Testimony of the New Hampshire Hospital Association on
He-M 614 Process for Involuntary Emergency Admission Rules

Department of Health and Human Services

June 30, 2022

On behalf of our New Hampshire Hospital Association (NHHA) membership which represents all 26 of our community hospitals and all of our specialty hospitals, I am presenting written testimony relative to He-M 614 Process for Involuntary Emergency Admission administrative rules dated 5/2/22 titled as "Initial Proposal".

Our testimony is centered around the universal fact that any patient that is deemed to be a harm to oneself or others should be afforded the protections of the State's mental health system through an Involuntary Emergency Admission (IEA) to a Designated Receiving Facility (DRF) or New Hampshire Hospital (NHH). Having clear and transparent rules that define an IEA, the process for certifying a petition for an IEA and describing the court's involvement in ensuring an individual's right to a probable cause hearing are all of upmost importance.

It is beyond dispute, however, that the He-M 614 emergency rules and the "initial proposal" version that is the subject of today's public hearing are contrary to state law, specifically RSA 135-C:29 I – which states "Upon completion of an involuntary emergency admission certificate under RSA 135-C:28, a law enforcement officer shall, except as provided in paragraph II, take custody of the person to be admitted and ***shall immediately deliver such person to the receiving facility identified in the certificate***." (emphasis added). It is no longer a matter of dispute because in the last two years the New Hampshire Supreme Court and the United States District Court for the District of New Hampshire have held that "involuntary emergency admission into the mental health services system . . . occurs when an [involuntary emergency admission] certificate is completed. Following certification, the statutory procedures require immediate delivery of the certified person to a designated receiving facility and a probable cause hearing within three days after certification." And, in fact, He-M 614.09 states "Delivery to a DRF ***shall*** be in accordance with RSA 135-C:29" which should bind all actions throughout the rule accordingly. Unfortunately, there are several sections in the administrative rule that contradicts the RSA and He-M 614.09, including:

- **He-M 614.05 (d)**: "the physical examination shall be conducted ***within 3 days*** of the date of the petitioner's statement…" This provision appears to create a type of "medical hold" that does not exist in the RSAs. In fact, it contradicts page 6 of an IEA certificate that requires the inclusion of the results of a physical examination. Because the IEA petition

must be "complete" before sending to a DRF, the physical exam must be completed as part of the admission process. It cannot wait up to three days.

- **He-M 614.05 (e)**: "the mental examination shall be conducted ***within 3 days*** of the date of the petitioner's statement…" We have the same concern here as we stated above for physical examination.
- **He-M 614.05 (e)(2)**: "the licensed practitioner or designee ***shall not perform the mental examination of the person sought to be admitted until after the individual has been determined medically stable*** for admission to the DRF or NHH". Most IEAs are prepared and certified while an individual is a patient in a hospital emergency department. The intent of RSA 135-C:29 is to ensure that the patient is sent to the most appropriate location for treatment as quickly as possible. In addition, by stating that the mental health exam **shall not be performed** until the individual is medically stable is an unrealistic standard. Sound clinical judgement needs to be part of the equation for both the physical and mental health examinations. This is not a linear endeavor, rather the choice between knowing if the physical condition created the mental health condition or if the mental health condition caused a physical condition is nuanced and the decisions about needing to IEA an individual, even if they are still being treated for a physical condition, must be considered.
- **He-M 614.07 (a) (1)**: "***within 3 days*** of completion of the petition, a certifying practitioner shall state the following on page 8 of the petition and certificate…" All of the items in this section are already on the **completed** certificate in order for the certificate to be deemed "completed", so it's impossible to allow for a timeframe of "within 3 days".
- **He-M 614.07 (a)(1)(i)**: "That the certifying practitioner informed the person of the DRF to which the person will be ***or will likely be*** transported…" (emphasis added) is contrary to RSA 135-C:29 - the person shall be immediately transported upon a completed IEA petition and certificate.
- **He-M 614.08 (a)-(b)**: these items only make clear that a ***completed petition and certificate*** should be immediately transmitted to a DRF or NHH. RSA 135-C:29 says that the ***patient*** should be immediately transported upon completion of a petition and certificate.
- **He-M 614.08 (h)**: this item states that the DRF is responsible for immediately filing the petition with the applicable district court "***even if the individual has yet to be transferred to the DRF***". We know that unfortunately this continues to happen that patients are not transferred immediately, but something that is contrary to law should not be permanently codified into administrative rules.
- **He-M 614.08 (i)**: this item describes that the district court with jurisdiction is the intended "…DRF that has, ***or will have***, custody of the person…". Another indication that status quo is being implemented into administrative rules.

We would like to also provide the following detailed comments on the remainder of the initial proposed administrative rules:

He-M 614.03 Criteria for Involuntary Emergency Admissions: It should be made clearer that all subsections (a)-(g) are options for someone to be eligible for an IEA. Only (a) explicitly states "a person should be eligible for an IEA if…"

He-M 614.03 (d)-(g): These are new items that were not in the emergency rules. These are important additions, especially allowing for someone on a conditional discharge to receive an IEA if needed.

He-M 614.04 (b)(4): there are two (4)s. The item "Notice of rights of person sought to be admitted" should be labeled as "(5)".

He-M 614.05 (b): We believe that the reference to "(a)(2)" should be "(a)(1)".

