SENATE HEALTH AND HUMAN SERVICES COMMITTEE

March 5, 2019

SB 177 – Relative to Clarifying When Physical Restraints May be Used to Transport a Person Being Admitted to New Hampshire Hospital or a Designated Receiving Facility

Testimony

Good afternoon, Mr. Chairman and members of the committee. My name is Paula Minnehan, Senior VP, State Government Relations for the New Hampshire Hospital Association (NHHA), and I am here representing all 26 of our state's community hospitals as well as all specialty hospitals.

NHHA has significant concerns with SB 177. Please first understand, we believe there is a shared goal among all stakeholders in doing what is best for the patient. We all support providing high quality, safe patient care and want to do the right thing on behalf of the patient.

Where I believe we may differ is in the approach taken to best serve patients experiencing a mental health crisis. Deciding on the use of restraints for individuals that have been certified as involuntary emergency admissions (IEA) is a difficult situation. When an individual has been certified as an IEA it is because the individual was deemed to be a danger to himself or herself or to others, thus creating a question about safety.

This bill is focused on the very narrow situation of when a patient is being transferred from a hospital emergency department to New Hampshire Hospital (NHH) or a designated receiving facility (DRF) by law enforcement, and it places the decision of whether a person is put into restraints solely on the clinician. It is silent on whether law enforcement's decision to restrain a person is considered.

While we are happy to work with the sponsor and the stakeholders on this bill to address our concerns, we believe the bill, as introduced, raises many concerns and questions for us and our members.

Our concerns with the bill include:

- The bill language puts the entire decision-making process onto the clinician. Could there be language considered that allows for the clinician and the law enforcement agency to consult in a collaborative approach on the decision for restraints?
- What type of liability protection could be given to the clinician for making such decisions? SB 590, which was passed by this committee in 2018, addressed the issue of liability as it relates to rescinding of involuntary admissions. RSA 135-C:29-a now reads in part: *"No civil action shall be maintained against a person who rescinds an involuntary admission…..provided that the person is acting in good faith within the limits of his or her authority."* Perhaps this same protection could be incorporated into the language of SB 177.
- It is unclear whether law enforcement would continue to have the ability to override a clinician's decision since they are the ones doing the actual transportation.
- It's our understanding that each of the county sheriff departments and local chiefs of police have their own policies regarding when a person needs to be restrained for these types of transfers and differ on instances of when restraints are used. Why can't all those policies be consistent to ensure that the opportunity for evaluating an individual's situation could allow for little or no restraints?
- In 2016, SB 427 created a Study Committee to consider the issue of "The Use of Restraints When Transporting a Person Subject to Involuntary Admission Proceedings". I have attached a copy of the report to my testimony for your review. It is worth noting that the Study Committee recommendations do not include making the clinician the sole decision maker regarding the use of restraints for transportation. This approach, now contemplated in this bill, was certainly discussed during the Study Committee in the fall of 2016. However, it was not included as a recommendation by the full committee. One suggestion would be to review the Study Committee recommendations and explore the viability of those proposals. Or create another study committee to explore all of the complex factors associated with the determination of use of physical restraints, to include the authority of such a determination as well as the best method for transporting patients to New Hampshire Hospital and/or a Designated Receiving Facility.

We would like to work with the sponsor and stakeholders to modify the bill to ensure that the least restrictive approach for the vulnerable patients in crisis becomes more the norm while ensuring that the concerns we raised are addressed.

Thank you for the opportunity to provide our comments. I am happy to answer any questions you may have.