

HOUSE No. 1041

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balsler

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 mental health parity implementation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/26/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/24/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/24/2021</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>2/26/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/26/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/26/2021</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>2/26/2021</i>

HOUSE No. 1041

By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 1041) of Ruth B. Balsler and others relative to mental health or substance use disorder insurance benefits. Financial Services.

The Commonwealth of Massachusetts

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

An Act relative to mental health parity implementation.

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 26 of the General Laws is hereby amended by inserting after
2 Section 8L the following section:-

3 Section 8M. All carriers licensed under chapters 175, 176A, 176B and 176G that provide
4 mental health or substance use disorder benefits, and the group insurance commission, under
5 chapter 32A, or the carriers the group insurance commission contracts with for the administration
6 of any self-insured plans, shall submit an annual report on or before January 31 to the
7 commissioner of insurance, a summary of which shall be sent to the Legislature on or before
8 June 30 each year by the division, that contains the following information:

9 (a) a description of the process used to develop or select the medical necessity criteria for
10 mental health and substance use disorder benefits and the process used to develop or select the
11 medical necessity criteria for medical and surgical benefits;

12 (b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to
13 mental health and substance use disorder benefits and medical and surgical benefits within each
14 classification of benefits, as defined in 45 CFR Part 146.136(c)(4)(i); provided that, there may be
15 no separate NQTLs that apply to mental health and substance use disorder benefits but do not
16 apply to medical and surgical benefits within any classification of benefits; and that the
17 processes, strategies, or methodologies for developing and applying the carrier's reimbursement
18 rates for mental health and substance use disorder benefits are comparable to and applied no
19 more stringently than those processes, strategies, or methodologies for developing and applying
20 the carrier's reimbursement rates for medical/surgical benefits.

21 (c) the results of an analysis that demonstrates that for the medical necessity criteria
22 described in subsection (a) and for each NQTL identified in subsection (b), as written and in
23 operation, the processes, strategies, evidentiary standards, or other factors used in applying the
24 medical necessity criteria and each NQTL to mental health and substance use disorder benefits
25 within each classification of benefits are comparable to, and are applied no more stringently than,
26 the processes, strategies, evidentiary standards, or other factors used in applying the medical
27 necessity criteria and each NQTL for medical and surgical benefits within the corresponding
28 classification of benefits; provided that, at a minimum, the results of the analysis shall:

29 (1) identify the factors used to determine that an NQTL will apply to a benefit;

30 (2) identify any processes, strategies, or evidentiary standards used to define the factors
31 identified in paragraph (c)(1) above;

32 (3) provide the comparative analyses, including the results of the analyses subject to
33 paragraph (d)(7) below, performed to determine that the processes and strategies used to design

34 each NQTL, as written, and the as written processes and strategies used to apply the NQTL to
35 mental health and substance use disorder benefits are comparable to, and are applied no more
36 stringently than, the processes and strategies used to design each NQTL, as written, and the as
37 written processes and strategies used to apply the NQTL for medical and surgical benefits;

38 (4) provide the comparative analyses, including the results of the analyses subject to
39 paragraph (d)(7) below, performed to determine that the processes and strategies used to apply
40 each NQTL, in operation, for mental health and substance use disorder benefits are comparable
41 to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in
42 operation, for medical and surgical benefits; and

43 (5) subject to paragraph (d)(7) below, disclose the findings and conclusions reached by
44 the carrier or the group insurance commission that the results of the analyses above indicate that
45 the carrier or group insurance commission is in compliance with this section and the Mental
46 Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations,
47 including but not limited to 45 CFR Part 146.136, 45 CFR Part 147.160, and 45 CFR Part
48 156.115(a)(3).

49 (6) In completing the analyses required under this subsection (c), carriers do not have to
50 examine each medical or surgical benefit subject to an NQTL that also applies to mental health
51 and substance use disorder benefits in the classification and are expected to perform the required
52 analyses broadly across each classification of benefits. Carriers may use any reasonable method
53 to determine how they will select medical and surgical benefits subject to an NQTL in the
54 classification for the purpose of performing the comparative analyses, provided that selecting
55 only certain medical and surgical benefits with the same characteristics as the mental health and

56 substance use disorder benefits subject to the NQTL, and not all medical/surgical benefits
57 sharing the same characteristics as the mental health and substance use disorder benefits subject
58 to the NQTL, in a classification for the purposes of performing the analyses shall not be
59 considered reasonable.

