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July 10, 2024

Dear Members of the Special Commission on State Institutions,

The Executive Office of Health and Human Services (EOHHS) is grateful to the members of the Commission for their dedication to its mission to study and report on the history of state institutions for people with intellectual or developmental disabilities or mental health conditions in the Commonwealth.

In March, my office received a letter from the Commission's two co-chairs, Evelyn Mateo and Matthew Millett, on behalf of the Commission, which referenced the discovery of records on the grounds of the former Fernald facility in Waltham. EOHHS has been working with all relevant parties to conduct a thorough review of the Department of Mental Health (DMH) and Department of Developmental Services (DDS) past practices and records retention policies for its former and current facilities, and appreciates the opportunity to provide the Commission's members with the following preliminary updates on the points raised in the letter:

a) Inventory of closed state institutions formerly operated by DDS and DMH

DMH and DDS have conducted inventories of closed state institutions formerly operated by each agency to determine whether and where records were stored on the premises. In all cases, DMH and DDS confirmed that records of those who resided at the facilities were relocated to secure DMH and DDS facilities prior to the facilities' closures and transfer of ownership.

On campuses where facilities only partially closed, such as Medfield State Hospital, EOHHS has been working with relevant parties to survey those campuses. For example, at Medfield State Hospital, DMH's survey was limited due to safety concerns, but it will be working with the Division of Capital Asset Management and Maintenance (DCAMM) to determine whether DMH can access apparently unsafe areas.

b) Documentation of what will be done to address any issues with record security at closed state institutions identified during the inventory process

Based on the inventories of closed facilities, EOHHS has not identified issues with record security at former DMH and DDS facilities, beyond what has been reported regarding the Fernald Developmental Center. Should any issues arise, DMH and DDS will address them in a timely manner consistent with federal and state policies.

c) Development of accessible, consistent, and clear processes for records requests

EOHHS is committed to working with the Commission and family members of former service recipients to develop straightforward, clear processes for accessing individuals' records and to streamline the process for requesting former and current service recipients' records.

Current procedures for former and current service recipients to request their own records, as well as for their immediate family members or estate to make such requests on their behalf, appear on both the DMH and DDS Mass.gov webpages:

DMH

- DMH medical record request: <https://www.mass.gov/dmh-medical-record-request>.
- Records request form for clients and legally authorized representatives (LARs) is available through the link immediately above and at: <https://www.mass.gov/doc/dmh-request-to-inspect-form-hipaa-f-9/download>.

DDS

- DDS client files can be requested by emailing "DDS.filerequests@mass.gov" directly.
- Additionally, DDS service recipients can contact their DDS Service Coordinator or local Area Office to request a copy of their records.

Under state law, family members may obtain medical records of DMH and DDS clients when: the family member is the client's legally authorized representative, such as a custodial parent, court appointed guardian, and court appointed personal representative of a deceased client's estate; the disclosure is otherwise ordered by a court of competent jurisdiction; the client authorizes the disclosure; or the commissioner determines that it is in the best interest of the client to provide the records to the family member.

d) Development of a transparent process for the handling, storage, and retention of confidential records

Detailed policies for the handling of client and patient records exist for both DMH and DDS.

DMH

DMH's Privacy Handbook sets forth rules regarding the handling, storage and retention of confidential records. The Handbook, consistent with state and federal law, requires that staff preserve the confidentiality of Protected Health Information (PHI) created and/or maintained by DMH.

Handling and Storage: The DMH Privacy Handbook outlines the physical and technical safeguards that must be followed when PHI is being used or disclosed. When using hard copy PHI, existing policies require that all reasonable efforts be made to avoid inadvertent disclosures to others, and PHI must be kept in a secured location such as a locked office and/or filing cabinet.

Retention and Disposition: DMH follows the Massachusetts Statewide Records Retention Schedule for guidance on retention and disposition, a copy of which is available on the Secretary of the Commonwealth's webpage:

https://www.sec.state.ma.us/arc/arcpdf/MA_Statewide_Records_Schedule_updated2022-10-31.pdf.

The statute governing retention of medical records sets a 20-year retention period. Medical records cannot be destroyed or transferred to the State Archives without permission from the Records Conservation Board (RCB) overseen by the Secretary of the Commonwealth. See process for obtaining permission and required forms at the Secretary of the Commonwealth's Agency Records Department: <https://www.sec.state.ma.us/divisions/archives/records-management/agency-records.htm>.

DDS

DDS's process for handling, storage and retention of confidential records is guided by the DDS HIPAA Privacy Handbook (2019), which requires DDS staff to preserve the confidentiality of Protected Health Information (PHI) created and/or maintained by DDS.

Handling and Storage: Existing DDS policies outline the physical and technical safeguards that must be followed when PHI is properly being used or disclosed. When using hard copy PHI, existing policies require that all reasonable efforts shall be made to avoid inadvertent disclosures to others. PHI shall be kept in a secured location, if possible in a locked office and/or filing cabinet. A tracking system is to be used to identify when a record has been removed, who took the record, and where it is located.

Retention and Disposition: DDS follows the Massachusetts Statewide Records Retention Schedule for guidance on retention and disposition, a copy of which is available on the Secretary of the Commonwealth's webpage:

https://www.sec.state.ma.us/arc/arcpdf/MA_Statewide_Records_Schedule_updated2022-10-31.pdf.

e) Creating an accounting of the records from closed institutions that may be stored at government offices or state-run facilities still in operation

Both DMH and DDS have detailed accounts of records and can access such records that are still in its possession, including records in the State Archives.

EOHHS values the work of the Commission and looks forward to maintaining an open dialogue with its members on ways in which the Commonwealth can better serve its residents with intellectual, developmental disabilities, or mental health conditions.

Sincerely,



Kathleen E. Walsh
Secretary

Cc: Maura Healey, Governor
Jane Ryder, DDS Commissioner
Brooke Doyle, DMH Commissioner