

# SENATE . . . . . No. 106

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## 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 resolve barriers to timely access to behavioral health care for children with complex needs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/19/2021</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>3/24/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>4/1/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/13/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>10/29/2021</i>

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By Ms. Friedman, a petition (accompanied by bill, Senate, No. 106) of Cindy F. Friedman, Joanne M. Comerford, Susannah M. Whipps and Michael P. Kushmerek for legislation to resolve barriers to timely access to behavioral health care for children with complex needs. Children, Families and Persons with Disabilities.

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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 resolve barriers to timely access to behavioral health care for children with complex needs.

*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 2018 Official Edition,  
2   is hereby amended by striking out section 16R and inserting in place thereof the following  
3   section:-

4           Section 16R. (a) There shall be geographically-based interagency review teams, which  
5   shall be convened by the secretary of health and human services or a designee to collaborate on  
6   complex cases involving a person under the age of 22 who is disabled or has special needs and  
7   may qualify for services from 2 or more public entities, including state agencies, MassHealth and  
8   local educational agencies.

9           (b) The interagency review team shall, as determined by the needs of the child, consist of  
10   representatives from agencies within the executive office of health and human services, the  
11   department of early education and care, and the department of elementary and secondary

education. If appropriate and if proper consent from the parent or legal guardian has been provided, representatives of local education agencies and juvenile probation shall be invited to participate. A child may be referred to the interagency review team by a state agency, the juvenile court or the child's parent or guardian with or without the assistance of a behavioral health provider or legal advocate.

(c) Not later than 14 days after a child is referred to an interagency review team, the team shall complete its review and, after hearing from the parents or guardian of the child, relevant agencies and service providers, and reviewing relevant materials, shall determine which services, including case management services, are appropriate for the child and who shall provide such services.

(d) Decisions of the interagency review team shall be issued to the parent or guardian in writing not later than 7 days after the decision and shall include the basis for the decision, the basis for the denial of services, if any, and information regarding rights to further review and appeal of a decision.

If the parent or guardian of the child disputes the decision of the interagency review team, the parent or guardian may file an appeal with the division of administrative law appeals, established under section 4H of chapter 7, which shall conduct an adjudicatory proceeding and order any necessary relief consistent with state or federal law. Alternatively, the parent or guardian may request a referral to the complex case resolution panel established in section 14A of chapter 18C; provided, that the parent or guardian shall retain the right to file an appeal with the division of administrative law appeals pending an action by the complex case review panel.

(e) If the interagency review team is unable to reach a consensus decision within 14 days of a referral under subsection (c), the matter shall be referred to the complex case resolution panel established in section 14A of chapter 18C.

(f) Nothing in this section shall be construed to entitle a child to services for which the child would otherwise be ineligible under applicable agency statutes or regulations.

(g) Notwithstanding chapters 66A, 112 and 119 or any other law related to the confidentiality of personal data, the interagency review team, the secretary of health and human services and the division of administrative law appeals shall have access to and may discuss materials related to a child's case under this section while the case is under review and once the parent or guardian has consented in writing and once those having access agree in writing to keep the materials confidential. Once the review of a child's case is complete, all materials shall be returned to the originating source.

(h) The secretary of health and human services, the commissioner of elementary and secondary education and the commissioner of early education and care shall jointly promulgate regulations to effectuate the purposes of this section.

(i) The secretary of health and human services shall publish an annual report, by February 15, summarizing the cases reviewed by an interagency review team in the previous year, the length of time spent at each stage and their final resolution. The report shall be provided to the office of the child advocate.

(j) Nothing in this section shall limit the rights of parents or children under chapter 71B, the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.

SECTION 2. Chapter 18C of the General Laws is hereby amended by adding the following section:-

Section 14A. (a) The office shall establish a complex case resolution panel, hereinafter referred to as the “panel”, for the purpose of establishing agreements between or among state agencies and local educational agencies to provide acute and long-term residential behavioral health services for children with complex needs.

