April 24, 2023

Testimony of Emily Mott
Resident of Portland, Maine

Testimony in Opposition of L.D. 1119

Senator Beebe-Center, Representative Salisbury, and esteemed members of the Committee On Criminal Justice and Public Safety, my name is Emily Mott, and I am a resident of Portland. I am a third-year student at the University of Maine School of Law, I have worked as a student attorney at the Cumberland Legal Aid Clinic, and I am here today in my personal capacity to offer testimony in opposition of L.D. 1119.

As someone who has worked in various jobs and externships where safety was a priority, I understand the importance of protecting our healthcare workers. I value their safety and do not believe that violence should be an expected part of their job. I believe that no one should ever be subjected to violence. However, L.D. 1119 is not the answer.

It is crucial to consider the perspectives of those who will be affected by this legislation. I encourage you to read the attached articles published in the Sun Journal in August of 2022, as they were written by mental health advocates and patients who have been treated in emergency rooms.

As a student attorney with the Cumberland Legal Aid Clinic, I represented a wonderful person who had experienced trauma throughout their life and sought emergency mental health treatment regularly. In order to receive the mental health treatment my client sought, my client would either go to, or be brought to, the emergency room. During that time, they would be forcibly restrained, and their trauma-response would kick-in, causing them to flail around.

My client's attempts to seek treatment led to re-traumatization and several Class D assault charges. The 60+ days of incarceration my client experienced without adequate mental health treatment only served to make things worse. It did not give my client coping strategies or access to more/better resources, that is not what the criminal justice system does. It was the people outside of the criminal justice system who supported my client by finding housing and treatment. Now, my client will have to disclose their criminal conviction and cope with the collateral consequences on top of everything else for the rest of their life.

Increasing the criminal penalties in these scenarios to a Class C felony, as proposed in this bill, will have unintended consequences. Any criminal conviction carries consequences that have a lasting impact on individuals, but felony convictions have greater collateral consequences. Collateral consequences hinder employment opportunities and access to housing programs and mental health treatment programs. Research shows that harsh penalties do not prevent crime or increase public safety. In fact, these penalties disproportionally impact vulnerable populations, such as individuals with mental health issues or those experiencing homelessness, without effectively addressing the underlying causes of the behavior. This bill will result in further harm and criminalization of already marginalized individuals, exacerbating existing social and economic disparities.

In conclusion, I strongly urge you to vote “ought not to pass.”

Thank you for your time and consideration. I am happy to be available for any questions you may have.

Sincerely,

Emily Mott

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Focus should be on fixing system, not punishing patients for hospital violence, mental health advocates say

SJ sunjournal.com/2022/08/21/focus-should-be-on-fixing-system-not-punishing-patients-for-hospital-violence-mental-health-advocates-say/

By Emily Bader

August 21, 2022

Jenny McCarthy of Raymond, a certified intentional peer support specialist, sits earlier this month in the lavender garden she planted. She plans to have a large garden of lavender where people can relax.
Andree Kehn/Sun Journal file

To prevent violence in hospitals, the state should focus on fixing the mental health system's failures, not on punishing individuals, according to those who have experienced mental health challenges and sought treatment at hospital emergency departments.

The individuals who spoke to the Sun Journal, most of whom are certified intentional peer support specialists, said they are deeply concerned about the legislative task force studying the issue of violence against health workers and the process by which criminal cases may be brought against those perpetrators.

Nearly a dozen doctors, nurses and administrators from area hospitals interviewed by the Sun Journal this year said they are frequently physically or verbally assaulted by patients or the people who accompany them. They said it is of particular concern for workers in emergency departments, intensive care units and psychiatric units.

When patients became violent with them, the hospital workers said, often, but certainly not always, the patients are there for a psychiatric or behavioral reason, including drug or alcohol intoxication.

They said when an assault turns physical, staff are generally hesitant to call law enforcement or pursue charges “because of the milieu in which they work,” one hospital president said.

When they do pursue charges, the providers said oftentimes law enforcement will decline to elevate the case to the district attorney, or the district attorney will refuse to prosecute. The reasons why are unclear and leaves them with little recourse, they said.

