

SENATE No. 942

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

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 provide critical community services.

PETITION OF:

NAME:

Cindy F. Friedman

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 942

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 942) of Cindy F. Friedman for legislation to provide critical community services. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to provide critical community 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. Section 1 of chapter 123 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “health.”, in line 4, the following
3 words:-

4 “Critical community health services”, health, behavioral health and social services that
5 can be provided in a community setting and do not require continuous inpatient hospitalization.

6 “Critical community health service treatment plan”, a plan defining a set of health,
7 behavioral health or social services delivered to an individual.

8 SECTION 2. Said section 1 of said chapter 123, as so appearing, is hereby further
9 amended by inserting after the word “program.”, in line 18, the following words:-

10 “Gravely disabled”, a condition evidenced by behavior in which a person, as a result of a
11 mental illness, is at substantial risk of inflicting serious harm to self or others, and has shown an

inability to provide for their basic physical needs, including medical and psychiatric treatment and shelter, because of the mental illness.

SECTION 3. Said section 1 of said chapter 123, as so appearing is hereby further amended by inserting after the word “facility.”, in line 92, the following words:-

“Supervising mental health professional”, a mental health services provider who is required pursuant to such practice to obtain a license from the commonwealth or who, at the discretion of the court, is deemed suitable to supervise a critical community health service treatment plan.

SECTION 4. Said chapter 123 is hereby further amended by inserting after section 8 the following section:-

Section 8 1/2. (a) Any physician licensed pursuant to section 2 of chapter 112 after examining an individual, the department of mental health, any person age 18 or older with whom the individual resides, the parent, spouse, sibling age 18 or older, child age 18 or older of the individual, the superintendent of any public or private facility or hospital authorized for the commitment or treatment of individuals with a mental illness , or the medical director of the Bridgewater state hospital, may petition for an order of a critical community health service treatment plan in the district court in whose jurisdiction a facility is located that shall provide such services, for any individual who:

(1) has a mental illness;

(2) is at least 18 years old; and

(3) meets the following criteria:

(i) is gravely disabled;

(ii) has a history of lack of compliance with treatment for mental illness that, prior to the filing of the petition, has been a significant factor in: (A) necessitating, at least twice within the previous 36 months, hospitalization or receipt of mental health services in a forensic or department of correction facility or house of corrections or the Bridgewater state hospital; or (B) the commission of one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the previous 36 months;

(iii) based on the individual's treatment history and current behavior, is in need of critical community health services in order to prevent a relapse or deterioration which would likely result in serious harm to the individual or others; and

(iv) is likely to benefit from critical community health services.

The petition shall include a written critical community health service treatment plan, hereinafter "plan," prepared in consultation with, when possible, those familiar with the individual, the superintendent or physician in charge of the care of the individual or those familiar with the case history of the individual. The plan shall include:

(1) a statement of the requirements for supervision, medication, and assistance in obtaining basic necessities such as employment, food, clothing, and shelter;

(2) if known, the address of the residence where the individual resides and the name of the person or persons in charge of the residence;

(3) if known, the name and address of any person, agency, or organization assigned to supervise a critical community health service treatment plan or care for the individual; and

(4) the conditions for continued receipt of critical community health services, which may require reporting, continuation of medication, submission to testing, or other reasonable conditions.

(b) A petition for critical community health services may be filed along with, and as an alternative to, a petition for inpatient commitment under section 7.

(c) A hearing shall be commenced within 4 days of the filing of the petition. The periods of time prescribed or allowed under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination by a physician or the potential need to provide treatment expeditiously.

(d) A court may not issue a critical community health service treatment plan unless it finds that providing critical community health services is the least restrictive alternative available to the person.

(e) If, after the hearing, the court finds by clear and convincing evidence that the individual who is the subject of the petition meets the criteria for critical community health services included in subsection (a), the court may order the supervising mental health professional of an appropriate treatment program to supervise the plan for such services.

Critical community health services shall not be ordered unless the court approves a written critical community health service treatment plan presented to the court which conforms to the requirements of this section and which contains the name of the designated director of the facility that will supervise and administer the service plan.

