SENATE DOCKET, NO. 2133 FILED ON: 2/19/2021

SENATE . . . . . No. 1276

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 addressing barriers to care for mental health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Julian Cyr	*Cape and Islands*
Cindy F. Friedman	*Fourth Middlesex*

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SENATE . . . . . No. 1276

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1276) of Julian Cyr and Cindy F. Friedman for legislation to address barriers to care for mental health. Mental Health, Substance Use and Recovery.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2546* OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act addressing barriers to care for mental health.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (a) of section 8 of chapter 6D of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word “system”, in line 9, the following words:- , and trends in annual behavioral health expenditures.

SECTION 2. Said section 8 of said chapter 6D, as so appearing, is hereby further amended by striking out, in line 94, the word “and” and inserting in place thereof the following words:- , including behavioral health expenditures, and.

SECTION 3. The first paragraph of subsection (a) of section 16 of chapter 12C of the General Laws, as so appearing, is hereby amended by adding the following sentence:- In addition to overall health costs, the center shall report on the subcategory of annual behavioral health

expenditures, as defined in regulation, and provide a similar analysis of costs and cost trends related to behavioral health services.

SECTION 4. Section 21A of said chapter 12C, as so appearing, is hereby amended by adding the following 2 sentences:- The center shall promulgate regulations to establish an annual baseline expenditure for behavioral health services. The regulations shall define criteria for health care services to be categorized as behavioral health services, with subcategories to the extent feasible, including, but not limited to: (i) mental health; (ii) substance use disorder; (iii) outpatient; (iv) inpatient; (v) services for children; (vi) services for adults; and (vii) provider type. The regulations shall establish guidelines for data collection related to behavioral health services, outcomes measures and expenditures.

SECTION 5. Section 9 of chapter 13 of the General Laws, as so appearing, is hereby amended by inserting after the word “workers”, in line 8, the following words:- , the board of registration of social workers, the board of registration of psychologists, the board of registration of allied mental health and human services professions.

SECTION 6. Section 79 of said chapter 13, as so appearing, is hereby amended by striking out, in lines 17 and 18 and in line 27, the words “director of consumer affairs and business regulations” and inserting in place thereof, in each instance, the following words:- commissioner of public health.

SECTION 7. Said chapter 13 is hereby further amended by striking out section 80, as so appearing, and inserting in place thereof the following section:-

Section 80. There shall be a board of registration of social workers that shall consist of: the commissioner of children and families or a designee who is licensed as either a certified

social worker or an independent clinical social worker under sections 130 to 137, inclusive, of chapter 112; the commissioner of mental health or a designee who is licensed as either a certified social worker or an independent clinical social worker under said sections 130 to 137, inclusive, of said chapter 112; and 7 members to be appointed by the governor, 1 of whom shall be a representative of an accredited school of social work, 3 of whom shall be licensed as a certified social worker or an independent clinical social worker under said sections 130 to 137, inclusive, of said chapter 112, 1 of whom shall be licensed under said sections 130 to 137, inclusive, of said chapter 112 and an active member of an organized labor organization representing social workers and 2 of whom shall be members of the general public. At least 1 licensed social work member and at least 1 member from the general public shall represent an underserved population, as defined by the United States Department of Health and Human Services. Not more than 6 members of the board shall belong to any 1 political party.

SECTION 8. Section 84 of said chapter 13, as so appearing, is hereby amended by striking out, in lines 8 and 9, the words “division of professional licensure” and inserting in place thereof the following words:- department of public health.

SECTION 9. Said section 84 of said chapter 13, as so appearing, is hereby further amended by striking out, in lines 44 and 45, inclusive, the words “Division of Professional Licensure Trust Fund established in section 35V” and inserting in place thereof the following words:- Quality in Health Professions Trust Fund established in section 35X.

SECTION 10. Section 88 of said chapter 13, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “division of professional licensure” and inserting in place thereof the following words:- department of public health.

SECTION 11. The first paragraph of section 90 of said chapter 13, as so appearing, is hereby amended by striking out the third sentence.

SECTION 12. Said section 90 of said chapter 13 is hereby further amended by striking out the third paragraph, as so appearing, and inserting in place thereof the following paragraph:-

The commissioner of public health may review and approve the rules and regulations proposed by the board.