This “frustration” with the criminal justice system is why the task force is examining possible criminal remedies to violence in health care settings, task force Co-chairman Sen. Ned Claxton, D-Auburn, said this month.

“The criminal focus (is) really more a concern about the process that exists now and how it’s instituted and less about adding criminal categories or charges,” he said. The task force held its first meeting this month.

But the possibility of an enhanced criminal response to those who commit violence against health care workers concerns mental health advocates.

“It just seems like a very counterproductive approach to be taking for such a complicated issue,” Carly Mahaffey, 40, of Lewiston said.

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People with mental health challenges say they’re being left out of the conversation about hospital violence

Mahaffey and the others interviewed by the Sun Journal instead described the ways in which Maine’s mental health system can be improved to reduce violence in health care settings, particularly in emergency departments.

They said they are being left out of the conversation about hospital violence and worry that without their input, the solutions being considered at the state level could make the situation worse.

They called for nonclinical alternatives to emergency departments for people in crisis, for more training on how to care for people experiencing a psychiatric emergency, and for peer support specialists to be embedded in every emergency department in the state.

MORE TRAINING, PEER SUPPORT NEEDED

The individuals interviewed described the loss of a sense of control they felt when they entered an emergency department for help during a mental health crisis. It’s an experience “that strips you of your dignity and your rights,” said Jenny McCarthy, 46, of Raymond.

“There’s so much expectation on the patients to remain calm and civil and do as they’re told and not speak up and not saying anything,” she said. “But the environment in itself is really traumatizing to be in.”

“We expect (health care providers dealing with) mental health emergency crisis situations to be trained in trauma-informed practices,” but they’re not, said Julie Potter, 44, of Gray.

Julie Potter sits with her two cats in her home in Gray this month. She finds the cats calming. Potter is a certified intentional peer support specialist. *Andree Kehn/Sun Journal*

Trauma-informed care describes a clinical and organizational framework for care developed by the federal Substance Abuse and Mental Health Services Administration.

According to the administration: “A program, organization or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system; and responds by fully integrated knowledge about trauma into policies, procedures and practices, and seeks to actively resist re-traumatization.”

One key element to a trauma-informed approach is peer support.

“It’s hard to understand something that you don’t have an experience about, which is why peer support is so important,” Potter said.

Peer support can describe any connection between people with shared experiences. When referring to peer support or peer support specialists, the people interviewed for this story are referring to a Maine-specific program where individuals with lived experience with mental

health challenges can receive training and certification from the Office of Behavioral Health to work in hospital emergency departments.

Peer support specialists “utilize training and lived experience to help individuals in crisis by providing support to de-escalate acute situations, assist individuals in self advocacy and provide a connection to recovery supports in the community,” according to the Office of Behavioral Health website.

Peer support “takes us seriously,” and is able to de-escalate a situation, or prevent an escalation from happening in the first place, by helping guide a person through their emergency department visit, said Joe Bennett, 56, of Hiram.

A Penobscot County woman in her 50s, who asked to remain anonymous for privacy reasons, said when she was involuntarily admitted to a psychiatric unit on multiple occasions beginning in her 30s, providers “never asked me about any trauma, they never addressed my trauma.” At the time, she was in an abusive relationship, she said.

Earlier this year – two decades since her first hospitalization – she was finally diagnosed with post-traumatic stress disorder.

In the absence of a diagnosis and proper treatment, she said peer support is what gave her the tools to heal from that trauma.

“I learned how to be independent. I learned how to think for myself,” she said.

Seven hospitals in Maine contract with the Office of Behavioral Health to provide peer support services: AR Gould Hospital in Presque Isle, Central Maine Medical Center in Lewiston, Mid Coast Hospital in Brunswick, Northern Light Eastern Maine Medical Center in Bangor, Northern Light Mercy Hospital in Portland, St. Mary’s Regional Medical Center in Lewiston and York Hospital.

McCarthy said she’s frustrated by hospitals which “speak out about the violence,” but don’t offer peer support specialists in their emergency departments.

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She and Bennett said Maine Medical Center in Portland, which has one of the largest emergency departments in the state, “refuses” to contract with the Office of Behavioral Health for peer support.

