

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

DATE: March 2, 2021
TO: Interested Parties
FROM: Jessica Monahan Pollard, PhD, Director, Office of Behavioral Health *Jessica M. Pollard, PhD*
SUBJECT: Revisions to Forms for the Emergency Involuntary Hospitalization Process

The Commissioner of the Department of Health and Human Services has revised the forms associated with the "Blue Paper" emergency involuntary hospitalization process pursuant to statutory authority to prescribe the form of applications at 34-B M.R.S. § 3802(5) and in light of the Law Court's recent decision in *A.S. v. LincolnHealth*, 2021 ME 6.

Please find attached two forms: (1) *State of Maine "Blue Paper" Application for Emergency Involuntary Admission to a Psychiatric Hospital* (Form MH-100.A), and (2) *State of Maine "Blue Paper" Notification to Judicial Officer of Identification of Psychiatric Hospital* (Form MH-100.B). **Effective immediately, these two forms should replace the "Blue Paper" application (Form MH-100) currently in effect and last revised on September 12, 2014.**

The Commissioner is issuing these forms to reflect the holdings expressed in the A.S. decision and to accord with the statutory framework at 34-B M.R.S. § 3863. Of note, judicial authorization to hold an individual at a hospital emergency department is required within twenty-four hours of the individual's detention even if no psychiatric hospital has been identified. In such cases, once initial judicial authorization is obtained, a hospital emergency department may then hold the individual for up to two 48-hour periods so long as certain conditions are met under § 3863(3)(D)-(E). These conditions include the hospital emergency department continuing to evaluate the need for admission to a psychiatric hospital, using its best efforts to locate an inpatient psychiatric bed or other appropriate alternative, and notifying the Department of Health and Human Services.

No further judicial authorization is required during these two 48-hour periods to continue the individual's detention at a hospital emergency department. However, the Department of Health and Human Services will be updating its current reporting protocols to ensure compliance with § 3863(3)(D)-(E) and anticipates issuing new reporting forms to hospital emergency departments soon.

If a psychiatric hospital is identified during these two 48-hour periods, and the applicant is still seeking the individual's admission to a psychiatric hospital, the applicant must immediately seek final judicial review and endorsement in order to authorize the individual's admission to a psychiatric hospital. In circumstances where no psychiatric hospital bed is located during this time, and the individual cannot be safely released from the hospital emergency department, then the applicant may start a new application.

These legal requirements are reflected in the new forms and are highlighted as follows:

State of Maine “Blue Paper” Application for Emergency Involuntary Admission to a Psychiatric Hospital (Form MH-100.A)

- This revised “Blue Paper” application form retains the same format as the form last updated on September 12, 2014 and includes the same three sections: (1) application; (2) certifying examination; and (3) judicial review and endorsement.
- In Section 1, the applicant must check whether the individual is currently being held at a hospital emergency department pursuant to a previously endorsed “Blue Paper” application and, if so, must indicate the date of when the detention began. The applicant must also provide all immediately preceding “Blue Paper” applications that authorized the individual’s detention whenever judicial review and endorsement is being sought.
- Section 1 also includes a check box option for the applicant to indicate whether a psychiatric bed has been identified for admission. If so, the applicant must list the psychiatric hospital. If not, the applicant must list the hospital emergency department where the individual will remain subject to the requirements of § 3863(3)(D)-(E).
- Section 2 remains substantially the same except for minor changes in format and wording to accord with the statute. Of note, the certifying medical practitioner must now check the appropriate qualification under the signature line when completing this section.
- Section 3 has been substantially revised to address two distinct scenarios: when a psychiatric bed is available at the time of the application, and when no psychiatric bed is initially available but is later identified. The applicant must check which option applies – either Section 3.A or Section 3.B – and cross out the inapplicable section.
- Section 3.A should be used when a psychiatric bed is initially available. If judicial review and endorsement is obtained in Section 3.A, the individual may be admitted to the identified psychiatric hospital.
- Section 3.B should be used when no psychiatric bed is initially available. This section is entirely new and contemplates two instances of judicial review and endorsement. Section 3.B.1 is for the initial review and endorsement that must occur within twenty-four hours of an individual’s detention at a hospital emergency department. Section 3.B.2 is for the final review and endorsement that must occur within the two 48-hour periods that follow once an inpatient psychiatric bed has been identified. Both Section 3.B.1 and Section 3.B.2 must be completed to authorize the individual’s admission to a psychiatric hospital.

State of Maine “Blue Paper” Notification to Judicial Officer of Identification of Psychiatric Hospital (Form MH-100.B)

- The Commissioner has developed a new supplemental “Blue Paper” notification form to be used in conjunction with the “Blue Paper” application when a psychiatric hospital is not initially identified at the time of the application. The applicant is required to list the time and date of the initial review and endorsement in Section 3.B.1 of the application, confirm that the individual has been detained at a hospital pursuant to the requirements governing the two 48-hour periods, and indicate the name of the psychiatric hospital to which admission is sought. The applicant must attach to this notification form the “Blue Paper” application that was initially reviewed and endorsed, along with any other

immediately preceding “Blue Paper” applications authorizing the individual’s detention at a hospital emergency department.

The Department acknowledges the new forms represent a change in practice and encourages all interested parties to carefully review the instructions accompanying the forms. The Department is also in the process of establishing trainings and updating the information on its website. Please address any concerns and comments in the meantime to Office of Behavioral Health Clinical Director, Dr. Debra Baeder at Debra.Baeder@maine.gov.