

HOUSE No. 1061

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to strengthen and expand access to behavioral healthcare.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/18/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/18/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/26/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>3/9/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>3/15/2021</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>3/31/2021</i>

HOUSE No. 1061

By Ms. Decker of Cambridge, a petition (accompanied by bill, House, No. 1061) of Marjorie C. Decker and others for legislation to strengthen and expand access to behavioral healthcare. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to strengthen and expand access to behavioral healthcare.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6A of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by inserting the following new section:-

3 Section 16CC. (a) The executive office of health and human services shall convene an
4 advisory committee on the Graduate Medical Education program established pursuant to section
5 78 of chapter 118E. Said committee shall include representatives from the executive office of
6 health and human services, including but not limited to representatives from the division of
7 medical assistance, the department of public health and the department of mental health. Said
8 committee shall work in consultation with the Health Policy Commission and the Center for
9 Health Information and Analysis.

10 (b) The advisory committee shall annually collect publicly available data regarding the
11 Graduate Medical Education program. Such data shall include, but not be limited to: (i) the
12 hospitals participating in the program; (ii) the amount of funding received per hospital for the

13 program; (iii) the number of licensed psychiatrists in the commonwealth, disaggregated by
14 specialty where possible; (iv) the identification of regions in the commonwealth that experience
15 shortages in access to licensed psychiatrists; (v) estimates of patient populations, disaggregated
16 by demographic metrics, including but not limited to, race, age and gender identity, who lack
17 access to psychiatric care; (vi) estimates of retention of psychiatrists in the commonwealth,
18 disaggregated by specialty where possible.

19 (c) The advisory committee shall submit a report including, but not limited to: (i) the
20 number of licensed psychiatrists in the commonwealth, disaggregated by specialty; (ii) an
21 analysis of the impact of the Graduate Medical Program on the number of licensed psychiatrists
22 in the commonwealth, disaggregated by specialty; (iii) an analysis of the impact of the Graduate
23 Medical Program on the retention of licensed psychiatrists in the commonwealth, disaggregated
24 by specialty; (iv) an analysis of the impact of the Graduate Medical Program on increasing access
25 to psychiatric services across regions of the commonwealth and across patient populations,
26 disaggregated by demographic metrics, including but not limited to, race, age and gender
27 identity; (v) an evaluation of the impact of the Graduate Medical Education program on the
28 quality of psychiatric care received by patients; (vi) an evaluation of the impact of the Graduate
29 Medical Education program on the well-being of psychiatrists in the commonwealth; (vii) the
30 cost of the Graduate Medical Program; (viii) an evaluation of the impact of the Graduate Medical
31 Education program on the cost of psychiatric services in the commonwealth; (ix)
32 recommendations, where appropriate, regarding higher education policies and programming to
33 support the psychiatric workforce in the commonwealth, based on an evaluation of the
34 experiences and outcomes of Graduate Medical Education participants; and (ix) legislative and
35 regulatory recommendations, where appropriate, to support the Graduate Medical Education

36 program. The report shall be submitted to the governor, the chairs of the house and senate
37 committees on ways and means, the chairs of the joint committee of healthcare financing, the
38 chairs of the joint committee on mental health, substance use and recovery and the chairs of the
39 joint committee on labor and workforce development every five years.

40 (d) The executive office of health and human services shall develop a communication and
41 outreach program to inform hospitals of the availability of Graduate Medical Education funding
42 to train psychiatrists.

43 SECTION 2. Section 9 of chapter 13 of the General Laws, as appearing in the 2018
44 Official Edition, is hereby amended by inserting after the word “workers”, in line 8, the
45 following words:- , the board of registration of social workers, the board of registration of
46 psychologists, the board of registration of allied mental health and human services professions.

