SENATE DOCKET, NO. 1416   FILED ON: 2/16/2021

SENATE . . . . No. 1287

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 to increase investment in behavioral health care in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cindy F. Friedman	*Fourth Middlesex*	
Susannah M. Whipps	*2nd Franklin*	*3/24/2021*
Sal N. DiDomenico	*Middlesex and Suffolk*	*4/1/2021*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*4/1/2021*

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By Ms. Friedman, a petition (accompanied by bill, Senate, No. 1287) of Cindy F. Friedman, Susannah M. Whipps, Sal N. DiDomenico and Joanne M. Comerford for legislation to increase investment in behavioral health care in the Commonwealth. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

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

An Act to increase investment in behavioral health care in the Commonwealth.

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. Section 1 of chapter 6D of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the definition of "After-hours care" the
3 following definitions:-

4 "Aggregate behavioral health baseline expenditures", the sum of all behavioral health
5 expenditures, as defined by the center, in the commonwealth in the calendar year preceding the
6 3-year period to which the aggregate behavioral health expenditure target applies; provided,
7 however, that aggregate behavioral health baseline expenditures shall initially be calculated
8 using calendar year 2021.

9 "Aggregate behavioral health expenditure target", the targeted percentage change in total
10 expenditures on behavioral health in the commonwealth from aggregate behavioral health
11 baseline expenditures.

12 SECTION 2. Said section 1 of said chapter 6D, as so appearing, is hereby further
13 amended by inserting after the definition of “Alternative payment methodologies or methods”
14 the following definitions:-

15 “Behavioral health baseline expenditures”, the sum of all behavioral health expenditures,
16 as defined by the center, by or attributed to an individual health care entity in the calendar year
17 preceding the 3-year period to which the behavioral health expenditure target applies; provided,
18 however, that behavioral health baseline expenditures shall initially be calculated using calendar
19 year 2021.

20 “Behavioral health expenditure target”, the targeted percentage change in expenditures on
21 behavioral health by or attributed to an individual health care entity compared to the entity’s
22 behavioral health baseline expenditures.

23 SECTION 3. Section 8 of said chapter 6D, as so appearing, is hereby amended by
24 striking out subsection (a) and inserting in place thereof the following subsection:-

25 (a) Not later than October 1 of every year, the commission shall hold public hearings
26 based on the report submitted by the center under section 16 of chapter 12C comparing the
27 growth in total health care expenditures to the health care cost growth benchmark for the
28 previous calendar year and comparing the growth in actual aggregate behavioral health
29 expenditures for the previous calendar year to the aggregate behavioral health expenditure target.
30 The hearings shall examine health care provider, provider organization and private and public
31 health care payer costs, prices and cost trends, with particular attention to factors that contribute
32 to cost growth within the commonwealth’s health care system and challenge the ability of the

33 commonwealth’s health care system to meet the benchmark or the aggregate behavioral health
34 expenditure target established under section 9A.

35 SECTION 4. Said section 8 of said chapter 6D, as so appearing, is hereby further
36 amended by striking out, in line 94, the word “and” and inserting in place thereof the following
37 words:- , including behavioral health expenditures, and.

38 SECTION 5. Said chapter 6D, as so appearing, is hereby further amended by inserting
39 after section 9 the following section:-

40 Section 9A. (a) The board shall establish an aggregate behavioral health expenditure
41 target for the commonwealth, which the commission shall prominently publish on its website.

42 (b) The commission shall establish the aggregate behavioral health expenditure target as
43 follows:

44 (1) For the 3-year period ending with calendar year 2024, the aggregate behavioral health
45 expenditure target for each of the 3 years shall be equal to a 30 per cent increase above aggregate
46 behavioral health baseline expenditures, and the behavioral health expenditure target for each of
47 the 3 years shall be equal to a 30 per cent increase above behavioral health baseline expenditures.