SECTION 13. Chapter 111 of the General Laws is hereby amended by inserting after section 51½ the following section:-

Section 51¾. The department, in consultation with the department of mental health, shall promulgate regulations requiring all acute-care hospitals licensed under section 51G to provide or arrange for qualified behavioral health clinicians, during all operating hours of an emergency department or a satellite emergency facility as defined in section 51½, to evaluate and stabilize a person admitted with a behavioral health presentation to the department, or to a facility and to refer such person for appropriate treatment or inpatient admission.

The regulations shall permit evaluation via telemedicine, electronic or telephonic consultation, as deemed appropriate by the department.

The regulations shall be promulgated after consultation with the department of mental health and the division of medical assistance and shall include, but not be limited to, requirements that individuals under the age of 22 receive an expedited evaluation and stabilization process.

SECTION 14. Section 61 of chapter 112 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in line 18, the words “A board of registration” and inserting in place thereof the following words:- Each board of registration under the supervision of the department of public health may discipline a holder of a license, certificate, registration or authority issued pursuant to this chapter and each board of registration.

SECTION 15. Said section 61 of said chapter 112, as so appearing, is hereby further amended by striking out, in lines 49 and 50, the words “a board of registration” and inserting in place thereof the following words:- each board of registration under the supervision of the department of public health and each board of registration.

SECTION 16. Section 65B of said chapter 112, as so appearing, is hereby amended by striking out, in line 1, the words “A board of registration” and inserting in place thereof the following words:- Each board of registration under the supervision of the department of public health and each board of registration.

SECTION 17. Section 65F of said chapter 112, as so appearing, is hereby amended by inserting after the word “licensure”, in line 4, the following words:- or a board of registration under the supervision of the department of public health.

SECTION 18. Section 126 of said chapter 112, as appearing in the 2018 Official Edition, is hereby amended by adding the following paragraph:-

All application fees and civil administrative penalties and fines collected by the board under sections 61 and 118 to 129B, inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in section 35X of chapter 10.

SECTION 19. Section 136 of said chapter 112, as so appearing, is hereby amended by adding the following paragraph:-

All application fees and civil administrative penalties and fines collected by the board under sections 61 and 130 to 137, inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in section 35X of chapter 10.

SECTION 20. Section 163 of said chapter 112, as so appearing, is hereby amended by inserting after the definition of "Licensed mental health counselor," the following definition:-

"Licensed supervised mental health counselor", a person licensed or eligible for license under section 165.

SECTION 21. Section 164 of said chapter 112, as so appearing, is hereby amended by inserting after the word "consultant", in line 7, the following words:- or licensed supervised mental health counselor, advisor or consultant.

SECTION 22. Section 165 of said chapter 112, as so appearing, is hereby amended by inserting after the word "health", in line 16, the following words:- or the department of public health.

SECTION 23. Said section 165 of said chapter 112, as so appearing, is hereby further amended by adding the following 3 paragraphs:-

The board may issue a license to an applicant as a supervised mental health counselor; provided, however, that each applicant, in addition to complying with clauses (1) and (2) of the first paragraph, shall provide satisfactory evidence to the board that the applicant: (i) demonstrates to the board the successful completion of a master's degree in a relevant field from

an educational institution licensed by the state in which it is located and meets national standards for granting of a master's degree with a subspecialization in counseling, or a relevant subspecialization approved by the board; and (ii) has successfully passed a board-approved examination.

A supervised mental health counselor shall practice under supervision of a clinician in a clinic or hospital licensed by the department of mental health or the department of public health or accredited by the Joint Commission on Accreditation of Hospitals or in an equivalent center or institute or under the direction of a supervisor approved by the board.

The board shall promulgate rules and regulations specifying the required qualifications of the supervising clinician.

SECTION 24. Section 168 of said chapter 112, as so appearing, is hereby amended by adding the following paragraph:-

All application fees and civil administrative penalties and fines collected by the board under sections 61 and 163 to 172, inclusive, shall be deposited into the Quality in Health Professions Trust Fund established in section 35X of chapter 10.

