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June 10, 2020

VIA EMAIL

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Betsy Schwechheimer, Chief Executive Officer
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Tewksbury, MA 01876

Re: Protection and Advocacy Investigation of Tewksbury State Hospital

Dear Commissioners, Counsel, and Ms. Feitelberg and Ms. Schwechheimer:

The Disability Law Center ("DLC") is writing out of concern for patients and staff at Tewksbury State Hospital. As you are aware, DLC is the designated Protection and Advocacy ("P&A") system of Massachusetts, operating pursuant to a federal mandate and legislation that gives us unique, extensive access to investigate suspected incidents of abuse or neglect at residential and non-residential facilities, both public and private.¹ In addition to investigative authority, the P&A statutes specifically authorize P&A agencies to monitor compliance with respect to the rights and safety of individuals with disabilities. Hospitals are included among the facilities to which our P&A authority extends.²

¹ See 42 U.S.C. § 10805(a)(1)(A) (PAIMI – persons with mental illness); 42 U.S.C. § 15043(a)(2)(B) (PAIDD persons with intellectual and developmental disabilities); 29 U.S.C. § 794e(f)(2) (PAIR – persons with other disabilities, including physical disabilities); 42 U.S.C. § 300d-53(k) (PATBI – persons with traumatic brain injury).

² See, e.g., 42 U.S.C. § 10802(30) (defining facility); 42 U.S.C. § 15043(B),(H)-(J) (granting access to locations in which services, supports, and other assistance are provided to persons with developmental disabilities and records

DLC initiated a monitoring of Tewksbury State Hospital due to reported concerns regarding the spread of COVID-19 at the facility. In addition, DLC received a complaint to the system. The P&A statutes specifically authorize P&A agencies to investigate incidents of abuse or neglect of individuals with disabilities under either of two circumstances: (1) when the agency receives a complaint; or (2) when it determines that there is probable cause – i.e., reasonable grounds to believe that individuals have been, or may be at significant risk of being subject to abuse or neglect.³

In this instance, DLC received a complaint to the system regarding the hospital's COVID-19 practices and procedures and DLC found probable cause to open an investigation. While DLC is aware of some corrective measures recently implemented at the facility, we believe that this is not enough to address the rights and safety of individuals with disabilities at Tewksbury State Hospital. We write now to formally let you know that we have opened an investigation and to request copies of the following four categories of records as part of our P&A investigation:⁴

1. Any written policies, protocols, or practices adopted and implemented by Tewksbury State Hospital within units run by the Department of Public Health (“DPH”) or the (“Department of Mental Health”) related to the following:
 - (a) Prevention of both COVID-19 introduction into Tewksbury Hospital and spread to patients and staff;
 - (b) Screening and testing for patients and staff presenting symptoms that may be indicative of COVID-19 infection and for individuals exposed to other who have presented symptoms or tested positive;
 - (c) Quarantine requirements for patients and staff who have tested positive or present symptoms that may be indicative of COVID-19 infection;
 - (d) Increased cleaning and sterilization of living quarters, communal bathrooms, communal eating areas, areas for the provision of medical and mental health services, medical equipment, phones, assistive technology, etc.;
 - (e) Provision of personal protective equipment, soap, disinfectant, cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, and laundry services to patients, as well as any interim plans in place if/when such supplies and services are not readily available to patients;
 - (f) Access to mental health treatment and programming during the COVID-19 pandemic, and any supplemental resources and supports made available to patients during suspensions of regular treatment and programming;

thereof that are relevant to an investigation), 29 U.S.C. § 794e(f)(2) (granting the same authority as 42 U.S.C. 15041 *et seq.*); 42 U.S.C. § 300d-53(k) (granting the same authority as 42 U.S.C. 15041 *et seq.*).

³ See, e.g., 42 U.S.C. § 10805(a)(1)(A); 42 C.F.R. § 51.2; 42 U.S.C. § 15043(a)(2)(B); 45 C.F.R. § 1326.19; 29 U.S.C § 794e(f)(2); 42 U.S.C. § 300d-53(k).

⁴ See, e.g., 42 CFR § 51.41; 45 CFR § 1326.25.

- (g) Hospital policies for patient non-compliance with COVID-19 safety precautions;
- (h) Access to fresh air and privileges during the COVID-19 pandemic; and
- (i) Any recent steps taken to mitigate the current spread of COVID-19 among patients and staff.

To the extent that the above is not captured in formal, written policies and protocols, we request summaries of current practices encompassing the above topics. Moreover, to the extent that Tewksbury is relying on DPH or DMH guidance available online, please identify that guidance by the specific name by which it is labeled on the mass.gov website.

- 2. Any report, notes or documentation regarding the infection control assessment of Tewksbury State Hospital conducted by Robin Wright, or any other infection control consultant, and/or set up through the DPH Health Care Quality office.
- 3. Any and all death records for individuals who died from COVID-19 at Tewksbury State Hospital or died after being transferred to another medical facility.
- 4. Names of all units currently in operation at Tewksbury State Hospital and, within each identified unit, a brief description of the population served within the unit (e.g., "DMH unit" or "Huntington's unit"), the current number of patients in the unit, the patient capacity of the unit, and whether the unit is currently designated as COVID-positive or negative.
- 5. Data concerning all COVID-19 infection and recovery numbers broken down by unit in the hospital.

We request that you provide the requested records electronically by June 24, 2020. Please let me know if you have any questions regarding the above records requests. My direct phone number is (413) 585-8792. In addition, please be aware that any confidential records and information obtained through P&A authority must be kept confidential to the same level of the original holder.⁵ After DLC receives and reviews the requested documentation, we intend to request the opportunity to meet with you and your client.

Thank you in advance for your assistance in facilitating DLC's investigation.

Sincerely,



Stefanie Krantz
Senior Attorney

⁵ 42 CFR § 51.45 Per 45 C.F.R. § 1326.28,