HOUSE DOCKET, NO. 731 FILED ON: 1/17/2023

HOUSE . . . . . No. 1963

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

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 promote high value and evidence-based behavioral health care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
James Arciero	*2nd Middlesex*	*1/11/2023*

HOUSE DOCKET, NO. 731 FILED ON: 1/17/2023

HOUSE . . . . . No. 1963

By Representative Arciero of Westford, a petition (accompanied by bill, House, No. 1963) of James Arciero for legislation to promote high value and evidence-based behavioral health care. Mental Health, Substance Use and Recovery.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to promote high value and evidence-based behavioral health care.

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. Chapter 6A of the General Laws is hereby amended by inserting after Section 18Z the following new section:

Section 19. The executive office of health and human services shall coordinate an interagency statewide planning committee to annually 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 data collected through the expedited psychiatric admissions process. The study shall identify the total number of units 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; and individuals with eating disorders. The study shall 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. The committee should consult with stakeholders on performing this analysis and on developing recommendations for how to achieve the needed services and capacity. The committee shall publish an annual report by December 31 of each year that includes recommendations for reducing boarding in the emergency departments, and any suggested legislation to implement those recommendations and shall submit a copy the to the joint committee on mental health, substance use and recovery and the joint committee on health care financing.

SECTION 2. Chapter 6A of the General Laws is hereby amended by inserting after Section 19 the following new section:

Section 19A. The executive office shall convene a special commission charged with expanding access to specialty behavioral health care inpatient beds for adults and youth, addressing funding for said beds and making recommendations for a potential rate structure to fund high intensity specialty behavioral health beds.

The commission shall consist of the following members or their designees: the commissioner of the department of mental health, who shall serve as chair; the commissioner of the department of public health; the commissioner of the division of insurance; the director of the bureau of substance addiction services within the department of public health; the assistant secretary for MassHealth; the executive director of the group insurance commission; the executive director of the health policy commission; the executive director of the center for health

information and analysis; and 6 members to be appointed by the chair: 1 of whom shall be a representative of the Association for Behavioral Healthcare, Inc.; 1 of whom shall be a representative of the Massachusetts Association of Behavioral Health Systems, Inc.; 1 of whom shall be a representative of the Massachusetts Health and Hospital Association; 1 of whom shall be a representative of the Massachusetts Association for Mental Health, Inc.; 1 of whom shall be a representative of Blue Cross and Blue Shield of Massachusetts, Inc.; and 1 of whom shall be a representative of the Massachusetts Association of Health Plans, Inc..

The commission's review shall include, but not be limited to: (i) data collected through the EPIA program, or other sources on the availability of specialty behavioral health inpatient beds; (ii) data on the populations that are more likely to face longer wait times, which may include but not be limited to specialty beds to treat adults and youth with autism spectrum disorder, specialty beds to treat adults and youth with higher levels of acuity, specialty beds to treat adults and youth with developmental disabilities, specialty beds to treat adults and youth with aggressive behavior, and specialty beds to treat adults and youth with complex medical needs; (iii) data on the number of beds to serve the populations listed in (ii), including the difference between the differences between licensed and operational beds and the reasons for any differences; (iv) how services are funded today, including payer mix and payment models utilized; (v) the feasibility of developing alternative payment models, including global payments, bundled payments, or payments based on risk adjustment and predictive modeling to ensure that services are funded based on the population served; and (vi) the feasibility of developing a multi-payer equitable rate structure designed to fund and ensure an adequate supply of high intensity specialty behavioral health beds in the commonwealth.

Not later than 1 year after the effective date of this act, the commission shall submit its findings and recommendations, together with drafts of legislation or regulations necessary to carry those recommendations into effect, to the clerks of the senate and house of representatives and the joint committee on mental health, substance use and recovery.

SECTION 3. Section 15 of Chapter 6D of the General Laws is hereby amended by striking paragraph (b) in its entirety and replace it with the following new language:-

(b) The commission shall establish minimum standards for certified ACOs. A certified ACO shall: (i) be organized or registered as a separate legal entity from its ACO participants; (ii) have a governance structure that includes an administrative officer, a medical officer, and patient or consumer representation; (iii) receive reimbursements or compensation from alternative payment methodologies; (iv) have functional capabilities to coordinate financial payments amongst its providers; (v) have significant implementation of interoperable health information technology, as determined by the commission, for the purposes of care delivery coordination and population management; (vi) develop and file an internal appeals plan as required for risk-bearing provider organizations under section 24 of chapter 176O; provided, that said plan shall be approved by the office of patient protection; provided further, that the plan shall be a part of a membership packet for newly enrolled individuals; (vii) provide medically necessary services across the care continuum including behavioral and physical health services, as determined by the commission through regulations, internally or through contractual agreements; provided, that any medically necessary service that is not internally available shall be provided to a patient through services outside the ACO; (viii) develop guidelines for the delivery of evidence-based delivery of behavioral health services, including but not limited to, 24/7 access to treatment and services, 24/7 admissions and discharges, treatment and discharge planning, adherence to

