

**HOUSE . . . . . No. 843**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Kimberly N. Ferguson***

*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 cognitive rehabilitation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>

<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>James J. Lyons, Jr.</i>	<i>18th Essex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

**HOUSE . . . . . No. 843**

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By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 843) of Kimberly N. Ferguson and others for legislation to mandate health insurance coverage for certain brain injury rehabilitation. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act relative to cognitive rehabilitation.

*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 175 of the General Laws as appearing in the 2012 Official Edition  
2 is hereby amended by inserting after section 47DD the following new section:-

3 Section 47EE. Coverage for Brain Injury Rehabilitation

4 (a) Applicability of Section

5 (1) Section 47EE applies only to a health benefit plan that provides benefits for medical  
6 or surgical expenses incurred as a result of a health condition, accident, or sickness, including an  
7 individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital  
8 service contract, or an individual or group evidence of coverage or similar coverage  
9 document that is offered by:

10 (i) an insurance company operating under Chapter 175;

11 (ii) a group hospital service corporation operating under Chapter 175;

- 12 (iii) a fraternal benefit society operating under Chapter 176;
- 13 (iv) a small group health insurance operating under Chapter 176J
- 14 (v) a non-profit hospital service corporation operating under Chapter 176A
- 15 (vi) a Medical Service Corporation operating under Chapter 176B
- 16 (vii) a non-group health insurance company operating under 176M
- 17 (viii) a health maintenance organization operating under Chapter 176G;
- 18 (ix) an approved nonprofit health corporation that holds a certificate of authority under
- 19 Chapter 176C.

20 (2)Section 47EE does not apply to:

21 (i) a plan that provides coverage:

22 (A) only for a specified disease or for another limited benefit other than an accident

23 policy;

24 (B) only for accidental death or dismemberment;

25 (C) for wages or payments in lieu of wages for a period during which an employee is

26 absent from work because of sickness or injury;

27 (D) as a supplement to a liability insurance policy;

28 (E) for credit insurance;

29 (F) only for dental or vision care;

30 (G) only for hospital expenses; or  
31 (H) only for indemnity for hospital confinement;  
32 (i) Non-Profit Medical Service Plans operating under Chapter 176C  
33 (ii) a workers' compensation insurance policy;  
34 (iii) a long-term care insurance policy operating under Chapter 176U, including a nursing  
35 home fixed indemnity policy, unless the commissioner determines that the policy  
36 provides benefit coverage so comprehensive that the policy is a health benefit plan as described  
37 by Chapter 175.

38 (iv) the Commonwealth Care Health Insurance Program as regulated under Chapter  
39 118H.

40 (b) Required Coverages

41 (1) A health benefit plan must include, but is not limited to, coverage for cognitive  
42 rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and  
43 rehabilitation, neurobehavioral, neurophysiological, neuropsychological, and  
44 psychophysiological testing and treatment, neuro feedback therapy, functional rehabilitation  
45 therapy and remediation required for and related to treatment of an acquired or traumatic brain  
46 injury.

47 (2) A health benefit plan shall include coverage for acute and post-acute:

48 (i) transition services

49 (ii) community reintegration services

50 (iii) residential services

51 (iv) inpatient services

52 (v) outpatient day treatment services

53 (vi) other post-acute care treatment services deemed necessary as a result of, or related to,  
54 an acquired or traumatic brain injury.

55 (3) A health benefit plan may not include any lifetime limitation, or unreasonable annual  
56 limitation on the number of days or sessions of acute care treatment. A health benefit plan may  
57 not include any lifetime limitation, or unreasonable annual limitation on the number of days or  
58 sessions of post-acute care treatment. Any limitations imposed under the plan for acute care  
59 treatment or post-acute care treatment must be separately stated in the plan.

60 (4) Except as provided by Subsection (c), a health benefit plan must include the same  
61 payment limitations, deductibles, copayments, and coinsurance factors for coverage required  
62 under this chapter as applicable to other similar coverage provided under the health benefit plan.

63 (5) To ensure that appropriate post-acute care treatment is provided, a health benefit plan  
64 must include coverage for reasonable expenses related to periodic reevaluation of the care of an  
65 individual covered under the plan who:

66 (i) has incurred an acquired or traumatic brain injury;

67 (ii) has been unresponsive to treatment; and

68 (iii) may become responsive to treatment at a later date.

