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November 1, 2023

The Honorable John Velis
Chair, Joint Committee on Mental Health, Substance Use and Recovery
24 Beacon Street, Room 519
Boston, MA 02133

The Honorable Adrian Madaro
Chair, Joint Committee on Mental Health, Substance Use and Recovery
24 Beacon Street, Room 33
Boston, MA 02133

Submitted to jointcmte-mentalhealth@malegislature.gov

Dear Chair Velis, Chair Madaro, and members of the Joint Committee:

Re: Testimony in support of S.1239, An Act to Transfer Bridgewater State Hospital from the Department of Correction to the Department of Mental Health

On behalf of the Massachusetts Association for Mental Health (MAMH), thank you for strong and steadfast leadership in advancing the health of people with behavioral health conditions and their families across the Commonwealth. I am writing to respectfully submit this testimony in support of **S.1239, An Act to Transfer Bridgewater State Hospital from the Department of Correction to the Department of Mental Health.**

Formed over a century ago, MAMH is dedicated to promoting mental health and well being, while preventing behavioral health conditions and associated disability. We are committed to advancing prevention, early intervention, effective treatment, and research for people of all ages. We seek to eliminate stigma and discrimination and advance full inclusion in all aspects of community life. This includes discrimination affecting not only people with behavioral health conditions, but also people who face unequal burdens and barriers to the protections and benefits of citizenship due to their race, ethnicity, gender identity, or disability status. MAMH has a demonstrated track record of furthering its mission by convening stakeholders across the behavioral health and public health communities; disseminating emerging knowledge; and providing subject matter expertise to inform public policy, service delivery, and payment methodologies.

This bill will ensure that individuals who are confined pursuant to a criminal matter and who need hospital-level mental health care are the responsibility of the Massachusetts Department of Mental Health (DMH).

Bridgewater State Hospital (BSH) houses individuals with serious psychiatric needs who have pending criminal charges or criminal convictions. Despite reforms that have removed correctional officers from the housing units, BSH remains a prison with the rules and punitive culture that correctional life entails. People with mental health needs who are held by the Commonwealth deserve a therapeutic setting which maximizes the possibility of recovery. Most prisoners will return to the community; we should strive to return people in good mental health, with the personal resources to succeed.

BSH prisoners could be well-served in the DMH system. Most of these men present similarly to patients residing in DMH hospitals, sharing similar diagnoses, treatment histories, risk factors, and potential for improvement. While they may have pending charges, require evaluations, or be serving sentences, all such cases can be handled by a state mental health agency. And, in fact, in 48 states, the state mental health agency serves such individuals exclusively, without the involvement of corrections.¹

Over the years, advocates have urged the state to transfer control of BSH. One consistent and reliable source of information regarding BSH is the Disability Law Center (DLC), which has monitored conditions from inside the facility for a number of years, pursuant to agreement, court order, and as the Protection and Advocacy agency in Massachusetts.

DLC reports describe a range of ongoing concerns at BSH for years and repeatedly call for the transfer of control from DOC to DMH. The first of the DLC reports, published on May 18, 2018, focused on DOC and the medical vendor at the time, Correct Care Recovery Solutions. The report, published shortly after a series of reforms spurred by litigation and DLC monitoring, praised the “tremendous culture shift” and the “deeper commitment to treatment, rather than punishment” that Correct Care Recovery Solutions had brought to BSH in one year as the provider of medical services.² After noting these successes, however, DLC flagged a series of issues that the agency would come back to repeatedly in subsequent reports on DOC and Wellpath activities at BSH. These issues included:

- problems with the physical plant including temperature and decay due to age;
- the involuntary administration of psychotropics, which Correct Care Recovery Solutions termed Emergency Treatment Orders (ETOs) without a court order, outside the legal parameters that allow for that possibility to a very limited extent in an emergency, and without complying with legal requirements regarding seclusion and restraint;
- the need to continue to work toward actualizing person-centered treatment;
- the need to implement the thus-far “aspirational” goal of remedying the limited amount, lack of variety, and poor quality of programming;
- the need to supplement the inadequate services for patients with intellectual and developmental disabilities;
- addressing a cohort of patients who do not need the strict security of BSH, but who could receive treatment in other settings, include DMH and DDS facilities and programs;
- meeting the needs of the “almost three dozen” patients on the Residential Unit and Intensive Stabilization and Observation Unit at Old Colony, who, DLC notes, were not afforded “[M]any of the most significant positive changes to the physical and cultural environment at BSH” but who “have been shoehorned into a narrow island within a much larger prison environment, where

