

April 19, 2020

The Honorable Phil Murphy  
Governor of New Jersey  
225 W. State Street  
Trenton, New Jersey

Commissioner Judith M. Persichilli  
New Jersey Department of Health  
369 South Warren Street  
Trenton, New Jersey 08608

**Re: Andover Subacute and Rehabilitation Centers I and II**

Dear Governor Murphy and Commissioner Persichilli:

On behalf of Disability Rights New Jersey, I thank you for the administration's swift response to the situation that unfolded this week at the Andover Subacute and Rehabilitation Center II, which we first read about in the press. See, e.g., *New York Times*, *After Anonymous Tip, 17 Bodies Found at Nursing Home Hit by Virus*, April 15, 2020. We appreciate the immediate intervention and investigation by the Department of Health, its Division of Health Facility Survey and Field Operations, and the Attorney General's Office, as well as the advocacy on behalf of residents and facilities by the Office of the Long Term Care Ombudsman. The allegations in the matter are so serious, we believe that all oversight and protective agencies and authority should be brought to bear for the health and safety of the residents of both Andover Subacute and Rehabilitation Center (Andover) I and II.

Disability Rights New Jersey is the designated Protection and Advocacy System for people with disabilities for the state of New Jersey. As such, DNRJ is charged with the obligation to investigate allegations of abuse and neglect of individuals with disabilities as well as certain deaths pursuant to the Development Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), 42 U.S.C. §15043 and 45 C.F.R. 1326 subpart B and C, and pursuant to the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. 10801 et seq. and 42 C.F.R. Part 51. Our responsibility extends to people with intellectual and developmental disabilities, people with mental illness, people with traumatic brain injury, and people with physical disabilities of any age, wherever those individuals may reside, including long term care facilities. Under this authority, we have begun our own investigation on behalf of individuals with disabilities who may be residing in Andover I and II, as well as those who died in those facilities since the COVID-19 emergency began. In addition, our Representative Payee program, 42 U.S.C. §405(j)(6), is presently conducting its review at the direction of the Social Security Administration.

Because we believe that the health and safety of residents, including those with disabilities within our jurisdiction, are presently at significant risk for health, safety, and even death, we call upon the administration to consider the following interventions even as we each continue our investigations. These interventions are guided by the information we have gathered to date:

*Advocating and advancing the human, civil and legal rights of persons with disabilities*

1. **PPE:** DRNJ has learned that there may be insufficient PPE in Andover I and II. We call upon the administration to ensure that staff and residents have the necessary PPE, in accordance with CDC recommendations, to limit the spread of the virus.
2. **Communication with Families:** There have been allegations regarding the lack of communications with families by Andover I and II, including notification of families when residents have died. Family members are also unable to visit or speak with their loved ones residing in the Andover facilities. Residents should have access to tracfones or other personal cells phones to allow them to call their family members. Consistent with the ADA, Section 504 of the Rehab Act, and Section 1557 of the ACA, residents with disabilities should be allowed to designate a support person who would have access to them in the facility. See DRNJ's April 11, 2020 letter to Commissioner Persichilli at drnj-covid.org.
3. **Staffing Levels and the National Guard:** While media reports suggest that the ownership of Andover I and II believe that staffing levels were sufficient last weekend and continue to meet required levels, should the Department of Health's investigation show otherwise, we call upon the administration to deploy the Army National Guard, including medics, to Andover I and II to meet the care needs of the residents of these facilities. In addition, all staff at Andover I and II should be tested for COVID-19 as soon as possible, given the reports that asymptomatic individuals with COVID-19 are likely transmitting the virus.
4. **Receivership:** Should the Department of Health verify the most egregious violations of state and federal law, including allegations that have been reported, DRNJ urges the administration to pursue the enforcement remedies outlined in N.J.A.C. 8:43E-3.1; we urge the Department to seek removal of the current management and the appointment of a receiver pursuant to N.J.S.A. 26:2H-42 and N.J.A.C. 8:43E-3.7 to remedy the conditions that represent a substantial or habitual violations of the standards of health, safety, or resident care; and in addition, DRNJ respectfully asks that the Department investigate any other New Jersey facility which shares any of the same owners, licensees, or administrators (or family members thereof).

Disability Rights New Jersey will continue to meet its responsibility under federal law to investigate allegations of abuse, neglect, and suspicious deaths of individuals with disabilities who reside in New Jersey's long term care facilities, as well as provide legal representation to individual residents with disabilities. We are concerned that Andover I and II are not the only facilities where residents are facing these dire circumstances. The Department of Health's inclusion of information about the number of long term care facilities with outbreaks, the number cases of COVID-19 at these facilities, and the number of residents who have died bears this out. While this information is helpful, we ask the Department for full transparency and to include the names of the specific facilities where there are COVID-19 outbreaks. As always, DRNJ offers the administration any assistance we can under our federal authority as New Jersey's designated protection and advocacy agency.

Sincerely,



Gwen Orlowski  
Executive Director

cc: Gurbir Grewal, Attorney General  
Laurie Facciarossa Brewer, LTC Ombudmans  
Stefanie Mozgai, Assistant Commissioner

*Advocating and advancing the human, civil and legal rights of persons with disabilities*