

# HOUSE . . . . . No. 2094

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Thomas A. Golden, Jr.*

*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 ensure full system accountability for mental health parity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>1/27/2021</i>

# HOUSE . . . . . No. 2094

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By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 2094) of Thomas A. Golden, Jr. for legislation to ensure that health care policies and protocols not discriminate between patients with mental health or substance use conditions and patients with a medical or surgical conditions. Mental Health, Substance Use and Recovery.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act to ensure full system accountability for mental health parity.

*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 111 of the general laws is hereby amended by adding after section  
2   51k the following new section:

3           Section 51L. Hospital Requirements for Mental Health Parity

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

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

9           (b) An acute-care hospital or a satellite emergency facility (hereinafter "facility") shall  
10   ensure that all policies and protocols developed by the facility shall be applied and implemented  
11   on a nondiscriminatory basis such that such policies and protocols do not discriminate between

patients presenting with a mental health or substance use condition and those patients with presenting with a medical /surgical condition.

(c) An acute-care hospital or a satellite emergency facility shall annually review its policies and procedures to ensure that such policies and procedures do not discriminate between patients presenting with a mental health or substance use condition and those patients with presenting with a medical /surgical condition and are applied and implemented on a nondiscriminatory basis. Following the review, the acute-care hospital or a satellite emergency facility must submit a certification to the department of public health and the department of mental health signed by the hospital's chief executive officer and chief medical officer that states that the hospital has completed a comprehensive review of the policies and procedures of the hospital for the preceding calendar year for compliance with this section and any accompanying regulations.

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

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

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

3. Patient care policies and procedures, which may include, but not be limited to, patient admission and discharge policies and decision-making, patient flow policies, patient

34 discharge planning, consultation, clinical competencies, charting processes, and patient rights,  
35 patient and staff security, and infection prevention.

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

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

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

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

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

SECTION 2. Chapter 19 of the general laws is hereby amended by inserting after section 19, the following new section:

Section 19A. Requirements for licensed facilities

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

(b) The department shall issue regulations requiring free-standing facilities licensed pursuant to 104 CMR 27.00 to have a clinical affiliation with a medical facility to ensure access by patients to medical services. Such affiliation shall include, but not be limited to patient care, testing, and patient diagnostics.

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

(d) The department may impose a penalty against a facility for noncompliance with subsection (a) of this section. The amount of any penalty imposed shall be \$100 for each day in

the noncompliance period with respect to each patient to whom such failure relates; provided however that the maximum annual penalty under this subsection shall be \$500,000.

SECTION 3. Chapter 19 of the general laws is hereby amended by inserting after section 19A, the following new section:

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

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

(d) A facility may deny admission to a patient whose needs have been determined by the facility medical director to exceed the facility's capability at the time admission is sought. The determination shall include the factors justifying denial of admission and why mitigating efforts, such as utilization of additional staff, would have been inadequate. This determination must be recorded in writing and shall be subject to review by the Department; provided however, that such written determination need not contain patient-identifiable information. (e) Facilities shall keep data on patients referred for admission in a form and format and containing data elements as determined by the Department; provided however, that facilities shall not be required to maintain patient-identifiable data on individuals not accepted for admission. Such data shall be available for inspection by the Department upon request.

SECTION 4. Behavioral Health care services in the ED

Chapter 111 of the general laws is hereby amended by inserting after Section X, the following new language: -

Section X. Behavioral Health care services in the ED

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

"Licensed mental health professional", a: (i) licensed physician who specializes in the practice of psychiatry or addiction medicine; (ii) licensed psychologist; (iii) licensed independent clinical social worker; (iv) licensed certified social worker; (v) licensed mental health counselor; (vi) licensed psychiatric clinical nurse specialist; (vii) certified addictions registered nurse; (viii) licensed alcohol and drug counselor I as defined in section 1 of chapter 111J; or (ix) healthcare provider, as defined in section 1, qualified within the scope of the individual's license to perform substance use disorder evaluations, including an intern, resident or fellow pursuant to medical staff policies and practice.