¹ Friends and Family of Individuals with Mental Illness, Bridgewater State Hospital Must be Placed Under the Dept. of Mental Health – Not the Dept. of Correction (Jan. 31, 2023), <https://ffimi.blog/2023/01/31/bridgewater-state-hospital-must-be-placed-under-the-dept-of-mental-health-not-the-dept-of-correction/>

² DLC, A Public Report on the Efficacy of Service Delivery Reforms at Bridgewater State Hospital (May 18, 2018), <https://www.dlc-ma.org/wp-content/uploads/2018/05/May-18-2018-Report-to-the-Legislature-FINAL.pdf> at 2.

their programming and recreational needs are generally limited and subordinate to the logistical and administrative needs of that correctional facility.”³

Subsequent reports would return to these issues, while at the same time drawing attention to shifts in policy and practice resulting from Wellpath’s assumption of the responsibility to provide medical care. In fact, DLC’s next report, published on February 25, 2019, while highlighting the “constant day-to-day deficiencies of the physical environment, affecting virtually every aspect of the infrastructure” (including asbestos and mold, which would take a prominent place in many DLC’s reports on BSH),⁴ also pointed to, as a “second ongoing challenge to the forward progress at BSH ...the substantial and near-constant change in the senior staff and leadership, both at the vendor Wellpath (formerly Correct Care Recovery Solutions) and at the Department of Corrections (DOC).”⁵ The Center went on to report “turnover among eleven key leadership positions at Wellpath. Except for three positions that remained the same, every other leadership position changed at least once and some positions changed more than once, including Administrator.”⁶ With respect to DOC, “the one constant was the presence of the Superintendent, Susan Thibault, although virtually every other position, both higher and lower than hers did change.”⁷

DOC and Wellpath have minimized or rejected certain criticisms by DLC in its reports, particularly DLC’s warning in January 2022 that DOC and Wellpath’s extensive use of Emergency Treatment Orders violates state law. In its January 2022 report regarding BSH, DLC found that, from the period from June 26, 2021 through November 25, 2021, 370 Emergency Treatment Orders were administered at BSH in conjunction with manual holds, mechanical restraints, or seclusion.⁸ In addition, a “significant number of ETOs” were recorded in patient medical records that occurred either without manual holds or with manual holds and other restraints that were omitted from restraint packets provided to the DOC Commissioner.⁹ The DLC concluded that “ETOs were widely used to control behaviors that do not justify chemical restraint, i.e., where no imminent threat of serious harm to self or others existed.”¹⁰ DLC found that DOC and Wellpath used Emergency Treatment Orders to “control [patient] behavior and, possibly, to inflict punishment upon them for engaging in disruptive, unhygienic, and otherwise unwanted behaviors.”¹¹ Other legal advocates supported DLC’s critique both of Wellpath and of DOC’s use of Emergency Treatment Orders at BSH.¹²

Wellpath has insisted that the practice is legally permissible, and DOC has defended that position. In a March 2022 letter to DLC’s Director of Litigation Tatum Pritchard, DOC Commissioner Carol Mici argued

³ *Id.*

⁴ Deborah Becker, WBUR, Chemical Restraints, Isolation Often Used at Bridgewater State hospital, New Report Says (Feb. 14, 2022), <https://www.wbur.org/news/2022/02/14/bridgewater-state-wellpath-disability-law-center-report>

⁵ DLC, A Public Report on the Efficacy of Service Delivery Reforms at Bridgewater State Hospital (Feb. 25, 2019), <https://www.dlc-ma.org/wp-content/uploads/2019/02/BSH-February-2019-Report-combined.pdf> at 1.

⁶ *Id.* at 7.

⁷ *Id.*

⁸ DLC, Public Report: Efficacy of Service Delivery Reforms at Bridgewater State Hospital (BSH) and Continuity of Care for BSH Persons Serviced (Jan. 2022), <https://www.dlc-ma.org/wp-content/uploads/2022/02/DLC-BSH-January-2022-Public-Report-2.9.2022.pdf> at 18.

⁹ *Id.* at 18-19.

¹⁰ *Id.* at 19.

¹¹ *Id.* at 18-19.

¹² See, e.g., Letter of Massachusetts Association for Mental Health to the Joint Committee on the Judiciary (April 25, 2022), <https://www.mamh.org/library/letter-in-objection-to-the-use-of-emergency-treatment-orders-at-bridgewater-state-hospital>

the injections were for treatment, and not a form of restraint.¹³ In his April 1, 2022 letter to Representative Michael Day, Chair of the Joint Committee on the Judiciary, Executive Office of Public Safety and Security Secretary Terrence R. Reidy repeated that “DOC and Wellpath continue to employ ETOs as treatment and not restraint.” The issue remains a major concern of patients, advocates, and family members.

