

HOUSE No. 1963

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

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 promote high value and evidence-based behavioral health care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>1/11/2023</i>

HOUSE No. 1963

By Representative Arciero of Westford, a petition (accompanied by bill, House, No. 1963) of James Arciero for legislation to promote high value and evidence-based behavioral health care. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to promote high value and evidence-based behavioral health care.

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 is hereby amended by inserting after
2 Section 18Z the following new section:

3 Section 19. The executive office of health and human services shall coordinate an
4 interagency statewide planning committee to annually study the need for behavioral health care
5 services across the commonwealth, beginning with inpatient psychiatric units and department of
6 mental health beds. The study shall utilize data collected from census reporting by inpatient
7 facilities and data collected through the expedited psychiatric admissions process. The study
8 shall identify the total number of units currently in operation in the commonwealth by
9 geographic region, including capacity to serve special populations, which shall include but not be
10 limited to: children; geriatric patients; individuals with autism spectrum disorder, intellectual
11 disabilities, and developmental disabilities; individuals with co-occurring substance use disorder;
12 individuals with co-occurring medical conditions; individuals who present with high level of

13 acuity, including severe behavior and assault risk; and individuals with eating disorders. The
14 study shall estimate the need for total units/beds by geographic region, estimate the need for
15 special population capacity by geographic region, and estimate the cost to operate each unit at
16 the needed capacity. The committee should consult with stakeholders on performing this analysis
17 and on developing recommendations for how to achieve the needed services and capacity. The
18 committee shall publish an annual report by December 31 of each year that includes
19 recommendations for reducing boarding in the emergency departments, and any suggested
20 legislation to implement those recommendations and shall submit a copy the to the joint
21 committee on mental health, substance use and recovery and the joint committee on health care
22 financing.

23 SECTION 2. Chapter 6A of the General Laws is hereby amended by inserting after
24 Section 19 the following new section:

25 Section 19A. The executive office shall convene a special commission charged with
26 expanding access to specialty behavioral health care inpatient beds for adults and youth,
27 addressing funding for said beds and making recommendations for a potential rate structure to
28 fund high intensity specialty behavioral health beds.

29 The commission shall consist of the following members or their designees: the
30 commissioner of the department of mental health, who shall serve as chair; the commissioner of
31 the department of public health; the commissioner of the division of insurance; the director of the
32 bureau of substance addiction services within the department of public health; the assistant
33 secretary for MassHealth; the executive director of the group insurance commission; the
34 executive director of the health policy commission; the executive director of the center for health

35 information and analysis; and 6 members to be appointed by the chair: 1 of whom shall be a
36 representative of the Association for Behavioral Healthcare, Inc.; 1 of whom shall be a
37 representative of the Massachusetts Association of Behavioral Health Systems, Inc.; 1 of whom
38 shall be a representative of the Massachusetts Health and Hospital Association; 1 of whom shall
39 be a representative of the Massachusetts Association for Mental Health, Inc.; 1 of whom shall be
40 a representative of Blue Cross and Blue Shield of Massachusetts, Inc.; and 1 of whom shall be a
41 representative of the Massachusetts Association of Health Plans, Inc..

42 The commission’s review shall include, but not be limited to: (i) data collected through
43 the EPIA program, or other sources on the availability of specialty behavioral health inpatient
44 beds; (ii) data on the populations that are more likely to face longer wait times, which may
45 include but not be limited to specialty beds to treat adults and youth with autism spectrum
46 disorder, specialty beds to treat adults and youth with higher levels of acuity, specialty beds to
47 treat adults and youth with developmental disabilities, specialty beds to treat adults and youth
48 with aggressive behavior, and specialty beds to treat adults and youth with complex medical
49 needs; (iii) data on the number of beds to serve the populations listed in (ii), including the
50 difference between the differences between licensed and operational beds and the reasons for any
51 differences; (iv) how services are funded today, including payer mix and payment models
52 utilized; (v) the feasibility of developing alternative payment models, including global payments,
53 bundled payments, or payments based on risk adjustment and predictive modeling to ensure that
54 services are funded based on the population served; and (vi) the feasibility of developing a multi-
55 payer equitable rate structure designed to fund and ensure an adequate supply of high intensity
56 specialty behavioral health beds in the commonwealth.