60 (d) The commissioner shall implement and enforce applicable provisions of the Paul
61 Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, and any
62 amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR
63 Part 146.136, 45 CFR Part 147.136, 45 CFR Part 147.160, and 45 CFR Part 156.115(a)(3), and
64 applicable state mental health parity laws, including but not limited to section 22 of chapter 32A,
65 section 47B of chapter 175, section 8A of chapter 176A, section 4A of chapter 176B and sections
66 4, 4B and 4M of chapter 176G, in regard to any carrier licensed under chapters 175, 176A, 176B
67 and 176G, or the group insurance commission. No later than July 1, 2021, the Commissioner
68 shall issue a report to the clerks of the house and senate and the chairs of the house and senate
69 joint committee on mental health substance use and recovery committees, which shall:

70 (1) cover the methodology the Commissioner is using to check for compliance with the
71 federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of
72 2008 (MHPAEA), and any federal regulations or guidance relating to the compliance and
73 oversight of MHPAEA;

74 (2) cover the methodology the commissioner is using to check for compliance with
75 applicable state mental health parity laws, including but not limited to section 22 of chapter 32A,
76 section 47B of chapter 175, section 8A of chapter 176A, section 4A of chapter 176B and sections
77 4, 4B and 4M of chapter 176G;

78 (3) identify market conduct examinations conducted or completed during the preceding
79 12-month period regarding compliance with parity in mental health and substance use disorder
80 benefits under state and federal laws and summarize the results of such market conduct
81 examinations;

82 (4) detail any educational or corrective actions the commissioner has taken to ensure
83 health carrier compliance with MHPAEA and section 22 of chapter 32A, section 47B of chapter
84 175, section 8A of chapter 176A, section 4A of chapter 176B and sections 4, 4B and 4M of
85 chapter 176G; and

86 (5) the report must be written in non-technical, readily understandable language. Carriers
87 shall make a summary report, as approved by the commissioner, available to the public by,
88 among such other means as the commissioner finds appropriate, posting the report on the
89 division's website.

90 (6) To the extent that any requirements of this section are inconsistent with or in excess
91 of the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and
92 Addiction Equity Act of 2008 and any amendments to, or regulations issued under that act, the
93 requirements of federal law will prevail over the requirements of this section, in accordance with
94 42 U.S.C. 300gg-23(a)(1). If federal guidance, including but not limited to the Self-Compliance
95 Tool for the Mental Health Parity and Addiction Equity Act, is released that indicates an NQTL
96 analysis and reporting process that is significantly different than, contrary to, or more efficient
97 than the NQTL analysis and reporting requirements described in subsection (c) of this section,
98 the Commissioner may promulgate regulations that delineate an NQTL analysis and reporting

99 format that may be used in lieu of the NQTL analysis and reporting requirements described in
100 subsection (c) of this section.

101 (7) Any proprietary portions of information submitted to the Commissioner by a Carrier
102 as a result of the requirements in this section shall not be made public record.

103

104 SECTION 2. Section 16C of chapter 118E of the General Laws, as appearing in the 2016
105 Official Edition, is hereby amended by inserting after paragraph (5) the following two
106 paragraphs:-

107 (6) The division shall submit an annual report on or before January 31 to the attorney
108 general, a summary of which shall be sent to the Legislature on or before June 30 each year, that
109 contains the following information regarding compliance with the Mental Health Parity and
110 Addiction Equity Act by the child health insurance program:

111 (a) a description of the process used to develop or select the medical necessity criteria for
112 mental health and substance use disorder benefits and the process used to develop or select the
113 medical necessity criteria for medical and surgical benefits;

114 (b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to
115 mental health and substance use disorder benefits and medical and surgical benefits within each
116 classification of benefits, as defined in 42 CFR Part 457.496(d)(4)(ii); provided, that there may
117 be no separate NQTLs that apply to mental health and substance use disorder benefits but do not
118 apply to medical and surgical benefits within any classification of benefits; and that the
119 processes, strategies, or methodologies for developing and applying the reimbursement rates for