evidence-based standards of care, compliance with quality and outcome measures, and communication and coordination with all treating providers and payers; (ix) implement systems that allow ACO participants to report the pricing of services, as defined by the commission through regulations; further provided that ACO participants shall have the ability to provide patients with relevant price information when contemplating their care and potential referrals; (x) submit a report to the commission detailing the percentage of total health care expenditures that are paid to behavioral health providers; (xi) obtain a risk certificate from the division of insurance under chapter 176U; and (xii) shall engage patients in shared decision-making, including, but not limited to, shared-decision making on palliative care and long-term care services and supports.

SECTION 4. Said Chapter 6D of the General Laws is hereby amended by inserting after Section 19 the following new section:-

Section 20. Study on Evidence-Based Practice.

The commission, in consultation with the center for health information and analysis, the department of public health, and the department of mental health, shall conduct a study on the variation of the practice of behavioral health providers in the commonwealth, across the full continuum of care, and shall issue a report, not later than December 31, 2018. The review shall be posted on the commission's website and shall be filed with the clerks of the house of representatives and the senate, and the joint committee on mental health and substance abuse.

In measuring adherence to evidence-based standards, the analysis shall include, but not be limited to: (i) adherence to evidence-based standards of care, as appropriate for each level of care, (ii) performance on quality and outcome measures, and (iii) patient access to appropriate

discharge planning and transitions throughout the full continuum of care. The report shall include an examination of any gaps in the availability of data, quality metrics, or other means of measuring provider performance related to outcomes and quality. The report shall make recommendations for improving the availability of data collection and the measurement of behavioral health quality and outcomes, and recommendations related to improving quality and outcomes for patients.

SECTION 5. 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 shall promulgate regulations to enforce the requirements of this section and shall require hospitals to provide remedies for any failure to meet the requirements of said regulations. Remedies may include remediation plans or financial penalties. 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 6. Chapter 19 of the General Laws is hereby amended by inserting after section 19A, the following new section:-

Section 19B.

(a) 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.

(b) 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.

(c) 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 to admit the patient. This determination must be recorded in writing. The facility shall submit a monthly report to the Department detailing the number of admissions that have been denied by the facility and the reasons for such denials; provided however, that such written determination shall not contain patient-identifiable information.

(d) 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. The department shall require that facilities report said data to the department on a monthly basis.

(e) The department shall promulgate regulations to enforce the requirements of this section and shall require facilities to provide remedies for any failure to meet the requirements of said regulations. Remedies may include remediation plans or financial penalties. 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 7. Section 25C of Chapter 111 is hereby amended by striking paragraph (k) in its entirety and replacing it with the following new language:

(k) Determinations of need shall be based on the written record compiled by the department during its review of the application and on such criteria consistent with sections 25B to 25G, inclusive, as were in effect on the date of filing of the application. In compiling such record the department shall confine its requests for information from the applicant to matters which shall be within the normal capacity of the applicant to provide. In reviewing an application, the department shall take into consideration the report of the statewide planning committee pursuant to section 19 of chapter 6A of the general laws. In each case the action by the department on the application shall be in writing and shall set forth the reasons for such action; and every such action and the reasons for such action shall constitute a public record and be filed in the department.

SECTION 8. Section 25C of Chapter 111 of the General Laws is amended by inserting after the first paragraph the following new paragraph:

The Department, working with the department of mental health, shall conduct a statewide planning initiative for the purposes of studying and coordinating the availability and delivery of acute inpatient psychiatric beds across the commonwealth. The initiative shall utilize data collected through the expedited psychiatric inpatient admissions program, from the department of mental health pursuant to section 19B of chapter 19 of the general laws, from the center for health information and analysis, and other data collected by the department. The department shall analyze the number of individuals who are waiting for placement, including the patient demographic information, geographic disparities, the diagnosis, the types of services that such patients need, and identify gaps in the supply of licensed and operational psychiatric beds. The department shall consider this analysis when making determinations of need pursuant to this section.

The department shall publish an annual acute psychiatric inpatient bed report by December 31 of each year that identifies the types of and location of services that are in need and where may be oversupply of services. A copy of the report shall be provided to the health policy commission, the joint committee on mental health substance use and recovery and the joint committee health care financing.

SECTION 9. Chapter 111 of the General Laws is hereby amended by adding after section 51K the following new section:

Section 51L. Standards for Delivery of Behavioral Health Care in Hospitals

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

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

(b) An acute-care hospital or a satellite emergency facility (hereinafter “facility”) shall ensure that all policies and protocols developed by the facility shall be applied and implemented 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 discharge planning, consultation, clinical competencies, charting processes, and patient rights, patient and staff security, and infection prevention.

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

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

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

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

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