



32 Industrial Drive East
Northampton, MA 01060
(413) 584-6337 *Voice*
(800) 222-5619 *Voice*
(413) 582-6919 *TTY*
(413) 584-2976 *Fax*
<http://www.dlc-ma.org>

11 Beacon Street, Suite 925
Boston, Massachusetts 02108
(617) 723-8455 *Voice*
(800) 872-9992 *Voice*
(617) 227-9464 *TTY*
(800) 381-0577 *TTY*
(617) 723-9125 *Fax*
email: mail@dlc-ma.org

July 6, 2021

Debra Tosti, CEO
Tewksbury Hospital
365 East St.
Tewksbury, MA 01876

RE: Disability Law Center Investigation of Tewksbury Hospital – Findings and Recommendations

Dear Ms. Tosti:

We write to inform you that the Disability Law Center (“DLC”) has concluded its COVID-19-related monitoring and investigation of Tewksbury Hospital (“Tewksbury”) and to provide written findings regarding our work as well as closing recommendations. We would like to thank hospital leadership, staff, and counsel for promptly responding to our requests for information, meetings, documents, and access to individual patients.

I. Background

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

The Protection and Advocacy System for Massachusetts



DLC initiated a monitoring of Tewksbury State Hospital on April 23, 2020 due to reported concerns regarding the spread of COVID-19 at the facility, which houses units run by the Department of Public Health (“DPH”) and the Department of Mental Health (“DMH”). 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. A mid-April 2020 media article reported that 67 patients and 46 staff had tested positive. By August, the Massachusetts Executive Office of Health and Human Services COVID-19 Weekly State Facility Report stated that 180 state staff tested positive, 154 patients tested positive, and 18 patients had died from COVID-19.

II. Monitoring and Investigation Activities

As part of its monitoring activity, DLC interviewed hospital leadership, including Marilyn Feitelberg, Chief Operating Officer and Director of Mental Health Services, on May 6, 2020, December 12, 2020, and February 2, 2021, and Betsy Schwechheimer, DPH CEO, on May 26, 2020. DLC submitted records requests to counsel on June 11, 2020 and August 28, 2020, and reviewed responsive records including early DPH COVID-19 infection protocols, *Infection Prevention and Control Recommendations and Action Plans* (based on visit dates of 5/20/20, 5/29/20, 6/15/20 and 7/30/20) and the death records of the 18 patients who died from causes related to COVID-19. In addition, with the assistance of Tewksbury staff, DLC conducted remote interviews with 32 DMH patients on July 6-10, November 12-13, and December 7, 2020, and remote interviews with DPH patients on August 6, 7, and 10. DLC also obtained information by participating in meetings with leadership from EOHHS, MassHealth, and DMH discussing the impact of Covid-19 transmission at Tewksbury Hospital.

Based on DLC’s review of the records provided, Tewksbury received at least one piece of guidance from the Department of Public Health by early March 2020. A DPH memorandum dated March 4, 2020 “to inform health care facilities on strategies to optimize the use of Personal Protective Equipment (PPE)” due to the reduced supply due to the outbreak of the novel Coronavirus.⁴ In that document, DPH stated, based on the two recorded cases of COVID-19 in Massachusetts, that “[t]he risk to MA residents [of contracting Covid-19] continues to remain low at this time. ... It is more likely that MA residents will contract the influenza virus than COVID-19.”⁵

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 DPH, “COVID-19 Response: Optimizing Use of Personal Protective Equipment (PPE)” (March 4, 2020).