SECTION 25. Chapter 123 of the General Laws is hereby amended by inserting after section 2 the following section:-

Section 2A. The department shall establish within its regulations additional factors to be considered when contracting for services in geographically-isolated communities, including, but not limited to, travel and transportation, to ensure availability and access to services.

SECTION 26. Section 1 of chapter 175 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the definition of "Domestic company" the following definition:-

"Emergency services programs", all programs subject to contract between the Massachusetts Behavioral Health Partnership and nonprofit organizations for the provision of community-based emergency psychiatric services, including, but not limited to, behavioral health crisis assessment, intervention and stabilization services 24 hours per day, 7 days per week, through the following service components: (i) mobile crisis intervention services for youth; (ii) mobile crisis intervention services for adults; (iii) emergency service provider community-based locations; and (iv) adult community crisis stabilization services.

SECTION 27. Section 47B of said chapter 175, as so appearing, is hereby amended by inserting after the word "specialist,", in line 122, the following words:-, a clinician practicing under the supervision of a licensed professional, and working towards licensure, in a clinic licensed under chapter 111.

SECTION 28. Section 8A of chapter 176A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word "specialist", in line 125, the following words:- , a clinician practicing under the supervision of a licensed professional, and working towards licensure, in a clinic licensed under chapter 111.

SECTION 29. Section 4A of chapter 176B of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word "specialist", in line 120, the following words:- , a clinician practicing under the supervision of a licensed professional, and working towards licensure, in a clinic licensed under chapter 111.

SECTION 30. Section 4M of chapter 176G of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word “specialist”, in line 117, the following words:- , a clinician practicing under the supervision of a licensed professional, and working towards licensure, in a clinic licensed under chapter 111.

SECTION 31. Chapter 176O of the General Laws is hereby amended by inserting after section 5C the following section:-

Section 5D. For the purposes of this section, the term “base fee schedule” shall mean the minimum rates, typically set forth in fee schedules, paid by the carrier to an in-network health care provider who is not paid under an alternative payment arrangement for covered health care services; provided, however, that final rates may be subject to negotiations or adjustments that may result in payments to in-network providers that are different from the base fee schedule.

A carrier, directly or through any entity that manages or administers mental health or substance use disorder benefits for the carrier, shall establish a base fee schedule for primary care services for behavioral health providers that is not less than the base fee schedule used for evaluation and management services for primary care providers of the same or similar licensure type and in the same geographic region; provided, however, that a carrier shall not lower its base fee schedule for primary care providers to comply with this section. The division shall promulgate regulations to implement this section.

SECTION 32. The interagency health equity team, as supported through the office of health equity, shall, in consultation with the advisory council appointed in this section, study ways to improve access to, and the quality of, culturally competent behavioral health services. The review shall include, but not be limited to: (i) the need for greater racial, ethnic and

linguistic diversity within the behavioral health workforce; (ii) the role of gender, gender identity, race, ethnicity, linguistic barriers, status as a client of the department of children and families, status as an incarcerated or formerly incarcerated individual, including justice-involved youth and emerging adults, status as a veteran, status as an individual with post-traumatic stress disorder, status as an aging adult, sexual orientation and social determinants of health regarding behavioral health needs; and (iii) any other factors identified by the team that create disparities in access and quality within the existing behavioral health service delivery system, including stigma, transportation and cost.

The advisory council shall consist of: the chairs of the joint committee on mental health, substance use and recovery; the chair of the Black and Latino Caucus or a designee; and the following members to be appointed by the commissioner of public health, 1 of whom shall be a local public health official representing a majority-minority municipality, 1 of whom shall be a representative of a racial or ethnic equity advocacy group, 1 of whom shall be a representative of a linguistic equity advocacy group, 1 of whom shall be a licensed behavioral health provider, 1 of whom shall be a representative of a mental health advocacy group, 1 of whom shall be a representative of an organization serving the health care needs of the lesbian, gay, bisexual, transgender, queer and questioning community, 1 of whom shall be a representative of an organization serving the health care needs of individuals experiencing housing insecurity and 1 of whom shall be an individual with expertise in school-based mental health services.

The team shall meet not less than quarterly with the advisory council. Not later than March 30, 2021 and annually for the following 3 years at the close of the fiscal year, the team shall issue a report with legislative, regulatory or budgetary recommendations to improve the access and quality of culturally competent mental and behavioral health services. The report shall

be written in non-technical, readily understandable language and shall be made available to the public by posting the report on the office of health equity's website.

