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VIA EMAIL

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Re: Protection and Advocacy Investigations of MCI-Shirley and MCI-Norfolk

Dear Commissioner Mici, Attorney White, Superintendent Thibault, and Superintendent Silva:

The Disability Law Center (DLC) has a federal mandate as the Commonwealth's Protection and Advocacy Agency¹ (P&A) to protect and advocate for individuals with disabilities, including those who are criminally and civilly detained in Department of Correction (DOC) facilities. This mandate as well as DLC's federal authority to conduct these activities continues during the current public health crisis.

As you are aware, a significant number of prisoners in DOC facilities fall within the high-risk groups more likely to develop serious illness or die if infected with COVID-19 due to age, medical condition, and/or disability. Accordingly, DLC requested in correspondence dated March 23, 2020 (attached) that

¹ This mandate was first codified through the passage of the Protection & Advocacy for People with Developmental Disabilities (PADD) Act, 42 U.S.C. § 15043(a). Congress extended the protections of the PADD Act, incorporating them by reference into legislation protecting persons with other forms of disabilities. This includes the: Protection & Advocacy for Mentally Ill Individuals (PAMII), 42 U.S.C. § 10805, Protection & Advocacy for Individual Rights (PAIR) Act, 29 U.S.C. § 794e(f), and the Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) Act, 42 U.S.C. § 300d-53(k).

The Protection and Advocacy System for Massachusetts



DOC provide any written policies and protocols adopted related to this crisis, including those concerning eight specific topics. To date, DLC has received no response from DOC concerning this request. Meanwhile, the total number of prisoners and staff in DOC facilities who have tested positive for COVID-19 have, according to the most recent data reported, climbed to 248.

Since sending our March 23, 2020 letter, DLC has also been receiving information concerning prisoners' access to services and treatment and general conditions in DOC facilities that cause our office great concern for the well-being of individuals with disabilities in DOC custody. Of particular concern are reports from MCI-Shirley and MCI-Norfolk, both of which have positive COVID-19 cases and specialized medical units on-site – the Nursing Care Unit (NCU)² and Critical Stabilization Units (CSUs).³

According to reports, lack of appropriate assistance with activities of daily living for residents in the NCU and CSUs is now pervasive because the presence of inmate companions – who normally provide this assistance – has been greatly reduced and medical staff are not filling in the gaps. As a result, prisoners who are elderly and/or have disabilities are not getting help with necessary activities such as eating, toileting, bathing, and wheelchair transfers. At the same time reports indicate that the facilities are not taking sufficient steps to protect NCU and CSU residents against COVID-19 infection or to monitor and treat those who may have already contracted it. For example, the absence of help reportedly forced one prisoner with disabilities to, without personal protective equipment (PPE), feed another prisoner with significant disabilities who was showing symptoms of possible COVID-19 infection. Complaints also include medical staff having a prisoner with neurological disabilities take his own temperature with questionable reliability rather than opening his door.

Other reports pertain to a variety of issues effecting prisoners with disabilities at MCI-Shirley and MCI-Norfolk, ranging from prisoners with diabetes having to use dirty, shared glucometers and denial of medically-ordered special diets to unclean communal areas in housing units, which are still available to prisoners on a very limited basis to permit showering and access to telecommunications.

Moreover, DLC has received information that prisoners with mental illness are currently getting limited or no access to mental health treatment, with mental health clinicians reducing the frequency of their cell-door interactions and no longer conducting the periodic out-of-cell meetings normally offered since DOC implemented its COVID-19 lockdown in its facilities. Despite the foreseeable mental and emotional strain that prisoners, especially prisoners with mental illness, face during this difficult time, DOC does not appear to be offering any alternatives to allow prisoners with mental illness sufficient access to support from clinicians (e.g., remote access via phone or video conference) or any other therapeutic programming.

Based on all of the information received, DLC has made the determination that there is probable cause to proceed with investigations of MCI-Shirley and MCI-Norfolk.

