

**Sara A. Gelser**  
**State Senator**  
**Chair, Senate Human Services Committee**



**Oregon State Senate**

November 11, 2019

Mark R. Chassin, M.D.  
President and Chief Executive Officer

Paul Schyve, M.D.  
Senior Vice President, Joint Commission

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Executive Director of Behavioral Health Care

The Joint Commission  
One Renaissance Boulevard  
Oakbrook Terrace, IL 60181

Dear Dr. Chassin, Dr. Schyve and Ms. Finken,

The Joint Commission is considering the reaccreditation of Northern Illinois Academy, a residential facility in Illinois serving children age six through 21 from four different states. The Commission's responsibility to the health and safety of children is significant, particularly in states that accept a Commission accreditation for deemed status of a Child Caring Institution or PRTF. In these states, accreditation from the Joint Commission can relieve the organization of oversight from most other organizations. This is an especially sobering responsibility given the implementation of the Family First Act and the requirement that Qualified Residential Treatment Programs achieved accreditation status. In some states, this means that the Joint Commission will essentially take over licensure and monitoring responsibilities for institutions serving some of the nation's most vulnerable children.

Oregon's child welfare agency currently places some foster children in out of state facilities and these facilities are primarily operated by Sequel Youth and Family Services. These are children

who come into the care of the Oregon Department of Human Services as a result of abuse and neglect. Currently, three Oregon foster children age 12 and younger are placed at NIA. It is my understanding that Wisconsin and West Virginia also have children placed at the NIA Aurora campus. In addition, Oregon has over 30 foster children placed in other Sequel facilities scattered across the country. Sequel serves children from dozens of different states, and many of these children are served in a state other than their state of origin.

As an Oregon State Senator, I serve as the Chair of the Senate Human Services Committee which is tasked with oversight of services provided by and through the Oregon Department of Human Services. It is in that capacity that I am writing to document significant concerns regarding the re-accreditation of a specific facility, Northern Illinois Academy. I am also writing to document concerns about Sequel's current application for systemwide accreditation. The organization not only serves many Oregon children out of state, but it seeks to establish services in state. System wide accreditation would theoretically allow Sequel to use automatic accreditation as a marketing tool in their effort to acquire or enter into service agreements with Oregon nonprofits. I request the Commission deny reaccreditation of Northern Illinois Academy unless and until significant changes are made to the program. I also request the Commission carefully consider whether Sequel's application for system accreditation is safe for children absent thorough site reviews, including unannounced surveys, at each location serving children.

### **NIA's Current Regulatory Structure and Status**

Northern Illinois Academy was last accredited in May of 2016. Commission surveyors visited the site again in June of 2019. The Commission has not yet issued its determination about reaccreditation as a result of that survey.<sup>1</sup>

Northern Illinois Academy, a facility operated by Sequel Youth and Family Services, represents itself as a Psychiatric Residential Treatment Facility, or PRTF. A PRTF is required to meet certain requirements established by the Centers for Medicare Services and outlined in the Code of Federal Regulations. Northern Illinois Academy appears to fall short of meeting many of the requirements set out in the regulations. These alleged failures place children at risk of inappropriate institutionalization, protracted lengths of stay, and potential physical and psychological harm. Further, these potential failures have the effect of exploiting state agencies that believe they are purchasing essential and highly regulated services for vulnerable children and youth. This leads to millions of dollars in taxpayer funds spent on services that are potentially not delivered as advertised.

In order to become a PRTF in Illinois, a facility must follow several steps. NIA has completed many of these tasks. Specifically, NIA can demonstrate that it has, at some point between 2016 and the present:

- Obtained certification as a CMS provider
- Obtained a license as a child care institution from the State of Illinois
- Obtained accreditation from the Joint Commission or another accrediting agency (though the current accreditation is more than 36 months old)<sup>2</sup>

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<sup>1</sup> Ryan Kollereb (Senior Account Manager, Joint Commission) letter to Anthony Penn, October 31, 2019.

<sup>2</sup> <https://www.qualitycheck.org/quality-report/?keyword=northern%20illinois%20academy&bsnid=390217>

NIA does have a letter of certification from the Illinois Department of Public Health (IDPH) certifying that in 2016, NIA met the conditions of participation required to be a CMS certified facility. The letter is attached to this document. This determination was made in 2016, but no follow up survey is scheduled to take place until 2021. IDPH reports that after the survey is complete, the organization does not do compliance monitoring. Rather, that is expected to be done through licensing entities and contracts through the Illinois Department of Health and Family Services (DHFS) which is the State Medicaid Agency.<sup>3</sup>

NIA also has a license as a general child care institution. This is not a health care license, nor is it a license that addresses issues specific to children with disabilities or mental health issues. The Department of Children and Family Services (DCFS) reports that its licensing activities are limited solely to the regulations that pertain to child caring institutions. They lack authority or expertise to investigate problems with the delivery of health care or mental health care services or to monitor for violations of the conditions of participation under the CFR for PRTF programs.<sup>4</sup>