“Behavioral health patients have unique needs that require a robust continuum of care in order to be treated effectively,” a spokesperson for MMC said in a statement to the Sun Journal. “Peer support services should be part of that continuum of care and made accessible in a setting that works for both patients and other health providers.

“MMC utilized certified intentional peer support specialists in its emergency department for several years,” according to the statement. “Following an evaluation at the end of the contract period, MMC determined it should pause the deployment of these resources in its emergency department, which is the state’s only Level I trauma center. Maine Behavioral Healthcare currently provides MMC’s emergency department with one-call peer support as part of its substance-use recovery coach program.”

The statement also said MMC staff receive regular training for how to provide care for behavioral health patients in the emergency department and “encourages continued investment in the continuum of behavioral health services across Maine and New England.”

ALTERNATIVES TO EMERGENCY DEPARTMENTS

The peer support specialists all said Maine needs alternatives to emergency departments for people experiencing a mental health crisis.

“Too many people (are) using the ED when they’re not supposed to,” Mahaffey said. “It’s because they have no one else to talk to or they have nowhere else to go.”

Having more community-based and peer-led alternatives to an emergency department will also help reduce the crunch on hospitals, she said.

M.T. said her first experience being hospitalized for a mental health emergency was in 2005, a few months after she said she was sexually assaulted by a co-worker.

The 41-year-old, who asked only to be identified by her initials for privacy reasons, said emergency department providers and staff are not “adequately trained to deal with patients experiencing psychiatric issues and frequently add fuel to the fire.”

While not a peer support specialist, M.T. said she has about a decade of experience as an emergency medical technician.

“Patients deserve to be heard (and) properly diagnosed and treated by adequately skilled providers,” she said. “All providers who interact with behavioral health patients,” whether they be medical, law enforcement or fire and rescue professionals, need to be better trained.

Last year, she said she attempted to kill herself. While waiting for a bed at an inpatient psychiatric unit to become available, she said she sat in the emergency department at Stephens Memorial Hospital in Norway for four days.

The only placement available to her was at Northern Maine Medical Center in Fort Kent, an Aroostook County town at the tip of northern Maine and a 5 1/2 hour drive from her home in South Paris.

Having a patient sit in an emergency department for days at a time waiting for a bed to open up is a “recipe for disaster,” said Mark Joyce, the managing attorney for Disability Rights Maine’s mental health advocacy program.

Maine needs more peer-led crisis respite centers, Joyce and others said. These are nonclinical settings where anyone can go and speak to a peer support specialist, learn about treatment resources or “just take a break,” in Mahaffey’s words.

“I think it would lessen that number of people ending up in the ED and having to go through those traumatic experiences,” Mahaffey said.

Earlier this year, Portland-based Spurwink, a behavioral health and education agency, in partnership with Maine’s Department of Health and Human Services opened the Living Room Crisis Center at 62 Elm St. in Portland. It’s the first of its kind in the state, Gov. Janet Mills said when it opened in March.

“If it’s not the right environment for them, they can leave,” said McCarthy, who wants to see more crisis centers like the Living Room throughout the state.

“That violence is taken away because they can leave,” she said.

‘THAT’S A TREATMENT FAILURE’

The legislative task force is only looking to charge violent individuals who have the legally defined mental capacity to be held responsible for their actions under Maine laws, Claxton, the co-chair, said this month.

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That’s not much reassurance for Joyce, who has worked 21 years at Disability Rights Maine, the state’s designated advocacy organization for people with disabilities, and also serves as the class counsel for the Augusta Mental Health Institute consent decree.

If the task force is only focused on individuals not being hospitalized due to their psychiatric disability, “that’s one thing,” he said.

But he wondered if it will “bleed over” to individuals who are hospitalized for their psychiatric disability and who become violent as a result of their disability.

“I’ve talked to a number of individuals throughout my career who have been blue papered (involuntarily admitted) being charged with crimes,” Joyce said.

Under Maine law, to involuntarily admit a patient, meaning they cannot leave on their free will, a medical practitioner must certify that they pose “a likelihood of serious harm” either to themselves or others, as demonstrated by recent suicidal, homicidal or violent behavior, or behavior that demonstrates an inability to avoid risk or injury.

