DISABILITY RIGHTS MAINE

April 9, 2025

Senator Henry Ingwersen, Chair
Representative Michele Meyer, Chair
Committee on Health and Human Services
Cross Office Building, Room 209
Augusta, Maine 04333

RE: LD 1239: *An Act to Require Data Collection on and Reporting of Psychiatric Hospital Resources and Transparency in Denials of Emergency Involuntary Admissions to Psychiatric Hospitals*

Dear Senator Ingerswen, Representative Meyer, and Members of the Committee on Health and Human Services:

My name is Mark Joyce and I am an attorney at Disability Rights Maine (DRM), Maine's designated protection and advocacy agency for individuals with disabilities. Thank you for the opportunity to provide testimony in support of LD 1239. I am also the attorney who represented A.F. in the case *A.F. v. MaineGeneral Medical Center*[1]. I've attached a copy of a blog post I wrote that offers additional context for this case.

LD 1239 is a direct response to a systemic issue that A.F.'s case brought into sharp focus: the lack of transparency and centralized data when psychiatric hospitals decline to admit individuals who have been referred from Emergency Departments under Maine's Emergency Involuntary Hospitalization laws—commonly known as the "blue paper" process.

These are individuals who have already been evaluated and found to meet the legal criteria for emergency psychiatric admission. Emergency Departments then refer them to psychiatric hospitals, but when those hospitals decline the referrals, the

[1] A.F. v. Mainegeneral Medical Center, 2024 WL 3568707, (Me.Super. Feb. 13, 2024).

individuals remain in the ED—and they can remain there for an indefinite period of time.

A.F. remained in an emergency department for 65 days. During that time, she was rejected by all of the hospitals she was referred to, each citing that she was too acute or not a good fit for their milieu. These decisions were not subject to review or oversight, and there was no centralized way to track how often this happens or why. While she waited, other patients were admitted ahead of her. As her case illustrates, it wasn't that there were no beds—it's just that the beds were not available *to her.*

After a legal petition was filed, A.F. was transferred within 24 hours. The court found her due process rights were violated and emphasized that broader, system-wide solutions must come from the legislative and executive branches.

LD 1239 takes a practical approach by requiring that hospital denials be documented and shared with DHHS and the patient. The data will help identify system gaps and guide resource decisions, while public access ensures transparency and accountability. Without this information, we're left to guess whether people remain in EDs due to true bed shortages or other factors—making it nearly impossible to plan, improve, or even define the problem.

A.F. cannot be here today, but she asked me to tell you that she fully supports this bill. I'd like to close with her own words, which appear in the transcript of her hearing testimony. She spoke of what it was like to finally leave the windowless emergency department after 65 days and be transferred upstairs to the psychiatric unit:

> *"It was like -- it was different. I had windows. I missed the entire fall season being in the ER. I never saw the leaves fall. I never saw the trees change color. Basically, when I went upstairs, it was winter. From the time I went in the ER to the time I went upstairs, I went from summer to winter. And people don't understand that people get worse when they're in the ER for a long time. It just -- it kills your soul."*

Her words remind us what's at stake. LD 1239 offers the State a meaningful tool to better understand, monitor, and improve access to care for individuals like A.F.—and so many others. For these reasons, DRM supports LD 1239 and urges this Committee to vote "ought to pass."

Sincerely,

Mark C. Joyce
Managing Attorney

DISABILITY RIGHTS MAINE

"The Beds Were Just Not Available to Her." When Psychiatric Hospitals Refuse to Admit Patients from Emergency Departments

by Mark Joyce | May 24, 2024 | Community Mental Health, Inpatient Psychiatric Settings & Group Homes

In the fall of 2022, Disability Rights Maine (DRM) represented a woman who had been "blue papered"[1] in an emergency department (ED) and was awaiting transfer to a psychiatric bed. She remained in the ED for 65 days until eventually being transferred to a psychiatric unit, two days after DRM filed a Petition for a Writ of Habeas Corpus in the Superior Court against the ED. After receiving treatment, she was discharged back to her apartment.

Her petition acknowledged meeting the standard for emergency involuntary psychiatric hospitalization but argued her due process rights were violated due to the prolonged wait for transfer from the ED to a psychiatric facility.

Some would argue that this case highlights the need for more psychiatric beds in Maine to prevent such lengthy stays in EDs due to long waitlists at psychiatric hospitals. However, a closer examination reveals a different reality.

Although technically moot, the Superior Court held a hearing on her petition even after her discharge. The court, in its opinion, found that her due process rights were indeed violated and she had the right to court appointed legal representation. This opinion is attached as A.F. v. MaineGeneral Medical Center.

The court noted that one reason for her extended stay in the ED was the repeated rejection by numerous psychiatric hospitals, citing reasons such as her acuity level being too high or not fitting their "milieu". This selection process led to her being "stuck" in the ED, as these hospitals could refuse admission without any waitlist.

