U.S. Department of Justice
Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Avenue, NW
Washington, DC 20530

June 22, 2010

VIA E-MAIL

David M. Tatarsky, General Counsel
Harry H. Stokes, Jr., Assistant General Counsel
Office of General Counsel
South Carolina Department of Corrections
P.O. Box 21787
4444 Broad River Road
Columbia, South Carolina 29221-1787

Re: ADA Complaint DJ#s 204-67-144 & 204-67-145

Dear Messrs. Tatarsky and Stokes:

As you know, we have been investigating numerous complaints received by the Civil Rights Division of the United States Department of Justice ("Department") alleging that the South Carolina Department of Corrections ("SCDC") is in violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. pt. 35. More specifically, the complaints allege that inmates with Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (collectively, "HIV") are segregated from the general population in housing; are excluded from many of the programs, services, and activities provided by SCDC; and have been receiving inadequate medical and mental health care.

On September 16-17, 2009 and December 8-9, 2009, the Department conducted on-site reviews at Broad River Correctional Institution ("BRCI"), the facility housing male inmates with HIV, and Camille Griffin Graham Correctional Institution ("CGGCI"), the facility housing female inmates with HIV. During our on-site visits at BRCI and CGGCI, we substantiated the complainants' allegations, among others, that SCDC is in violation of Title II of the ADA and its implementing regulation, including the ADA Standards for Accessible Design, 28 C.F.R. pt. 36, App. A, in some key areas. Our investigation was also conducted under the authority of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department's implementing regulation, 28 C.F.R. pt. 42, subpart G.

We found that inmates with HIV under the custody and control of the SCDC are housed exclusively at BRCI (men) and CGGCI (women) and that SCDC policy does not permit their being housed at any other SCDC facility. Furthermore, inmates with HIV are segregated to specific dorms within these facilities that house only inmates with HIV. As a result of this segregation, many inmates with HIV suffer disparate treatment from other similarly situated

inmates without HIV. For example, many inmates with HIV are housed at these higher Level III facilities notwithstanding their lower classification levels. This procedure results in their being housed in a more restrictive setting than is appropriate according to classification. It also results in their inability to participate in programs and services that SCDC offers at other facilities. Further, certain programs and services, such as drug treatment, work release, and pre-release, are offered only at other facilities and not at BRCI and CGGCI. As a result of not being permitted to participate in these programs, many inmates with HIV serve longer sentences than other inmates with the same classification. Also inmates with HIV who must complete a drug treatment program as a condition of their sentence or to meet parole requirements are not only unable to do so, but they also are denied the benefit of such treatment programs on the basis of disability.

Additionally, we found that inmates with HIV were restricted from jobs in the cafeteria and canteen at BRCI and CGGCI. Although these jobs are not paying jobs, they result in greater work credits that would shorten inmates' sentences, and inmates with HIV are therefore denied the opportunity to earn work credits and forced to serve longer sentences. We also found that, because inmates with HIV are assigned to segregated housing, other inmates are made aware that an inmate has HIV by virtue of their housing assignment, which discloses the inmate's confidential medical information. Inmates with HIV are unable to engage in programs provided in other housing units, such as the Short Term Offender Program or housing with special privileges (*e.g.*, relaxed access to laundry facilities). Finally, because of SCDC's segregated housing policy, inmates with HIV are not eligible for hardship transfers.

Recently, we sent you a letter concerning medical and mental health care at BRCI and CGGCI for inmates with HIV and inmates with disabilities generally. This letter incorporates those findings by reference and also addresses programmatic and architectural issues we found during our investigation. We also recently discussed the ability of [redacted] to provide technical assistance to SCDC by way of recommendations concerning medical and mental health care at BRCI and CGGCI. Those recommendations are attached.