48 (2) For calendar years 2025 and beyond, the commission may modify the behavioral
49 health expenditure target and aggregate behavioral health expenditure target, to be effective for
50 each year of a 3-year period, provided that the behavioral health expenditure target and aggregate
51 behavioral health expenditure target shall be approved by a two-thirds vote of the board not later
52 than December 31 of the final calendar year of the preceding 3-year period. If the commission
53 does not act to establish an updated behavioral health expenditure target and aggregate

54 behavioral health expenditure target pursuant to this subsection, the behavioral health
55 expenditure target for each of the 3 years shall be equal to a 30 per cent increase above
56 behavioral health baseline expenditures, and the aggregate behavioral health expenditure target
57 for each of the 3 years shall be equal to a 30 per cent increase above aggregate behavioral health
58 baseline expenditures, until such time as the commission acts to modify the behavioral health
59 expenditure target and aggregate behavioral health expenditure target. If the commission
60 modifies the behavioral health expenditure target and aggregate behavioral health expenditure
61 target, the modification shall not take effect until the 3-year period beginning with the next full
62 calendar year.

63 (c) Prior to establishing the behavioral health expenditure target and aggregate behavioral
64 health expenditure target, the commission shall hold a public hearing. The public hearing shall be
65 based on the report submitted by the center under section 16 of chapter 12C, comparing the
66 actual aggregate expenditures on behavioral health services to the aggregate behavioral health
67 expenditure target, any other data submitted by the center and such other pertinent information or
68 data as may be available to the board. The hearings shall examine the performance of health care
69 entities in meeting the behavioral health expenditure target and the commonwealth's health care
70 system in meeting the aggregate behavioral health expenditure target. The commission shall
71 provide public notice of the hearing at least 45 days prior to the date of the hearing, including
72 notice to the joint committee on health care financing. The joint committee on health care
73 financing may participate in the hearing. The commission shall identify as witnesses for the
74 public hearing a representative sample of providers, provider organizations, payers and such
75 other interested parties as the commission may determine. Any other interested parties may
76 testify at the hearing.

77 SECTION 6. Said chapter 6D, as so appearing, is hereby further amended by inserting
78 after section 10 the following section:-

79 Section 10A. (a) For the purposes of this section, “health care entity” shall mean any
80 entity identified by the center under section 18 of chapter 12C.

81 (b) The commission shall provide notice to all health care entities that have been
82 identified by the center under section 18 of chapter 12C for failure to meet the behavioral health
83 expenditure target. Such notice shall state that the center may analyze the performance of
84 individual health care entities in meeting the behavioral health expenditure target and, beginning
85 in calendar year 2025, the commission may require certain actions, as established in this section,
86 from health care entities so identified.

87 (c) In addition to the notice provided under subsection (b), the commission may require
88 any health care entity that is identified by the center under section 18 of chapter 12C for failure
89 to meet the behavioral health expenditure target to file and implement a performance
90 improvement plan. The commission shall provide written notice to such health care entity that
91 they are required to file a performance improvement plan. Within 45 days of receipt of such
92 written notice, the health care entity shall either:

93 (1) file a performance improvement plan with the commission; or

94 (2) file an application with the commission to waive or extend the requirement to file a
95 performance improvement plan.

96 (d) The health care entity may file any documentation or supporting evidence with the
97 commission to support the health care entity’s application to waive or extend the requirement to

98 file a performance improvement plan. The commission shall require the health care entity to
99 submit any other relevant information it deems necessary in considering the waiver or extension
100 application; provided, however, that such information shall be made public at the discretion of
101 the commission.

