the involved staff to MSHS-Cambridge Administration. Completed CARE information will be submitted to the MSHS-Cambridge Director and assigned CARE review team for review and follow up with the respective MSHS-Cambridge program teams, SOS Therapeutic Intervention instructors, or the Internal Review Committee.
7. HIMS shall maintain statistics on the use of restraints. For each use of restraint it shall record: the client's name, the date of the restraint, the type of restraint used, and the length of time the restraint was used. This information shall be provided to the Director and DHS [Internal Reviewer] monthly.

DATA PRIVACY: Staff must ensure compliance with state and federal data privacy regulations.

REFERENCES:

- State Operated Services Policy 6260, Therapeutic Intervention
- MSHS-Cambridge Procedure #15904 – Administration of Psychotropic Medication to Persons with Developmental Disabilities
- DHS# 3654 – Psychotropic PRN Medication Use Report, Documentation for Emergency Use of Manual Restraint, Emergency/911 Call Documentation and Notification of Incident Form
- DHS# 3653 – Expanded Interdisciplinary Team Documentation Form

CANCELLATIONS: This procedure supersedes MSHS-Cambridge Procedure #15868 dated December 4, 2013.

AUTHENTICATION SIGNATURES:

Steven Jensen,
Minnesota Specialty Health System – Cambridge Director

10/19/13
Date