### **NIA Failure to Maintain a Provider Agreement with a State Medicaid Agency**

Since 2001, the regulatory framework promulgated in the federal rule has relied on the establishment and maintenance of at least one current provider agreement with a State Medicaid Agency (SMA) by a PRTF. This requirement is clearly stated in the Federal Register, Volume 66, Number 99 published May 22, 2001. On page 28111, the interim final rule states: “As set forth in the interim final rule, psychiatric residential treatment facilities are facilities that are not licensed as hospitals but meet the requirements in 42 CFR part 441 subpart D, the requirements of 42 CFR part 483, subpart G, ***and have a provider agreement with the state Medicaid Agency***” (emphasis added).<sup>5</sup>

In Illinois, the State Medicaid Agency is the Department of Health and Family Services (DHFS). The SMA is responsible for receiving and reviewing annual attestations of compliance, alerting IDPH to safety issues related to restraint and seclusion and patient care, and monitoring medical necessity and quality of care through the billing and service oversight process.<sup>6</sup>

However, NIA does not have a provider agreement with Illinois DHFS or any other Medicaid agency. This leaves NIA dangerously lacking in oversight of day to day operations, child safety and basic compliance with PRTF requirements. There is no agency with the authority, mandate or obligation to ensure the safety, fidelity or medical necessity of treatment services provided by NIA.

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<sup>3</sup> October 2019 Emails and telephone correspondence with Karen Senger, RN, BSN, Division Chief, Division of Health Care Facilities and Programs, Illinois Department of Public Health

<sup>4</sup> Telephone conversation with Michelle Brockman, Licensing Representative, Illinois Department of Children and Family Services, October 2019

<sup>5</sup> <https://www.federalregister.gov/documents/2001/05/22/01-13041/medicaid-program-use-of-restraint-and-seclusion-in-psychiatric-residential-treatment-facilities>

<sup>6</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/WhatisaPRTF.pdf>

## NIA Failure to Fulfill Key Conditions of Participation

According to a CMS memo issued in 2017, psychiatric residential facilities are required to maintain complete compliance with regulations outlined in 42 CFR 441 Subpart D and 42 CFR 483 Subpart G for **all children** served on site.<sup>7</sup> Although IDPH affirmed that NIA was compliant with the conditions of participation at the time of its 2016 survey, it appears that compliance may not have been maintained to the present day. Without an entity overseeing medical necessity through billings or ensuring receipt of annual attestations, it would be difficult for IDPH to be aware of this absent a complaint.<sup>8</sup> There are several areas of concern related to NIA’s compliance with the conditions of participation and they are outlined below.

### ***NIA is not a stand-alone facility***

The 2007 CMS memo clarifies that a PRTF, “is a separate, stand-alone entity” and that the federal regulations “apply to the entire certified provider/supplier and to all patients/residents being served by the certified entity, regardless of payment source.”<sup>9</sup>

Northern Illinois Academy advertises itself as a PRTF, and that is the service the state of Oregon believes it is purchasing for its foster children. However, the majority of residents of NIA are placed in the program for purposes not consistent with a PRTF. Most significantly:

- NIA is an approved provider of **residential special education services** by the Illinois State Board of Education. Local school districts place students in the facility for special education purposes. School districts make **placements based on need for specialized instruction**, not medical necessity. The daily payment for these services does not reflect the expectation of provision of inpatient medical or psychiatric services.<sup>10</sup>
- Even within the ISBE approved contracts, NIA is approved under four different programs: Northern Illinois Academy, Northern Illinois Academy Autism, Northern Illinois Academy Autism Intensive and Northern Illinois Academy Intensive. The combined room/board/tuition rates are \$461.84 for the basic programs and \$814.31 for the intensive programs. In both cases, the cost for room and board exceeds the cost of tuition.<sup>11</sup>

Private Facility Search Results								
Id	Name	Facility Type	Address	City	State	Zip	County	
59604	<a href="#">CORE Academy</a>	Day School Program	801 W Illinois Ave	Aurora	IL	60506	Kane	
59605	<a href="#">CORE Supported</a>	Day School Program	801 W Illinois Ave	Aurora	IL	60506	Kane	
64820	<a href="#">CORE Supported-Intensive</a>	Day School Program	801 W Illinois Ave	Aurora	IL	60506	Kane	
59453	<a href="#">Northern IL Academy</a>	Combination	998 Corporate Blvd	Aurora	IL	60502	Dupage	
59455	<a href="#">Northern IL Academy - Autism</a>	Combination	998 Corporate Blvd	Aurora	IL	60502	Dupage	
59456	<a href="#">Northern IL Academy - Autism Int</a>	Combination	998 Corporate Blvd	Aurora	IL	60502	Dupage	
59454	<a href="#">Northern IL Academy - Int</a>	Combination	998 Corporate Blvd	Aurora	IL	60502	Dupage	

<sup>7</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/SCLetter07-15.pdf>

<sup>8</sup> October 2019 Emails and telephone correspondence with Karen Senger, RN, BSN, Division Chief, Division of Health Care Facilities and Programs, Illinois Department of Public Health

<sup>9</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/SCLetter07-15.pdf>

<sup>10</sup> <https://www.isbe.net/Pages/Nonpublic-Special-Education-Programs.aspx>

<sup>11</sup> <http://webprod1.isbe.net/FacilityInquiry/PrivateFacilitySearch/PFSearch.aspx>

Enter “Aurora” under city. Reset the date in the top right hand corner to 2019 to get the accurate rates. A different rate is charged for each program.

