



COMMONWEALTH of VIRGINIA

MIRA E. SIGNER
ACTING COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797
Richmond, Virginia 23218-1797

Telephone (804) 786-3921
Fax (804) 371-6638
www.dbhds.virginia.gov

August 23, 2019

Colleen Miller, Executive Director
disAbility Law Center of Virginia
1512 Willow Lawn Drive, Suite 100
Richmond, Virginia 23230

Re: July 16, 2019 Letter Regarding Individuals on the Extraordinary Barriers to Discharge List

Dear Ms. Miller:

Thank you for your July 16, 2019 letter and attached document regarding individuals in state psychiatric hospitals on the extraordinary barriers to discharge list (EBL). I have reviewed your letter, the attached document, and the information regarding the disAbility Law Center's (dLCV) assertions.

I value dLCV's role in advocating for the protection of some of the most vulnerable individuals in our public system of care. Effective advocacy is critical to the advancement of our shared vision of a life of possibilities for everyone. I also fully concur with your recommendations for investing in a full and robust continuum of care so that individuals can receive all of the services they need in their home community. In partnership with the General Assembly and Department of Behavioral Health and Developmental Services (DBHDS) stakeholders, I remain committed to advancing a system of community-based services. Furthermore, I also share your concern about the significant growth in the number of individuals on the EBL during the month of May and its impact for the individuals under our care. DBHDS continues to provide appropriate state oversight by monitoring the EBL trends closely and working with providers and other stakeholders to develop community resources to meet the needs of those individuals.

What is of significant concern to me is that the July 16, 2019 document lacks salient context for the issues being discussed, omits materially relevant facts, and makes serious assertions without substantiating evidence to support them. I am providing you with the following examples of important context and materially relevant facts that were excluded from this report as well as serious and unsubstantiated assertions.

- The July 16 Document disregards the significant investments the General Assembly and DBHDS are making in community-based services. Most specifically, during the past two years, the General Assembly provided \$43 million in General Fund dollars to support the build out of a consistent array of accessible behavioral health services in every community.

This includes \$10.8 million for same day access, \$7.4 million for primary care screening, \$2 million for detoxification services, \$7.8 million for enhancements to crisis services, and \$15 million for outpatient services. Likewise, your report fails to mention that since fiscal year (FY) 2016, the General Assembly has invested \$15 million in permanent supportive housing. Furthermore, in the past year, DBHDS has invested over \$1 million in federal mental health block grant funds to further strengthen PACT services in Virginia. It also chooses to ignore the fact that in the past five years, the General Assembly has increased the discharge assistance plan (DAP) funding available for individuals on the EBL by 47.5 percent, growing from \$22 million in FY 2015 to \$32.5 million in FY 2020. These funds supported a 65 percent increase in the number of individuals leaving state hospitals and living in the community, growing from 1,123 individuals in FY 2015 to 1,860 individuals in FY 2018.

- The July 16, 2019 Document ignores materially relevant facts that provide the context for its concern about state hospital operations and oversight of individuals who are clinically ready to leave the state hospitals. Most specifically, dLCV fails to recognize the dramatic increase in civil temporary detention order (TDO) admissions to state hospitals due to the declining role of the private sector in serving those individuals. When compared to FY 2013, the state hospitals have experienced a 294 percent increase in the number individuals admitted under a TDO, growing from 1,359 individuals in FY 2013 to 5,536 in FY 2018. However, overall the number of TDOs issued across the state have remained relatively constant over time. Thus, the primary point of intervention for the state hospital census pressures would be for the private sector to resume the role it had prior to the enactment of the last resort legislation of admitting 90 percent or more of all individuals under a TDO. Furthermore, the General Assembly has provided over \$36.9 million for state hospital operations since the enactment of the last resort legislation. dLCV consistently overlooks this context in its reports and documents.
- dLCV does not acknowledge the overall growth in numbers of individuals admitted to state hospitals who require specialized community services and supports nor the efforts DBHDS has consistently undertaken to address those needs. In fact, the percentage of civil TDO admissions placed on the EBL has declined from 4.4 percent of all admissions in FY 2016 to 3.1 percent of all admissions in FY 2018. Additionally, dLCV has attended presentations when DBHDS reported that the number of individuals supported with DAP in the community has increased by 65 percent, growing from 1,123 individuals in FY 2015 to 1,860 in FY 2018. As dLCV knows from its close work with DBHDS, beginning in FY 2014, DBHDS established a discharge readiness rating scale to improve the consistency of the discharge planning process. DBHDS implemented this process in all adult and geriatric hospitals and has diligently promoted consistency in its use and application. As of FY 2015, DBHDS established two community transition specialist positions to oversee the consistency of the discharge planning process, use of the discharge readiness scale, monitor and assist individuals on the EBL, and track the use of DAP funds. There are now four community specialist positions who participate in all state hospital discharge planning meetings and CSB reviews of individuals on the EBL, including discharge readiness rating. Effective July 2019, DBHDS has expanded its oversight to include a DAP manager position and two pilot community integration teams to work in state hospitals and communities with the highest number of individuals on the EBL. All of these efforts are notably absent from dLCV's reports and documents.

- The July 16, 2019 Document makes serious allegations that are not substantiated with facts. Specifically, dLCV states that individuals are dying in state hospitals due to lack of staffing and resources without citing any evidence to support this serious claim. In a similar manner, dLCV states that individuals with developmental disabilities are subjected to extreme violence and that licensed professionals in state hospitals are mechanically and chemically restraining them. Once again, dLCV makes these serious allegations without any substantiating evidence. If in fact, dLCV has evidence to support such claims, it has an obligation to immediately provide such information to the state hospital director so that allegation could be investigated as abuse, neglect, or exploitation in the manner required by the Commonwealth of Virginia's Human Rights Regulations. There have been no investigations or privileged peer reviews substantiating deaths due to lack of staffing or resources. In a similar manner, there have been no investigations of abuse or neglect that found licensed professionals mechanically or chemically restrained individuals in violation of the human rights regulations or accepted standards of care. I am deeply concerned that dLCV has made such unsubstantiated and serious allegations in the absence of supporting data and qualified peer review. I request that in the future such concerns are immediately raised to the state hospital directors so that they can be addressed right away. I am also requesting that dLCV promptly escalate any unresolved concerns to the Deputy Director of Facility Services so that DBHDS can respond immediately.

Finally, within the context of the growing state hospital census pressures, I feel obligated to strongly restate my commitment to an ongoing investment in a full continuum of services and supports in every community in Virginia. At the same time, DBHDS has a legal obligation to serve individuals who are committed to its care.

Sincerely,



Mira Signer
Acting Commissioner

c: Daniel Herr, Deputy Commissioner