

HOUSE No. 1800

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 improving access to emergency treatment plans.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-----------------------------|--------------------------------|
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Jennifer L. Flanagan</i> | <i>Worcester and Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> |
| <i>Carlos Gonzalez</i> | <i>10th Hampden</i> |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> |

HOUSE No. 1800

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1800) of Kay Khan and others relative to improving mental health treatment. Mental Health and Substance Abuse.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to improving access to emergency treatment plans.

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 5-101 of chapter 190B of the General Laws, as appearing in the
2 2012 Official Edition, is hereby amended by inserting after subsection (25) the following
3 subsections:-

4 “(26) “treatment monitor”, any person who holds himself out to the general public as one
5 providing mental health services and who is required pursuant to such practice to obtain a license
6 from the commonwealth or who, at the discretion of the court, is deemed suitable to monitor the
7 treatment plan as described in subsection (a) of Section 5-306A of said chapter 190B.

8 and further, in subsection (3), by adding after the word “court”, in line 14, the following
9 words:- or in proceedings relating to the appointment of treatment monitors and supervision of
10 treatment plans as described in Section 5-306 of said chapter 190B.”

11 SECTION 2. Section 5-306A of said chapter 190B, as appearing in the 2012 Official
12 Edition, is hereby amended by adding, in line 16, after the words “section 5-308.” the following
13 sentence:-

14 In all cases, a treatment plan by order or decree must be issued and a monitor must be
15 assigned not later than 14 days after the initial petition is filed.

16 SECTION 3. Section 5-306A of said chapter 190B, as appearing in the 2012 Official
17 Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the
18 following section:-

19 (b) The court shall delegate to a treatment monitor, the authority to supervise the
20 treatment plan to ensure that the treatment plan is followed. Reasonable expense incurred in such
21 monitoring may be paid out of the estate of such person, by the petitioner, or, by the
22 commonwealth, as may be determined by the court.

23 SECTION 4. Said chapter 190B, as so appearing, is hereby amended by inserting after
24 section 5-306A the following sections:-

25 Section 5-306B.

26 (a) A treatment monitor shall report in writing the condition of the incapacitated person
27 within 30 days following appointment and not more than 60 days thereafter; and when otherwise
28 ordered by the court. A report shall state:

29 (1) the current mental, physical and social condition of the incapacitated person;

30 (2) a statement of compliance with the treatment plan by the incapacitated person and
31 the delivery of treatment services by the provider;

32 (3) a recommendation as to the need for continued monitoring and any recommended
33 changes in the scope of monitoring; and

34 (4) plans regarding future care.

35 (b) The court shall establish a system for overseeing treatment monitors of incapacitated
36 persons, including the filing and review of regular reports.

37 (c) When the treatment monitor determines that an incapacitated person has refused to
38 comply with any condition of the treatment plan or when the treatment monitor determines that
39 the service provider is not delivering treatment in accordance with the treatment plan, the
40 monitor shall petition the court for a hearing to report the conditions of the treatment plan that
41 have been violated.

42 Upon receipt of notice from the treatment monitor, the court shall appoint counsel, if
43 necessary, and schedule treatment non-compliance hearings and service provider non-
44 compliance hearings for a date, said date to be no less than 7 days and not more than 14 days
45 later except in extraordinary circumstances, as determined by the court. The court shall create a
46 standard “notice of treatment non-compliance” form, which the monitor shall complete with
47 times and dates of alleged non-compliance of the incapacitated person or the service provider.

48 Treatment non-compliance hearings shall proceed in two distinct steps, the first to
49 adjudicate the factual issue of whether the alleged treatment plan is being complied with and the
50 second to determine the disposition of the matter, if treatment non-compliance is found by the
51 court to have occurred.

52 If the court finds that the incapacitated person has not complied with one or more
53 conditions of the treatment plan as alleged, or that the service provider has not complied with
54 one or more conditions of the treatment plan as alleged, the treatment monitor shall recommend
55 to the court a course of immediate action and may present argument and evidence in support of
56 that recommendation.

57 The incapacitated person or his representative and the treatment provider or his
58 representative shall be permitted to present argument and evidence relevant to disposition and to
59 propose dispositional terms. The court may issue an order of enforcement that shall include a
60 course of action and reasons for taking such action, including an order that the incapacitated
61 person or service provider return before the court to amend the treatment plan.

62 (d) Nothing in this section shall prevent a supervising mental health professional from
63 authorizing involuntary commitment and treatment in emergency under Section 12 of Chapter
64 123.

65 Section 5-306C.

66 The authority and responsibility of a treatment monitor of an incapacitated person
67 terminates upon the death of the monitor or incapacitated person, the determination of incapacity
68 of the monitor, the determination that the person is no longer incapacitated, or upon removal or
69 resignation as provided in section 5-306D.

70 Section 5-306D.

71 (a) on petition of the incapacitated person or any person interested in the welfare of the
72 incapacitated person, the court, after notice and hearing, may remove a treatment monitor if the

73 person under a treatment plan is no longer incapacitated or for other good cause. On petition of
74 the treatment monitor, the court may accept a resignation.

75 (b) The incapacitated person or any person interested in the welfare of the incapacitated
76 person, if 18 or more years of age, may petition for removal of a treatment monitor on the ground
77 that removal would be in the best interest of the incapacitated person.

78 (c) The incapacitated person or any person interested in the welfare of the incapacitated
79 person may petition for an order that the person is no longer incapacitated, for termination of the
80 treatment order, or for modification of the treatment plan.

81 (d) After notice and hearing on a petition for removal or for permission to resign, the
82 court may appoint a successor treatment monitor and make any other appropriate order. Before
83 appointing a successor treatment monitor, or ordering that a person's incapacity has been
84 terminated, the court shall follow the same procedures to safeguard the rights of the incapacitated
85 person that apply to a petition for appointment of treatment monitor.

86 SECTION 5. Subsection (f) of section 8B of chapter 123 of the General Laws, as so
87 appearing, is hereby amended, in line 49, by adding, after the word "ordered", the following:-
88 "The superintendent of a facility or medical director of the Bridgewater state hospital may
89 further petition the court for the continued monitoring of the patient after the expiration of the
90 order of commitment. The hearing to continue monitoring shall take place no longer than 7 days
91 after the filing of the petition. The court may appoint a treatment monitor, as described under
92 Section 5-306A-D of said chapter 190B, to monitor the existing treatment plan or, under the
93 guidance of the court, develop and monitor a new treatment plan, as described in subsection (a)
94 of Section 5-306A of said chapter 190B."