

SENATE No. 941

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 relative to improving access to emergency treatment plans.

PETITION OF:

NAME:

Cindy F. Friedman

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 941

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 941) of Cindy F. Friedman for legislation relative to improving access to emergency treatment plans. The Judiciary.

The Commonwealth of Massachusetts

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

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. Subsection (f) of section 8B of chapter 123 of the General Laws, as
2 appearing in the 2016 Official Edition, is hereby amended by adding the following sentences:-
3 The superintendent of a facility or medical director of the Bridgewater state hospital may further
4 petition the court for the continued monitoring of the patient after the expiration of the order of
5 commitment. The hearing to continue monitoring shall take place within 7 days following the
6 filing of the petition. The court may appoint a treatment monitor, as described under sections 5-
7 306A-D of chapter 190B, to monitor the existing treatment plan or, under the guidance of the
8 court, develop and monitor a new treatment plan, as described in subsection (a) of section 5-
9 306A of chapter 190B.

10 SECTION 2. Section 5-101 of chapter 190B of the General Laws, as appearing in the
11 2016 Official Edition, is hereby amended by inserting, in subsection (3), after the word “court”,
12 in line 14, the following words:- or in proceedings relating to the appointment of treatment
13 monitors and supervision of treatment plans as described in section 5-306.

SECTION 3. Said section 5-101 of said chapter 190B is hereby further amended by inserting after subsection (25) the following subsection:-

(26) “Treatment monitor”, 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 monitor the treatment plan as described in subsection (a) of section 5-306A.

SECTION 4. Section 5-306A of said chapter 190B, as so appearing, is hereby amended by inserting after the words “section 5-308.”, in line 17, the following words:-

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

SECTION 5. Said section 5-306A of said chapter 190B, as so appearing, is hereby further amended by striking out subsection (b) and inserting in place thereof the following subsection:-

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

SECTION 6. Said chapter 190B is hereby amended by inserting after section 5-306A the following sections:-

Section 5-306B. (a) A treatment monitor shall report in writing the condition of the incapacitated person within 30 days following appointment and not more than 60 days thereafter and when otherwise ordered by the court. A report shall state:

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

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

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

(4) plans regarding future care.

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

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

Upon receipt of notice from the treatment monitor, the court shall appoint counsel, if necessary, and schedule treatment non-compliance hearings and service provider non-compliance hearings within 7 days and not more than 14 days, except in extraordinary circumstances, as determined by the court. The court shall create a standard “notice of treatment non-compliance” form, which the monitor shall complete with times and dates of alleged non-compliance of the incapacitated person or the service provider.

Treatment non-compliance hearings shall proceed in 2 distinct steps, the first to adjudicate the factual issue of whether the alleged treatment plan is being complied with and the

second to determine the disposition of the matter, if treatment non-compliance is found by the court to have occurred.

If the court finds that the incapacitated person has not complied with one or more conditions of the treatment plan as alleged, or that the service provider has not complied with one or more conditions of the treatment plan as alleged, the treatment monitor shall recommend to the court a course of immediate action and may present argument and evidence in support of that recommendation. The incapacitated person or his representative and the treatment provider or his representative shall be permitted to present argument and evidence relevant to disposition and to propose dispositional terms. The court may issue an order of enforcement that shall include a course of action and reasons for taking such action, including an order that the incapacitated person or service provider return before the court to amend the treatment plan.

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

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

Section 5-306D. (a) On petition of the incapacitated person or any person interested in the welfare of the incapacitated person, the court, after notice and hearing, may remove a treatment monitor if the person under a treatment plan is no longer incapacitated or for other good cause. On petition of the treatment monitor, the court may accept a resignation.

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

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

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