"Satellite emergency facility", a health care facility that operates on a 7–day per week, 24–hour per day basis that is located off the premises of a hospital, but is listed on the license of a hospital, and is authorized to accept patients transported to the facility by ambulance.

(b) A satellite emergency facility, licensed pursuant to this chapter, shall ensure that patients have access to a Licensed Mental Health Professional upon admission to the facility. Services provided pursuant to this section shall include screening, evaluation, and psychopharmacological evaluations.

SECTION 5. Chapter 19 of the general laws is hereby amended by inserting after section 19B, the following new section:

Section 19C. The department shall, working with the department of public health, the office of Medicaid and the Massachusetts Behavioral Health Partnership Program, require all licensed facilities to report a minimum of three (3) times a day to the Massachusetts Behavioral Health Access website as an effort to improve the search capabilities of health care providers, carriers, and the public to locate inpatient beds, services, and placement for individuals with mental health and substance use. The department may evaluate the existing reporting requirements for licensed facilities and make recommendations for additional information to be reported by facilities and reported to the website. The department shall promulgate regulations governing compliance with this section, which shall include monetary penalties for noncompliance.

## SECTION 6. Statewide Planning

The executive office of health and human services shall coordinate an interagency statewide planning working group to study the need for behavioral health care services across the commonwealth, beginning with inpatient psychiatric units and department of mental health beds. The study shall utilize data collected from census reporting by inpatient facilities and through data collected through the expedited psychiatric admissions process. The study should identify the total number of units and currently in operation in the commonwealth by geographic region, including capacity to serve special populations, which shall include but not be limited to children; geriatric patients; individuals with autism spectrum disorder, intellectual disabilities, and developmental disabilities; individuals with co-occurring substance use disorder; individuals



with co-occurring medical conditions; individuals who present with high level of acuity, including severe behavior and assault risk; individuals with eating disorders; by geographic region, and estimate the need for total units/beds by geographic region, estimate the need for special population capacity by geographic region, and estimate the cost to operate each unit at the needed capacity. In performing this analysis, the working group should consult with stakeholders on performing this analysis and on developing recommendation for how to achieve the needed services and capacity. The working group shall publish an report by December 31, 2020 and submit a copy the to the joint committee on mental health substance use and recovery and the joint committee health care financing, that includes recommendations for reducing boarding in the emergency departments, and any suggested legislation to implement those recommendations.

## SECTION 7. Expedited Psychiatric Inpatient Admissions

There shall be a commission on boarding in the emergency room for patients seeking mental health and substance use disorder services within the department of mental health. The purpose of the commission is to implement the expedited inpatient admissions protocol, as established by the department, collect data on the number of patients boarding in emergency departments and the reasons for extended wait times, including capacity constraints, and make recommendations for measures to reduce the wait times for admissions. The commission shall enforce provisions The commission shall consist of: the commissioner of the department of mental health, or designee, who shall serve as chair, the commissioner of the department of public health, or designee, the undersecretary for the office of Medicaid or designee, the commissioner of the division of insurance, or designee, a representative from the Massachusetts association of health plans, a member representing blue cross blue shield of Massachusetts, a

163 representative from the Massachusetts health and hospital association, a representative from the  
164 Massachusetts College of Emergency Physicians, a representative from the Massachusetts  
165 association for behavioral health systems, a member representing the emergency service  
166 providers, and a consumer representative.

167         The commission on emergency department boarding shall submit an annual report by  
168 December 31 to the secretary of health and human services, the joint committee on mental health  
169 substance use and recovery and the joint committee health care financing, that summarizes the  
170 data collected on the number of patients boarding in the emergency departments identified by  
171 age, gender, race and ethnicity, insurance status, diagnosis, and reason for the delay in  
172 admission, and includes recommendations for reducing boarding in the emergency departments,  
173 and any suggested legislation to implement those recommendations, which shall include but not  
174 be limited to requirements for the delivery system to operate on a 24/7 basis for admissions and  
175 discharges and penalties for noncompliance.