The office of health equity, the department of mental health and the department of public health may, subject to appropriation, provide administrative, logistical and research support to produce the report.

SECTION 33. The health policy commission, in consultation with the division of insurance, shall review the role of behavioral health managers, as defined in section 1 of chapter 176O of the General Laws, within the health care delivery system. The commission shall review:

(i) oversight practices by other states on behavioral health managers; (ii) the effects of behavioral health manager state licensure, regulation or registration on access to behavioral health services; (iii) other aspects of behavioral health managers as deemed appropriate by the commission.

Not later than January 1, 2022, the health policy commission shall file a report of its findings with the clerks of the senate and house of representatives, the joint committee on health care financing, the joint committee on mental health, substance use and recovery and the joint committee on financial services.

SECTION 34. Notwithstanding any general or special law to the contrary, the executive office of health and human services, in consultation with the department of mental health, the department of public health, MassHealth, the office of the child advocate and the division of insurance, shall establish an expedited protocol that establishes clear steps and responsibilities to ensure that individuals under the age of 22 in need of inpatient or residential psychiatric treatment are placed in an appropriate facility from an emergency department or

satellite emergency facility within 48 hours of admission to the emergency department or satellite emergency facility that shall be incorporated in the regulations required under section 51¾ of chapter 111 of the General Laws. The protocol shall include, but not be limited to: (i) a behavioral health evaluation to occur, in person or through the use of telehealth technology, within 12 hours of admission to the emergency department or satellite emergency facility; (ii) notification to the department of mental health and the patient's insurance carrier to expedite placement in or admission to an appropriate treatment program or facility upon completion of the behavioral health evaluation; (iii) where appropriate, monitoring, emergent psychiatric intervention and initiation of treatment to stabilize the individual until placement in or admission to an appropriate treatment program or facility; (iv) notification upon discharge from the emergency department or satellite emergency facility to the patient's primary care physician, if known; and (v) recording by the emergency department or satellite emergency facility of the behavioral health evaluation in the patient's electronic medical record upon discharge and making the evaluation directly accessible by other healthcare providers and facilities consistent with federal and state privacy requirements through a secure electronic medical record, health information exchange or other similar software or information systems.

SECTION 35. Notwithstanding any special or general law to the contrary, there shall be a special commission to review ways to increase consumer access to the behavioral health workforce. The commission shall consider: (i) workforce needs within the behavioral health field; (ii) identified behavioral health workforce shortages, including, but not limited to, shortages in inpatient and community-based settings; (iii) ways to identify barriers to mental health providers' acceptance of commercial insurance and MassHealth, including, but not limited to, the impact of commercial insurance and MassHealth reimbursement rates and administrative

processes; (iv) ways to increase and incentivize the acceptance of commercial insurance and MassHealth by behavioral health providers; (v) the feasibility of requiring acceptance of commercial insurance and MassHealth as a condition of licensure for mental health providers;(vi) recommendations and best practices proven to have the most impact on addressing behavioral health workforce shortages, including, but not limited to, the impact of current rates for behavioral health services and use of peer support groups and alternative therapeutic interventions to supplement existing interventions and pathways of care; and (vii) ways to implement the integration of peer support groups and alternative therapeutic interventions into the existing behavioral health care system. The commission shall consist of the following members or their designees: the secretary of health and human services, who shall serve as chair; the commissioner of insurance; the assistant secretary for MassHealth; the commissioner of public health; the commissioner of the department of mental health; and the following members to be appointed by the chair, 1 of whom shall be a representative on the Massachusetts Nurses Association, 1 of whom shall be a representative of the Massachusetts Psychiatric Society, Inc., 1 of whom shall be a representative of the Massachusetts Psychological Association, Inc., 1 of whom shall be a representative of the National Association of Social Workers, Inc., 1 of whom shall be a representative of the MAAPPN Massachusetts Association of Advanced Practice Psychiatric Nurses, Inc., 1 of whom shall be a representative of the Massachusetts Mental Health Counselors Association, Inc., 1 of whom shall be a representative of the Association for Behavioral Healthcare, Inc., 1 of whom shall be a representative of The Massachusetts Medical Society, 1 of whom shall be a representative of the National Alliance on Mental Illness of Massachusetts, Inc., 1 of whom shall be a representative of the American Nurses Association Massachusetts, Inc, 1 of whom shall be a representative of Blue Cross and