“If you bring a person to the ER for any of these three particular reasons, involuntarily, and they’re stuck there for two or three days, I mean, that’s a recipe for disaster,” Joyce said.

If a patient is in an emergency department for an extended period of time after a doctor has certified that the patient is at risk of harm to themselves or others — and they cannot leave the emergency department for that exact reason — “and then they act on it because of the fact that they aren’t in the correct treatment environment, that’s a treatment failure. That’s a treatment failure for that person,” he said.

“The whole reason behind the law is that we’re saying at the beginning (that) we don’t want to charge you with a crime (for harming yourself or others), we want you to get treatment . . . and then if the end point is they get charged with a crime, that just turns the whole . . . system on its head,” Joyce said.

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People with mental health challenges say they're being left out of the conversation about hospital violence

SJ sunjournal.com/2022/08/14/people-with-mental-health-challenges-say-theyre-being-left-out-of-the-conversation-about-hospital-violence/

By Emily Bader August 14, 2022

Carly Mahaffey is a peer support specialist who works as a mental health advocate for Disability Rights Maine. *Andree Kehn/Sun Journal*

Patients treated in emergency departments for mental health crises say they're being left out of conversations about violence in health care settings and worry that, without their input, the solutions being considered at the state level could make the situation worse.

A group of certified intentional peer support specialists told the Sun Journal that their experiences receiving care for a mental health crisis in hospital emergency departments has been uneventful at best and extremely traumatic at worst. The individuals, who have lived experiences with mental health challenges, receive training from the Maine Department of Health and Human Services to serve as patient advocates in various clinical settings, including in some hospital emergency departments.

"There (are) no other medical reasons out there, that when you enter an emergency room, that strips you of your dignity and your rights than for mental health," Jenny McCarthy, 46, of Raymond said.

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Hospital workers say they experience assault, threats of violence nearly

every day

Hospital officials and providers told the Sun Journal that while the issue of violence in health care settings, particularly in emergency departments, predates COVID-19, the pandemic and its “ripple effects” have contributed to the increasing frequency and severity of verbal and physical assaults from patients or visitors against health care workers.

The peer support specialists who spoke to the Sun Journal have all gone to an emergency department at a Maine hospital at least once — voluntarily and involuntarily — for help with a mental health crisis. Most have been to an emergency department multiple times for mental health care.

They all described the same situation when entering an emergency department for a behavioral reason and are “blue papered” — Maine’s legal term for an involuntary admission for a psychiatric reason.

“The first thing they do is they take things away from you,” Carly Mahaffey, 40, of Lewiston said.

“They take away your clothes, they make you change into their paper scrubs. They take away your shoes, you know, no shoelaces. They take away your phone,” she said. Sometimes, if you have someone with you, like a friend or a family member, the ED staff will not allow them to come with the patient.

“It’s like right off, you go there for help and they send you the message that, ‘Oh, you’re bad. You’re sick. You can’t even handle, you can’t even handle your clothes or your phone. So give them to us,’” Mahaffey said.

Jenny McCarthy, a certified intentional peer support specialist, sits Wednesday in the lavender garden she planted in Raymond. She plans to have a large garden of lavender where people can relax. *Andree Kehn/Sun Journal*

A patient who is blue papered is not allowed to leave the hospital and that in itself sets up a “power dynamic” and a “dangerous scenario,” McCarthy said.

“And I’m in no way saying that violence is ever OK. I’m not. But from the view of a patient, it is extremely scary to be stuck in a position where, in a place where there is this power dynamic . . . You’re powerless (and) there’s nothing you can say or do to change that dynamic.”

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Hospital workers told the Sun Journal there is a “learned helplessness” among health care providers and they do not have the same level of protections that workers in other public places have because of their job. They also said that when an assault turns physical, staff are often hesitant to call law enforcement or pursue charges against a patient “because of the milieu in which they work,” one hospital president said.

Julie Potter, 44, of Gray said, “Violence in any workplace is not something that we should have to tolerate. But I also believe that, you know, the system that is in place for crisis services” in Maine is not working. Potter said that with few, if any alternatives to emergency departments for individuals experiencing a mental health crisis, an ED environment can actually “escalate” situations.