47 SECTION 3. Section 76 of chapter 13 of the General Laws, as appearing in the 2018
48 Official Edition, is hereby amended by inserting the following new sentence:-

49 The governor shall not leave a member of said board unappointed for a period longer
50 than six months.

51 SECTION 4. Section 79 of chapter 13 of the General Laws, as appearing in the 2018
52 Official Edition, is hereby amended by striking out, in lines 17 and 18 and in line 27, the words
53 “director of consumer affairs and business regulations” and inserting in place thereof, in each
54 instance, the following words:- commissioner of public health.

55 SECTION 5. Chapter 13 of the General Laws, as appearing in the 2018 Official Edition,
56 is hereby further amended by striking out section 80 and inserting in place thereof the following
57 section:-

58 Section 80. There shall be a board of registration of social workers that shall consist of:
59 the commissioner of children and families or a designee who is licensed as either a certified
60 social worker or an independent clinical social worker under sections 130 to 137, inclusive, of
61 chapter 112; the commissioner of mental health or a designee who is licensed as either a certified
62 social worker or an independent clinical social worker under said sections 130 to 137, inclusive,
63 of said chapter 112; and 7 members to be appointed by the governor, 1 of whom shall be a
64 representative of an accredited school of social work, 3 of whom shall be licensed as a certified
65 social worker or an independent clinical social worker under said sections 130 to 137, inclusive,
66 of said chapter 112, 1 of whom shall be licensed under said sections 130 to 137, inclusive, of
67 said chapter 112 and an active member of an organized labor organization representing social
68 workers and 2 of whom shall be members of the general public. At least 1 licensed social work
69 member and at least 1 member from the general public shall represent an underserved
70 population, as defined by the United States Department of Health and Human Services. Not more
71 than 6 members of the board shall belong to any 1 political party.

72 The governor shall not leave a member of said board unappointed for a period longer
73 than six months.

74 SECTION 6. Section 84 of chapter 13 of the General Laws, as appearing in the 2018
75 Official Edition, is hereby amended by striking out, in lines 8 and 9, the words “division of

76 professional licensure” and inserting in place thereof the following words:- department of public
77 health.

78 SECTION 7. Section 84 of chapter 13 of the General Laws, as appearing in the 2018
79 Official Edition, is hereby further amended by striking out, in lines 44 and 45, inclusive, the
80 words “Division of Professional Licensure Trust Fund established in section 35V” and inserting
81 in place thereof the following words:- Quality in Health Professions Trust Fund established in
82 section 35X.

83 SECTION 8. Section 88 of chapter 13 of the General Laws, as appearing in the 2018
84 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words “division of
85 professional licensure” and inserting in place thereof the following words:- department of public
86 health.

87 SECTION 9. Said section 88 of chapter 13 of the General Laws, as appearing in the 2018
88 Official Edition, is hereby further amended by inserting the following new sentence:-

89 The governor shall not leave a member of said board unappointed for a period longer
90 than six months.

91 SECTION 10. The first paragraph of section 90 of chapter 13 of the General Laws, as
92 appearing in the 2018 Official Edition, is hereby amended by striking out the third sentence.

93 SECTION 11. Section 90 of chapter 13 of the General Laws, as appearing in the 2018
94 Official Edition, is hereby further amended by striking out the third paragraph, as so appearing,
95 and inserting in place thereof the following paragraph:-

96 The commissioner of public health may review and approve the rules and regulations
97 proposed by the board.

98 SECTION 12. Chapter 29 of the General Laws, as appearing in the 2018 Official Edition,
99 is hereby amended by inserting after section 2CCCCC the following section:-