- NIA receives Illinois children whose placements are financed by the Illinois Individual Care Grants. These grants are reflected in current state contracts which are for non-Medicaid long term care residential services for individuals with intellectual and developmental disabilities. Although individuals with an intellectual disability can be served in a PRTF, in order to be admitted they must also have a psychiatric diagnosis that requires inpatient treatment.<sup>12</sup> The most recent contract is attached, but this screenshot captures the contracted service-- non-Medicaid, long term developmental disability services. This is not a contract for PRTF services and the contract makes no mention of psychiatric services, a physician directed active treatment plan, or the provision of any psychiatric, behavioral or medical services.

<p>STATE PROGRAM NAME: CHILD CARE INSTITUTION SCOPE OF SERVICES</p> <p>CSFA Number: 444-24-9999 Appropriation FY: 2020 Appropriation Code: 24001490B Appropriation Desc: DD LONG TERM CARE Appropriation Amount: \$2,481,598.00 Use by DHS as Maintenance of Effort (MOE): No Use by DHS as Matching Funds: No CFDA: N/A - CFDA Name: N/A FAIN Number: N/A - FAIN Award Agency: N/A FAIN Award Date: N/A</p> <p>: Scope of Service:</p> <p>1.The Child Care Institution (CCI) Program is a fixed rate, Non-Medicaid state funded program. As such, the provider will provide in a manner as described in this agreement, including all applicable laws, rules, manuals and guidelines, which are incorporated herein by reference. See Attachment A, section II which describes these applicable laws, rules and includes the manual references and guidelines.</p> <p>2.Residential Services for children with developmental disabilities programs are designed to provide a structured environment to children and adolescents who cannot reside in their own home. Residential services are provided in a setting that is licensed by the Department of Children and Family Services (DCFS) as a Residential School/Child Care Institution. See Attachment A, section II, 89 IL Administrative Code 401 for requirements by DCFS to maintain licensure.</p>
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The NIA Handbook (attached) reflects the different programs offered by the facility. The manual acknowledges not all of the youth served have psychiatric needs. On page 17, the manual reads: “Northern Illinois Academy ensures that **any resident requiring psychiatric services or experiences a psychiatric emergency** is promptly provided all necessary treatment. **Residents in need of such services** will be offered a coordinated treatment ... and **monthly medication consultations** with board certified psychiatrists.” This suggests not all services to all youth at the facility are provided under the direction of a psychiatrist. By definition, to meet the eligibility criteria for a PRTF, a child must be in need of psychiatric care under the direction of a physician.

All of the children at NIA, regardless of payor source or reason for placement at NIA, are served in the same education program, share the same dining facilities, are supervised by the same

<sup>12</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Question 14

program staff and live on the same units. Because of this, NIA apparently fails to meet the stand-alone facility requirement of the federal regulation.

***Medical necessity for in-patient psychiatric care may not be appropriately documented for each youth at the facility***

The 2007 CMS memo describing the distinction between RTCs and PRTFs clearly states that in addition to the “stand alone” requirement in the regulations, every youth living in the facility must be certified to meet the threshold of medical necessity. “All PRTF residents according to regulation must need inpatient services to treat his or her psychiatric condition under the direction of a physician and the services provided must be reasonably expected to improve the resident’s condition or prevent further regression so that the services will no longer be needed.”<sup>13</sup>

According to the 2017 guide for surveyors published by CMS, federal regulations also require that the initial certification of the need for inpatient services be determined by a team that includes, at a minimum, a psychiatrist, a psychologist and a physician.<sup>14</sup> There is no readily available evidence to suggest that each youth placed in the facility has gone through the rigorous, independent assessment needed to justify services in an inpatient setting. There has been no evidence that Oregon children placed at NIA have had the rigorous, physician led assessment, complete with signed certification of eligibility completed prior to placement at NIA.

***Independent medical assessment questions***

NIA employs or contracts with a pediatrician and a psychiatrist. However, there is no evidence the independent assessment of medical necessity is completed prior to each youth’s placement at NIA. Because the Medical Director, Dr. Miroslav Walo, is an employee of Sequel/NIA he cannot provide an *independent* assessment of the medical necessity of inpatient services. Sequel itself identified the potential challenges of this arrangement in its 2017 SEC filing relating to a proposed merger with GPAC. In this filing, Sequel identified current arrangements with medical providers who may approve or refer services as potential legal liabilities that may be deemed to violate federal anti-kickback laws. On page 56, Sequel leadership explains that “Sequel has a variety of financial relationships with physicians and other professionals who refer clients to Sequel’s facilities... [C]ertain of Sequel’s current arrangements with physicians and other potential referral sources may not qualify for safe harbor protection. In addition to its relationships with referring physicians, Sequel’s marketing activities may also lead to scrutiny or violations of the Anti-Kickback Statute.”<sup>15</sup>