(f) The first order for critical community health services shall not exceed 180 days, and any subsequent order shall not exceed 365 days.

(g) Before an order for critical community health services can commence, the individual shall be provided with copies of the court order and full explanations of the approved service plan. The approved service plan shall be filed with the court and the supervising mental health professional in charge of the individual's service plan.

(h) During any period in which an individual receives critical community health services, the individual or the supervising mental health professional may petition the court to amend the critical community health service treatment plan. The court may order an amended service plan or, if contested, the court may order a hearing on the amended plan. If an amended service plan is contested, the party wishing to amend the service plan shall provide the opposing party the proposed amended service plan at least 7 days before the filing of a petition.

(i) A supervising mental health professional may petition the court for a hearing if the supervising mental health professional has determined that the individual is not complying with the critical community health service treatment plan.

When a supervising mental health professional determines that the individual has not complied with any condition of the service plan, that monitor shall notify the court of the conditions of the treatment plan that have been violated.

(1) Upon receiving notice from the supervising mental health professional, the court shall appoint counsel, if necessary, and schedule a service plan non-compliance hearing for a date no less than 7 days and not more than 14 days after receiving said petition, except in extraordinary circumstances, as determined by the court. The court shall create a standard “notice of service

plan non-compliance” form, which the monitor shall complete with the times and dates of the alleged non-compliance of the individual.

(2) The notice of service plan non-compliance shall set forth the conditions of the plan that the supervising mental health professional alleges have not been complied with and shall order the individual to appear at a specific date and time for the non-compliance hearing, and shall be delivered to all parties to the original proceeding under which the service plan order was issued.

(3) Service plan non-compliance hearings shall proceed in two distinct steps, the first to adjudicate the factual issue of whether the plan is being complied with and the second to determine the disposition of the matter, if plan non-compliance is found by the court to have occurred.

(4) If the court finds that the individual has not complied with one or more conditions of the service plan as alleged, the supervising mental health professional shall recommend to the court a course of immediate action and may present argument and evidence in support of that recommendation. If the court determines that the individual is not complying with the terms of the order, the court may amend the service plan as the court deems necessary. The amended order may alter the service plan, or the court may request, under the provisions of section 12 of this chapter, an emergency evaluation to determine whether the failure to hospitalize the individual would create a likelihood of serious harm.

(j) The supervising mental health professional shall require periodic reports, not more frequently than every 30 days, concerning the condition of individuals receiving critical

118 community health services from any person, agency, or organization assigned to treat such
119 individuals.

120 (k) The supervising mental health professional shall review the condition of an individual
121 ordered to receive critical community services at least once every 30 days.

122 (l) The supervising mental health professional may, at any time, petition the court for
123 termination of an individual's critical community health service plan if the supervising mental
124 health professional determines that critical community health services are no longer the least
125 restrictive appropriate treatment available.

126 (m) Nothing in this section shall prevent the supervising mental health professional from
127 authorizing involuntary commitment and treatment in cases of emergency under section 12 of
128 this chapter.

129 (n) The individual or their representative may petition for termination of an order for
130 critical community health services.

131 (o) All hearings under this section shall be conducted by a judge consistent with the
132 requirements of this chapter and applicable law with such flexibility and informality as the court
133 may deem appropriate. The individual shall be entitled to the assistance of counsel, and the court,
134 if necessary, shall appoint counsel. All testimony shall be taken under oath. The standard of
135 proof at such hearing will be that of clear and convincing evidence.

136 (p) Reasonable expense incurred in providing critical community health services may be
137 paid for out of the estate of the individual, by the petitioner or by the commonwealth, as may be
138 determined by the court.

139 SECTION 5. Section 9 of said chapter 123, as so appearing, is hereby amended by
140 inserting after the words “of section eight B.”, in line 39, the following words:- Any person may
141 apply to the court stating their belief that an individual currently receiving critical community
142 health services under section 8 1/2 should no longer be so treated.