

SENATE . . . . . No. 44

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer L. Flanagan

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 protect children's mental health services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Jennifer L. Flanagan	Worcester and Middlesex	
Jay R. Kaufman	15th Middlesex	1/26/2017
Marjorie C. Decker	25th Middlesex	1/26/2017
Jason M. Lewis	Fifth Middlesex	1/31/2017
Kay Khan	11th Middlesex	2/1/2017
Paul R. Heroux	2nd Bristol	2/1/2017
Mathew Muratore	1st Plymouth	2/1/2017
Jack Lewis	7th Middlesex	2/2/2017
Barbara A. L'Italien	Second Essex and Middlesex	2/2/2017
Michael J. Barrett	Third Middlesex	2/2/2017
Michael F. Rush	Norfolk and Suffolk	2/2/2017
James B. Eldridge	Middlesex and Worcester	2/2/2017
Danielle W. Gregoire	4th Middlesex	2/2/2017
Stephan Hay	3rd Worcester	2/3/2017
Kimberly N. Ferguson	1st Worcester	2/3/2017
Joan B. Lovely	Second Essex	2/3/2017
Sal N. DiDomenico	Middlesex and Suffolk	2/3/2017

**SENATE . . . . . No. 44**

By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 44) of Jennifer L. Flanagan, Jay R. Kaufman, Marjorie C. Decker, Jason M. Lewis and other members of the General Court for legislation to protect children's mental health services. Children, Families and Persons with Disabilities.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

An Act to protect children's mental health services.

*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 2014 Official Edition,  
2 is hereby amended in Section 16R by inserting after the first paragraph the following:-

3 If after 14 days of a child being determined eligible for services said child cannot access  
4 the services because of disagreement about responsibility for payment among state agencies and  
5 local educational authorities, the child advocate shall have the authority to impose a binding  
6 temporary cost share agreement on said agencies and local educational authorities. The cost  
7 share agreement will remain in effect until the child advocate is informed in writing of a  
8 permanent cost share or payment agreement having been implemented.

9 SECTION 2. Chapter 18C of the General Laws, as appearing in the 2014 Official  
10 Edition, is hereby amended in Section 1 by inserting after the definition of “advisory council” the  
11 following definitions:-

12 “Mental health disorder”, any mental, behavioral or emotional disorder described in the  
13 most recent edition of the Diagnostic and Statistical Manual or DSM, which substantially  
14 interferes with or substantially limits the functioning and social interactions of a child or  
15 adolescent.

16 SECTION 3. Chapter 18C of the General Laws is hereby further amended in Section 2 by  
17 adding at the end thereof the following:-

18 e. oversee the children’s mental health ombudsman program, as described in sections 14  
19 and 15.

20 SECTION 4. Chapter 18C of the General Laws is hereby further amended by adding at  
21 the end thereof the following sections:-

22 Section 14

23 a. The child advocate, subject to appropriation or the receipt of federal funds, shall  
24 establish a statewide children’s mental health ombudsman program for the purpose of advocating  
25 on behalf of children with mental health disorders, identifying barriers to effective mental health  
26 treatment and proposed solutions; monitoring and ensuring compliance with relevant statutes,  
27 regulations, rules and policies pertaining to children’s behavioral health services; and of  
28 receiving, investigating, resolving through administrative action, as described in paragraph (c),  
29 complaints filed by a child or by individuals legally authorized to act on behalf of a child or  
30 children or by any individual, organization or government agency that has reason to believe that  
31 any entity regulated by the commonwealth or government agency has engaged in activities,  
32 practices or omissions that constitute violations of applicable court orders, statutes or regulations  
33 or that may have an adverse effect upon the health, safety, welfare or rights of children. Pursuant

34 to the provisions of Chapter 6A section 16R, the child advocate shall have the authority to  
35 temporarily order state agencies and local educational authorities to assume full or partial  
36 responsibility for payment of costs of services for which a child has been determined eligible  
37 when the delivery of those services is delayed more than 14 days because agreement on  
38 responsibility for payment cannot be reached.

39           b. The child advocate shall designate a staff person to act as the director of the  
40 ombudsman program who shall be a person qualified by training and experience to perform the  
41 duties of the office. The ombudsman shall not be subject to the provisions of Sections 8 or 9 of  
42 Chapter 30. The child advocate, in consultation with the secretary of executive office of health  
43 and human services, director of the office of medicaid, commissioner of mental health and  
44 secretary of the department of education, shall establish policies and procedures as needed to  
45 facilitate compliance with the provisions of the ombudsman program. These policies and  
46 procedures shall include procedures for filing complaints, investigating complaints, and taking  
47 action to implement resolutions to these complaints, including the use of state agency  
48 enforcement authority to resolve complaints as recommended by the ombudsman.

49           c. Investigations conducted by the ombudsman shall be subject to Sections 7, 8 and 12 of  
50 this Chapter.

51           Section 15. To ensure the goals of the ombudsman program as described in section 14 are  
52 met:

53           a. The ombudsman shall monitor the development and implementation of federal, state  
54 and local statutes, regulations and policies regarding services and supports for children with  
55 mental health disorders, including the education of these children;

56           b. The ombudsman shall maintain complete records of complaints received, the actions  
57 taken, findings, outcomes, and recommendations in response to such complaints and other  
58 actions, including those taken by the government and private agency responses to serious  
59 complaints;

60           c. Each quarter, the ombudsman shall send a report to each government agency about  
61 which a complaint or complaints were received by the Ombudsman during the relevant period,  
62 listing the complaints involving that agency which were received during the past quarter, and  
63 shall meet regularly with the child advocate, the secretary of executive office of health and  
64 human services, director of the office of medicaid, the commissioner of mental health and the  
65 secretary of the department of education, and shall report on any system-wide problems that the  
66 ombudsman has identified, and potential solutions;

67           d. The child advocate shall report annually, within 120 days of the end of the fiscal year,  
68 to the governor, the speaker of the house, the senate president, the joint committee on mental  
69 health and substance abuse, the joint committee on children, families and persons with  
70 disabilities, the joint committee on education, and the house and senate clerks on the activities of  
71 the children's mental health ombudsman program, including complaints that are relevant to the  
72 Ombudsman an analysis of patterns in complaints made through the ombudsman, and requests  
73 for assistance made through the office of patient protection, the department of children and  
74 families ombudsman and the department of mental health investigations department, and shall  
75 make recommendations for legislation, policy or programmatic changes related to the protection  
76 of the rights of children with mental health disorders. These reports shall be publicly available  
77 and published on the Office of the child advocate website.

78           SECTION 5. The child advocate shall promulgate regulations and establish policies and  
79 procedures as necessary for performing the required activities of the children's mental health  
80 ombudsman program.