100 Section 2DDDDD.

101 (a) There shall be a Behavioral Health Investment Trust Fund, in this section called the
102 fund. The fund shall be administered by the secretary of the executive office of health and human
103 services. The purpose of the fund shall be to support investments in the behavioral health
104 infrastructure in the commonwealth, including but not limited to: (i) establishing additional
105 inpatient psychiatric beds and providing supplemental payments, as needed, for said beds; (ii)
106 expanding outpatient and partial hospitalization treatment settings, intensive community based
107 acute treatment programs, community based acute treatment programs, substance use treatment
108 programs, crisis stabilization units and community mental health centers; (iii) supporting
109 increased rates of payment for behavioral health providers; (iv) establishing a behavioral health
110 home hospital pilot program; (v) supporting an expanded and culturally and linguistically-
111 competent behavioral health workforce in the commonwealth, including but not limited to
112 psychiatrists, psychologists, nurses, social workers, mental health workers, sitters, certified
113 nursing assistants, licensed mental health counselors, recovery coaches and peer specialists via
114 programs including, but not limited to, psychiatric Graduate Medical Education payments and
115 loan forgiveness programs to increase access to behavioral healthcare equitably across the
116 commonwealth.

117 SECTION 13. Chapter 32A of the General Laws, as appearing in the 2018 Official
118 Edition, is hereby amended by inserting after section 17O the following new section:-

119 Section 17OO. The commission shall provide to any active or retired employee of the
120 commonwealth who is insured under the group insurance commission coverage for medically
121 necessary mental health treatment and shall not require a preauthorization prior to obtaining
122 treatment. Medical necessity shall be determined by the treating clinician in consultation with the
123 patient and noted in the patient's medical record.

124 SECTION 14. Section 25C ½ of chapter 111 of the General Laws, as appearing in the
125 2018 Official Edition, is hereby amended by inserting after subsection (a)(4) the following
126 subsection:-

127 (5) A health facility if the facility plans to make a capital expenditure for the
128 development of acute psychiatric services including, inpatient, community based acute treatment,
129 intensive community based acute treatment and partial hospitalization program; provided that the
130 health facility demonstrates the need for a license from the department of mental health pursuant
131 to paragraph c of section 19 of chapter 19 of the general laws, as so appearing.

132 SECTION 15. Chapter 111C of the General Laws, as so appearing, is hereby amended by
133 adding the following subsection:-

134 (c) MIH programs that are focused on behavioral health services shall not be subject to
135 application and registration fees.

136 SECTION 16. Section 2 of chapter 112 of the General Laws, as appearing in the 2018
137 Official Edition, is hereby amended in the first paragraph by inserting after the second sentence
138 the following sentence:-

139 The board shall implement administrative procedures to ensure that applications for
140 registration, including registration of qualified physicians who have been licensed or registered
141 upon a written examination in another state pursuant to paragraph 3 of this section, are reviewed
142 and processed within 90 days from the date of submission.

143 SECTION 17. Section 2 of chapter 112 of the General Laws, as appearing in the 2018
144 Official Edition, is hereby further amended by inserting after the sixth paragraph the following
145 paragraph:-

146 If the board has not made a determination on a physician's application for renewal of the
147 certificate of registration within 90 days from the date of submission of a complete renewal
148 application, the board shall issue a temporary registration to the physician so that the physician
149 can complete the internal hospital credentialing and privileging process at the hospital at which
150 the physician is employed or at the hospital at which the physician will be employed.

151 SECTION 18. Section 61 of chapter 112 of the General Laws, as appearing in the 2018
152 Official Edition, is hereby amended by striking out, in line 18, the words "A board of
153 registration" and inserting in place thereof the following words:- Each board of registration
154 under the supervision of the department of public health may discipline a holder of a license,
155 certificate, registration or authority issued pursuant to this chapter and each board of registration.

156 SECTION 19. Section 61 of chapter 112 of the General Laws, as appearing in the 2018
157 Official Edition, is hereby further amended by striking out, in lines 49 and 50, the words "a

158 board of registration” and inserting in place thereof the following words:- each board of
159 registration under the supervision of the department of public health and each board of
160 registration.

161 SECTION 20. Section 65B of chapter 112 of the General Laws, as appearing in the 2018
162 Official Edition, is hereby amended by striking out, in line 1, the words “A board of registration”
163 and inserting in place thereof the following words:- Each board of registration under the
164 supervision of the department of public health and each board of registration.