69 (6) A determination of whether expenses, as described by Subsection (e), are reasonable  
70 may include consideration of factors including:

71 (i) cost;

72 (ii) the time that has expired since the previous evaluation;

73 (iii) any significant difference in the specialization of the physician or practitioner  
74 performing the evaluation;

75 (iv) changes in technology; and

76 (v) advances in medicine.

77 (7) The commissioner shall adopt rules as necessary to implement this chapter.

78 (c) Training for Certain Personnel Required

79 (1) For its use in this section, "preauthorization" shall mean the provision of a reliable  
80 representation to a physician or health care provider of whether a health benefit plan issuer will  
81 pay the physician or provider for proposed medical or health care services if the physician or  
82 provider provides those services to the patient for whom the services are proposed. The term  
83 includes precertification, certification, recertification, or any other activity that involves  
84 providing a reliable representation by the issuer to a physician or health care provider.

85 (2) The commissioner by rule shall require a health benefit plan issuer to provide  
86 adequate training to personnel responsible for preauthorization of coverage or utilization review  
87 under the plan. The purpose of the training is to prevent denial of coverage in violation of  
88 Chapter 175, Section 47EE(b) to avoid confusion of medical benefits with mental health

89 benefits. The commissioner, in consultation with the Massachusetts Brain Injury Advisory Board  
90 shall prescribe by rule the basic requirements for the training described by this subsection.

91 (d) Notice to Insured and Enrollees

92 (1) A health benefit plan issuer subject to this chapter must annually notify each insured  
93 or enrollee under the plan in writing about the coverages described by CHAPTER 175,  
94 SECTION 47EE(B).

95 (2) The commissioner, in consultation with the Massachusetts Brain Injury Advisory  
96 Board shall prescribe by rule the specific contents and wording of the notice required under this  
97 section.

98 (3) The notice required under this section must include:

99 (i) a description of the benefits listed under CHAPTER 175, SECTION 47EE(B);

100 (ii) a statement that the fact that an acquired or traumatic brain injury does not result in  
101 hospitalization or receipt of a specific treatment or service described by CHAPTER 175,  
102 SECTION 47EE(B) for acute care treatment does not affect the right of the insured or enrollee to  
103 receive benefits described by CHAPTER 175, SECTION 47EE(B) commensurate with the  
104 condition of the insured or enrollee; and

105 (4) a statement of the fact that benefits described by CHAPTER 175, SECTION 47EE(B)  
106 may be provided in a facility listed in Chapter 175, Section 47EE (f)

107 (e) Determination of Medical Necessity; Extension of Coverage



108 (1) In this section, "utilization review" is defined as "a system for prospective or  
109 concurrent review of the medical necessity and appropriateness of health care services being  
110 provided or proposed to be provided to an individual in this state. The term does not include a  
111 review in response to an elective request for clarification of coverage".

112 (2) A health benefit plan shall respond to a person requesting utilization review of a  
113 determination of medical necessity, or appealing for an extension of coverage based on an  
114 allegation of medical necessity not later than three business days after the date on which the  
115 person makes the request or submits the appeal. The person must make the request or submit the  
116 appeal in the manner prescribed by the terms of the plan's health insurance policy or agreement,  
117 contract, evidence of coverage, or similar coverage document. To comply with the requirements  
118 of this section, the health benefit plan issuer must respond through a direct telephone contact  
119 made by a representative of the issuer, and in writing to the person requesting review.

120 (f) Treatment Facilities

121 (1) A health benefit plan may not deny coverage under this chapter based solely on the  
122 fact that the treatment or services are provided at a facility other than a hospital. Treatment for  
123 an acquired or traumatic brain injury may be provided under the coverage required by this  
124 chapter, as appropriate, at a facility at which appropriate services may be provided, including,  
125 but not limited to:

126 (i) a hospital regulated under Chapter 111, including an acute or post-acute rehabilitation  
127 hospitals;

128 (ii) an assisted living facility regulated under Chapter 19D;

129 (iii) a Skilled Nursing and Rehabilitative Care Facility (Level I) or Skilled Nursing Care  
130 Facility (Level II) as designated under Department of Public Health regulations.

131 (2) Individual practitioners and treatment facilities will be qualified to provide acute care,  
132 and post-acute care rehabilitation services through possession of the appropriate licenses,  
133 accreditations, training and experience deemed customary and routine through trade practice.

134 (g) Consumer Information

135 (1) The commissioner shall prepare information for use by consumers, purchasers of  
136 health benefit plan coverage, and self-insurers regarding coverage recommended for acquired or  
137 traumatic brain injuries. The department shall publish information prepared under this section on  
138 the department's Internet website.