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June 5, 2023

Sent via email and first-class mail

Commissioner Nelson Smith
Department of Behavioral Health and Developmental Services
1220 Bank Street
Richmond, Virginia 23219

Re: dLCV's Report on Critical Incidents

Dear Commissioner Smith:

As you may be aware, the disAbility Law Center of Virginia ("dLCV") is the designated Protection and Advocacy System for the Commonwealth of Virginia. In routinely monitoring DBHDS-operated facilities, dLCV makes concerted efforts to collect and analyze data with the goal of identifying statistical trends and systemic issues among the Commonwealth's population of institutionalized people with disabilities. Accordingly, we have attached our analysis of critical incidents reports for the 2022 federal fiscal year in the following report: dLCV's Report on Critical Incidents in Virginia's State Operated Facilities, October 1, 2021 - September 30, 2022.

dLCV would like to bring the following issues to your attention.

We, foremost, are finding that many individuals on the Extraordinary Barriers to Discharge List (EBL) are continuing to languish away in DBHDS-operated facilities. In failing to discharge these individuals DBHDS is not only violating the rights of people on the EBL, but is perpetuating the overcrowding issues we have seen across nearly all State Hospitals. Despite dLCV's pleas for DBHDS to address these *Olmstead* violations, at last publication, the EBL showed that 182 patients, deemed to be clinically ready for discharge by their doctors, remained in DBHDS-operated hospitals for an average of 171.9 days. Since DBHDS has continually refused to provide us with more recent data, dLCV bases these assumptions on data that has not been updated since September, 2022.

The practical integration of Trauma Informed Care (TIC) practices at DBHDS facilities appears to be inadequate, based on our monitoring, patient reporting, and the influx of Critical Incident Reports about self-injury and peer-to-peer assaults. This issue can be ameliorated, to some extent, by integrating a trauma-informed care approach that includes the adoption of

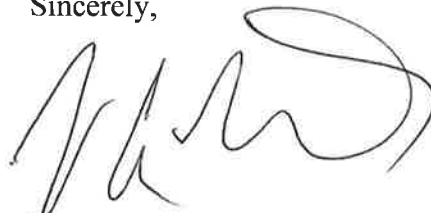
actionable steps providers must take to translate TIC philosophy into practice, such as Trauma Informed Universal Precautions.

We remain concerned with the overall lack of adequate reporting by DBHDS-operated facilities and staff. If you will recall, dLCV has raised this issue multiple times in past reports. Although the statutory mandates on reporting requirements are quite clear, we routinely see a lack of detail and clarity in the reports that we do receive. Arguably more concerning are the reports that we are simply *not* receiving. Based on our data and speaking directly to patients, we routinely witness an overall lack of reports being filed – despite the statutory mandate that reports be filed. While a few DBHDS-operated facilities have made some progress when it comes to efforts in reporting, there are still glaring systemic inconsistencies when it comes to adequate reporting.

In bringing these concerns to your attention, dLCV hopes to shed greater light on these issues and, in turn, advocate on behalf of individuals that are institutionalized and their respective rights. As always, dLCV stands ready to work with you in advocating for meaningful legislative and policy reforms; which are long overdue and much needed.

We welcome your thoughts on this report. We expect to publish it on July 5, 2023 and would be happy to include any response that you send to us by June 30, 2023. Please kindly direct any response to dLCV's Director of Litigation, Rebecca Herbig, Esq.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Colleen Miller', with a large, stylized flourish at the end.

V. Colleen Miller, Esq.
Executive Director

Enclosure

cc: Chief Deputy Commissioner, Ellen Harrison