57 Not later than 1 year after the effective date of this act, the commission shall submit its
58 findings and recommendations, together with drafts of legislation or regulations necessary to
59 carry those recommendations into effect, to the clerks of the senate and house of representatives
60 and the joint committee on mental health, substance use and recovery.

61 SECTION 3. Section 15 of Chapter 6D of the General Laws is hereby amended by
62 striking paragraph (b) in its entirety and replace it with the following new language:-

63 (b) The commission shall establish minimum standards for certified ACOs. A certified
64 ACO shall: (i) be organized or registered as a separate legal entity from its ACO participants; (ii)
65 have a governance structure that includes an administrative officer, a medical officer, and patient
66 or consumer representation; (iii) receive reimbursements or compensation from alternative
67 payment methodologies; (iv) have functional capabilities to coordinate financial payments
68 amongst its providers; (v) have significant implementation of interoperable health information
69 technology, as determined by the commission, for the purposes of care delivery coordination and
70 population management; (vi) develop and file an internal appeals plan as required for risk-
71 bearing provider organizations under section 24 of chapter 176O; provided, that said plan shall
72 be approved by the office of patient protection; provided further, that the plan shall be a part of a
73 membership packet for newly enrolled individuals; (vii) provide medically necessary services
74 across the care continuum including behavioral and physical health services, as determined by
75 the commission through regulations, internally or through contractual agreements; provided, that
76 any medically necessary service that is not internally available shall be provided to a patient
77 through services outside the ACO; (viii) develop guidelines for the delivery of evidence-based
78 delivery of behavioral health services, including but not limited to, 24/7 access to treatment and
79 services, 24/7 admissions and discharges, treatment and discharge planning, adherence to

80 evidence-based standards of care, compliance with quality and outcome measures, and
81 communication and coordination with all treating providers and payers; (ix) implement systems
82 that allow ACO participants to report the pricing of services, as defined by the commission
83 through regulations; further provided that ACO participants shall have the ability to provide
84 patients with relevant price information when contemplating their care and potential referrals; (x)
85 submit a report to the commission detailing the percentage of total health care expenditures that
86 are paid to behavioral health providers; (xi) obtain a risk certificate from the division of
87 insurance under chapter 176U; and (xii) shall engage patients in shared decision-making,
88 including, but not limited to, shared-decision making on palliative care and long-term care
89 services and supports.

90 SECTION 4. Said Chapter 6D of the General Laws is hereby amended by inserting after
91 Section 19 the following new section:-

92 Section 20. Study on Evidence-Based Practice.

93 The commission, in consultation with the center for health information and analysis, the
94 department of public health, and the department of mental health, shall conduct a study on the
95 variation of the practice of behavioral health providers in the commonwealth, across the full
96 continuum of care, and shall issue a report, not later than December 31, 2018. The review shall
97 be posted on the commission's website and shall be filed with the clerks of the house of
98 representatives and the senate, and the joint committee on mental health and substance abuse.

99 In measuring adherence to evidence-based standards, the analysis shall include, but not
100 be limited to: (i) adherence to evidence-based standards of care, as appropriate for each level of
101 care, (ii) performance on quality and outcome measures, and (iii) patient access to appropriate

102 discharge planning and transitions throughout the full continuum of care. The report shall include
103 an examination of any gaps in the availability of data, quality metrics, or other means of
104 measuring provider performance related to outcomes and quality. The report shall make
105 recommendations for improving the availability of data collection and the measurement of
106 behavioral health quality and outcomes, and recommendations related to improving quality and
107 outcomes for patients.

108 SECTION 5. Chapter 19 of the General Laws is hereby amended by inserting after
109 section 19, the following new section:-

110 Section 19A. Requirements for licensed facilities

111 (a) The department shall establish clinical competencies and additional operational
112 standards for care and treatment of patients admitted to facilities licensed pursuant to 104 CMR
113 27.00, including for specialty populations identified by the department. Clinical competencies
114 and operational standards established by the Department shall incorporate national and local
115 standards of practice where such standards of practice exist, and to the extent deemed
116 appropriate by the Department. In establishing the clinical competencies, the department shall
117 utilize all data collected to identify the needs of the commonwealth and consult with relevant
118 stakeholders, including but not limited to, inpatient psychiatric facilities, emergency
119 departments, emergency service providers, Medicaid managed care organizations, and
120 commercial carriers. The department shall update the clinical competencies on a biennial, or as
121 needed basis.

