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Testimony of the Department of Health and Human Services  
Before the Joint Standing Committee on Health and Human Services

In support of LD 38

*An Act To Clarify the Timing of an Appeal of a Finding Regarding Involuntary Mental Health Treatment at a Designated Nonstate Mental Health Institution*

Sponsored by: Senator Ned Claxton  
Hearing Date: March 4, 2021

Senator Claxton, Representative Meyer, and Members of the Joint Standing Committee on Health and Human Services. My name is Joseph Pickering. I am the Chief Administrative Hearing Officer of the Division of Administrative Hearings in the Department of Health and Human Services. I am here today to introduce and speak in support of LD 38. The Department is grateful to Senator Claxton for sponsoring this bill on our behalf.

LD 38 seeks to amend 34-B M.R.S. § 3861 to clarify the process for appeals of involuntary treatment orders from clinical review panels at designated nonstate mental health institutions (e.g., Spring Harbor Hospital or Acadia Hospital). More specifically, LD 38 would clarify the standard of review and extend the deadline for DHHS to issue a decision on such appeals.

Involuntary treatment (i.e., medication) can be ordered by a clinical review panel at a designated nonstate mental health institution. The patient can appeal the clinical review panel decision to DHHS. The statute currently states that a decision on the appeal should be issued within three business days, but does not specify what standard of review should be used by DHHS in reviewing the order of the clinical review panel.

Appeals at DHHS of clinical review panel decisions are generally handled by the Division of Administrative Hearings with the Commissioner retaining final decision-making authority. The Administrative Hearing Officer conducts an evidentiary hearing and issues a recommended decision and then the Commissioner issues a final decision accepting or rejecting the recommended decision.

When the Division of Administrative Hearings conducts such an appeal, it currently does so on what is called a “de novo” basis, requiring testimony by witnesses. There are, however, significant practical difficulties in scheduling a hearing, holding a full evidentiary hearing with testimony, reviewing materials submitted by the parties, issuing a recommended decision, and having the Commissioner issue a final decision within three business days.

It is not clear that the Legislature actually intended appeals to DHHS of clinical review panel decisions by nonstate mental health institutions to require a full evidentiary hearing. The statute does not specifically state that the Commissioner must hold a full hearing. The clinical review

panel process conducted at the nonstate mental health institution is already a form of hearing. The statute allows for appeals of clinical review panels at State mental health institutions (i.e., Riverview Psychiatric Center and Dorothea Dix Psychiatric Center) to go directly to the Superior Court without an additional administrative hearing at DHHS. The purpose of having appeals to DHHS of orders of nonstate mental health institution's clinical review panel appears instead simply to be a necessary procedural step to allow the patient the opportunity to appeal the Commissioner's final decision as final agency action to the Superior Court under Rule 80C of the Rules of Civil Procedure.

The intent of this bill is to resolve this issue. The bill clarifies that DHHS should simply review the order and record that was created by the clinical review panel. The bill establishes a standard of review where the Commissioner or the Commissioner's designee would review the decision for abuse of discretion, error of law, or findings not supported by substantial evidence in the record. This is the same standard that the Superior Court uses in reviewing final agency decisions.

The bill also establishes deadlines for the designated nonstate mental health institution to submit the record to the Department and for the submission of written arguments by the patient and institution. This will clarify what actions each party must take. I would note that designated nonstate mental health institutions are well aware when a patient appeals because, since the patient is restricted to the institution, it is the designated nonstate mental health institution that notifies the Department of the appeal.

Finally, the bill extends the deadline for the Commissioner to issue a final decision to four business days after the submission of the record and any arguments. This ensures that the Commissioner or the Commissioner's designee has a more reasonable opportunity to review the record and any objections before issuing a final decision.

In conclusion, the current appeal process is not practicable. This bill provides much needed clarity regarding the standard of review for appeals from clinical review panel orders at designated nonstate mental health institutions and slightly extends the deadline to allow DHHS a more reasonable opportunity to conduct a review and issue a final decision.

I look forward to working with the committee on this bill and will provide further information if necessary.