102 (e) The commission may waive or delay the requirement for a health care entity to file a
103 performance improvement plan in response to a waiver or extension request filed under
104 subsection (c) in light of all information received from the health care entity, based on a
105 consideration of the following factors: (1) the behavioral health baseline expenditures, costs,
106 price and utilization trends of the health care entity over time, and any demonstrated
107 improvement to increase the proportion of behavioral health expenditures; (2) any ongoing
108 strategies or investments that the health care entity is implementing to invest in or expand access
109 to behavioral health services; (3) whether the factors that led to the inability of the health care
110 entity to meet the behavioral health expenditure target can reasonably be considered to be
111 unanticipated and outside of the control of the entity; provided, that such factors may include,
112 but shall not be limited to, market dynamics, technological changes and other drivers of non-
113 behavioral health spending such as pharmaceutical and medical devices expenses; (4) the overall
114 financial condition of the health care entity; and (5) any other factors the commission considers
115 relevant.

116 (f) If the commission declines to waive or extend the requirement for the health care
117 entity to file a performance improvement plan, the commission shall provide written notice to the
118 health care entity that its application for a waiver or extension was denied and the health care
119 entity shall file a performance improvement plan.

120 (g) The commission shall provide the department of public health any notice requiring a
121 health care entity to file and implement a performance improvement plan pursuant to this
122 section. In the event a health care entity required to file a performance improvement plan under
123 this section submits an application for a notice of determination of need under section 25C or 51
124 of chapter 111, the notice of the commission requiring the health care entity to file and
125 implement a performance improvement plan pursuant to this section shall be considered part of
126 the written record pursuant to said section 25C of chapter 111.

127 (h) A health care entity shall file a performance improvement plan: (1) within 45 days of
128 receipt of a notice under subsection (c); (2) if the health care entity has requested a waiver or
129 extension, within 45 days of receipt of a notice that such waiver or extension has been denied; or
130 (3) if the health care entity is granted an extension, on the date given on such extension. The
131 performance improvement plan shall identify specific strategies, adjustments and action steps the
132 entity proposes to implement to increase the proportion of behavioral health expenditures. The
133 proposed performance improvement plan shall include specific identifiable and measurable
134 expected outcomes and a timetable for implementation.

135 (i) The commission shall approve any performance improvement plan that it determines
136 is reasonably likely to address the underlying cause of the entity's inability to meet the
137 behavioral health expenditure target and has a reasonable expectation for successful
138 implementation.

139 (j) If the board determines that the performance improvement plan is unacceptable or
140 incomplete, the commission may provide consultation on the criteria that have not been met and
141 may allow an additional time period, up to 30 calendar days, for resubmission.

142 (k) Upon approval of the proposed performance improvement plan, the commission shall
143 notify the health care entity to begin immediate implementation of the performance improvement
144 plan. Public notice shall be provided by the commission on its website, identifying that the health
145 care entity is implementing a performance improvement plan. All health care entities
146 implementing an approved performance improvement plan shall be subject to additional
147 reporting requirements and compliance monitoring, as determined by the commission. The
148 commission shall provide assistance to the health care entity in the successful implementation of
149 the performance improvement plan.

150 (l) All health care entities shall, in good faith, work to implement the performance
151 improvement plan. At any point during the implementation of the performance improvement
152 plan the health care entity may file amendments to the performance improvement plan, subject to
153 approval of the commission.

154 (m) At the conclusion of the timetable established in the performance improvement plan,
155 the health care entity shall report to the commission regarding the outcome of the performance
156 improvement plan. If the performance improvement plan was found to be unsuccessful, the
157 commission shall either: (1) extend the implementation timetable of the existing performance
158 improvement plan; (2) approve amendments to the performance improvement plan as proposed
159 by the health care entity; (3) require the health care entity to submit a new performance
160 improvement plan under subsection (c); or (4) waive or delay the requirement to file any
161 additional performance improvement plans.

162 (n) Upon the successful completion of the performance improvement plan, the identity of
163 the health care entity shall be removed from the commission's website.

164 (o) The commission may submit a recommendation for proposed legislation to the joint
165 committee on health care financing if the commission determines that further legislative
166 authority is needed to achieve the health care quality and spending sustainability objectives of
167 section 9A, assist health care entities with the implementation of performance improvement
168 plans or otherwise ensure compliance with the provisions of this section.

