



April 2, 2020

Secretary Cheryl Strange
Washington State Department of Social and Health Services
1115 Washington Street SE
Olympia, WA 98504
Via email: strance@dshs.wa.gov

Dear Secretary Strange,

The signatories of this letter (Disability Rights Washington, the American Civil Liberties Union of Washington, Washington Defender Association, and the Washington Association of Criminal Defense Lawyers) acknowledge the unprecedented crisis presented by the COVID-19 outbreak, especially in large facilities like Western and Eastern State Hospitals (WSH, ESH). We are writing to request that the Department of Social and Health Services (DSHS) immediately undertake efforts to reduce the patient population at both WSH and ESH. At the time of this writing, WSH has seen its first death from COVID-19 and ESH is reporting its first positive tests.

We applaud your leadership and the many efforts already underway to maintain the safety and health of patients and staff at WSH and ESH. This includes efforts that could reduce overall patient population and thereby better prevent COVID infection and improve care of sick patients. For example, we understand that Washington recently sought a Medicaid 1115 waiver to establish a COVID-19 Disaster Relief Fund that would provide temporary shelter for people awaiting discharge from institutional care. This could present valuable options to quickly house WSH and ESH patients who have already been waiting for discharge for some time.

Even with these steps, DRW believes the state must take additional action to move patients—even temporarily—out of WSH and ESH right away. The Center for Disease Control and the Centers for Medicaid and Medicare Services have provided guidance to facilities making clear how important it is to maintain separation and adequate social distance for patients. This is very difficult to achieve at WSH and ESH, since both facilities operate at full capacity with patients on many wards routinely sharing a room. Potential staffing shortages at both hospitals adds to the need to reduce patient population.

The usual procedures to discharge patients have long resulted in lengthy waitlists of patients waiting to get out. It is therefore imperative to undertake non-traditional methods to reduce the population of both hospitals right away in order to most effectively protect staff and patients.

from COVID-19. DSHS should consider all options and should work with Governor Inslee to identify additional executive action. We are suggesting some specific options below:

1) Temporary release of civil patients

RCW 71.05.270 authorizes WSH and ESH to temporarily release civil patients “for prescribed periods during the term of the person's detention, under such conditions as may be appropriate.” Thus, WSH and ESH should immediately release appropriate civil patients on a temporary basis. Both hospitals should identify civil patients who may be successfully moved into another space for at least one month, with the possibility of continuance. This could include temporary releases to family, friends, or other facilities procured by the state for this purpose.

2) Review all civil patients for full release or LROs

Our understanding is that, although the courts are largely shut down, they are currently still approving stipulations for release and Less Restrictive Orders (LRO) for civil patients. WSH and ESH should immediately review civil patients who can be safely released prior to the expiration of their commitment period or pursuant to an LRO. Both hospitals should be prioritizing this work with defense counsel and patients’ family and friends to achieve this. DSHS should also ensure close cooperation between Behavioral Health Administration, Developmental Disability Administration, and Home and Community Services to streamline release of patients who are eligible for residential services—for example, by using the recently approved Appendix K waivers that are encouraging provider capacity in the community and moving those at high risk out of institutional care.

3) Furlough NGRI patients

NGRI patients on conditional release may receive a furlough with the consent of the DSHS Secretary. *See* RCW 10.77.163 and BHA Policy 5.3. Notice must generally be provided to prosecutors and law enforcement, but this notice may be waived in the case of emergency. *Id.* Washington State Governor Inslee declared a state of emergency in response to COVID-19 on February 29, 2020. Therefore, notice on a significantly reduced timeline, or even a waiver of notice, is acceptable.

WSH and ESH should immediately review NGRI patients who already have been granted conditional release status by a court and grant furlough to those who can safely reside with family, friends, or in other appropriate arrangements that do not present the same risk of COVID-19 infection as WSH and ESH. DSHS should also undertake review of NGRI patients who are on the verge of conditional release and fast track recommendations to achieve conditional release for those patients. A furlough may be cancelled at any time and DSHS may undertake procedures for final discharge for these patients while they are on furlough, as appropriate.

4) Use COVID-related Medicaid waiver funds and flexibility to facilitate patient release

We appreciate how proactive Washington has been in seeking COVID-related Medicaid 1135, 1115, and Appendix K waivers. To the extent that emergency funding and flexibility becomes available through Medicaid waivers, DRW is asking that you prioritize moving individuals safely out of institutions, especially WSH and ESH. For example, funding for housing under the 1115 waiver or increased rates for providers under the Appendix K waivers could be key to releasing WSH and ESH much more quickly.

We are requesting that DSHS be aggressive and creative in reducing the patient population at WSH and ESH, but we are not advocating release to homelessness or otherwise dangerous situations. We recognize that patients often benefit from ongoing treatment and support once released from the hospital and that this is in short supply at the moment. We would like to discuss ways of addressing this issue with you, but we strongly believe that there are patients at WSH and ESH who can be safely supported in an immediate temporary release, furlough, LRO, or full release. Weighed against the current COVID-19 situation at WSH and ESH, this is imperative.

Thank you for your ongoing efforts and attention to our concerns. We look forward to learning about how DSHS plans to reduce WSH and ESH patient population. Please contact Kimberly Mosolf at Disability Rights Washington, 206-324-1521, with response, questions, or concerns.

Sincerely,

s/ Kimberly Mosolf
Director of Treatment Facilities Program
Disability Rights Washington

s/ Michele Storms
Executive Director
ACLU of Washington

s/ Merf Ehman
Executive Director
Columbia Legal Services

s/ Christie Hedman
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Washington Defender Association

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*CC: Sean Murphy, Assistant Secretary, BHA
Amber Leaders, Senior Policy Advisor to Gov. Inslee
Nicholas Williamson, Assistant Attorney General*