⁵ *Id.*

By March 19, 2020, DPH issued a memo to healthcare facility leadership discussing the “widespread community transmission of COVID-19”⁶ and severely restricting visitors to public health and mental health hospitals.⁷ On March 20, 2020, Tewksbury established that patients suspected of COVID-19 infection would be placed in private rooms and droplet protections followed.⁸ On March 30, 2020, DPH issued guidance for public hospitals requiring the use of surgical masks by staff in all clinical areas but not in “non-clinical spaces.”⁹ On March 30, Tewksbury issued an attachment to its “Infection Control Risk Reduction Plan—COVID-19” to “identify, control and prevent the exposure and further spread of infection on designated unit and further to the rest of the long term acute care and MH units.”¹⁰ DPH issued “Comprehensive Personal Protective Equipment (PPE) Guidance” to healthcare facility leadership on April 5, 2020.¹¹ This guidance required surgical or procedure masks to be worn by staff at all times while in clinical care areas.¹² The National Guard arrived at Tewksbury on April 9, 2020 to begin testing and treating patients, as well as training staff on infection control procedures and the use of PPE. Tewksbury developed a policy specific to N95 mask distribution on April 24, 2020, permitting staff to use one N95 for up to 5 days.¹³ Tewksbury also developed a training in April 2020 for staff working on COVID-positive units (then DPH A3, DPH D2, and DMH A5).¹⁴ After the departure of the National Guard from Tewksbury, it issued a post-Army deployment PPE Management plan on May 20, 2020.¹⁵ On June 15, 2020, DPH conducted an infection prevention and control survey at Tewksbury that led to a number of findings and recommendations.¹⁶

Tewksbury reported continuing mental health treatment on its DMH units in keeping with DPH and DMH guidance.¹⁷ Tewksbury reported focusing on providing individualized treatment during the early stages of the pandemic. It reported bringing its programming into the DMH units rather than continuing to operate in separate buildings. Rehabilitation staff worked on the same units as much as possible, providing one-to-one treatment for ADLs, vocational skills, art, and other activities. Groups were put on hold due to patients’ reported inability to maintain social distancing and space availability limitations. The DMH units provided Kindle tablets to all

⁶ Elizabeth Daake Kelly, MPH, MBA, Director, Bureau of Health Care Safety and Quality, DPH, “Memorandum: Health Care Personnel with Potential Exposure to Patients with COVID-19 Guidance” (March 19, 2020).

⁷ Monica Bharel, MD, MPH, Commissioner, DPH, “Memorandum: Amended Visitor Access Implementation Protocols and Procedures for DMH and DPH Hospitals during COVID-19” (March 19, 2020).

⁸ “Infection Prevention Policy and Procedure: Procedure COVID-19 #1,” effective March 20, 2020; *see also* undated “Administrative Policy and Procedure: Policy #IC-4.04, Policy and Procedure for Care for the Patient in Quarantine,” stating quarantined patients to be placed in a private room with private bathroom and staff monitor assigned to the room to make sure patient does not exit and that patient’s needs are met in a timely manner.

⁹ Massachusetts Department of Public Health Public Health Hospital System Policy and Procedure, effective March 30, 2020, “Universal Mask Use Policy.”

¹⁰ “SUBJECT: Infection Control Risk Reduction Plan—COVID-19,” last reviewed March 30, 2020.

¹¹ DPH from Elizabeth Daake Kelly, MPH, MBA, Director, Bureau of Health Care Safety and Quality, “Memorandum: Comprehensive Personal Protective Equipment (PPE) Guidance,” (April 5, 2020)

¹² *Id.*

¹³ “Tewksbury N95 Distribution Policy” (April 24, 2020).

¹⁴ “COVID+ Floors Entering and Exiting Procedures,” PowerPoint (April 2020).

¹⁵ “PPE Management Plan – Post Army Deployment” (May 20, 2020).

¹⁶ “Infection Prevention and Control Recommendations for Tewksbury Hospital Visit Date: 6/15/2020,” Assessment Conducted by Liza Rydzewski, RN, BSN and Barbara Bolstorff, MPH, CIC DPH Epidemiologist.

¹⁷ DMH guidance included “Bulletin 20-01R: Admission and Treatment of Patients with COVID-19” (May 1, 2020).

patients who indicated an interest; these devices were used for music, entertainment, and in some instances telehealth appointments. Some patients also participated in virtual peer support groups.

