



April 20, 2020

Stephanie Clendenin
Director
Department of State Hospitals
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Dear Director Clendenin:

We appreciate the Department of State Hospital's (DSH) prompt response to protect those committed to its care during the COVID-19 pandemic. As part of its response, DSH has temporarily suspended admissions and discharges for most patients. See Executive Order N-35-20. However, the Governor gave DSH flexibility in how to accomplish this. **We request that DSH use its authority to decrease the population in its facilities by discharging residents who have community alternatives and provide additional protections for the residents who remain.**

Specifically, we request that DSH assess all residents for potential release to the community using discharge criteria that focuses on the least restrictive setting appropriate to the needs of the individual. As required by law, DSH must consider whether the resident has family or other housing options immediately available, even if temporary. This individualized review will enable DSH to effectively limit the spread of the virus without infringing upon the significant liberty interests of the individuals with mental illness committed to its facilities. Reducing the population will also allow greater separation for residents and reduce the likelihood of transmission within the facilities, as intended by the Executive Order.

We also ask that DSH consider: (1) assessing patients on the DSH waitlist and providing recommendations for mental health diversion; (2) reducing the likelihood of transmission within DSH facilities by expanding housing alternatives on DSH campuses and providing additional personal protection and education for all patients regarding COVID-19; and (3) supporting

individuals who are committed to DSH's care by ensuring meaningful access to counsel and maintaining transparency in DSH's response to the pandemic.

This is a challenging time for everyone. We write not to criticize, but to offer these recommendations in order to further our common goal of preventing the spread of COVID-19 and deaths of vulnerable individuals in DSH's care.

I. DHS Can Reduce the Risk of Infection and Decrease the Burden on Staff by Discharging Medically Vulnerable Individuals and/or Individuals Safe for Discharge.

A. Many DSH Residents are at High-Risk for Infection and DSH Facilities Are Not Well-Equipped for Social Distancing.

The state hospitals and jail-based programs are not adequately equipped to protect numerous individuals who are at high risk for serious complications from the virus. The Centers for Disease Control (CDC) has identified the elderly, those who are immunocompromised, and those with diabetes, lung conditions, high blood pressure and cancer at greater risk for contracting COVID-19.¹ As of 2018, DSH reported a patient population of over 6,000, with 755 individuals over the age of 65.² These numbers alone raise serious concerns. In addition, even in pre-pandemic times, individuals with a serious mental illness experience significantly higher risks of cardiovascular disease, diabetes, HIV, tuberculosis and hepatitis B and C.³ All of these conditions raise the risk for severe COVID-19 reactions, and also result in greater overall mortality rates.

Although we recognize that DSH has updated its plans for pandemic response, screening for symptoms, and modifying patient activity, DSH facilities and existing protocols do not meet CDC recommended standards, such as providing masks for all patients, disinfecting regularly touched

¹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

² <https://og-production-open-data-chelseama-892364687672.s3.amazonaws.com/resources/31648812-8bad-4a5c-a4c8-d6b2d07216de/age.pdf?Signature=xZsDa8XYW55XKPx%2B0lmAmtvfEcY%3D&Expires=1586241193&AWSAccessKeyId=AKIAJJIENTAPKHZMIPXQ>

³ <https://apps.who.int/iris/bitstream/handle/10665/275718/9789241550383-eng.pdf>

areas, and social distancing of at least 6 feet.⁴ DSH common areas and dining facilities must accommodate many individuals at any given time who will find it difficult, if not impossible, to maintain the necessary separation. Staff and patients interact in close proximity, putting both at risk for infection. Patients isolated to their room risk contamination by staff and roommates, particularly when sharing a space with two or more people. Because of the lack of space, these patients cannot properly distance themselves to avoid contamination by droplets when an individual coughs or sneezes or by aerosol when other, perhaps asymptomatic, patients simply exhale.⁵ DSH has a duty to do everything it can to ensure that the many high-risk patients in its care are removed from this dangerous, congregate environment.

B. DSH Currently Houses Many Patients Who are Safe to Discharge.

Currently, DSH houses many individuals who are not considered ready for discharge although they no longer actively experience symptoms of mental illness, demonstrate consistent medication compliance, or do not require treatment with antipsychotic medication. For example, many DSH patients are confined to the skilled nursing facility or the geriatric unit based on age and medical fragility and no longer pose a “substantial physical threat to the community.” Despite the legal category that compelled placement in a DSH facility, these patients no longer need treatment in a secure and locked facility. Many have family or friends to support them in the community if released.

C. DSH Should Identify Patients Eligible for Discharge and Proactively Pursue Discharge Options on their Behalf.

We encourage DSH to engage its social workers to identify alternative placements and solutions to decrease its existing population. With adequate discharge planning and collaboration with committing counties, these individuals may be suitably placed with family or in other appropriate community-based settings.