Protection and Advocacy Authority for DLC's Investigation and Request for Records

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;

² This unit at MCI-Shirley has approximately 25 beds and was formerly known as the DOC's Skilled Nursing Facility (SNF).

³ These units at MCI-Shirley and MCI-Norfolk each have between 10 and 20 beds and were formerly known as the Assisted Daily Living Units (ADLs).

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.⁴

As described above, DLC has received a number of complaints to the system concerning the experiences of prisoners with a range of disabilities at both MCI-Shirley and MCI-Norfolk *and* has found probable cause to open an investigation. We write now to formally notify DOC, MCI-Shirley, and MCI-Norfolk that we have opened investigations and to request copies of the following records as part of our P&A investigation:⁵

- (1) Written policies, protocols, schedules, and guidance to staff adopted by and/or currently utilized at MCI-Shirley and MCI-Norfolk, including those created by DOC and its medical contractor, Wellpath, concerning the following:
 - a. Prevention and mitigation of COVID-19 spread to prisoners and staff;
 - b. Special measures taken to protect elderly and/or disabled prisoners, including those in the NCU and CSUs, who are most vulnerable to serious illness and death from COVID-19;
 - c. Screening and testing for individuals presenting symptoms that may be indicative of COVID-19 infection and for individuals exposed to others who have presented symptoms or tested positive;
 - d. Quarantine and treatment of individuals who have tested positive or present symptoms that may be indicative of COVID-19 infection;
 - e. Cleaning and sterilization of living quarters; communal bathrooms, handicap bathrooms, handicap showers, and shower chairs; communal eating areas; areas for the provision of medical and mental health services; medical equipment (e.g., thermometers, glucometers, etc.); phones; and assistive technology;
 - f. Access to information for prisoners and staff concerning COVID-19 and recommended safety precautions to prevent infection, and the presence of infections in their housing units and facilities;
 - g. Provision of PPE, soap, disinfectant, cleaning supplies, hand sanitizer with at least a 60% alcohol content, tissues, and extra clean uniforms to prisoners;
 - h. Staff usage of PPE;
 - i. Current inmate companion schedule and responsibility changes in the NCU and CSUs;
 - j. Medical staff current responsibilities to provide care and assistance to prisoners in the NCU and CSUs;
 - k. Access to mental health treatment and, including any changes to mental health clinician contact with prisoners due to COVID-19;
 - l. Access to medical services unrelated to COVID-19, including medication line, dialysis, diabetic testing;
 - m. Medical diets; and

⁴ See 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).

⁵ See 42 CFR § 51.41; 45 CFR § 1326.25.

n. Access to recreation, telecommunications, and other programming.

- (2) The number of prisoners who have tested positive for COVID-19 while housed in the NCU and CSU and each of those prisoner's current placements within DOC or at outside medical facilities;
- (3) The current number of prisoners in the NCU and CSUs;
- (4) Current daily schedules for prisoners in the NCU, CSUs, general population units, and restrictive housing units; and
- (5) Current medical staffing levels in the MCI-Shirley and MCI-Norfolk Health Services Units.

Please let us know if you wish to discuss the above records requests. 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.⁶ In addition, per federal authority, DLC is entitled to access to records relevant to conducting an investigation no later than three business days after the written request is made.⁷ If MCI-Shirley and/or MCI-Norfolk deny or delay access to the requested records beyond this period, DLC is entitled to a "written statement of reasons" for the denial or delay.⁸

Thank you for your time and attention. We look forward to your response.

Sincerely,



Tatum A. Pritchard
Director of Litigation



Marlene Sallo
Executive Director

⁶ See 42 CFR § 51.45; 45 C.F.R. § 1326.28.

⁷ See 42 U.S. C. § 15043(a)(2)(J)(i); 29 U.S.C. § 794e(f)(2).

⁸ See 45 C.F.R. § 1326.26 and 42 C.F.R. § 51.43.