As noted above, DLC interviewed Tewksbury patients in July, August, November, and December of 2020. Themes that emerged from talking to patients regarding COVID-19-related issues included the following complaints:

- a) Lack of masks available to patients in DPH and DMH units in April 2020;
- b) Staff floating between COVID-positive and COVID-negative units in April and May of 2020;
- c) Patients lining up to receive medication without masks or social distancing early in the pandemic;
- d) DMH patients continuing therapies and treatment in groups without social distancing and masks early in the pandemic;
- e) DMH patients not receiving appropriate treatment during COVID outbreaks;
- f) Patients afraid of dying from COVID because of crowding and shared bedrooms;
- g) Crowding of 4-5 patients per room in DMH units during the spring of 2020;
- h) Excessive downtime/certain patients spending most of the day sleeping on DMH units;
- i) Lack of opportunities for physical exercise in DMH units;
- j) Limited access to psychiatrists, therapists, counselors on certain DMH units;
and
- k) Inconsistent access to Wifi network throughout the hospital important for patient access to outside support systems, entertainment, and remote treatment and programming.

As the pandemic progressed and COVID-19 protocols were put into place, patients reported improvements to DLC. This included dedicated COVID-positive units/staffing, reducing the number of patients per room, and access to PPE. Most patients also reported having access to fresh air, albeit limited to the courtyard, throughout the pandemic. A number of patients praised the hard work and dedication of hospital staff.

DLC notes that the bulk of the improvements made in the COVID-19 protocols are documented in two assessments. One is “Tewksbury Hospital Facility Preparedness Assessment Tools: Findings, Recommendations and Action Plans.” This assessment was conducted based on visits on 5/20/20 and 5/29/20. The second assessment, “Infection Prevention and Control Recommendations for Tewksbury Hospital,” was based on visits conducted on 6/15/20 and 7/30/20. Both documents include detailed lists of findings, action to be taken, who is responsible, target date, status, and comments. They are comprehensive documents that address needed corrective measures to prevent the spread of COVID-19 in the facility. This includes PPE, training, visual tools, cleaning protocols, social distancing, signage, COVID-positive and COVID-negative units, dedicated staff to individual units, transition plans, and education programs. The documents also address on-going training to conform with current CDC guidance.

In addition to the implementation of these COVID-19 protocols, vaccines have been offered to all patients and staff and are widely available. The current EOHHS State-Operated Facility data shows that out of 301 patients, none are COVID-positive and out of 969 staff there are less than

5 COVID-positive. We were also recently informed that the visitor policy restrictions have stopped, food delivery has resumed, and programming is closer to pre-pandemic levels.

III. Recommendations

In conclusion, DLC has found that there were failures and delays in implementing appropriate COVID-19 protocols to adequately protect patients at the onset of the pandemic. However, once the assessments were completed and the recommendations were implemented, Tewksbury Hospital successfully reduced facility COVID-19 transmission.

Given the serious lapses early in the pandemic, DLC now recommends the immediate development of a pandemic preparedness plan that provides safety protocols to prevent the spread of disease and interruption of services and treatment in the event of a COVID-19 resurgence or other infectious disease outbreak. This plan shall include, but not be limited to:

1. Detailed safety procedures concerning prevention of the spread of COVID-19 and other infectious diseases at Tewksbury and detailed criteria regarding when and how such procedures shall be implemented;
2. Detailed plans on how each unit will safely continue to provide services, recreation, exercise, fresh air and treatment when the pandemic preparedness plan is in place, rather than halt access to program and services;
3. Continued conversion of all quadruple and triple patient rooms to single and double rooms; and
4. Assessment of Wi-Fi dead spots and plans to immediately improve Wi-Fi access across the hospital.

We request that Tewksbury provide this pandemic preparedness plan to DLC within 6 months of the date of this letter.

At this time, DLC is closing our investigation with the expectation that Tewksbury will provide the recommended pandemic preparedness plan to our office, as requested above. DLC intends to continue with regular monitoring of the hospital. Thank you again for your cooperation in this process. DLC looks forward to continued cooperation in the interests of the many people with disabilities that Tewksbury serves.

Sincerely,



Stefanie Krantz
Senior Staff Attorney

A handwritten signature in black ink that reads "Matthew Steele". The signature is written in a cursive, flowing style.

Matthew Steele
Staff Attorney

Cc: Betsy Schwechheimer, DPH CEO
Marilyn Feitelberg, COO and Director of Mental Health Services,
Lester Blumberg, DMH General Counsel
Steve Chillian, DPH Counsel