The concern about lack of independent assessment is clearly demonstrated by the admission of the two Oregon youth admitted to NIA in 2019 (3/13/19 and 7/1/2019 respectively). Each of these youth were transferred directly to NIA from other Sequel facilities. Child 1 (admitted to NIA 3/13/10) transferred from Sequel Kingston in Tennessee, where she had been placed since 1/29/19. Kingston closed immediately following Tennessee’s abrupt removal of over a dozen

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<sup>13</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/downloads/SCLetter07-15.pdf>

<sup>14</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Question 54

<sup>15</sup> [http://www.sec.gov/Archives/edgar/data/1643953/000121390017000665/prem14a0117\\_globalpartner.htm](http://www.sec.gov/Archives/edgar/data/1643953/000121390017000665/prem14a0117_globalpartner.htm)



children due to health and safety concerns.<sup>16</sup> Child 2 (admitted 7/1/2019) transferred to NIA from Sequel Normative Services Academy in Wyoming where he had been placed since 11/15/18. Prior to his placement at the Wyoming facility, Child 2 was served by Sequel Woodward in Iowa where he was initially placed on 4/23/18. As there was no break in service between these Sequel placements, it is unclear how a qualified team without financial ties to Sequel had any opportunity to assess these youth and certify the need for such a high level of care prior to their admission as required by the federal conditions of participation.<sup>17</sup>

### *Active treatment concerns*

Federal regulations require that “the services provided must be reasonably expected to improve the resident’s condition or prevent further regression so that the services will no longer be needed” and that each child’s plan of care must “be designed to achieve the beneficiary’s discharge from inpatient status at the earliest possible time.”

Although federal regulations do not impose a specific length of stay criteria, PRTF lengths of stay generally last for several months. NIA has exceptionally long lengths of stay. According to data recently provided to the Oregon Department of Human Services/Oregon Health Authority, the average length of stay at NIA is nearly two years with some cases stretching out even longer.

The 2007 Sequel investor statement acknowledges that extended lengths of stay boost profits. “Inpatient utilization, average lengths of stay and occupancy rates continue to be negatively affected by payor- required pre-admission authorization and utilization review and by payor pressure to maximize outpatient and alternative healthcare delivery services” (page 49). Absent any oversight by a state Medicaid Agency or a commercial insurer, Sequel is left to make its own determination about length of stay in very expensive beds without needing to demonstrate medical necessity. This is particularly concerning given Sequel’s statement that the company’s “ability to grow its business is dependent on capacity and occupancy at its facilities” (page 60).

### *Attestation of compliance*

PRTFs in Illinois are required to file an attestation of compliance with the federal conditions of participation annually and every time the director changes. This attestation is required to include specific information, and in Illinois is required to be submitted on a form prescribed by the agency.<sup>18</sup><sup>19</sup> It appears NIA failed to do this. While a letter was filed in 2016, there is no record of any additional filing between that date and October 16, 2019. The 2016 letter was not provided in the form required by Illinois DHFS and did not include all of the information required by CMS.

Upon request, on October 17, 2019 NIA provided an attestation form **signed the same day** by its new director who began employment in June. This form appears to include inaccurate information. Despite not having a provider agreement with any state Medicaid agency and not

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<sup>16</sup> <https://www.roanecounty.com/content/kingston-academy-now-closed>

<sup>17</sup> Oregon DHS spreadsheet of admissions and discharges of Oregon youth in out of state placements, 2016 to 2019. Spreadsheet does not include youth names or other personally identifiable information.

<sup>18</sup> [https://drive.google.com/file/d/1FXz0zBZWTcNjnDRY\\_DbwFF9hN193srLN/view](https://drive.google.com/file/d/1FXz0zBZWTcNjnDRY_DbwFF9hN193srLN/view)

<sup>18</sup> <https://www.illinois.gov/hfs/MedicalProviders/notices/Pages/prn160914a.aspx>

<sup>19</sup> <https://www.illinois.gov/hfs/SiteCollectionDocuments/hfs2734a.pdf>

being reimbursed with Medicaid funds, Director Penn indicated that NIA serves kids receiving Medicaid coverage through the states of Illinois, Wisconsin, West Virginia and Oregon. This is simply untrue. (Statement is attached)

### **NIA Safety Risks to Youth**

More concerning than failure to comply with basic PRTF regulations are the safety risks faced by the children at NIA.