DLC’s most recent report, dated July 2023, leaves little hope for the ability of the facility to continue to serve its patients, raising both old and new concerns:

- continued use of Emergency Treatment Orders;
- continuing widespread presence of mold growth throughout BSH, as confirmed by DLC’s expert, despite the costly mold remediation and asbestos abatement efforts the Department of Correction undertook in response to DLC’s 2022 reports;
- sanitation issues and ineffective heat mitigation efforts during the summer months;
- systemic violations of Massachusetts law regarding chemical and physical seclusion and restraint;
- inadequate language access for individuals with Limited English Proficiency;
- many impediments to successful continuity of care following discharge from BSH.
- lack of sufficient access to treatment for individuals with substance use disorder and inappropriately tapering and terminating of access to Medication Assisted Treatment by BSH providers; and
- concern regarding BSH’s introduction of an atypical antipsychotic treatment taken via inhalation -- despite the medication’s association with increased risk of bronchospasm and contradictions for people with respiratory conditions and aging individuals with dementia.¹⁴

As it released the report, DLC “again urgently call[ed] on the Commonwealth to transfer oversight of the BSH population to the Department of Mental Health (DMH) and to construct a new hospital. Both steps are essential to protect the health, safety, and rights of people with complex mental health needs and disabilities who are involuntarily committed to BSH.”¹⁵

In the last session, the Legislature took an important step to effectuate a transfer of authority for BSH. Within the General Governmental Bond Bill, [Chapter 140 of the Acts of 2022](#), was a requirement for the Division of Capital Asset Management and Maintenance to undertake a pre-design study to plan for the development of a forensic psychiatric hospital for the Commonwealth. The pre-design study is to involve the determination of state hospital property for potential location; program needs of potential patients; design features of a forensic psychiatric facility; construction cost estimates and financing strategies; and timelines for development and construction. The study must be conducted in consultation with designated public agencies and non-governmental entities. A report to the Legislature containing these elements was to have been produced by April 2, 2023. At this point, the report has not been produced but is still urgently needed.

¹³ Sarah Betancourt, WGBH, Restraints and Involuntary Medication Are Widespread at Corrections Facility for People with Mental Illness, Report Alleges (Aug. 9, 2022), <https://www.wgbh.org/news/local-news/2022/08/09/restraints-and-involuntary-medication-are-widespread-at-corrections-facility-for-people-with-mental-illness-report-alleges>

¹⁴ DLC, Public Report: Efficacy of Service Delivery Reforms at Bridgewater State Hospital (BSH) and Continuity of Care for BSH Persons Served, <https://www.dlc-ma.org/wp-content/uploads/2023/08/DLC-BSH-Public-Report-7.31.2023.pdf>.

¹⁵ *Id.* at 5.

It is our understanding that the report was delayed because of lack of funding. However, Governor Healey's June 22, 2023 capital investment plan included the necessary funding.¹⁶ With this study, the groundwork for transfer of control of BSH from DOC to DMH will be established. However, the legislation is still necessary to effectuate the transfer of legal authority.

S.1239 would take key steps to transfer authority and otherwise protect BSH patients:

- The DMH Commissioner would assume responsibility for operation and oversight of BSH;
- DMH would provide forensic services for persons commitment for evaluation or treatment pursuant to G.L. Chapter 123, §§ 15-18, as well as inpatient continuing care;
- DMH shall develop a division of forensic mental health services to assume these duties;
- DMH will review and analyze all restraint forms and make restraint data publicly available.

As has been the case repeatedly in the history of BSH, the conditions under which the patients live necessitate reform. We urge the Legislature to recognize that DOC is not the agency that can make the needed changes and to take action to transfer authority for BSH to DMH at this time.

For all these reasons, MAMH urges you to report this bill out favorably.

Thank you for your consideration.

Sincerely,



Danna Mauch, Ph.D.
President and CEO

c: Sen. Cynthia Creem

¹⁶ Commonwealth of Massachusetts, Five-Year Capital Investment Plan: FY 2024-2028 (June 22, 2023), <https://www.statehousenews.com/content/docs/2023/06-22FY24-FY28CAPITAL.pdf> at 26 (“In addition to addressing the needs of its own facilities, the Human Services leadership and agencies will also be engaged with their colleagues in Public Safety and Corrections around the long-term strategy for Bridgewater State Hospital. Recent legislation directed DCAMM to study the development of a new Forensic Psychiatric Hospital to be under the direction of the Department of Mental Health (DMH) – which would mean moving those services from DOC to DMH. This study was initiated in 2017 but never brought to conclusion. The [Capital Investment Plan] provides funding to restart and conclude this study”).