122 (b) The department shall issue regulations requiring free-standing facilities licensed
123 pursuant to 104 CMR 27.00 to have a clinical affiliation with a medical facility to ensure access

124 by patients to medical services. Such affiliation shall include, but not be limited to patient care,
125 testing, and patient diagnostics.

126 (c) The department shall develop requirements for reporting of quality and outcome
127 measures by facilities to ensure compliance with this section.

128 (d) The department shall promulgate regulations to enforce the requirements of this
129 section and shall require hospitals to provide remedies for any failure to meet the requirements of
130 said regulations. Remedies may include remediation plans or financial penalties. The amount of
131 any penalty imposed shall be \$100 for each day in the noncompliance period with respect to each
132 patient to whom such failure relates; provided however that the maximum annual penalty under
133 this subsection shall be \$500,000.

134 SECTION 6. Chapter 19 of the General Laws is hereby amended by inserting after
135 section 19A, the following new section:-

136 Section 19B.

137 (a) The department shall promulgate regulations instituting a policy to prohibit a facility
138 from refusing to admit a patient who meets the general admission criteria for the facility,
139 including all clinical competencies, pursuant to Section 19A of this chapter, where such
140 admission would not result in a census exceeding the facility's operational capacity.

141 (b) The department shall require facilities to collect and report data to the department on
142 the facility's total number of admission requests, admissions, admission denials, and the reasons
143 for the rejected admissions.

144 (c) A facility may deny admission to a patient whose needs have been determined by the
145 facility medical director to exceed the facility's capability at the time admission is sought. The
146 determination shall include the factors justifying denial of admission and why mitigating efforts,
147 such as utilization of additional staff, would have been inadequate to admit the patient. This
148 determination must be recorded in writing. The facility shall submit a monthly report to the
149 Department detailing the number of admissions that have been denied by the facility and the
150 reasons for such denials; provided however, that such written determination shall not contain
151 patient-identifiable information.

152 (d) Facilities shall keep data on patients referred for admission in a form and format and
153 containing data elements as determined by the Department; provided however, that facilities
154 shall not be required to maintain patient-identifiable data on individuals not accepted for
155 admission. The department shall require that facilities report said data to the department on a
156 monthly basis.

157 (e) The department shall promulgate regulations to enforce the requirements of this
158 section and shall require facilities to provide remedies for any failure to meet the requirements of
159 said regulations. Remedies may include remediation plans or financial penalties. The amount of
160 any penalty imposed shall be \$100 for each day in the noncompliance period with respect to each
161 patient to whom such failure relates; provided however that the maximum annual penalty under
162 this subsection shall be \$500,000.

163 SECTION 7. Section 25C of Chapter 111 is hereby amended by striking paragraph (k) in
164 its entirety and replacing it with the following new language:

165 (k) Determinations of need shall be based on the written record compiled by the
166 department during its review of the application and on such criteria consistent with sections 25B
167 to 25G, inclusive, as were in effect on the date of filing of the application. In compiling such
168 record the department shall confine its requests for information from the applicant to matters
169 which shall be within the normal capacity of the applicant to provide. In reviewing an
170 application, the department shall take into consideration the report of the statewide planning
171 committee pursuant to section 19 of chapter 6A of the general laws. In each case the action by
172 the department on the application shall be in writing and shall set forth the reasons for such
173 action; and every such action and the reasons for such action shall constitute a public record and
174 be filed in the department.