In assessing whether patients are eligible for discharge, we ask that DSH **affirmatively contact family and community members to locate**

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

⁵ <https://www.the-scientist.com/news-opinion/the-covid-19-coronavirus-may-travel-in-aerosols-67380/>

alternative housing options, even if just during the pandemic crisis.

For those who can be discharged to family members or other housing, DSH must consider broader factors than the current specified discharge criteria.

DSH should release:

- A. High-risk patients:** This group includes the elderly, those who are immunocompromised, and those with diabetes, lung conditions, high blood pressure, and cancer. As older adults and individuals with underlying medical conditions are at greatest risk for contracting the disease, these individuals should be immediately released to family members or other appropriate alternatives.

 - B. Individuals who are safe for discharge, including those charged with misdemeanors and low-level felonies.** As part of the state's plan to reduce the concentration of individuals in jails, the Judicial Council created a statewide Emergency Bail Schedule to limit the entry of low-risk defendants into the jails.⁶ We request that DSH also reduce the population by releasing individuals who pose a low-risk of harm to the community. For those individuals who appear gravely disabled, DSH can refer these individuals to the Public Guardian immediately rather than waiting until the end of a commitment term.
- II. DHS Can Reduce the Risk of Infection and Decrease the Burden on Staff by Assessing Patients on the DSH Waitlist and Providing Recommendations for Mental Health Diversion.**

Although DSH has suspended admissions and discharges, county courts continue to issue orders committing individuals to the state hospital. These people are then placed on the DSH waitlist of approximately 800 individuals.⁷ If neither DSH nor counties divert people on the waitlist to alternative placements, the number of individuals waiting for admission to the state hospital will increase exponentially, causing greater problems when admissions finally resume.

⁶ See Judicial Council Emergency Rule 4 subdivision (c) adopting a statewide Emergency Bail Schedule that sets bail at \$0 for most misdemeanor and lower-level felony offenses.

⁷ DSH Budget Summary, p. 44, <http://ebudget.ca.gov/2020-21/pdf/BudgetSummary/HealthandHumanServices.pdf>

Until now, DSH has left recommendations for mental health diversion to the counties. However, both CONREP and DSH treatment staff, who evaluate patients for risk to the community, are well-suited to recommend mental health diversion. DSH should direct its staff to work with the counties to review current and new people on the waitlist thereby increasing the number of individuals diverted to safer and less restrictive settings.

III. DSH Can Further Reduce the Likelihood of Transmission within DSH Facilities.

In order to meet CDC guidelines and protect the patients and staff against transmission of the virus within the hospital, we recommend the following:

- A. Provide additional personal protection and education for all patients regarding COVID-19.** DSH must educate and train all residents to allow them to protect themselves and others. We understand that DSH now requires all staff to wear masks on the units, but have not provided this option to patients. The CDC now recommends that people wear cloth face coverings in areas where social distancing is difficult,⁸ like DSH facilities. DSH should make masks available to residents, as well as additional soap and hand sanitizer. Further, patients should be permitted to eat meals in their rooms, if they so choose.

- B. Expand housing alternatives on DSH campuses:** We are aware that there are currently unused buildings on some DSH properties (Napa, Metropolitan, Patton) that could be used as step-down units for residents who are closer to discharge. The creation of these units would reduce concentration on other DSH units and allow for more social distancing, while simultaneously supporting independent living skills. We request that DSH report on the availability of these unused spaces as step down for those ready to be discharged who have no other place to go.

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

IV. DSH Can Further Support Individuals Who Are Committed to Its Care and Their Families Through Ensuring Meaningful Access to Counsel and Maintaining Transparency in its Response to the Pandemic.

This is a frightening time for many, and particularly for those confined with no outside support. It is important that individuals committed to the care of DSH have regular access to their legal counsel for support and assurance that their rights will be protected, even during this time of uncertainty.

DSH should also provide a publicly available outbreak prevention response plan according to the Department of Health and CDC guidelines. A transparent response is just as important as the response itself. Family and friends of committed individuals as well as the public at large should have access to DSH's efforts in response to this pandemic.

Thank you again for your continuing leadership and dedication to protecting the health and safety of those committed to the care of the Department of State Hospitals.

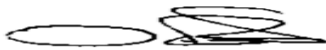
Sincerely,



Stephanie Regular, CPDA
Mental Health Committee Co-Chair



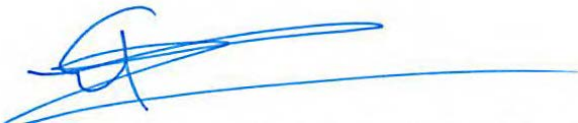
Andrew J. Imparato, Executive Director
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Kathleen Guneratne, Senior Staff Attorney
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Eric Schweitzer, CACJ President