SENATE DOCKET, NO. 2041 FILED ON: 2/19/2021

SENATE . . . . . No. 107

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

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 relative to child ED boarding.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cindy F. Friedman	*Fourth Middlesex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*3/19/2021*
Susannah M. Whipps	*2nd Franklin*	*3/24/2021*
Michael P. Kushmerek	*3rd Worcester*	*4/1/2021*

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SENATE . . . . . No. 107

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 107) of Cindy F. Friedman, Joanne M. Comerford, Susannah M. Whipps and Michael P. Kushmerek for legislation relative to child ED boarding. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

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

An Act relative to child ED boarding.

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

SECTION 1. Chapter 6A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out section 16P and inserting in place thereof the following section:-

Section 16P. (a) For the purpose of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Awaiting residential disposition", an individual who waits 72 hours or more to be moved from an acute level of psychiatric care to a less intensive or less restrictive clinically-appropriate level of psychiatric care.

"Boarding", when an individual waits 12 hours or more to be placed in an appropriate therapeutic setting, after being assessed to need acute psychiatric treatment, intensive community-based treatment, continuing care unit placement, or post-hospitalization residential

placement, and having been determined by a licensed health care provider to be medically stable without needing urgent medical assessment or hospitalization for a physical health condition.

"Children and adolescents", individuals between the ages of 0 and 18 years old.

(b) The secretary of health and human services shall facilitate the coordination of services for children and adolescents awaiting clinically-appropriate behavioral health services by developing and maintaining an online portal that enables the public to access real-time data on children and adolescents who are boarding, awaiting residential disposition or are in the care or custody of a state agency and are awaiting discharge to an appropriate foster home or a congregate or group care program.

(c) The online portal shall include, but not be limited to, the following data: (1) the total number of children and adolescents boarding in the commonwealth, including a breakdown of the total number of children and adolescents boarding in hospital emergency rooms or at emergency services sites, on a medical floor after having received medical stabilization treatment, or while at home; (2) the total number of children and adolescents awaiting residential disposition in the commonwealth, including a breakdown of the type of facility that each child or adolescent is currently placed at while awaiting residential disposition and the type of placement for which each child and adolescent is waiting; and (3) the total number of children and adolescents in the commonwealth who are hospitalized and in the care or custody of a state agency, and have been assessed to no longer need hospital-level care, but have waited 72 hours or more for discharge to an appropriate foster home or a congregate or group care program.

(d) For each category of children and adolescents data published on the online portal pursuant to subsection (c), the online portal shall include the following data: (1) the average

length of wait for discharge to the appropriate level of care or placement; (2) the level of care required as determined by a licensed health care provider; (3) the primary behavioral health diagnosis and any comorbid conditions relevant for the purposes of placement; (4) the primary reason for boarding, awaiting residential disposition or, for children and adolescents who are hospitalized and in the care or custody of a state agency and have been assessed to no longer need hospital-level care, the primary reason why such children and adolescents have waited 72 hours or more for discharge to an appropriate foster home or a congregate or group care program; (5) whether the children and adolescents are in the care or custody of the department of children and families or the department of youth services or are eligible for services from the department of mental health or the department of developmental services; (6) the type of insurance coverage for the children and adolescents; and (7) the ages, races, ethnicities, preferred spoken languages, and genders of the children and adolescents.

(e) The online portal shall include data on the availability of pediatric acute psychiatric beds, intensive community-based treatment beds, continuing care beds, and post-hospitalization residential beds. The online portal shall also enable a real-time bed search and shall categorize beds by geographic region in the commonwealth, which shall include, but not be limited to: (1) the total number of beds licensed by the department of mental health, the department of public health and the department of early education and care, and the total number of available beds broken down by licensing authority; (2) the total number of available beds broken down by children and adolescents age ranges; (3) the average daily bed availability broken down by licensing authority and by children and adolescent age ranges; (4) daily bed admissions broken down by licensing authority and by children and adolescent age ranges; (5) the location from which a child or adolescent was admitted; (6) daily bed discharges broken down by licensing

authority and by children and adolescent age ranges; and (7) the average length of stay broken down by licensing authority and by children and adolescent age ranges.

(f) (1) Quarterly, not later than 14 days after the preceding quarter has ended, the secretary shall compile a report on the status of children and adolescents awaiting clinically-appropriate behavioral health services, which shall include a summary and assessment of the data published on the online portal under subsections (c), (d) and (e) for the immediately preceding quarter.

(2) Annually, not later than February 1, the secretary shall compile a report on the status of children and adolescents awaiting clinically-appropriate behavioral health services, which shall include a summary and assessment of the data published on the online portal under subsections (c), (d) and (e) for the immediately preceding calendar year.

(3) The reports required under paragraphs (1) and (2) of this subsection shall be submitted to the children's behavioral health advisory council established in section 16Q, the office of the child advocate, the health policy commission, the chairs of the joint committee on health care financing, the chairs of the joint committee on mental health, substance use and recovery, the chairs of the joint committee on children, families and persons with disabilities, and the senate and house committees on ways and means.