165 SECTION 21. Section 65F of said chapter 112, as appearing in the 2018 Official Edition,
166 is hereby amended by inserting after the word “licensure”, in line 4, the following words:- or a
167 board of registration under the supervision of the department of public health.

168 SECTION 22. Section 126 of chapter 112, as appearing in the 2018 Official Edition, is
169 hereby amended by adding the following paragraph:- All application fees and civil
170 administrative penalties and fines collected by the board under sections 61 and 118 to 129B,
171 inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in
172 section 35X of chapter 10.

173 SECTION 23. Section 136 of chapter 112, as appearing in the 2018 Official Edition, is
174 hereby amended by adding the following paragraph:- All application fees and civil
175 administrative penalties and fines collected by the board under sections 61 and 130 to 137,
176 inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in
177 section 35X of chapter 10.

178 SECTION 24. Section 168 of chapter 112, as appearing in the 2018 Official Edition, is
179 hereby amended by adding the following paragraph:- All application fees and civil

180 administrative penalties and fines collected by the board under sections 61 and 163 to 172,
181 inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in
182 section 35X of chapter 10.

183 SECTION 25. Chapter 118E of the General Laws, as appearing in the 2018 Official
184 Edition, is hereby amended by inserting after section 10L the following new section:-

185 Section 10M. The division and its contracted health insurers, health plans, health
186 maintenance organizations, behavioral health management firms and third-party administrators
187 under contract to a Medicaid managed care organization or primary care clinician plan shall
188 provide coverage for the administration of all medically necessary services for mental health
189 treatment and shall not require a preauthorization prior to obtaining treatment. Medical necessity
190 shall be determined by the treating clinician in consultation with the patient and noted in the
191 patient's medical record.

192 SECTION 26. Chapter 118E of the General Laws, as appearing in the 2018 Official
193 Edition, is hereby amended by inserting at the end the following new section:-

194 Section 78. MassHealth shall make Graduate Medical Education payments to address
195 psychiatrist, and especially child and adolescent psychiatrist, shortages in the commonwealth.

196 SECTION 27. Section 24B of chapter 175 of the General Laws, as appearing in the 2018
197 Official Edition, is hereby amended by inserting after the first paragraph the following
198 paragraphs:

199 A carrier, as defined in section 1 of chapter 176O, shall be required to pay for health care
200 services ordered by the treating health care provider if (1) the services are a covered benefit

201 under the insured's health benefit plan; and (2) the services follow the carrier's clinical review
202 criteria. Provided however, a claim for treatment of medically necessary services may not be
203 denied if the treating health care provider follows the carrier's approved method for securing
204 authorization for a covered service for the insured at the time the service was provided. A carrier
205 shall have no more than twelve months after the original payment was received by the provider
206 to recoup a full or partial payment for a claim for services rendered, or to adjust a subsequent
207 payment to reflect a recoupment of a full or partial payment. However, a carrier shall not recoup
208 payments more than ninety days after the original payment was received by a provider for
209 services provided to an insured that the carrier deems ineligible for coverage because the insured
210 was retroactively terminated or retroactively disenrolled for services, provided that the provider
211 can document that it received verification of an insured's eligibility status using the carrier's
212 approved method for verifying eligibility at the time service was provided. Claims may also not
213 be recouped for utilization review purposes if the services were already deemed medically
214 necessary or the manner in which the services were accessed or provided were previously
215 approved by the carrier or its contractor. A carrier which seeks to make an adjustment pursuant
216 to this section shall provide the health care provider with written notice that explains in detail the
217 reasons for the recoupment, identifies each previously paid claim for which a recoupment is
218 sought, and provides the health care provider with thirty days to challenge the request for
219 recoupment. Such written notice shall be made to the health provider not less than thirty days
220 prior to the seeking of a recoupment or the making of an adjustment.