The panel shall include: the child advocate or a designee, who shall serve as chair; the secretary of health and human services or a designee; the director of Medicaid or a designee; the commissioner of mental health or a designee; the commissioner of children and families or a designee; the commissioner of elementary and secondary education or a designee; the commissioner of developmental services or a designee; and 2 individuals to be appointed by the child advocate to serve for 2-year terms, 1 of whom shall be a representative from an organization providing services to families of children with behavioral health needs and 1 of whom shall be a representative from an organization that assists families in navigating the health and human services system; provided, that the 2 individuals appointed for 2-year terms shall recuse themselves from any matter in which they have a direct conflict of interest; and provided further, that for the 2 individuals appointed for 2-year terms, if a vacancy occurs prior to the end of the individual’s 2-year term, the vacancy shall be immediately filled by the child advocate. The child advocate may require the participation of a local educational agency when the matter involves or may involve services provided by or paid for by said local educational agency. Panel member designees shall be empowered by the agency or local educational agency to act on behalf of the appointee in making decisions and agreements.

(b) The panel shall review and resolve matters referred to the panel by:

(1) geographically-based interagency review teams under section 16R of chapter 6A; and

(2) a parent or legal guardian or a legal advocate or behavioral health provider authorized to act on behalf of a parent or guardian, seeking to access services for a child with complex behavioral health needs by resolving any administrative, financial or clinical barriers to such services that arise from disputes between state agencies, MassHealth or local educational agencies; provided, that “complex behavioral health needs” shall include, but not be limited to:

(i) multi-agency involvement and a behavioral health diagnosis and co-occurring developmental or serious physical health diagnosis, (ii) a child who has waited 5 days or more to be placed in an appropriate therapeutic setting after being assessed to need acute psychiatric treatment and having been determined by a licensed health care provider to be medically stable without need for urgent medical assessment or hospitalization for a physical health condition, or (iii) a child who has experienced more than 14 days of inpatient psychiatric treatment in a 180-day period or has been admitted to an emergency department for a behavioral health condition more than 3 times in a 90-day period, and has been assessed to need ongoing services and is awaiting approval for said services.

(c) The panel shall convene not later than 3 days after receiving a referral under paragraph (1) of subsection (b), and not later than 3 days after the child advocate agrees to a panel review of a matter referred under paragraph (2) of subsection (b).

Not later than 14 days after the panel convenes for the first time on a matter, the panel shall issue a decision resolving the matter. If the lack of a primary care manager is impeding the child’s access to services or if, after 14 days, the panel cannot reach consensus regarding the

99 agency or entity with primary responsibility for managing the care of a child, the child advocate  
100 has the authority to and shall immediately designate an agency to act as the primary care  
101 manager. The designated agency shall remain the primary case manager until an alternative  
102 agreement is entered into or until the child no longer qualifies for the services. If the child is  
103 unable to access services for which they are eligible or entitled because of a disagreement about  
104 the responsibility for payment among state agencies and local education agencies, or if, after 14  
105 days, the panel cannot reach consensus about responsibility for payment among the agencies or  
106 local education agencies, the child advocate has the authority to and shall immediately require  
107 the relevant state and local agencies to enter into a binding temporary cost-share agreement. The  
108 cost-share agreement shall remain in effect until the child advocate is informed in writing of a  
109 permanent cost-share or payment agreement having been implemented or until the child no  
110 longer qualifies for the services.

111 Panel decisions shall be provided to the parent or guardian in writing not later than 7 days  
112 after the decision and shall include the basis for the decision, the basis for the denial of services,  
113 if any, and information regarding rights to further review or appeal of a decision.

114 (d) If the parent or guardian of the child disputes the decision of the panel under  
115 subsection (c), the parent or guardian may file an appeal with the division of administrative law  
116 appeals, established under section 4H of chapter 7, which shall conduct an adjudicatory  
117 proceeding and order any necessary relief consistent with state or federal law.

118 (e) Nothing in this section shall be construed to entitle a child to services for which the  
119 child would otherwise be ineligible under applicable agency statutes or regulations.

120 (f) Notwithstanding chapters 66A, 112 and 119 or any other law related to the  
121 confidentiality of personal data, the teams, the child advocate and the division of administrative  
122 law appeals shall have access to and may discuss materials related to a case while the case is  
123 under review once the parent or guardian has consented in writing and those having access agree  
124 in writing to keep the materials confidential. Once the review is complete, all materials shall be  
125 returned to the originating source.

126 (g) Nothing in this section shall limit the rights of parents or children under chapter 71B,  
127 the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or Section 504 of  
128 the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.

129 (h) The child advocate shall promulgate regulations to effectuate the purposes of this  
130 section.

131 (i) The child advocate shall publish an annual report summarizing the cases reviewed by  
132 the panel in the previous year, the length of time spent at each stage and their final resolution.