Potter and others said they do not necessarily see it as the fault of the providers and staff, who they acknowledge are working in a high-stress environment and may lack the proper training or tools to handle psychiatric emergencies.

‘IT WAS HUMILIATING’

“(The) nurses at the ER, they’re overworked. They’re overwhelmed,” said Joe Bennett, 56, of Hiram. “They’re doing stuff that they’re not trained to do.”

Bennett, who works with Mahaffey on the Intentional Peer Support Advisory Committee, a group of peer support specialists who advise and support DHHS on intentional peer support matters in the state, said he was diagnosed with multiple sclerosis, a chronic disease affecting the central nervous system, in late 2016 following a “horrific” process.

Joe Bennett stands Tuesday on his front porch in Hiram. Bennett has multiple sclerosis and did not feel that he has always received appropriate care during hospital visits. Bennett is a certified intentional peer support specialist. *Andree Kehn/Sun Journal*

He said his many visits to emergency departments, mostly for MS-related medical concerns, have taught him to “walk on eggshells” when speaking with providers. It wasn’t until he became a peer support specialist that Bennett said he learned how to self-advocate in an ED.

The biggest learning moment came about a year before his MS diagnosis, when he went to the York Hospital Emergency Department with symptoms of a heart attack. Bennett said this was one of a string of such visits where he presented with symptoms of a heart attack, stroke or anxiety attack, which he later learned were presentations of his MS.

But this was before his providers had figured that out and Bennett said that he was once again feeling frustrated and disheartened because although he was in a serious amount of pain, he was medically cleared to go home. When he told the on-call doctor this, using some perhaps ill-conceived humor to play off how uncomfortable he was, it was like a flip switched, he said.

The doctor decided to blue paper him, administered the sedative Ativan, and the next thing Bennett said he remembers is waking up in a locked behavioral health unit in Biddeford. He was there for 40 hours before his primary care physician was able to get him out.

“My experience in that locked ward was humiliating,” Bennett said. “It was pretty scary. You can’t call nobody. And it’s like, they rip all your rights away from you. … It was humiliating.”

York Hospital spokesperson Jean Kolak said that while privacy laws prohibit the hospital from discussing a specific patient’s care, “we confirm that the mental health and safety of our patients is at all times a priority.”

‘I FELT TRAPPED’

Potter, who now works at a mental health agency in Auburn, said an experience at the Emergency Department at Central Maine Medical Center in Lewiston forced her to drop out of her master’s degree program for social work.

Potter said she has a “pretty extensive trauma history” and first interacted with the mental health care system when she was 14. Officially, she said she has a diagnosis of post-traumatic stress disorder, which “creates a way of being in the world that sometimes looks very different to others, and it’s hard to understand.”

Julie Potter sits Wednesday with her two cats in her home in Gray. She finds the cats calming. Potter is a certified intentional peer support specialist. *Andree Kehn/Sun Journal*

In 2017, she was dealing with a flurry of circumstances that she said brought flashbacks, nightmares and insomnia. Then, she began to experience dissociative episodes, or dissociative amnesia, or what she called “losing time.”

“Although I was functional throughout my day, I wasn’t emotionally conscious,” Potter said. “So I was going through getting things done and I, like, the last time I would remember, it was 9 o’clock in the morning and then I look at the clock and it’s 3 o’clock and I’m sitting in my car with a haircut and I have no idea what happened.”

After this happened a few times, Potter said she was “very anxious and scared so I decided to go to the ER.”

But what she experienced there was the opposite of helpful. Potter said she was treated with a lack of transparency and with coercion.

“Suddenly, I felt trapped,” she said.

Potter said the nurses told her they wanted to make her more comfortable by bringing her to another part of the hospital. As they were walking over, she realized that she was being led to a room with no windows, padded walls, cameras and a single bed with no sheets.

She froze. Then she remembered that the nurses asked her to turn over her belongings. But the one thing she refused to hand over were her keys.

“I said I felt I needed a sense of empowerment because I felt like my world was out of control, so I chose not to give them my keys,” Potter said.