221 SECTION 28. Chapter 175 of the General Laws, as appearing in the 2018 Official
222 Edition, is hereby amended by inserting after section 47KK the following section:-

223 Section 47LL. Any policy, contract, agreement, plan or certificate of insurance issued,
224 delivered or renewed within the commonwealth, which is considered creditable coverage under
225 section 1 of chapter 111M, shall provide coverage for medically necessary mental health
226 treatment and shall not require a preauthorization prior to obtaining treatment. Medical necessity
227 shall be determined by the treating clinician in consultation with the patient and noted in the
228 patient's medical record.

229 SECTION 29. Section 8A of chapter 176A of the General Laws, as appearing in the 2018
230 Official Edition, is hereby amended by inserting after the word "specialist", in line 125, the
231 following words:- , a clinician practicing under the supervision of a licensed professional, and
232 working towards licensure, in a clinic licensed under chapter 111.

233 SECTION 30. Chapter 176A of the General Laws, as appearing in the 2018 Official
234 Edition, is hereby amended by inserting after section 8MM the following section:-

235 Section 8NN. Any contract between a subscriber and the corporation under an individual
236 or group hospital service plan which is delivered, issued or renewed within the commonwealth
237 shall provide coverage for medically necessary mental health treatment and shall not require a
238 preauthorization prior to obtaining treatment. Medical necessity shall be determined by the
239 treating clinician in consultation with the patient and noted in the patient's medical record.

240 SECTION 31. Section 4A of chapter 176B of the General Laws, as appearing in the 2018
241 Official Edition, is hereby amended by inserting after the word "specialist", in line 120, the
242 following words:- , a clinician practicing under the supervision of a licensed professional, and
243 working towards licensure, in a clinic licensed under chapter 111.

244 SECTION 32. Chapter 176B of the General Laws, as appearing in the 2018 Official
245 Edition, is hereby amended by inserting after section 4MM the following section:-

246 Section 4NN. Any subscription certificate under an individual or group medical service
247 agreement delivered, issued or renewed within the commonwealth shall provide coverage for
248 medically necessary mental health treatment and shall not require a preauthorization prior to
249 obtaining treatment. Medical necessity shall be determined by the treating clinician in
250 consultation with the patient and noted in the patient’s medical record.

251 SECTION 33. Section 4M of chapter 176G of the General Laws, as appearing in the
252 2018 Official Edition, is hereby amended by inserting after the word “specialist”, in line 117, the
253 following words:- , a clinician practicing under the supervision of a licensed professional, and
254 working towards licensure, in a clinic licensed under chapter 111.

255 SECTION 34. Chapter 176G of the General Laws is hereby amended by inserting after
256 section 4EE the following section:-

257 Section 4FF. Any individual or group health maintenance contract that is issued or
258 renewed shall provide coverage for medically necessary mental health treatment and shall not
259 require a preauthorization prior to obtaining treatment. Medical necessity shall be determined by
260 the treating clinician in consultation with the patient and noted in the patient’s medical record.

261 SECTION 35. Notwithstanding any general or special law to the contrary, the so called
262 expedited psychiatric inpatient admissions protocol, developed by the executive office of health
263 and human services, department of mental health, department of public health, division of
264 medical assistance and division of insurance, shall include within the escalation protocol patients
265 who initially had a primary medical diagnosis or primary presenting problem requiring treatment

266 on a medical-surgical floor, who have been subsequently medically cleared and are boarding on
267 a medical-surgical floor for an inpatient psychiatric placement.