Blue Shield of Massachusetts, Inc., 1 of whom shall be a representative of the Massachusetts Association of Health Plans, Inc., 1 of whom shall be a representative of the Children's Mental Health Campaign, 1 of whom shall be a representative of Massachusetts League of Community Health Centers, Inc., 1 of whom shall be a representative of Massachusetts Association for Mental Health, Inc., 1 of whom shall be a representative of the GPS Group Peer Support, LLC and 1 of whom shall be a representative of the Massachusetts Health and Hospital Association, Inc. The commission shall submit its findings and recommendations with the clerks of the senate and house of representatives, the joint committee on mental health, substance use and recovery and the joint committee on public health not later than 1 year from the effective date of this act.

SECTION 36. Chapter 6A of the General Laws is hereby amended by inserting after Section 16BB the following new section:-

Section 16CC. (a) There shall be an office of behavioral health promotion within the executive office of health and human services. The office shall be under the supervision and control of a director of behavioral health promotion who shall be appointed by and shall report to the secretary of health and human services.

(b) The office shall coordinate all activities of the commonwealth to promote the mental, emotional, and behavioral health and wellness of all residents. The office shall set goals for the promotion of mental health and the prevention of mental health and substance use conditions. The office shall fully integrate health equity principles and apply a health equity lens to all its work. The office will prepare and implement an annual plan for the commonwealth.

The office shall collaborate with the executive offices, state agencies, independent agencies, and state commissions, including but not limited to, the executive office of health and

human services, the executive office of education, the executive office of elder affairs, the department of mental health, department of public health, department of children and families, department of veterans' services, department of early education and care, department of elementary and secondary education, office for refugees and immigrants, office of health equity, office of the child advocate, and the Massachusetts commission on LGBTQ youth. The office shall facilitate communication and partnership between these entities to develop greater understanding of the intersections between agency activities and behavioral health promotion and illness prevention.

(c) The office shall: (1) facilitate the development of interagency initiatives that are informed by the science of promotion and prevention, advance health equity and trauma-informed care, and address the social determinants of health; (2) develop and implement a comprehensive plan to strengthen community and state-level promotion and prevention programming and infrastructure through training, technical assistance, resource development and dissemination, and other initiatives; (3) advance the identification and dissemination of evidence-based and promising practices designed to further behavioral health promotion and prevent mental health and substance use conditions and associated disability; (4) collect and analyze data measuring population-based indicators of behavioral health from existing data sources, track changes over time, and make programming and policy recommendations to address the needs of populations at greatest risk; (4) coordinate the behavioral health promotion and wellness programs, campaigns, and initiatives of the Commonwealth; and (5) provide staffing support for the community behavioral health promotion and prevention commission, established in Massachusetts General Laws, Part 1, Title II, Chapter 6, Section 219. The office may enter into

service agreements with the department of mental health or the department of public health to fulfill the obligations of the office.

(d) The office shall prepare an annual report to evaluate its progress, and the overall progress of the Commonwealth, toward promoting mental, emotional, and behavioral wellness, and preventing mental health and substance use conditions using, where possible, quantifiable measures and comparative benchmarks. The report shall be filed with the governor, the clerks of the house of representatives and senate, and the chairs of the joint committee on mental health, substance use and recovery not later than July 1. The report shall be posted on the official website of the commonwealth.

(e) The secretary of the executive office of health and human services may expend revenue generated from section 27 of chapter 133 of the acts of 2019 for any operating costs associated with the office of behavioral health promotion.

SECTION 37. The center for health information and analysis shall revise regulations relative to reporting requirements under sections 8, 9 and 10 of chapter 12C of the General Laws to implement section 4 within 6 months of the effective date of this act.

SECTION 38. Sections 5 to 12, inclusive, sections 14 to 17, inclusive, and sections 18, 19 and 23 shall take effect July 1, 2022.

SECTION 39. Section 31 of the act shall take effect 1 year after the effective date of this act.