This matter will be resolved, and we will close our investigation, if you provide evidence that you have completed the following modifications to SCDC policy, medical and mental health care, and architectural features at CGGCI and BRCI:

Within three (3) months of the date of this letter, unless another date is specified:

1. **Policies, Practices, Procedures, Guidelines, and Directives (collectively "Policies") Regarding HIV and Inmates with HIV**

Amend SCDC policies to eliminate provisions that segregate inmates with HIV from any SCDC programs, services, and activities for which they are otherwise eligible, including:

a. General Policy: Adopt, implement, and maintain a general policy of nondiscrimination on the basis of disability in all programs, services, and activities conducted by or on behalf of the SCDC. The policy at Attachment A meets this requirement.

b. Reception and Evaluation: Amend, implement, and maintain policies to eliminate the segregation of inmates with HIV from inmates who do not have HIV during the reception and evaluation intake processes. Ensure that testing, counseling, and evaluation procedures have appropriate, adequate privacy and confidentiality protections for personally identifiable health information.

c. Institution and Housing Designation

(1) To eliminate discrimination on the basis of HIV, amend, implement, and maintain policies to eliminate the *per se* segregation of inmates with HIV to specific institutions and specific dorms and to house inmates with HIV based on classification and other criteria that do not discriminate on the basis of HIV or any other disability. Such policy may include a procedure for assigning an inmate to controlled housing based upon a determination that the inmate poses a direct threat of engaging in conduct involving a significant risk of transmission of HIV to others (*i.e.*, violence to self or others likely to result in open wounds or sexual conduct involving the exchange of bodily fluids). A determination that an inmate with HIV poses a direct threat must be based on an individualized assessment of reliable, objective evidence regarding the actual risk posed by an inmate (*i.e.*, the inmate's recent conduct) and whether such risk can be reduced to an acceptable level by a reasonable modification in policies, practices, or procedures (*e.g.*, educating an inmate on infection control or providing treatment that may reduce a propensity toward violence). Any determination assigning an inmate to controlled housing must be made following a hearing conducted by an individual knowledgeable regarding the nondiscrimination requirements of the ADA, with the inmate having the opportunity to introduce evidence. Controlled housing assignments based on a determination of direct threat must be reviewed every 90 days.

(2) Establish, implement, and maintain a mechanism for inmates with HIV to be housed with other inmates with HIV if they so choose and are otherwise suitable for such arrangements based on classification or other criteria that do not discriminate on the basis of disability.

(3) Amend, implement, and maintain policies so that inmates with HIV are ensured an equal opportunity to qualify for and receive hardship transfers. Such policies may have an exception for controlled housing status based on a determination that an inmate poses a direct threat of transmitting HIV to others and a reasonable modification in policies, practices, and procedures will not reduce the risk to an acceptable level, as discussed in (1) above.

d. Programs, Services, and Activities: Amend, implement, and maintain policies to

afford inmates with HIV an equal opportunity to participate in and benefit from drug treatment (including but not limited to those inmates whose sentences mandate drug treatment), work release, the Short Term Offender Program ("STOP"), youthful offender programs, reentry, sports and other recreational activities with inmates without HIV, access to religious or spiritual activities or groups, and other programs and activities for which they are otherwise eligible according to classification or other criteria that do not discriminate on the basis of disability. Ensure that inmates with HIV have an opportunity to access and benefit from the law library on as equal basis with other inmates (*i.e.*, allowing them the same amount of time, no greater restrictions on access, and no segregation based on HIV or other disability).

e. Jobs: Amend, implement, and maintain policies that allow inmates with HIV to participate in jobs in the cafeteria and canteen, for which they are otherwise eligible according to classification and other criteria that do not discriminate on the basis of disability, including HIV.

f. Food Access: Allow inmates with HIV adequate time to eat, as HIV reduces the absorption of food and makes it more difficult to eat, and provide them with sufficient food, including fruits and vegetables. During lockdowns, provide balanced diets and sufficient nutrition to inmates with HIV.

g. Medical Co-Payments: Amend, implement, and maintain policies that eliminate co-payments for medication for chronic medical conditions, including but not limited to HIV.

2. **Privacy Controls and Considerations**

Amend, implement, and maintain policies that protect the confidentiality of personally identifiable health information for inmates with HIV. See, e.g., Dept. of Health and Human Svcs., Ctrs. for Disease Ctrl. and Prev., HIV Testing Implementation Guidance for Correctional Settings (January 2009).