In its decision the Superior Court observed:

> **Over the course of the 65 days, A.F. was rejected by the following hospitals: Riverview Psychiatric Center, Dorothea Dix Psychiatric Center, Spring Harbor Hospital, Northern Light Acadia Hospital, Southern Maine Medical Center, St. Mary's Regional Medical Center, Mid Coast Hospital, Penobscot Bay Hospital, Maine Medical Center, and MGMC. They all claimed that she was not a good fit for their hospital as her acuity level was too high, or otherwise did not fit their milieu. And these rejections repeatedly occurred while other patients, who were also awaiting admission from MGMC's ED, were admitted to psychiatric hospitals.**

> The nursing director for the ED at MGMC, testified that there is essentially no "waiting list" for these patients as that term is conventionally understood. Instead, prospective hospitals are permitted to decide whether a patient is a good fit for their facility. If not, the patient and the ED where the patient is being detained, have no option but to accept that decision, and to wait. And wait they did.

Consequently, A.F. found herself confined to the emergency department until one of these hospitals had a change of heart. However, despite more than two months passing, this change didn't materialize until after she filed her petition in the Superior Court.

Hence, increasing the number of beds would not have eased AF's situation in the ED; it would have merely increased the count of beds inaccessible to her.

The court noted:

> As her attorney essentially puts it, the beds were just not available *to her"* (emphasis in original).

How frequently does this scenario unfold, where individuals languish in the ED not due to bed availability but for reasons that could persist indefinitely due to these psychiatric hospitals refusing to admit?

Answering these questions is challenging. The Maine Department of Health and Human Services (DHHS) lacks centralized data on when psychiatric hospitals decline to admit "blue papered" patients from EDs based on reasons such as acuity level or not a good fit for milieu. Consequently, it's difficult to ascertain whether, at a statewide level, individuals remain stuck in the ED primarily due to bed shortages or other reasons.

Furthermore, there's no oversight to evaluate the acceptability of these hospitals' determinations to refuse such patients.

For instance, many hospitals cited the concept of not being a good fit for the "milieu" as a justification for refusing A.F. The court, citing to the testimony of

the ED nursing director, described the conditions in which A.F. was detained in the ED for over two months as follows:

> **The nursing director described the conditions as potentially worse than jail in most cases. There was no outdoor time, no windows, just four white walls. She urged consideration that the environment was akin to being in jail.**

There appears to be insufficient oversight regarding whether psychiatric hospitals' refusal to admit a "blue papered patient" due to their milieu or acuity is justified, particularly when the patient is subjected to conditions akin to jail with minimal treatment while waiting in the ED.

Moreover, it's reasonable to speculate that an individual's acuity level could intensify the longer they are exposed to such an environment, potentially reducing their appeal to psychiatric hospitals that reject admission based on escalating acuity levels.

Despite the DHHS contracting with these hospitals to accept "blue papered" patients, the court found that DHHS had essentially forfeited its right to object to these hospitals' refusal to admit patients like A.F. The court stated:

> **The reality is that MGMC, like all the other hospitals, are "stuck" with the determinations about "acuity" and "milieu" made by other hospitals, and the other hospitals are "stuck" with determinations made by MGMC. The Court agrees with MGMC that the Court cannot and should not involve itself in making such clinical judgments, *particularly when DHHS has apparently bargained away its own right to object to these clinical decisions*, presumably to find private hospitals such as MGMC willing to accept patients like A.F. (emphasis added).**

The court clearly recognized that the system's flaw could have resulted in A.F. being detained indefinitely in the ED as psychiatric hospitals opted for other patients. The court emphasized:

> But for Nurse Duprey's intervention and Disability Rights Maine's willingness to file this case, A.F. could have easily become another patient who lived at MGMC's ED for six months.

The court, citing to a recent Maine Supreme Judicial Court decision, further noted that the problem with the system is not something that can be fixed judicially but should be addressed by the Executive and Legislative branches, stating:

> There is no indication in *LincolnHealth* that the Law Court ever expected that the "restart process" could go on indefinitely, and it stated plainly that patients in AF's circumstances continue to be protected by due process while waiting. A fair reading of the case would be that the Law Court went as far as it deemed appropriate with the record before it, but that it expected and hoped, along with the hospitals and Maine citizens who reside for extended periods in EDs, that the Executive and Legislative branches of Maine government would remedy what has now become a chronic problem.

The case of A.F. exemplifies the challenges faced by individuals awaiting transfer from emergency departments to psychiatric beds. The Superior Court's observation of her extended emergency department stay, marked by repeated rejections from psychiatric hospitals, underscores systemic issues. The lack of oversight exacerbates the situation, with no centralized data to assess the frequency of such refusals or the appropriateness of hospital decisions. The Superior Court's acknowledgment of the systemic flaw underscores the need for executive and legislative action to address the chronic problem of this type of selection process, as judicial intervention alone cannot rectify the issue. This was underscored by the court's authority being restricted to ordering MaineGeneral to notify DRM if A.F. found herself in the same situation in the emergency department within the next five years.

[1] "Blue papered" is often used to describe Maine's emergency involuntary psychiatric hospitalization process.