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

Section 20. Every 5 years, the commission, in collaboration with the department of public health, the department of mental health, and the department of developmental services, shall review data on children and adolescents awaiting clinically-appropriate behavioral health

services published on the online portal under section 16P of chapter 6A and compiled by the secretary of health and human services in the reports submitted to the commission under subsection (f) of section 16P of chapter 6A, and shall publish on its website a pediatric behavioral health planning report that analyzes the pediatric behavioral health needs of the commonwealth. The report shall include, but not be limited to, an analysis of: (i) the availability of pediatric acute psychiatric beds, intensive community-based treatment beds, continuing care beds, and post-hospitalization residential beds by geographic region in the commonwealth and by sub-specialty, and any service limitations; (ii) the capacity of the pediatric behavioral health workforce to respond to the acute behavioral health needs of children and adolescents across the commonwealth; and (iii) any statutory, regulatory or operational factors that may impact pediatric boarding.

SECTION 3. Chapter 18C of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after section 10 the following section:-

Section 10A. (a) The child advocate shall review data on children and adolescents awaiting clinically-appropriate behavioral health services published on the online portal under section 16P of chapter 6A and compiled by the secretary of health and human services in the reports submitted to the child advocate under subsection (f) of section 16P of chapter 6A, and shall draft an annual report analyzing any trends in the data from the immediately preceding calendar year and making recommendations for decreasing and eliminating the number of children and adolescents awaiting clinically-appropriate behavioral health services by geographic region in the commonwealth and by sub-specialty. The report shall be submitted annually, not later than April 1, to the governor, the children's behavioral health advisory committee established in section 16Q of chapter 6A, the clerks of the senate and the house of

representatives, the chairs of the joint committee on health care financing, the chairs of the joint committee on mental health, substance use and recovery, the chairs of the joint committee on children, families and persons with disabilities, and the senate and house committees on ways and means.

SECTION 4. Said chapter 18C is hereby further amended by adding the following section:-

Section 14A. (a) The office shall establish a complex case resolution panel, hereinafter referred to as the "panel". The panel shall include: the child advocate or a designee, who shall serve as chair; the secretary of health and human services or a designee; the director of Medicaid or a designee; the commissioner of mental health or a designee; the commissioner of children and families or a designee; the commissioner of elementary and secondary education or a designee; the commissioner of developmental services or a designee; and 2 individuals to be appointed by the child advocate to serve for 2-year terms, 1 of whom shall be a representative from an organization providing services to families of children with behavioral health needs and 1 of whom shall be a representative from an organization that assists families in navigating the health and human services system; provided, that the 2 individuals appointed for 2-year terms shall recuse themselves from any matter in which they have a direct conflict of interest; and provided further, that for the 2 individuals appointed for 2-year terms, if a vacancy occurs prior to the end of the individual's 2-year term, the vacancy shall be immediately filled by the child advocate. The child advocate may require the participation of a local educational agency when the matter involves or may involve services provided by or paid for by said local educational agency. Panel member designees shall be empowered by the agency or local educational agency to act on behalf of the appointee in making decisions and agreements.

(b) The panel shall review and resolve matters referred to the panel by a parent or legal guardian or a legal advocate, a physician or behavioral health provider authorized to act on behalf of a parent or guardian, seeking to access services for a child with complex behavioral health needs by resolving any administrative, financial or clinical barriers to such services that arise from disputes between state agencies, MassHealth or local educational agencies; provided, that the child has waited in a hospital emergency department or a medical bed or at home for 5 days or more to be placed in an appropriate therapeutic setting after being assessed to need acute psychiatric treatment and having been determined by a licensed health care provider to be medically stable without need for urgent medical assessment or hospitalization for a physical health condition.

(c) The panel shall convene not later than 1 business day after receiving a referral under subsection (b). If the lack of a primary care manager is impeding the child's access to services and if, after 1 business day after the panel convenes for the first time on a matter, the panel cannot reach consensus regarding the primary state or local agency responsible for case management, the child advocate has the authority to and shall immediately designate an agency to act as the interim primary care manager until a final decision is issued on the matter under subsection (d). If the child is unable to access services for which they are eligible or entitled because of a disagreement about the responsibility for payment among state agencies and local education agencies and if, after 1 business day after the panel convenes for the first time on a matter, the panel cannot reach consensus about responsibility for payment among the agencies or local education agencies, the child advocate has the authority to and shall immediately require the relevant state and local agencies to enter into a binding temporary cost-share agreement until a final decision is issued on the matter under subsection (d).