3. **Integration of Inmates with HIV**

a. Reception and Evaluation: Ensure that inmates processed at Reception and Evaluation are integrated throughout that system and continually into the general population upon departure, subject to classification and other criteria that are not discriminatory on the basis of disability.

b. Integration Planning: Develop a plan for integration of inmates with HIV currently in segregated housing and who elect to be integrated into general population according to classification and other criteria that are not discriminatory on the basis of disability.

c. Integration Training: Within six (6) months of the date of this letter, provide training to staff at the Kirkland Correctional Institution Reception and Evaluation facility, and staff and inmates at BRCI and CGGCI, on the integration process and the policy of nondiscrimination on the basis of disability. Training for staff should also include counseling on

retaliation, intimidation, harassment, interference, and coercion of inmates with HIV and those associated with them engaging in individual or concerted activities that are protected by the ADA, its regulation, and the requirements of this letter.

d. Integration: Beginning six (6) months from the date of this letter, integrate inmates with HIV at BRCI and CGGCI who elect to be moved into the general population by classification status, eligibility for programs, such as the STOP program, and other criteria that are not discriminatory on the basis of disability. Election to integrate or to remain clustered with other inmates with HIV shall be determined by the form at Attachment B after a counseling session has been provided to the inmate about HIV by appropriate medical personnel. Immediately permit institutional and interstate transfers, including but not limited to circumstances where participation in a program offered at a different facility is a condition of a sentence or parole, subject to classification and other criteria that is not discriminatory on the basis of disability. Within six (6) months of the date of this letter, every inmate with HIV in SCDC custody as of the date of this letter shall have been given an opportunity to elect to integrate or to remain clustered with other inmates with HIV, which shall be documented on the form at Attachment B. Within six (6) months of the date of any election, any inmate who previously had elected to remain clustered will be provided the same election procedure identified above, should the inmate have changed his or her mind. Every three (3) months for one year from the date of this letter, SCDC will submit to the United States copies of the election forms obtained during that three month period.

4. **ADA Coordinator and Inmate Grievance Procedure**: At each facility, designate a responsible employee to coordinate efforts to comply with and carry out the facility's ADA responsibilities and to ensure that each program, service, and activity is readily accessible to and usable by inmates with disabilities in accordance with the program accessibility provisions of the Title II regulation. Establish a written grievance procedure for resolving inmate ADA complaints.

5. **Medical and Mental Health Care and System**:

a. Immediately (*i.e.* no later than 30 days after the date of this letter), address the medical and mental health issues specifically identified for individual inmates in the Department's January 21, 2010 letter.

b. Within six months of the date of this letter, develop a plan to implement the recommendations provided by [redacted], which are provided at Attachment C, relating to resources, the health services model, medication management, and performance measurement and quality management/assurance at BRCI and CGGCI.

6. **Effective Communication**:

Communications with inmates with disabilities, such as those who are deaf, are hard of hearing, are blind, have low vision, or have another disability that affects communication, must

be as effective as communications with inmates without disabilities. Various auxiliary aids and services, such as the provision of interpreters, video interpretation services, computer assisted real-time transcription (CART) services, pagers or other devices that provide text messages and tactile notification, tactile or talking watches, documents in alternate formats (e.g., Braille, large print, cassette tapes, etc.), assistance in reading and filling out forms or wayfinding, reading materials and playback devices provided by the Library for the Blind and the Physically Handicapped, and training and equipment for the use of Braille by blind inmates will enable effective communication with inmates with communication disabilities.

Within one month of the date of this letter, SCDC will identify at each of its correctional institutions sources of auxiliary aids and services to achieve effective communication, including but not limited to qualified sign language and oral interpreters, video interpretation services, real-time transcription services, and vendors documents in alternate formats. Within that same period, SCDC will implement and report to the Department its written procedures, with time frames, for fulfilling requests from inmates with disabilities for auxiliary aids and services for effective communication.