268 SECTION 36. Notwithstanding any general or special law to the contrary, the health
269 policy commission, the division of medical assistance, four representatives from academic
270 medical centers currently rendering inpatient services in a patient's home, the department of
271 public health and the department of mental health, shall conduct a study and issue a report
272 regarding the design of a behavioral health home hospital program, herein referred to as the
273 program. The study shall include, but not be limited to: (i) the recommendation of patient
274 populations who would be best served by the provision of behavioral healthcare in a home
275 environment; (ii) the identification of healthcare providers who would make up the program care
276 team; (iii) the projected impact of the program on the rate of psychiatric emergency department
277 boarding statewide; (iv) the identification of safety concerns regarding the provision of
278 behavioral healthcare in a home environment and recommendations to address said concerns; (v)
279 the projected impact of the program on the availability of psychiatric hospital beds in the
280 commonwealth; (vi) the projected cost estimates of the program; (vii) a comparison of cost
281 estimates of providing behavioral healthcare in the home versus in a healthcare facility; (viii) an
282 analysis of the quality of patient care received through the program; (ix) the identification of
283 screening protocols before care at home begins to assess medical and non-medical factors,
284 including working utilities, assessment of physical barriers and screenings for domestic violence
285 concerns; (x) recommendations for minimum personnel visits, the provision of immediate, on-
286 demand telehealth connections with program staff; and (xi) recommendations for minimum
287 emergency response times. The report shall be submitted to the governor, the chairs of the joint
288 committee on health care financing, the chairs of the joint committee on mental health, substance

289 use and recovery and the house and senate committees on ways and means no later than July 31,
290 2022.

291 SECTION 37. (a) There shall be a task force to: (i) evaluate ways to ensure the financial
292 stability of inpatient behavioral health units and facilities; (ii) consider the role of inpatient
293 behavioral health units and facilities within the continuum of behavioral health services; and (iii)
294 address current behavioral health workforce challenges. The task force shall consist of the
295 following members: the executive director of the health policy commission, who shall serve as
296 co-chair; the executive director of the center for health information and analysis, who shall serve
297 as co-chair; the assistant secretary for MassHealth or his/her designee, the commissioner of the
298 department of mental health or his/her designee, the commissioner of the department of public
299 health or his/her designee, and 1 representative from each of the following organizations: the
300 Massachusetts Health & Hospital Association; the Massachusetts Psychiatric Society; the
301 Massachusetts Association of Behavioral Health Systems; the Massachusetts Psychological
302 Association; the Massachusetts Association of Advanced Practice Psychiatric Nurses; the
303 National Association of Social Workers-Massachusetts Chapter; and the Massachusetts
304 Association for Mental Health.

305 (b) The task force shall conduct an analysis and issue a report which shall include but not
306 be limited to: (i) a review of the methodologies used for determining reimbursement rates for
307 inpatient hospital behavioral health services provided to MassHealth members including those by
308 MassHealth's contracted health insurers, health plans, behavioral health management firms, and
309 third party administrators under contract to a Medicaid managed care organization or primary
310 care clinician plan; (ii) an analysis of the estimated payment levels associated with MassHealth
311 reimbursement relative to the cost of providing inpatient hospital behavioral health care in acute

312 hospital units and freestanding facilities; (iii) recommended improvements to MassHealth
313 reimbursement for care provided by inpatient behavioral health units and facilities to promote
314 financial stability, including a review of a cost-based method for rate determination; (iv) an
315 assessment of the utility and limitations of incorporating diagnosis-related group DRG
316 classifications in said rate calculation; (v) industry-wide workforce initiatives including, but not
317 limited to, ways to improve recruitment, training, including transitional training opportunities for
318 employment in behavioral health units and facilities and training in new behavioral healthcare
319 modalities including but not limited to telehealth, retention, rates of pay and other methods of
320 ensuring a sustainable, culturally and linguistically-competent behavioral health workforce; and
321 (vi) the role of external economic factors on the development and retention of the behavioral
322 health workforce such as the increases in the minimum wage and competition from other
323 industries.

324 (c) The task force shall convene its first meeting within 30 days after the effective date of
325 this act. The task force shall submit its report, including any proposed legislation necessary to
326 carry out its recommendations, by filing the same with the clerks of the house of representatives
327 and senate, the joint committee on health care financing, the joint committee on mental health,
328 substance use and recovery, the joint committee on labor and workforce development and the
329 house and senate committees on ways and means not later than December 31, 2021.