#### ***Excessive and prolonged physical restraints***

Incident reports for three Oregon youth over a four month time frame demonstrate an overreliance on restraint as a punishment for children. These previously abused and neglected foster youth ranged in age from nine to twelve. They experienced dozens of physical restraints, including supine restraints lasting for as long as 33 minutes. There is no evidence of changes to behavior or treatment plans to support these youth to become more successful in their environment. There is also no evidence that the precipitating events rose to the level of serious risk of physical injury which is the threshold required for initiation of an emergency restraint under the federal regulations.<sup>20</sup>

Incidents themselves have led to injury. In the case of a ten year old girl, in one instance she reported being punched in the face by a staff member during a restraint. This was confirmed through the written statement of a staff member who witnessed the incident.<sup>21</sup> This same child also required emergency hospital treatment after a staff member's shin "came in contact" with the child's face, leading to bleeding that could not be managed by on site nursing staff.<sup>22</sup> For this child alone, nearly 50 different adults were involved in applying supine restraints. The documentation suggests these restraints were rarely supervised in person by clinical staff which is required under the federal conditions of participation for a PRTF.<sup>23</sup>

#### ***Mechanical restraints, unjustified restraints and seclusion***

When I personally visited NIA in July, I personally witnessed an inappropriate physical restraint/intervention when a child reached for a piece of fruit without first asking for permission. There was no risk of injury to self or others that precipitated this event. I also witnessed a child zipped from toe to chin in a body sock in a classroom, rendering her unable to independently use her arms or legs. This would be considered a mechanical restraint.<sup>24</sup> Further, had there been a fire or other emergency she would not have been able to safely evacuate without assistance. I also witnessed a child in seclusion (physically prevented from leaving a room with no lights) when there clearly was no imminent emergency. NIA insists this is not seclusion because there

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<sup>20</sup> Incident reports from March 2019 through August 2019 released under Oregon Public Records law. These can be provided upon request

<sup>21</sup> Incident report witness summary dated 3/28/19. Attached.

<sup>22</sup> Incident reported dated 8/26/19. Attached.

<sup>23</sup> Incident reports March 2019 through August 2019 released under Oregon Public Records law. These can be provided upon request.

<sup>24</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Question 49



are no doors. However, CMS regulations clearly state that regardless of whether there is a door, when a child is in a space alone and prevented from leaving it is a seclusion.<sup>25</sup>

### ***Chemical restraint***

When Oregon Health Authority staff visited the facility in June, NIA staff disclosed that they had been using intramuscular injections of **thorazine** and **atavan** to control children’s behaviors when they were “unable to calm themselves.”<sup>26</sup> According to guidance from CMS, this is considered chemical restraint.<sup>27</sup> According to the Wouda memo, the reporting of this practice was so lax that the facility acknowledged it did not keep track of the number of injections administered each month until the spring of this year—despite the practice being years old. Chemical restraint to manage behavior is prohibited under Illinois licensing standards for a Child Care Institution, which is the only license held by NIA. Further, despite acknowledging to Oregon regulators that chemical injections were utilized for several years, the NIA handbook clearly states they do not use chemical restraint.<sup>28</sup> Not only is such a statement misleading to consumers and placing agencies, it represents a failure to comply with the CMS conditions of participation that require written description of the restraint policy is provided upon admission.

### ***Concerns about NIA restraint practices expressed by TCI/Cornell***

NIA reports that to date it has utilized the TCI crisis management program which was developed by Cornell University. However, when provided with copies of recent incident reports, senior staff at Cornell expressed concern that the practices were inconsistent with the training. In particular, most of the incident reports involving Oregon youth include prolonged, supine restraints. However, TCI does not recommend the use of supine restraints for young children. TCI leadership also noted that the incident reports did not include triggers that were consistent with the need for emergency restraint.<sup>29</sup> According to CMS guidelines, “instances where the staff automatically use the highest level of intervention for the purpose of retaliation, coercion, punishment or convenience would be considered resident abuse.”<sup>30</sup>

Finally, TCI reported that NIA does not currently have an adequate number of certified trainers to train staff according to TCI guidelines. TCI employs a co-training model, but the organization currently only has one individual (Emily Kightly) who is eligible to provide TCI training to staff.<sup>31</sup> Earlier this year, NIA told Oregon regulators that their compliance manager, Deborah Lipman, was a TCI trainer and that she personally reviews every restraint for safety and compliance and is able to provide immediate feedback to staff. According to the staff at Cornell, Ms. Lipman’s certification expired in 2012.<sup>32</sup>

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<sup>25</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Questions 19 and 44

<sup>26</sup> June 20, 2019 site review summary prepared by Carrie Wouda, Licensing and Certification Compliance Specialist

<sup>27</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Question 34

<sup>28</sup> NIA Handbook, Page 17

<sup>29</sup> November 11, 2019 email correspondence and telephone conversations with Martha Holden and Andrea Turnbull, TCI, Cornell University

<sup>30</sup> <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-28-.pdf>, Question 51

<sup>31</sup> Written correspondence from Andrea Turbull and Martha Holden, November 11, 2019

<sup>32</sup> Oregon DHS/OHA site review document dated XXXX

### ***New crisis management curriculum not approved***

NIA recently announced that along with other Sequel programs, the organization is changing its crisis response program to Ukeru.<sup>33</sup> Ukeru confirmed they spent several days in late October at NIA to begin the training process and to help NIA develop an implementation plan that would roll out over the course of several months.<sup>34</sup> However, Ukeru is not on the list of approved behavioral intervention programs authorized by the Illinois Administrative Code.<sup>35</sup> Illinois licensing standards require that physical restraint only be performed by individuals who have received appropriate training in one of the programs authorized through their Behavior Intervention Plan matrix.