(d) Not later than 14 business days after the panel convenes for the first time on a matter, the panel shall complete its review and, after hearing from the parents or guardian of the child, relevant agencies and service providers, and reviewing relevant materials, shall issue a decision on which services are appropriate for the child, who shall provide such services and who shall pay for such services. If the lack of a primary care manager is impeding the child's access to services and if, after 14 business days, the panel cannot reach consensus regarding the agency or entity with primary responsibility for managing the care of a child, the child advocate has the authority to and shall immediately designate an agency to act as the primary care manager. The designated agency shall remain the primary case manager until an alternative agreement is entered into or until the child no longer qualifies for the services. If the child is unable to access services for which they are eligible or entitled because of a disagreement about the responsibility for payment among state agencies and local education agencies and if, after 14 days, the panel cannot reach consensus about responsibility for payment among the agencies or local education agencies, the child advocate has the authority to and shall immediately require the relevant state and local agencies to enter into a cost-share agreement. The cost-share agreement shall remain in effect until the child advocate is informed in writing of an alternative cost-share or payment agreement having been implemented or until the child no longer qualifies for the services.

Panel decisions shall be issued to the parent or guardian in writing not later than 3 days after the decision and shall include the basis for the decision, the basis for the denial of services, if any, and information regarding rights to further review or appeal of a decision.

(e) If the parent or guardian of the child disputes the decision of the panel under subsection (d), the parent or guardian may file an appeal with the division of administrative law

appeals, established under section 4H of chapter 7, which shall conduct an adjudicatory proceeding and order any necessary relief consistent with state or federal law.

(f) Nothing in this section shall be construed to entitle a child to services for which the child would otherwise be ineligible under applicable agency statutes or regulations.

(g) Notwithstanding chapters 66A, 112 and 119 or any other law related to the confidentiality of personal data, the teams, the child advocate and the division of administrative law appeals shall have access to and may discuss materials related to a case while the case is under review once the parent or guardian has consented in writing and those having access agree in writing to keep the materials confidential. Once the review is complete, all materials shall be returned to the originating source.

(h) Nothing in this section shall limit the rights of parents or children under chapter 71B, the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.

(i) The child advocate shall promulgate regulations to effectuate the purposes of this section.

(j) The child advocate shall publish an annual report summarizing the cases reviewed by the panel in the previous year, the length of time spent at each stage and their final resolution.

SECTION 5. Subsection (a) of section 25C ½ of chapter 111 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after paragraph (4) the following paragraph:-

(5) A health facility if the facility plans to make a capital expenditure for the development of acute psychiatric services, including inpatient, community-based acute treatment, intensive community-based treatment, a continuing care unit and partial hospitalization program; provided, that the health facility demonstrates the need for a license from the department of mental health pursuant to subsection (c) of section 19 of chapter 19.

SECTION 6. Said chapter 111, as so appearing, is hereby amended by inserting after section 51½ the following section:-

Section 51¾. The department, in consultation with the department of mental health, shall promulgate regulations requiring all acute-care hospitals licensed under section 51G to provide or arrange for qualified behavioral health clinicians, during all operating hours of an emergency department or a satellite emergency facility as defined in section 51½, to evaluate and stabilize a person admitted with a behavioral health presentation to the department, or to a facility and to refer such person for appropriate treatment or inpatient admission.

The regulations shall permit evaluation via telemedicine, electronic or telephonic consultation, as deemed appropriate by the department.

The regulations shall be promulgated after consultation with the department of mental health and the division of medical assistance and shall include, but not be limited to, requirements that individuals under the age of 22 receive an expedited evaluation and stabilization process.

SECTION 7. Notwithstanding any general or special law to the contrary, the so called expedited psychiatric inpatient admissions protocol, developed by the executive office of health and human services, department of mental health, department of public health, division of

medical assistance and division of insurance, shall: (i) require, for patients under the age of 22, notification to the department of mental health to expedite placement in or admission to an appropriate treatment program or facility within 48 hours of boarding or within 48 hours of being assessed to need acute psychiatric treatment and having been determined by a licensed health care provider to be medically stable without needing urgent medical assessment or hospitalization for a physical health condition; (ii) include, within the escalation protocol, patients who initially had a primary medical diagnosis or primary presenting problem requiring treatment on a medical-surgical floor, who have been subsequently medically cleared and are boarding on a medical-surgical floor for an inpatient psychiatric placement; and (iii) include, for patients under the age of 22, notification upon discharge from the emergency department, satellite emergency facility or medical-surgical floor to the patient's primary care physician, if known.

SECTION 8. The secretary of health and human services shall develop the online portal established by section 16P of chapter 6A of the General Laws not later than 6 months after the effective date of this act.

SECTION 9. The health policy commission shall publish its first pediatric behavioral health planning report required by section 20 of chapter 6D of the General Laws not later than 1 year after the effective date of this act.

SECTION 10. The office of the child advocate shall publish the first annual report required by section 10A of chapter 18C of the General Laws not later than 1 year after the development of the online portal established by section 16P of chapter 6A of the General Laws.

SECTION 11. Section 6 shall take effect on January 1, 2023; provided, however, that the department of public health shall promulgate regulations to implement section 51¾ of chapter 111 of the General Laws not later than October 1, 2022.