Within one (1) year of the date of this letter, unless otherwise specified:

7. **Architectural Accessibility and Program Access at BRCI**

a. Moultrie Dorm, STOP Program [New Construction]:

I. Permit an otherwise qualified inmate with a mobility disability to participate in the STOP Program (alternate, equitable formats can be developed for inmates with physical disabilities who may not be able to participate in the main program because of the disability).

ii. There is no accessible shower provided in the Moultrie Dorm because the designated accessible shower does not comply with the ADA Standards for Accessible Design ("ADA Standards"), 28 C.F.R. pt. 36, App. A. Provide a shower in the Moultrie Dorm that is exactly 36 inches wide and 36 inches deep with an L-shaped shower seat mounted on the wall opposite the controls and extending the full depth of the stall, with a 48 inch long and 36 inch wide clear floor space alongside the shower opening which extends 12 inches beyond the shower wall on which the seat is mounted, enabling a parallel approach (Fig. 35(a)), and with a curb no greater than ½ inch OR a shower that is at least 30 inches deep and 60 inches wide with no curb or threshold and with a 36 inch deep and 60 inch wide clear floor space at the shower opening (Fig. 35(b)). Ensure that the shower has grab bars, controls, a shower spray unit, and a seat, curb, and enclosure, if provided, that comply fully with the ADA Standards and with Figs. 35, 36, and 37, as applicable. ADA Standards §§ 4.1.3(11), 4.21, Figs. 35, 36, and 37.

Note: For security purposes, a fixed shower head mounted at 48 inches above the finished floor may be used instead of a shower spray unit with a hose, and a stable, appropriate roll-in shower

chair may be used instead of a seat. Standards § 4.21, Figs. 35, 36, 37. Some inmates with mobility disabilities may be unable to bathe adequately to maintain personal hygiene without access to a shower spray unit with a hose or assistance in showering. Establish appropriate procedures to meet the needs of such inmates to maintain personal hygiene. 28 C.F.R. §§ 35.130(b)(7), 35.149, 35.150.

b. Prison Industries 1 (License Plates and Road Signs) [Existing]: The toilet room contains a number of inaccessible elements and is not accessible to people with disabilities. Provide an accessible toilet room such that all of the room's elements, including signage, door, door hardware, clear floor space, water closet, urinal (if provided), grab bars, lavatory, mirror, controls, and dispensers, comply with the Standards. ADA Standards §§ 4.1.3(11), 4.22, 4.13, 4.16, 4.18, 4.19, 4.26, 4.27, 4.30, Figs. 28, 29.

c. Wateree Dorm [Existing]: Ensure that at least 5% of the cells are accessible cells such that all of the cells' elements, including door, clear floor space, water closet, grab bars, lavatory, mirror, bed, controls, and dispensers, comply with the ADA Standards. ADA Standards §§ 4.1.3(7), 4.1.3(11), 4.13, 4.16, 4.19, 4.26, 4.27, 9.2.2, Figs. 28, 29.

d. Visitation [Existing]:

i. Visitors Men's and Women's Toilet Rooms with Stalls:

A. The designated accessible stalls are incorrectly configured as ambulatory stalls, and there are no standard accessible stalls provided. Provide in each toilet room a "standard" accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall's elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply with the ADA Standards. ADA Standards §§ 4.1.3(11), 4.22.4, 4.22.7, 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

B. The pipes for the lavatories are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards §§ 4.1.3(11), 4.22.6, 4.19.4.

ii. Inmate Single User Toilet Room: The inmate single user toilet contains a number of inaccessible elements and is not accessible to people with disabilities. Provide an accessible toilet room such that all of the room's elements, including signage, door, door hardware, clear floor space, water closet, urinal (if provided), grab bars, lavatory, mirror, controls, and dispensers, comply with the Standards. Standards §§ 4.1.3(11), 4.22, 4.13, 4.16, 4.18, 4.19, 4.26, 4.27, 4.30, Figs. 28, 29.

e. Saluda Dorm (Lockup) [Existing]: Ensure that at least 5% of the cells designated for the lockup are accessible cells such that all of the cells' elements, including door, clear floor space, water closet, grab bars, lavatory, mirror, bed, controls, and dispensers, comply with the

ADA Standards. ADA Standards §§ 4.1.3(7), 4.1.3(11), 4.13, 4.16, 4.19, 4.26, 4.27, 9.2.2, Figs. 28, 29.

f. Pill Call: Inmates with disabilities are exposed to the elements for extended periods while in line for pill call. Provide a protective covering or shelter to provide protection from the sun and inclement weather. Implement policies to ensure that inmates whose disabilities do not permit them to wait in line for extended periods of time are not required to do so in order to receive medication. Such policies must ensure that inmates are afforded equal access to medication (*e.g.*, receipt of medication is timely, all services provided to those who wait in line are afforded on an equal basis to inmates with disabilities who cannot wait in line, inmates who request or receive medication pursuant to such policies do not face negative repercussions for doing so). 28 C.F.R. § 35.149, Standards § 6.2.