### ***Inadequate notifications***

NIA also fails to provide timely, written notification about serious incidents and incidents of restraint and seclusion. When Oregon youth were restrained, NIA was not sending written incident reports despite a contractual obligation to do so. Instead, NIA staff would telephone Oregon caseworkers often leaving voicemails with little to no detail about the incidents. In some cases, these voicemails were left on “dead” phone lines meaning that no one received the messages.<sup>36</sup> Further, not all of the incidents were reported. When written incident reports were obtained this fall and compared against case notes for the same period of time, there were dozens of incidents that were not reflected in case notes recorded after verbal notification. Further, there were not written incident reports to coincide with each verbal notification recorded in the children’s case records.<sup>37</sup> Oregon officials also were not notified about the rape of a 13 year old child on April 15, 2019. Oregon DHS only learned of this incident following coverage by the Chicago Tribune on October 17, 2019.<sup>38</sup>

Finally, there is evidence that NIA fails to make necessary notifications to the child abuse hotline. In April, NIA was subject to an abuse investigation by DCFS regarding an Oregon child who indicated she was punched in the face during a restraint on March 28, 2019. The executive director, Carolyn Willandt, stated that the contact from DCFS was “the first we were made aware” of the incident.<sup>39</sup> However, a March 29, 2019 witness statement by an NIA staff member reported that the 10 year old child was hit in the face with a closed fist. Further, the child’s NIA case manager conceded in a communication with the child’s Oregon case worker that she was aware that the child had been hit in the face.<sup>40</sup> Despite this, NIA did not make a report to the Illinois or Oregon child abuse hotline. It was only when an Oregon child welfare worker reported his client’s statements to the hotline that an investigation occurred.

### **Risks to public agencies placing children at NIA**

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<sup>33</sup> <https://www.prnewswire.com/news-releases/sequel-youth-and-family-services-adopts-ukeru-systems-restraint-free-behavior-management-program-300807495.html>

<sup>34</sup> Email from Kim Sanders, President of Ukeru, October 21, 2019

<sup>35</sup> <https://casetext.com/regulation/illinois-administrative-code/title-89-social-services/part-384-behavior-treatment-in-residential-child-care-facilities/appendix-a-matrix-of-behavior-treatment-techniques>

<sup>36</sup> Email from Will Boldt to Reyna Aguiar, 10/2/2019

<sup>37</sup> Email correspondence released under Oregon Public Records law, available upon request.

<sup>38</sup> Telephone discussion with Oregon DHS Director Fariborz Pakseresht and Oregon Interim Child Welfare Director Jana McClellan, October 30, 2019

<sup>39</sup> Email from Carolyn Willandt, Executive Director NIA to Deborah Lipman, Quality Assurance Manager NIA, April 8, 2019.

<sup>40</sup> Redacted Case Notes for “Child 2”, available upon request.

The practices of NIA not only place children at risk, but they also put public agencies in significant fiscal and legal jeopardy. Relying on statements from NIA about their accreditation and certification status, public agencies like Oregon believe this is a psychiatric residential treatment facility (PRTF) providing high quality services delivered under the watchful eye of federal Medicaid regulation. As a result, Oregon pays \$802.75/child/day in state general fund directly to the facility. That equates to over \$660,000 in taxpayer funds paid to NIA over the past 14 months.<sup>41</sup>

Despite requesting needed materials for the past year to enroll NIA as a Medicaid Provider, Sequel and NIA have failed to provide these materials. At one point, Sequel indicated they may not want to enter an agreement with a state Medicaid agency because it could reduce their rate.<sup>42</sup> A PRTF is a Medicaid construct and a Medicaid service. NIA overtly states that it is a CMS certified provider. As such, it was reasonable for Oregon to believe it could purchase services for a Medicaid required service with federal funds. That is not the case at NIA, meaning Oregon has been denied access to desperately needed Medicaid funds to which these children are entitled—and which NIA’s marketing falsely suggests are Medicaid eligible.

The daily rate is only one of the fiscal concerns, however. Federal CMS regulations prohibit the placement of children in Institutions for Mental Disease (IMD). An IMD is a facility with more than 16 beds in which a child is placed for treatment. Any child placed in an IMD loses all eligibility for Medicaid services and reimbursements, including for basic health care.<sup>43</sup> The only exception to the IMD exclusion for children is placement in a PRTF. If NIA is not a PRTF (which it does not appear to be), every Medicaid eligible child in that facility is at risk of losing the coverage to which they are entitled. Because most of these children remain in the care and custody of their Illinois parents, this means that these parents may face extraordinary out of pocket costs for health care services if Medicaid begins to deny payment for their medical needs based upon their IMD placement.

