NAMI New Hampshire
National Alliance on Mental Illness

June 7, 2021

Senator Jeb Bradley
Senate Health and Human Services Committee
107 North Main Street
Concord, New Hampshire 03301

Dear Chairman Bradley and Committee Members,

My name is Kenneth Norton, and I am the Executive Director of NAMI NH, the National Alliance on Mental Illness. I am a Licensed Independent Clinical Social Worker (LICSW) in the State of New Hampshire with extensive experience in working in community mental health. I have served as a subject matter expert in the areas of mental health as well as suicide prevention for the US Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Defense (DoD) and the Veterans Administration (VA). On behalf of NAMI NH, I am here to offer testimony regarding the proposed amendment to HB 565.

First, although it is getting overshadowed by the medical protective custody part of the bill, NAMI NH is supportive of the language in Section 1 regarding the addition of "private entity" to the definition of community mental health program in RSA 135-C:2, IV. It has long been our hope the state would consider this type of private entity to provide statewide mobile crisis response services. New Hampshire can benefit from any qualified and willing provider.

As for Section 2 adding a medical protective custody component to Involuntary Emergency Admission (IEA) Examination under RSA 125-C:28, on behalf of NAMI NH, I would like to speak in opposition to this section as proposed.

It has been over 20 years since I have done mental health assessments in emergency departments. However, it has only been 10 years since Emergency Department boarding started. It is important to remember that for the 25 plus years before 2011, every person who met the criteria for an involuntary emergency admission (IEA) was admitted to New Hampshire Hospital (NHH) within *hours* of being brought to an emergency department for an assessment. This included first being "medically cleared." Individuals who were intoxicated and determined to be a danger to themselves or others were routinely placed in protective custody in the local jail, and when they were sober, the jail then decided whether they needed a mental health assessment. They were never IEA while intoxicated.

The major problem with this proposed amendment is it is fatally flawed. The flaw is it presumes mental health *treatment* is available in Emergency Departments. Simply stated, it is not. While there are two or three hospitals who provide some limited mental health treatment in emergency rooms the clear majority provide little to none. If you have not already done so, please review the testimony submitted by former NAMI NH Board member Karen Trudel of how disturbing it was for her to be held in a windowless room in yellow pod at Concord Hospital alone with her destructive thoughts, for days at a time. And I would note Concord Hospital is one of the better equipped and staffed emergency departments to deal with people in a mental health crisis.

NAMI NH truly wishes and believes there should be more mental health treatment available in local hospitals where people can receive appropriate and timely treatment closer to their families and their natural community supports. We believe if more voluntary psychiatric hospital beds were available, there would be many fewer IEA's and people would be afforded more dignity. We have stated on numerous occasions that care of people with serious mental illness is not the sole responsibility of the State and that local hospital and commercial insurance providers need to do more to provide comprehensive and local mental health care. However, enacting this medical protective custody provision without first ensuring that treatment is available at local hospitals will likely mean people in a mental health crisis will again languish without effective treatment while they wait for in patient admission.

NAMI NH also has other concerns including that the amendment does not contain any structure or provisions to safeguard that people who clearly need to be immediately admitted to a designated receiving facility won't be placed into this medical protective custody category and have their admission delayed. In fact, the amendment as proposed sets out no criteria to determine who should be transferred immediately, and who should be held in protective custody. We also have concerns about people's due process rights, but will defer these concerns to legal advocates who can better address this issue.

New Hampshire Hospital has indicated many of the IEA's they receive are not appropriate and they cite two major cohorts of people who are being IEA'd who do not necessarily meet the criteria for admission. These include individuals who are intoxicated or have some type of substance abuse induced psychosis, and people with dementia or some other type of organic brain disorder/trauma who are not diagnosed with a major mental illness. While there needs to be more discussion specific to these populations and their medical needs, NAMI NH is willing to consider supporting a medical protective custody provision for people with these conditions with specific language that it does not apply to people with a serious mental illness.

In citing some of the reasons for proposing the medical protective custody provision, Commissioner Shibinette has cited the high number of IEA hearings which are dismissed, waived or no probable cause found. While there may be a number of reasons for these dispositions, particularly hearings that were waived or dropped, the number of hearings where no probable cause was found is of serious concern and may indicate people are being inappropriately IEA'd. The data below, which was provided to NAMI NH by a reporter who

obtained it from the Circuit Courts indicates for 2019 and 2020 that in over 10% of the cases, no probable cause was found. At a minimum, this indicates a need for more training of Emergency Department staff and providers, as well as a stronger review by NHH or a designated triage person prior to admission to ensure that forms are properly filled out and people truly meet the criteria for an IEA.

