

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

John Doe, et al.

v.

Civil No. 18-cv-1039-LM

Commissioner, New Hampshire
Department of Health and
Human Services

O R D E R

A group of New Hampshire hospitals (“Hospitals”) intervened in this class action to challenge the practice of the Commissioner of the New Hampshire Department of Health and Human Services of boarding individuals experiencing mental health crises in hospital emergency departments while waiting for space in a designated receiving facility (“DRF”). On February 23, 2023, the court granted the Hospitals’ motion for summary judgment, in part, and issued a declaratory judgment that the Commissioner’s boarding practice violated the Hospitals’ Fourth Amendment right against unreasonable seizure of their emergency departments. The court gave the Hospitals and the Commissioner time to agree to terms for a permanent injunction or to file separate proposed injunctions. The parties were unable to agree and filed separate proposed injunctions.

On May 15, 2023, the court held a hearing on the proposed injunctions. After discussion of the proposals and related issues, the court paused the hearing, prepared a draft injunction, and distributed it for counsels’ consideration. The court then resumed the hearing and heard counsels’ responses to the draft

injunction. Based on the parties' briefing and the hearing, the court issues the following permanent injunction:

PERMANENT INJUNCTION

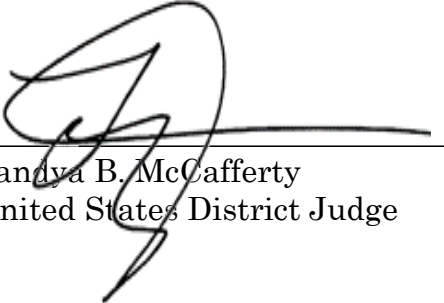
1. The following definitions apply to this injunction:

- a. "Commissioner" means the Defendant in this action, the Commissioner of the Department of Health and Human Services, in her official capacity and as defined in RSA 135-C:2, III.
- b. "Department" means the New Hampshire Department of Health and Human Services, which is overseen by the Commissioner, and as defined in RSA 135-C:2, VI.
- c. "Hospital" and "Hospitals" mean the hospital entities that are the intervenor plaintiffs in this case.
- d. "DRF" means designated receiving facilities and the New Hampshire Hospital and Hampstead Hospital, as defined in RSA 135-C:2, XIV and RSA 135-C:26.
- d. "IEA" means involuntary emergency admission, as that term is used in RSA chapter 135-C:27.
- e. "IEA Certificate" means the certificate signed by a physician, PA, or APRN approved by the Commissioner as provided in RSA 135-C:28.
- f. "IEA Patient" means a patient in a non-DRF bed in a hospital facility for whom an IEA petition has been completed (RSA 135-C:28), who

has been deemed to meet the criteria for involuntary emergency admission in RSA 135- C: 27, and for whom an IEA Certificate has been completed by a physician, PA, or APRN approved by the Commissioner as provided in RSA 135-C:28.

2. The Commissioner is permanently and prospectively enjoined from seizing the Hospitals' property and resources in violation of their Fourth Amendment rights by failing to accept the transfer of IEA Patients to a DRF as soon as is practicable but no later than 6 hours after the transmittal of a completed IEA Certificate by a Hospital to the Department.
3. The Commissioner shall be in compliance with this injunction within 12 months of the date of this order.
4. The Commissioner shall file status reports 4 months and 8 months from the effective date of the injunction.
5. The effective date of this injunction is the date at the bottom of the order.

SO ORDERED.



Landya B. McCafferty
United States District Judge

May 17, 2023

cc: Counsel of record.