He-M 614.05 (c): We recommend adding a reference to (a)(2) to this item to read as follows: "If a witness is available to testify, the witness's statement ***in (a)(2) above*** shall be completed by a witness…"

He-M 614.05 (d)(1)(d): "and" at the end of the sentence should be deleted.

He-M 614.05 (d)(2): RSA 328 is the wrong statutory reference. RSA 328 is for Physical Therapists. The right statute citation should be RSA 328-D for Physician Assistants.

He-M 614.05 (e)(1)(c): typo needs to be fixed: "detained" should be "detailed".

He-M 614.05 (e)(2): This item indicates that there is a sequence of events that must be followed (physical exam first, then mental exam) which also means that an IEA cannot be considered "complete", thus a contradiction exists. This should be made clearer. Also see our comments to this section He-M 614.05 (e)(2) above.

He-M 614.05 (e)(3): RSA 328 is the wrong statutory reference. RSA 328 is for Physical Therapists. The right statute citation should be RSA 328-D for Physician Assistants.

He-M 614.05 (g)(2): This item states that "The certifying practitioner shall not sign the certificate if… the person has medical ailments that cannot be safely treated by the medical services at the DRF". But, if the mental health evaluation shows that an IEA is warranted, what happens to this individual while (s)he is being medically treated and (s)he should be held due to concerns about danger to oneself or others when a certificate cannot be signed according to this rule? This situation should not be an exclusion from an IEA petition and certificate because there is no other statutory authorization for holding a person who remains a danger to himself, herself, or others.

He-M 614.06 (a): "the commissioner or designee shall maintain a list of certifying practitioners…" How often will this be list be updated? Will the courts have access to this list to compare against the petitioner signatures? Who else will be checking these lists?

He-M 614.06 (b)(1): how will "have experience with laws and rules governing the mental health services system" be documented and evaluated?

He-M 614.06 (b)(2): who is responsible for conducting "annual training on involuntary emergency admissions, non-emergency involuntary admissions, and voluntary admissions"?

And, if only run annually, what does that mean for practitioners that need to be certified if the training is not readily available? Do they have to wait for the training to be conducted? And, once someone is certified, do they still have to attend an annual training? Requiring annual training for a practitioner already certified could be an administrative burden when no new information or processes were being discussed.

He-M 614.06 (d): how will DRFs and CMHPs "provide the names of all certifying practitioners they have approved to the department"? How will locum tenens practitioners be handled? How quickly can someone be certified?

He-M 614.07 (a)(1): (a)–(l) are premised on a contradiction with RSA 135-C:29, I. (a)(1) states that a certifying physician is required to state (a)-(l) on the petition and certificate "***within 3 days*** of completion of the petition…" However, all of the statements are necessary for completion of the certificate and upon completion of the certificate the IEA patient is to be transported to a DRF immediately.

He-M 614.07 (a)(1)(c): this item includes the phrase "***if indicated and circumstances permit***". (emphasis added). This phrase is contrary to the requirement outlined in He-M 614.05 (d) that says that a physical exam "shall" be conducted.

He-M 614.07 (a)(1)(j): what does "pending" mean for this item: "That the certifying practitioner has contacted the selected DRF and conveyed that this IEA is ***pending***" (emphasis added). There is no "pending" status for an IEA certificate. If the certifying practitioner executes the certificate, it is complete.

He-M 614.07 (a)(2)(f): what does "…has reviewed and considered a less restrictive voluntary option for treatment…" mean? Does the certifying practitioner have to document this analysis?

He-M 614.07 (c)-(d): both of these items are new in the initial proposal and are important additions as they both affirm the role of the state's mental health system relative to the individual's status as well as the healthcare practitioner and facilities. For example, "if treatment . . . shall be administered in accordance with all applicable federal and state laws[,]" then IEA patients must be transported to a DRF immediately upon completion of an IEA certificate in accordance with RSA 135-C:29.

He-M 614.08 (d): The DRFs and NHH should have an obligation to identify any deficiencies immediately upon receipt of an IEA petition and certificate so that the certifying practitioner may fix the issues and not have to re-do all IEA paperwork and processes - which also have a direct impact on the patient. There is no timeframe mentioned here regarding when the feedback should be given to the petitioner.

He-M 614.08 (f): we believe that this wording "to the department" should actually say "to the DRF or NHH".

He-M 614.10 (a)-(b): we acknowledge that the details that were in the emergency rule in this section have been appropriately placed in item (b).

He-M 614.10 (b)(5): we agree with this new addition to this section.

He-M 614.10 (d): we believe that "(a) above" should be "(a) or (b) above".

He-M 614.12 (a): this section is silent on the rights of the certifying practitioner to appeal the decision of the court if, in their clinical judgement, the individual should remain as an IEA. We believe that there should be consideration for the petitioner to request an appeal or reconsideration if they believe it is in the best interest of their patient.

He-M 614.12 (c): there is a reference to a "Medication Form". Instead of the petitioner sending the form to the court, the medication form should be sent to the DRF which, in turn, is responsible for submitting the certificate and petition to the court.

He-M 614.13: we recognize and support that this section has been expanded to include more detail about the 10-day period and includes an opportunity to file a subsequent IEA, if applicable, is an important addition to the administrative rules.

We appreciate the opportunity to share our testimony with you on these proposed rules. We'd be happy to work with DHHS on reviewing and clarifying any of the items raised in our testimony. Thank you.

Submitted by:

Kathy A. Bizarro-Thunberg

Kathy A. Bizarro-Thunberg
Executive Vice President