

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

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:-

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

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

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

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

Section 14

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

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

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

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

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

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

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

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

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