Finally, states placing children in a facility that is not providing high quality services face significant legal risk. They could be sued for failure to place a child in an actual PRTF if a physician has found such services to be necessary. They could also be sued under Olmstead for placement of a child in an unnecessarily restrictive setting and for a period of time longer than what is medically necessary due to lack of necessary utilization review. If the program fails to provide adequate staffing, training or supervision or if the facility inappropriately uses physical, chemical or mechanical restraint a placing public agency could face liability in a tort arising from a child’s injury, death, sexual assault or mental injury.

### **The Role of the Joint Commission**

Relying on assurances of accreditation by the Joint Commission, states like Oregon sincerely believe that Northern Illinois Academy is a PRTF and a safe, therapeutic placement option for children. However, NIA’s apparent failure to maintain a provider agreement with an SMA, apparent failure to maintain a standalone facility, apparent failure to certify medical necessity for

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<sup>41</sup> These figures are based on reported daily rate of \$802.75/day for three Oregon children admitted on 7/1/19 (135 days), 3/13/19 (245 days) and 8/27/18 (443 days) and still residing in facility as of the drafting of this letter.

<sup>42</sup> Email from Jessica Meyer to Glenda Marshall, February 13, 2019

<sup>43</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/faq092019.pdf>

each child, apparent failure to ensure timely discharge, apparent failure to file annual attestations consistent with Illinois state law and apparent failure to comply with basic state and federal standards for seclusion and restraint practices demonstrate that NIA is likely not in compliance with basic PRTF requirements. The organization's inability to maintain basic paperwork coupled with very serious issues related to inappropriate use of chemical, physical and mechanical restraint call into question the quality, leadership and safety of the facility. Because there is no SMA providing regular oversight, because the state survey agency is not required to visit the facility again until 2021, and because Illinois does not require a Joint Commission accredited PRTF to obtain any sort of separate health facility or behavioral health care license, **the Joint Commission is the only regulatory agency with the capacity to hold this provider accountable as a behavioral health care provider through the withholding of accreditation.**

In the course of investigating my concerns about NIA's reaccreditation process, I learned that Sequel is pursuing a "system accreditation" through the Joint Commission. The potential of a system wide accreditation for Sequel may pose substantial risk to children. Unlike hospital systems, Sequel is not a homogenous service system primarily staffed by regulated professionals. Instead, Sequel represents a loosely affiliated association of residential care facilities predominantly staffed by unlicensed individuals, paid low wages, and may hold only a GED or a high school diploma. Sequel's facilities are each operated under different contracts, and their facilities are operated to a variety of different licensing standards depending upon the state in which they are located. Most are also doing business under the auspices of an independent non-profit organization. In many cases, Sequel is not even the entity holding the license. That responsibility is left to the local non-profit agency that may never receive a visit or review during a system accreditation process.

It is my understanding that under a Joint Commission System Accreditation, Sequel would be authorized to claim Joint Commission accreditation for every residential facility it operates, including those not yet acquired, without the Commission actually visiting each site. This is concerning for a system like Sequel that has pervasive problems with quality and safety of services for the youth in its care all across the country. Since January of this year, Sequel has closed five different facilities in the face of complaints of inappropriate conditions for youth. These include **Sequel Kingston Academy** (Tennessee)<sup>44</sup>, **Sequel TSI Madison** (Alabama)<sup>45</sup>, **Sequel Union County Juvenile Detention Facility** (Florida)<sup>46</sup>, **Sequel Red Rock Canyon Academy** (Utah)<sup>47</sup> and **Sequel Mt. Pleasant Academy** (Utah)<sup>48</sup>. In at least two of these facilities, criminal charges or investigations are pending against staff related to treatment of youth. In at least one other, lack of supervision from a facility is alleged to have resulted in a homicide.<sup>49</sup> In addition to these closures, **Sequel Normative Services Academy** saw a reduction of placements from public agencies in its own state and protest from facility neighbors as a result of supervision levels.<sup>50</sup> CMS threatened to pull funding from **Sequel Pomegranate** in

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<sup>44</sup> <https://www.roanecounty.com/content/kingston-academy-now-closed>

<sup>45</sup> <https://www.al.com/news/2019/08/in-wake-of-killing-and-escapes-madison-revokes-three-springs-business-license.html>

<sup>46</sup> <https://mycbs4.com/news/local/child-battery-investigation-closes-union-juvenile-residential-facility-officials-say>

<sup>47</sup> <https://www.thespectrum.com/story/news/2019/07/10/red-rock-canyon-school-staff-sexual-assault-investigation-child-abuse/1693477001/>

<sup>48</sup> <https://www.sltrib.com/news/2019/07/15/embattled-company-close/>

<sup>49</sup> <https://whnt.com/2019/08/09/madison-juvenile-facility-sued-over-escape-that-allegedly-led-to-mans-murder/>

<sup>50</sup> <https://thesheridanpress.com/110571/neighbors-frustrated-with-nsi-runaways/>

Ohio due to concerns including inappropriate use of physical restraints, facility safety issues, and inadequate physical and mental health assessments.<sup>51</sup>