169 (p) If the commission determines that a health care entity has: (1) willfully neglected to
170 file a performance improvement plan with the commission by the time required in subsection (h);
171 (2) failed to file an acceptable performance improvement plan in good faith with the
172 commission; (3) failed to implement the performance improvement plan in good faith; or (4)
173 knowingly failed to provide information required by this section to the commission or that
174 knowingly falsifies the same, the commission may assess a civil penalty to the health care entity
175 of not more than $500,000. The commission shall seek to promote compliance with this section
176 and shall only impose a civil penalty as a last resort.

177 (q) The commission shall promulgate regulations necessary to implement this section.

178 (r) Nothing in this section shall be construed as affecting or limiting the applicability of
179 the health care cost growth benchmark established under section 9, and the obligations of a
180 health care entity thereto.

181 SECTION 7. Subsection (a) of section 16 of chapter 12C of the General Laws, as
182 appearing in the 2018 Official Edition, is hereby amended by striking out, in line 2, the words
183 "sections 8, 9 and 10" and inserting in place thereof the following words:- this chapter.

184 SECTION 8. Said subsection (a) of said section 16 of said chapter 12C, as so appearing,
185 is hereby further amended by inserting after the words “commonwealth,” in line 9, the following
186 words:-

187 and shall compare the costs, cost trends, and expenditures with the aggregate behavioral
188 health expenditure target established under section 9A of said chapter 6D,.

189 SECTION 9. Said subsection (a) of said section 16 of said chapter 12C, as so appearing,
190 is hereby further amended by inserting, after the words “rates;” in line 24, the following words:-

191 (5) behavioral health expenditure trends as compared to the aggregate behavioral health
192 baseline expenditures, as defined in section 1 chapter 6D; (6) the proportion of health care
193 expenditures reimbursed under fee-for-service and alternative payment methodologies; (7) the
194 impact of health care payment and delivery reform efforts on health care costs including, but not
195 limited to, the development of limited and tiered networks, increased price transparency,
196 increased utilization of electronic medical records and other health technology; (8) the impact of
197 any assessments including, but not limited to, the health system benefit surcharge collected under
198 section 68 of chapter 118E, on health insurance premiums; (9) trends in utilization of
199 unnecessary or duplicative services, with particular emphasis on imaging and other high-cost
200 services; (10) the prevalence and trends in adoption of alternative payment methodologies and
201 impact of alternative payment methodologies on overall health care spending, insurance
202 premiums and provider rates; (11) the development and status of provider organizations in the
203 commonwealth including, but not limited to, acquisitions, mergers, consolidations and any
204 evidence of excess consolidation or anti-competitive behavior by provider organizations; (12) the
205 impact of health care payment and delivery reform on the quality of care delivered in the

206 commonwealth; and (13) costs, cost trends, price, quality, utilization and patient outcomes
207 related to behavioral health service subcategories, as described in section 21A.

208 SECTION 10. Said section 16 of said chapter 12C, as so appearing, is hereby further
209 amended by adding the following subsections:-

210 (d) The center shall publish the aggregate behavioral health baseline expenditures in its
211 annual report, beginning in the center's 2022 annual report.

212 (e) The center, in consultation with the commission, shall determine the behavioral health
213 baseline expenditures for individual health care entities and shall report to each health care entity
214 its respective baseline expenditures annually, by October 1.

215 SECTION 11. Said chapter 12C, as so appearing, is hereby further amended by striking
216 out section 18 and inserting in place thereof the following section:-

217 Section 18. The center shall perform ongoing analysis of data it receives under this
218 chapter to identify any payers, providers or provider organizations whose: (i) increase in health
219 status adjusted total medical expense is considered excessive and who threaten the ability of the
220 state to meet the health care cost growth benchmark established by the health care finance and
221 policy commission under section 10 of chapter 6D; or (ii) expenditures fail to meet the
222 behavioral health expenditure target under section 9A of chapter 6D. The center shall
223 confidentially provide a list of the payers, providers and provider organizations to the health
224 policy commission such that the commission may pursue further action under sections 10 and
225 10A of chapter 6D.