When she refused, Potter said CMMC called Lewiston police. When she froze and turned around to leave, two “very large” uniformed cops were behind her. One of the officers put his hands on both of her shoulders and shoved her into the room. That’s the last thing she remembered before waking up on a hospital bed with a nurse tending to her, with signs of bruising and stinging, a red mark on her neck that was sore to the touch. One officer was holding the other back, who was shouting that she had assaulted him.

“I had no idea what was going on. I was terrified,” Potter said.

Later, the nurse told her that the police officers had stunned her twice with a Taser and wrestled her to the ground, which explained the bruises and the burn. She only recently learned that her mother came to the hospital and they spoke, none of which she said she can recall.

“While Central Maine Healthcare is not able to comment on a specific patient, we can say that the safety of patients and our team members is our top priority,” CMH spokesperson Jim Cyr said in response for a request for comment.

“Regarding involuntary commitment, Central Maine Healthcare acts in accordance with Maine state law,” Cyr said.

After that experience, Potter was admitted to an inpatient psychiatric unit and although “all I could think of is this cop who kept saying ‘assault of a police officer,’” the providers there told her it would be fine, and she decided to focus on her recovery.

One day, after she left the inpatient unit and returned home, she was pulled over by a police officer who informed her there was a warrant out for her arrest for failure to appear in court on a summons. She found out that the police came to her apartment to serve the summons, but she wasn’t there; she was in the inpatient unit. Potter spent two days in jail.

She was charged with assault on a police officer, a crime that is punishable by up to five years in prison and a $5,000 fine.

Court records reviewed by the Sun Journal confirm these details.

She was in the second year of her master’s degree program and had to drop out while the charges were pending.

The court sent her for a psychiatric screening, which confirmed her PTSD and dissociative disorder diagnoses. Still, Potter said, she felt the court thought her diagnoses were “convenient.”

After what she said was a two-year court battle and a year of “good behavior,” during which she was monitored by a psychiatrist, the charges were dropped.

‘IT’S A BIG MISTAKE’

“As soon as you get that psychiatric label, that diagnosis on your record, you’re treated differently,” Mahaffey said.

Though it’s been 20-something years since she said she was blue papered while seeking care at Eastern Maine Medical Center in Bangor, Mahaffey has been working off-and-on as a peer support specialist at Health Affiliates Maine and Mid Coast Hospital in Brunswick and now works as a community mental health advocate at Disability Rights Maine. Although her professional experiences inform her perspectives, Mahaffey said her comments do not represent that of her employer.

The legislative task force created to study the process in which criminal cases can be brought against perpetrators of violence against health care workers “seems like a very counterproductive approach to be taking for such a complicated issue,” Mahaffey said.

“It’s like, why aren’t we looking at the things that are causing this violence to happen?” she asked.

Stemming from a bill introduced by Rep. Walter Riseman, I-Harrison, last year, the 12-member task force was formed earlier this summer. In June, the group’s co-chairman, Sen. Ned Claxton, D-Auburn, said he would like the task force to answer three main questions: How to protect staff from violent incidents, how to take into consideration a patient’s circumstances when deciding whether to pursue charges and how to make the criminal process more transparent, especially for the victims.

The task force is expected to submit its report and recommendations to the Legislature’s Joint Standing Committee on Justice and Public Safety in November.

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‘A huge chasm for folks’: Task force studying hospital violence lays out system’s complexities

At its first meeting earlier this month, the task force laid out the foundation for its study. The discussion among the group of lawmakers, hospital officials, law enforcement officers and deputy district attorneys made at least one thing clear: There are gaping holes in the matrix of Maine’s health care, legal and judicial systems when it comes to balancing patient care, provider safety and criminal justice.

Bennett fears the task force, which has representatives from the Legislature, the major health care networks, law enforcement officials and members of the judiciary system — but no patient advocates — “is a big mistake.”

“We need a seat at that task force and a voice,” he said. “That’s the only way. The way they’re trying to set it up (is) as a Band-Aid that’s going to create more chaos and trauma — trauma for our workers and the patients.”

McCarthy said in no way does she think that the issue of violence in health care settings, particularly in emergency departments, is inflated.

“But I think we’re missing the point of why it’s happening,” she said.

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