8. **Architectural Accessibility at CGGCI**

a. Blue Ridge [New]: Ensure that at least 5% of the cells are accessible cells such that all of the cells' elements, including door, clear floor space, water closet, grab bars, lavatory, mirror, bed, controls, and dispensers, comply with the ADA Standards. ADA Standards §§ 4.1.3(7), 4.1.3(11), 4.13, 4.16, 4.19, 4.26, 4.27, 9.2.2, Figs. 28, 29.

b. Whitney B Dorm [New]: There is no accessible shower provided in the Whitney B Dorm because the designated accessible shower does not comply with the ADA Standards for Accessible Design ("ADA Standards"), 28 C.F.R. pt. 36, App. A. Provide a shower in the Whitney B Dorm that is exactly 36 inches wide and 36 inches deep with an L-shaped shower seat mounted on the wall opposite the controls and extending the full depth of the stall, with a 48 inch long and 36 inch wide clear floor space alongside the shower opening which extends 12 inches beyond the shower wall on which the seat is mounted, enabling a parallel approach (Fig. 35(a)), and with a curb no greater than ½ inch OR a shower that is at least 30 inches deep and 60 inches wide with no curb or threshold and with a 36 inch deep and 60 inch wide clear floor space at the shower opening (Fig. 35(b)). Ensure that the shower has grab bars, controls, a shower spray unit, and a seat, curb, and enclosure, if provided, that comply fully with the ADA Standards and with Figs. 35, 36, and 37, as applicable. ADA Standards §§ 4.1.3(11), 4.21, Figs. 35, 36, and 37.

Note: For security purposes, a fixed shower head mounted at 48 inches above the finished floor may be used instead of a shower spray unit with a hose, and a stable, appropriate roll-in shower chair may be used instead of a seat. Standards § 4.21, Figs. 35, 36, 37. Some inmates with mobility disabilities may be unable to bathe adequately to maintain personal hygiene without access to a shower spray unit with a hose or assistance in showering. Establish appropriate procedures to meet the needs of such inmates to maintain personal hygiene. 28 C.F.R. §§ 35.130(b)(7), 35.149, 35.150.

We will contact you shortly to confirm that you plan to undertake and implement these measures and maintain compliance. Your evidence of these modifications may consist of

photographs and other substantiating documentation. We will conduct an on-site visit to verify modifications at a mutually convenient time. If at that time, compliance has been achieved, we will close this matter without more formal action.

This letter does not address other potential incidents of discrimination on the basis of disability that may exist or arise. Rather, it is limited to the findings developed in the investigation that are reflected in this letter.

As noted, [redacted] recommendations for addressing concerns for medical and mental health care at BRCI and CGGCI are at Attachment C.

Thank you, again, for your continued cooperation. If you have questions or would like to discuss the proposed resolution, please contact me at (202) 305-2008 or at William.Lynch@usdoj.gov.

Very truly yours,

William F. Lynch
Trial Attorney
Disability Rights Section

ATTACHMENT A

GENERAL POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

It is the policy of the South Carolina Department of Corrections, its employees, agents, and contractors (collectively "SCDC"), that no otherwise qualified inmate with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of SCDC and its Institutions. Otherwise qualified inmates with disabilities, as defined by the Americans with Disabilities Act, as amended, and the Rehabilitation Act of 1973, as amended, are entitled to participate in any programs, services, and activities to the same extent as other similarly situated inmates without disabilities (i.e., subject to classification and other criteria that do not discriminate on the basis of disability). Similarly, SCDC prohibits retaliation, coercion, intimidation, threats, or interference with the exercise or enjoyment of rights of inmates with disabilities protected by law. Protected conduct includes but is not limited to requesting auxiliary aids and reasonable modifications in policies, practices, and procedures; filing grievances or filing complaints with the U.S. Department of Justice and assisting in the investigation of such grievances or complaints, and filing lawsuits under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