226 SECTION 12. Section 21A of said chapter 12C, as so appearing, is hereby amended by
227 adding the following sentence:-

228 Said continuing investigation and study shall include developing and defining criteria for
229 health care services to be categorized as behavioral health services, with subcategories including,
230 but not limited to: (i) mental health; (ii) substance use disorder; (iii) outpatient; (iv) inpatient; (v)
231 services for children; (vi) services for adults; and (vii) provider type.

232 SECTION 13. Notwithstanding any general or special law to the contrary, there shall be a
233 special task force to develop guiding principles and practice specifications that will assist health
234 care entities in meeting their annual behavioral health expenditure target, as established by
235 section 9A of chapter 6D of the General Laws.

236 The task force shall consist of 21 individuals: the executive director of the health policy
237 commission or a designee, who shall serve as chair; the secretary of health and human services
238 or a designee; the executive director of the center for health information and analysis or a
239 designee; the senate chair of the joint committee on health care financing or a designee; the
240 house chair of the joint committee on health care financing or a designee; and 16 members to be
241 appointed by the chair, 1 of whom shall be a representative of the Association for Behavioral
242 Healthcare, 1 of whom shall be a representative of Blue Cross Blue Shield of Massachusetts,
243 Inc., 1 of whom shall be a representative of the Children's Mental Health Campaign, 1 of whom
244 shall be a representative from Health Care For All, 1 of whom shall be a representative of the
245 Massachusetts Association for Mental Health, Inc., 1 of whom shall be a representative of
246 Massachusetts Association of Behavioral Health Systems, 1 of whom shall be a representative of
247 the Massachusetts Association of Health Plans, Inc., 1 of whom shall be a representative of the

248 Massachusetts Health and Hospital Association, Inc., 1 of whom shall be a representative of the
249 Massachusetts League of Community Health Centers, 1 of whom shall be from a healthcare
250 consumer organization that advocates on behalf of adults who receive behavioral health care
251 services, 1 of whom shall be from a healthcare consumer organization that advocates on behalf
252 of children who receive behavioral health services, 1 of whom shall be a representative from a
253 behavioral health provider group, 1 of whom shall have expertise in the behavioral health
254 treatment of Black, Indigenous, and People of Color, 1 of whom shall have expertise in the
255 behavioral health treatment of the lesbian, gay, bisexual, transgender, and queer community, 1 of
256 whom shall have expertise in the treatment of individuals with a mental health condition, and 1
257 of whom shall have expertise in the treatment of individuals with a substance use disorder.

258 The task force shall make recommendations on the guiding principles and practice
259 specifications by which health care entities are required to meet their annual behavioral health
260 expenditure target, as established by section 9A of chapter 6D of the General Laws. The guiding
261 principles and practice specifications may include, but are not limited to: (i) the adoption and
262 dissemination of practices that promote health; (ii) person-centered and whole person care
263 delivery; (iii) early intervention and urgent care services that mitigate morbidity and mortality
264 risks; (iv) integrated behavioral health and primary care; (v) non-medical supports such a
265 recovery coaches and peer specialists in care transformation efforts; and (vi) emphasis on
266 ambulatory and community-based services.

267 The task force shall submit a report and recommendations to the clerks of the senate and
268 house of representatives not later than 6 months after passage of this legislation. The executive
269 director of the health policy commission shall also make the report and recommendations
270 publicly available on the commission’s website.

271 SECTION 14. Subsection (e) of section 16 of chapter 12C of the General Laws shall take

272 effect October 1, 2022.