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President and CEO

Ambassador (ret.) Barry B. White

Chairperson of MAMH Board of Directors

November 1, 2023

The Honorable John Velis
Chair, Joint Committee on Mental Health, Substance Use and Recovery
24 Beacon Street, Room 519
Boston, MA 02133

The Honorable Adrian Madaro
Chair, Joint Committee on Mental Health, Substance Use and Recovery
24 Beacon Street, Room 33
Boston, MA 02133

Submitted to jointcmte-mentalhealth@malegislature.gov

Dear Chair Velis, Chair Madaro, and members of the Joint Committee:

Re: Testimony in opposition to H.1993/S.1241, An Act to strengthen emergency restraint for persons suffering dangerous or violent mental illness, and H.1994/S.1246, An Act to provide more timely treatment of inpatient mental health care

On behalf of the Massachusetts Association for Mental Health (MAMH), thank you for strong and steadfast leadership in advancing the health of people with behavioral health conditions and their families across the Commonwealth. I am writing to respectfully submit this testimony in opposition to the above referenced bills.

Formed over a century ago, MAMH is dedicated to promoting mental health and well being, while preventing behavioral health conditions and associated disability. We are committed to advancing prevention, early intervention, effective treatment, and research for people of all ages. We seek to eliminate stigma and discrimination and advance full inclusion in all aspects of community life. This includes discrimination affecting not only people with behavioral health conditions, but also people who face unequal burdens and barriers to the protections and benefits of citizenship due to their race, ethnicity, gender identity, or disability status. MAMH has a demonstrated track record of furthering its mission by convening stakeholders across the behavioral health and public health communities; disseminating emerging knowledge; and providing subject matter expertise to inform public policy, service delivery, and payment methodologies.

MAMH opposes H.1993/S.1241, An Act to strengthen emergency restraint for persons suffering dangerous or violent mental illness

- This bill amends Chapter 123, the mental health statute, to expand the criteria for admission to a psychiatric facility and, in certain cases, to allow for expedited readmissions to such facilities. First, it adds a new Section 12(a)(1) to allow for hospital admission for “a person who is violent,

homicidal, or poses a risk of serious physical harm to another.” ***This new 12(a)(1) stands in contrast to the existing Section 12(a) which allows for detention in a facility but does not provide for admission (that is pursuant to Section 12(b)) and which only allows such detention on the basis of that failure to hospitalize would create the likelihood of serious harm by reason of mental illness. In this way, this bill potentially would dramatically expand the bases for involuntary admissions to hospital emergency departments (EDs).***¹

- The bill also amends Section 12(d) regarding the requirement of discharge after three days (unless a person agrees to stay voluntarily or the facility superintendent petitions for civil commitment) by adding that persons admitted under the new Section 12(a) must be held the full three days and, after release, must be subject to seven days of supervision in person or by video conference by a licensed social worker or mental health worker (MHW) affiliated with a police department. ***This three-day hold upends the right to discharge if hospitalization is no longer needed or the least restrictive alternative (or if a mistake was made and not rectified with an emergency hearing). It also introduces community oversight, with significant cost, whether needed or not, over a subpopulation of people, many likely with disabilities. It does not identify the nature of the supervision is or why a person would need it.***
- This bill adds new Sections 12(f) and 12(g). Section 12(f) provides access to hospital records to a social worker with supervisory authority over a person, ostensibly a discharged person pursuant to the proposed revised Section 12(d). Section 12(g) states that if the social worker or MHW finds that person “relapsing into mental illness such that he or she again presents a danger of serious harm, or is otherwise not compliant with treatment or supervision, that social worker or MHW shall have authority to petition for expedited readmission to the facility from which the person was released” without a new legal proceeding. ***It is unclear if that authority is limited to the seven-day supervision period or what constitutes relapse. This provision may violate patient confidentiality and is likely to result in more people bouncing in and out of hospitals.***
- ***All three of these changes to Section 12 would raise substantial procedural and substantive due process concerns with the civil commitment statute, which already has sufficient provisions to hold and hospitalize a person exhibiting “dangerous or violent mental illness” under Section 12 with its provision for persons who present an imminent risk of harm to self or others.***

MAMH opposes H.1994/S.1246, An Act to provide more timely treatment of inpatient mental health care

This bill makes several problematic revisions to Chapter 123, most notably shortening time frames for individuals to prepare to defend themselves against involuntary civil commitment and forced medication, likely compromising the ability of many to effectively present their case.

- First, the bill also requires that Department of Mental health (DMH) regulations implementing Chapter 123 be written in a way that recognizes available physician resources and national standards regarding night coverage for physicians. ***This provision is unnecessary and vague.***

¹ There is some uncertainty, however, about the effect of adding this subsection. The new subsection is a subsection of the existing Section 12(a) and also references “hospitalization pursuant to this section.” It is unclear if it, therefore, expands the existing Section 12(a) or defines a subclass of potential patients that also have to meet Section 12(a) criteria.

DMH regulations cannot change statutory requirements that establish physician responsibilities.

- Second, this bill reduces the time frame (to just 24 hours) during which an independent medical examination (IME) could be requested for use in a civil commitment or extraordinary treatment proceeding and then requires that the examiner complete that evaluation within 3 days of it being requested. ***As you will almost certainly learn from the Committee for Public Counsel Services, it would be nearly impossible for attorneys and evaluators to comply with this unrealistic timeline. At the very least it would compromise the quality of independent evaluations or, more likely, the very ability to obtain one at all.***
- Third, this bill removes the ability, through a change in Section 5 of Chapter 123, for counsel to request a delay in a civil commitment or extraordinary treatment proceeding. A similar change is made in Section 7(c) regarding commitment hearings under that section and under Sections 8(d), 15(e), 16, and 18. ***As currently written Section 5 balances the patients' interest in a speedy resolution of the petition of their cases with their interest in presenting a well-prepared defense to the petition. The facility may also have some interest in a speedy resolution, but it is the patients' liberty that is at stake and the facility's interest is neither controlling nor paramount. Moreover, short delays often provide counsel for a patient and the facility to reach compromises such as voluntary admission, agreement to accept treatment, or discharge.***
- Fourth, the bill shortens the time frame by which a Section 8B substituted judgment hearing must be commenced from 14 to 5 days. ***This change would very likely also compromise the ability of counsel for a patient to prepare for a serious hearing – that is a hearing regarding involuntary administration of antipsychotic medication.***²

For all the above reasons, we oppose these two bills. If MAMH can provide any additional information, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely,



Danna Mauch, Ph.D.
President and CEO

² The bill also would amend Section 5-308 of Chapter 190B (the Uniform Probate Code) to shorten the time frame within which temporary guardianship hearings must be held for persons in inpatient mental health facilities to within seven days of the petition. It would also require that the Department of Children and Families and the Office of the Child Advocate create a process and time frames, consistent with existing law, regulation, and procedure, to expedite the court process to request authorization to administer antipsychotic medication to children in DCF custody.