175 SECTION 8. Section 25C of Chapter 111 of the General Laws is amended by inserting
176 after the first paragraph the following new paragraph:

177 The Department, working with the department of mental health, shall conduct a statewide
178 planning initiative for the purposes of studying and coordinating the availability and delivery of
179 acute inpatient psychiatric beds across the commonwealth. The initiative shall utilize data
180 collected through the expedited psychiatric inpatient admissions program, from the department
181 of mental health pursuant to section 19B of chapter 19 of the general laws, from the center for
182 health information and analysis, and other data collected by the department. The department
183 shall analyze the number of individuals who are waiting for placement, including the patient
184 demographic information, geographic disparities, the diagnosis, the types of services that such
185 patients need, and identify gaps in the supply of licensed and operational psychiatric beds. The
186 department shall consider this analysis when making determinations of need pursuant to this
187 section.

188 The department shall publish an annual acute psychiatric inpatient bed report by
189 December 31 of each year that identifies the types of and location of services that are in need and
190 where may be oversupply of services. A copy of the report shall be provided to the health policy
191 commission, the joint committee on mental health substance use and recovery and the joint
192 committee health care financing.

193 SECTION 9. Chapter 111 of the General Laws is hereby amended by adding after section
194 51K the following new section:

195 Section 51L. Standards for Delivery of Behavioral Health Care in Hospitals

196 (a) For the purposes of this section, the following words shall have the following
197 meanings: -

198 "Acute-care hospital", any hospital licensed under section 51 that contains a majority of
199 medical-surgical, pediatric, obstetric, and maternity beds, as defined by the department, and the
200 teaching hospital of the University of Massachusetts Medical School.

201 (b) An acute-care hospital or a satellite emergency facility (hereinafter "facility") shall
202 ensure that all policies and protocols developed by the facility shall be applied and implemented
203 on a nondiscriminatory basis such that such policies and protocols do not discriminate between
204 patients presenting with a mental health or substance use condition and those patients with
205 presenting with a medical/surgical condition.

206 (c) An acute-care hospital or a satellite emergency facility shall annually review its
207 policies and procedures to ensure that such policies and procedures do not discriminate between
208 patients presenting with a mental health or substance use condition and those patients with

209 presenting with a medical/surgical condition and are applied and implemented on a
210 nondiscriminatory basis. Following the review, the acute-care hospital or a satellite emergency
211 facility must submit a certification to the department of public health and the department of
212 mental health signed by the hospital's chief executive officer and chief medical officer that states
213 that the hospital has completed a comprehensive review of the policies and procedures of the
214 hospital for the preceding calendar year for compliance with this section and any accompanying
215 regulations.

216 (d) As part of the review outlined in the preceding paragraph, an acute-care hospital or a
217 satellite emergency facility shall review its policies and procedures in the following areas:

218 1. Administrative policies and procedures, which may include but not be limited to,
219 acquiring and maintaining equipment, policies on vendor requirements, licensing and credentials,
220 and records requirements.

221 2. Operational policies and procedures, which may include, but not be limited to,
222 information technology, physical plant maintenance, safety and security, food preparation,
223 emergency management/disaster plans, and milieu.

224 3. Patient care policies and procedures, which may include, but not be limited to,
225 patient admission and discharge policies and decision-making, patient flow policies, patient
226 discharge planning, consultation, clinical competencies, charting processes, and patient rights,
227 patient and staff security, and infection prevention.

228 4. Medication policies and procedures, which may include, but not be limited to,
229 paperwork requirements for medicine, inventory control, dose distribution systems, and
230 disposing of expired drugs.

231 5. Human Resources and Staffing policies and procedures, which may include, but
232 not be limited to, staff hiring decisions, training, patient care ratios, scheduling, staffing for
233 emergency management/disaster plans

234 6. Payment and Financial policies and procedures, which may include, but not be
235 limited to, investment and resource allocation, billing and payment policies, and staff salaries
236 and reimbursement.

237 (e) The department, in conjunction with the department of mental health, shall establish a
238 process by which complaints regarding alleged non-compliance with the requirements of this
239 section may be submitted. The department must provide a telephone number and address to be
240 used to submit complaints, a standard form that can be used to submit complaints, and timeline
241 for resolving the complaints. The department shall publish the information on its website to
242 notify individuals how to submit a complaint to the department.

243 (f) The department, in conjunction with the department of mental health, shall promulgate
244 regulations necessary to carry out this section, including the development of reporting
245 procedures and a standard format for facility self-reporting.