Involuntary Emergency Admissions 2019	Count Cases Filed	Count Cases Disposed	Disposition Type								
			Denied	Dismissed	Granted	No Probable Cause Found	Order Issued	Probable Cause Found	Released Prior to Hearing	Waived Probable Cause	Withdrawn
6th Circuit - District Division - Concord	882	883		20	1	26	4	778	29	15	10
6th Circuit - District Division - Franklin	233	233		23		32		140	3	20	15
9th Circuit - District Division - Manchester	408	408		7		64		308	1	12	16
9th Circuit - District Division - Nashua	5	5	1		4						
10th Circuit - District Division - Portsmouth	370	372		9		74		271		4	14
Total	**1,898**	**1,901**	**1**	**59**	**5**	**196**	**4**	**1,497**	**33**	**51**	**55**

data as of 3/25/21
Some cases may not have been filed and disposed in the same calendar year.

Involuntary Emergency Admissions 2020	Count Cases Filed	Count Cases Disposed	Disposition Type								
			Denied	Dismissed	Granted	No Probable Cause Found	Order Issued	Probable Cause Found	Released Prior to Hearing	Waived Probable Cause	Withdrawn
6th Circuit - District Division - Concord	816	807		36		9		724	29	1	8
6th Circuit - District Division - Franklin	219	219		17		24		149	2	13	14
9th Circuit - District Division - Manchester	432	432		27		69		277		30	29
9th Circuit - District Division - Nashua	1	1			1						
10th Circuit - District Division - Derry	177	177		11	1	68		84		12	1
10th Circuit - District Division - Plaistow	3	3		1		2					
10th Circuit - District Division - Portsmouth	319	319		18		79		182		12	28
10th Circuit - District Division - Salem	7	7		3		1		3			
Total	**1,974**	**1,965**		**113**	**2**	**252**		**1,419**	**31**	**68**	**80**

data as of 3/25/21
Some cases may not have been filed and disposed in the same calendar year.

It is important to note this has been an extremely challenging year for everyone due to the pandemic. Components of the Ten-Year Mental Health Plan which DHHS had prioritized, and you the members of Senate Health and Human Services Committee had championed and led through the legislative process, have been delayed. And sadly, the mental health impacts of the pandemic have exacerbated the emergency department boarding crisis in multiple ways.

Although initially shocked by this proposal coming so soon on the heels of the Jane Doe decision, I believe the Commissioner and Department of Health and Human Services have the best of intentions in bringing this amendment forward. Having spent the better part of the past week talking with key stakeholders including DHHS, it is clear we all share a common goal. That

goal is for people in a mental health crisis who have been determined to be a danger to themselves or someone else to receive timely access to treatment which will ensure their care, safety, and well-being, as well as the safety of the general public, and that they are also afforded their due process rights.

As providers, advocates, and key stakeholders we do not necessarily agree how to do that in the short run. It is hard to not look back over the length of this emergency department boarding crisis and identify points where we could have, or should have intervened. But there is nothing to be gained by looking back. We must look forward. For the most part we do agree that the steps DHHS, the Governor, and you, our bipartisan leaders in the legislature, have taken prioritize the key recommendations of the Ten-Year Mental Health Plan and are making significant strides in building a comprehensive community-based system of care.

The gains we have made in a month since the Jane Doe decision in bringing the adult emergency department boarding list down to single digits and even zero, may not be sufficient in the long run to remain in compliance with the Jane Doe decision while bridging the gap until we can operationalize additional mobile crisis response teams, designated receiving facilities, and community residential programs/beds. In the twenty-nine-page amicus brief which NAMI NH submitted to the NH Supreme Court we ended our brief with the following two sentences.

> *NAMI NH also respectfully cautions the Court that it would not be in the public interest to force release of patients who are, in fact, a danger to themselves or to others. Any relief provided by this Court should be prospective, so that those bound by the Court's order will have adequate time to assure that dangerous patients are not released on a technicality.*

We believe the potential for people who are a danger to themselves, or others being released on a technicality is what we may be quickly heading toward and what Commissioner Shibinette is trying to avoid by proposing this medical protective custody amendment. While we cannot support the amendment as currently written, we are willing to immediately work with this committee, DHHS and other stakeholders to identify modifications or alternatives to HB 565 as proposed.

As this is likely the last public hearing of the Senate Health and Human Services Committee this year, on behalf of NAMI NH, I would like to thank you for all of your bi-partisan leadership over the past few years to reform New Hampshire's mental health service delivery system.

Thank you for the opportunity to offer NAMI NH's testimony on this proposed amendment. I am happy to answer any questions which you have.

Respectfully,

Kenneth Norton, LICSW
Executive Director