ATTACHMENT B

ELECTION FORM FOR INMATES WITH HIV TO CHOOSE TO INTEGRATE OR TO REMAIN CLUSTERED WITH OTHER INMATES WITH HIV

The South Carolina Department of Corrections ("SCDC") has recently amended its policy regarding the segregation of inmates with HIV from the general population. SCDC is integrating inmates with HIV into the general population or to other Institutions to which an inmate is otherwise qualified pursuant to SCDC policy. Inmates with HIV have the opportunity to choose whether to be integrated or to be clustered by dorm with other inmates with HIV at Broad River Correctional Institution/Camille Griffin Graham Correctional Institution or another Institution, if the inmate is otherwise qualified pursuant to SCDC policy. SCDC will provide the opportunity to make another decision to integrate within six months from the date of your signature below.

I, _____(Inmate Name)_____, inmate no. _____:

- ❑ Would like to be housed with the general population, subject to classification and other criteria;
- ❑ Would like to transfer to another facility because:

  _____

  _____

  _____;
- ❑ Would like to remain clustered with other inmates with HIV in my current institution.

If I have chosen to remain clustered with other inmates with HIV, I understand that I will have the opportunity to change my decision in six months:

_____/_____ _____

Inmate Printed Name and Signature Date

_____/_____ _____

Witness Printed Name and Signature Date

_____/_____ _____

ADA Coordinator for Institution Printed Name and Signature Date

ATTACHMENT C

RECOMMENDATIONS OF [redacted] TO ADDRESS MEDICAL AND MENTAL HEALTH CARE CONCERNS AT BRCI AND CGGCI

I. Resources

A. There is insufficient on-site primary care presence at the facilities to meet the expected demands for facilities of their size. This truncated presence substantially contributes to some of the adverse findings mentioned in [redacted] report. Without increased primary care staffing, the South Carolina Department of Corrections (SCDOC) will be unable to resolve many extant problems.

Recommendation: Increase the on-site time for primary care practitioners, either physician or mid-level. Considering the number of prisoners and their morbidity, Broad River Correctional Institution (BRCI) should have approximately two full-time equivalent (FTE) physicians. Camille Griffin Graham Correctional Institution should have one to one and a half FTE, considering the morbidity of the population and the fact that women prisoners use substantially more medical care than do men.

B. Cancers of the uterine cervix and breast are among the leading causes of morbidity and mortality among women. Women with HIV are especially susceptible to cancer of the cervix. Routine screening and appropriate follow-up save lives, reduce morbidity and mortality, and are cost-effective.

Recommendation: Develop the resources to provide routine screening for cancers of the uterus and breast, following nationally-accepted guidelines.

II. Health Services Model: reduce barriers to care, implement a primary care model, and eliminate disparities between care for patients with HIV as compared to those with serious mental illness

A. There are barriers to access to care that prevent continuity and coordination of care. Rules, such as limiting patient encounters to one problem per visit, increase staff workload and demand for service; this particular rule fosters dissatisfaction, which has adverse consequences, including increasing demand and poor adherence to medical recommendations. Practices, such as bouncing patients from practitioner to practitioner interfere with continuity and coordination of care, leading to adverse outcomes.

Recommendation: SCDOC should develop a primary care model with primary care practitioners who addresses chronic disease and acute problems when the practitioner is available. Other practitioners can see the patient for acute problems, but the patient returns to his/her "medical home" for continuity of care. The physician who manages

treatment for HIV would be best used as a consultant for the management of viral load and other HIV-related conditions.

B. In the correctional environment, co-payments are typically used to control demand for acute care, under the assumption that patients will only pay for necessary care. Patients with HIV and other chronic disabling conditions should be seen on a regular basis, for their own good and, in the case of chronic communicable diseases such as HIV, for the public health. Patients with HIV and patients with other disabilities seeking treatment or needing medication should not be asked or required to make co-payments as a condition of receiving treatment or being prescribed or receiving medication to treat these and related conditions.

Recommendation: Eliminate co-payments for chronic care for HIV, for HIV-related medication, and for chronic care or medications for other disability-related conditions.