Over the past year, California regulators identified serious problems at other Sequel facilities that currently boast Joint Commission Accreditation. The state of California publishes all of its licensing and complaint surveys online.<sup>52</sup> **Sequel Clarinda Academy**, Sequel’s flagship facility, was cited for significant deficiencies in May and October of this year. These included lack of hot water, violations of youth rights, inadequate record keeping, inadequate supply of clothing, insufficient bedding, lack of privacy for toileting and lack of sanitary conditions.<sup>53</sup> As late as October 2019, California found that Clarinda Youth had to eat their meals on the floor of the dorm due to a lack of tables and chairs.<sup>54</sup>

**Sequel Woodward Academy** is also currently accredited by the Joint Commission. However, in October of this year, California regulators issued citations for significant deficiencies including unsanitary conditions, non-flushing toilets, clogged sinks, inadequate bedding, broken windows, lack of hot water, food safety failures, missing consents for medical treatment and inadequate authorizations for administration of psychotropic medications.<sup>55</sup> In July, California issued citations to Woodward after substantiating that staff were using derogatory language and cursing at youth, discharging children without an adequate plan, and violating student rights through random physical searches and drug testing.<sup>56</sup> As at NIA, Woodward also failed to appropriately send incident reports—delivering 244 incomplete incident reports on May 15, 2019 that included descriptions of restraints lasting up to an hour. These incidents all occurred between October of 2018 and May of 2019.<sup>57</sup>

**Sequel Lakeside Academy**, also currently holding Joint Commission accreditation, was cited in May of 2019 for a failure to report its change of executive director and failure to adequately complete incident reports.<sup>58</sup> The month prior, California cited **Sequel Lakeside** for placing a child in an inappropriate physical restraint for refusing to fully straighten an injured leg.<sup>59</sup> Just a few months earlier, **Sequel Starr Albion Commonwealth** was cited for publicly cutting the braids off the head of a youth in front of other children and denying youth access to culturally appropriate hair products.<sup>60</sup>

The California licensing records coupled with media reports suggests a pervasive pattern across the Sequel system of inadequate record keeping, inappropriate restraint, violation of individual rights, sloppy oversight of facility maintenance, and lax reporting to state agencies regarding program leadership, quality, and youth safety. Though it was NIA that prompted me to write this letter, my concerns extend to Sequel’s entire application for system wide accreditation.

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<sup>51</sup> <https://www.10tv.com/article/cms-threatened-pull-medicare-funding-sequel-pomegranate-unless-issues-fixed-2019-oct>

<sup>52</sup> <https://secure.dss.ca.gov/CareFacilitySearch/>

<sup>53</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300055&inx=8>

<sup>54</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300055&inx=11>

<sup>55</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300054&inx=10>

<sup>56</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300054&inx=8>

<sup>57</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300054&inx=6>

<sup>58</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300066&inx=6>

<sup>59</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300066&inx=5>

<sup>60</sup> <https://secure.dss.ca.gov/cclid/TransparencyAPI/api/FacilityReports?facNum=602300089&inx=4>

It is my hope that the Joint Commission will carefully investigate these issues prior to reaccrediting Northern Illinois Academy and before moving forward with a process for system accreditation of Sequel residential care programs. My hope is that this consideration would include unannounced visits to the facilities, interviews with youth and advocates, examination of medical records, review of incident reports alongside professionals at Cornell and examination of the licensing actions of all states contracting with these facilities. The health, welfare and safety of countless vulnerable children, many lacking individual champions, is reliant upon the Commission's action.

Thank you for your consideration.

Sincerely,



Senator Sara Gelser  
Senate District 8  
Chair, Senate Human Services Committee

CC under separate cover:

Senator Ron Wyden

Senator Tammy Duckworth

Governor Kate Brown

Governor J.B. Pritzker

Governor Tony Evers

Governor Jim Justice

James Cowher, CAPT, USPHS, Acting Director, CMS, Divisions of Continuing Care Providers

Donald Howard, CMS, Division of Continuing Care Providers, PRTF Lead

Fariborz Pakseresht, Director, Oregon Department of Human Services

Marc D. Smith, Director, Illinois Department of Children and Family Services

Dr. Carmen Ayala, Illinois State Superintendent of Education

Linda Watts, Commissioner, West Virginia Bureau for Children and Families

Emilie Amundson, Secretary Designee, Wisconsin Department of Children and Families

Pat Allen, Director, Oregon Health Authority

Dr. Ngozi Ezike, Director, Illinois Department of Public Health

Jake Cornett, Executive Director, Disability Rights Oregon

Zena Naidich, Executive Director, Equip for Equality, Illinois

Lea Kitz, Executive Director, Disability Rights Wisconsin

Susan Given, Executive Director, Disability Rights West Virginia

Ben Wolf, American Civil Liberties Union of Illinois

Ronald Davidson, PhD



Attachments:

NIA 2016 Letter of Attestation

NIA October 17, 2019 Letter of Attestation

Witness statement regarding closed fist

Incident report regarding bleeding face

Northern Illinois Academy Handbook

IDPH 2016 Letter of Accreditation

NIA/Illinois Contract for DD Long Term Care services