C. There is substantial scientific evidence that following nationally-accepted clinical guidelines for chronic disease and cancer prevention reduces morbidity and mortality. Further, following these guidelines is a valuable risk management tool.

Recommendation: Revise SCDOC clinical guidelines for diabetes, hypertension, hyperlipidemia, asthma, epilepsy, and HIV to comport with nationally-accepted guidelines. Implement these guidelines through the primary care model described in § IIA above. For patients with HIV, provide vaccines for pneumococcal pneumonia, influenza, and viral hepatitis, consistent with recommendations of the CDC Advisory Committee on Immunization Practices. For women, provide Pap smears on intake and periodically following nationally-accepted guidelines and provide mammography according to nationally-accepted guidelines and when clinically indicated.

D. Physical examination is a critical element for patient assessment and diagnosis. Primary care cannot be practiced properly without touching patients. HIV is not transmitted by contact with patients, to the extent that basic sanitary and universal precautions are followed.

Recommendation: Assure that patients are examined properly and that examination findings are documented in the medical record. This should be accomplished through training and performance monitoring.

E. Patients with acute episodes of illness, such as seizures and skin infections, should have physician evaluation within a medically-appropriate time frame following nursing evaluation and care.

Recommendation: Implement policy and procedure to have appropriate physician evaluation available to patients with acute episodes of illness. The necessity and urgency for these evaluations should be clearly indicated in nursing protocols.

F. Disabled patients in segregation status should have access to acute care equivalent to patients in general population, with nursing rounds at least three times per week, mental health rounds at least weekly, and timely access to care, where appropriate. Every prisoner placed in segregation should have a medical and mental health review at the time of this classification.

Recommendation: Provide access to sick call to segregated patients, provide nursing rounds in the Special Management Unit at least three times per week, and mental health rounds at least once weekly. Assure timely medical and mental health review of prisoners newly transferred to segregated housing units.[1] Note: The Department of Justice has sought the elimination of segregation based on HIV. This recommendation contemplates procedures to be implemented during the interim period until segregation is eliminated and for inmates placed in controlled housing based on a direct threat determination.

III. Medication Management: improve medication management systems to prevent illicit diversion of medication and to assure patient safety

A. Long waits for medication during inclement weather poses risk for patients with compromised immune systems.

Recommendation: Through the use of secure medication carts, bring patients' medication to the housing units.

B. Poor inventory controls increase the risk of illicit diversion of stock medication. The process of "pre-pouring" medication into little cups or little envelopes increases risk of medication error, error that can be dangerous and sometimes life-threatening. Unsafe medication practices may breach state pharmacy board regulations.

Recommendation: Arrange for a thorough review of medication management practices by a pharmacist familiar with institutional medication management practices and implement recommended remedies, including but not limited to inventory control, logs indicating disposition of inventory, safe storage, and proper labeling for medication to be administered or delivered.[2]

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[1]Standards for Health Services in Prisons 2008, National Commission on Correctional Health Care, Standard P-E-09.

[2]See http://www.scstatehouse.gov/code/t40c043.htm

C. Nurses should practice within the scope of their licenses. In South Carolina, it is outside the scope of nursing licenses to make a medical diagnosis or to order prescription medication without certification for advanced practice.[3]

Recommendation: Through policy, procedure, training, supervision, and performance measurement, assure that nurses are practicing within the scope of their training and licensure.

IV. Custody policies and practices: reduce barriers to equal access to programs and services

Recommendation: Provide equal access to disabled prisoners to programs such as intermediate level mental health care, drug and alcohol treatment, work release, pre-release programming, and hospice.

Transgender patients with disabilities should be allowed equal access to programs and services. Transgender patients with disabilities who do not request protective housing should be classified in the same manner as those without disabilities.

V. Performance measurement and quality management

Recommendation: Develop and implement a performance measurement program, with tracking and trending over time. Institute a quality management program that addresses identified opportunities for improvement and follows up until there is sustained resolution of these opportunities and others that get identified in the future.

[3] http://www.scstatehouse.gov/code/t40c033.htm, Nurse Practice Act, Section 40-33-110 (A)(13) and (21) and Section 4-33-200.