120 mental health and substance use disorder benefits are comparable to and applied no more
121 stringently than those processes, strategies, or methodologies for developing and applying the
122 reimbursement rates for medical/surgical benefits; and

123 (c) the results of an analysis that demonstrates that for the medical necessity criteria
124 described in clause (a) and for each NQTL identified in clause (b), as written and in operation,
125 the processes, strategies, evidentiary standards, or other factors used in applying the medical
126 necessity criteria and each NQTL to mental health and substance use disorder benefits within
127 each classification of benefits are comparable to, and are applied no more stringently than, the
128 processes, strategies, evidentiary standards, or other factors used in applying the comparable
129 medical necessity criteria and NQTL for medical and surgical benefits within the corresponding
130 classification of benefits; provided that, at a minimum, the results of the analysis shall:

131 (i) identify the factors used to determine that an NQTL will apply to a benefit;

132 (ii) identify any processes, strategies, or evidentiary standards used to define the factors
133 identified in subclause (i) above;

134 (iii) provide the comparative analyses, including the results of the analyses subject to
135 clause (7)(f) below, performed to determine that the processes and strategies used to design each
136 NQTL, as written, and the as written processes and strategies used to apply the NQTL to mental
137 health and substance use disorder benefits are comparable to, and are applied no more stringently
138 than, the processes and strategies used to design each NQTL, as written, and the as written
139 processes and strategies used to apply the NQTL to medical and surgical benefits;

140 (iv) provide the comparative analyses, including the results of the analyses subject to
141 clause (7)(f) below, performed to determine that the processes and strategies used to apply each

142 NQTL, in operation, for mental health and substance use disorder benefits, including provider
143 reimbursement rates, are comparable to, and applied no more stringently than, the processes or
144 strategies used to apply each NQTL, in operation, for medical and surgical benefits, including
145 provider reimbursement rates;

146 (v) subject to clause (7)(f) below, disclose the findings and conclusions reached by the
147 division that the results of the analyses above indicate that the child health insurance program is
148 in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008
149 and its implementing and related regulations, including but not limited to 42 CFR Part 457.496;
150 and

151 (vi) In completing the analyses required under this paragraph (6), the division or any
152 Medicaid managed care organization that contracts with the division do not have to examine
153 each medical or surgical benefit subject to an NQTL that also applies to mental health and
154 substance use disorder benefits in the classification and are expected to perform the required
155 analyses broadly across each classification of benefits. The division or any Medicaid managed
156 care organization that contracts with the division may use any reasonable method to determine
157 how they will select medical and surgical benefits subject to an NQTL in the classification for
158 the purpose of performing the comparative analyses, provided that selecting only certain medical
159 and surgical benefits with the same characteristics as the mental health and substance use
160 disorder benefits subject to the NQTL, and not all medical/surgical benefits sharing the same
161 characteristics as the mental health and substance use disorder benefits subject to the NQTL, in a
162 classification for the purposes of performing the analyses shall not be considered reasonable.

163 (7) the division shall issue a report to the clerks of the house and senate and the chairs of
164 the house and senate joint committee on mental health substance use and recovery committees,
165 which shall:

166 (a) cover the methodology the division is using to check for compliance with the federal
167 Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008
168 (MHPAEA), and any federal regulations or guidance relating to the compliance and oversight of
169 MHPAEA;

170 (b) identify any action taken by the division during the preceding 12-month period
171 regarding compliance with parity in mental health and substance use disorder benefits under state
172 and federal laws and summarize the results of such action;

173 (c) detail any educational or corrective actions the division has taken to ensure Medicaid
174 managed care compliance with MHPAEA; and

175 (d) the report must be written in non-technical, readily understandable language.
176 Medicaid managed care organizations shall make a summary report, as approved by the division,
177 available to the public by, among such other means as the division finds appropriate, posting the
178 report on the division's website.

179 (e) To the extent that any requirements of this section are inconsistent with or in excess of
180 the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and
181 Addiction Equity Act of 2008 and any amendments to, or regulations issued under that act, the
182 requirements of federal law will prevail over the requirements of this section. If federal guidance,
183 including but not limited to the Self-Compliance Tool for the Mental Health Parity and
184 Addiction Equity Act, is released that indicates an NQTL analysis and reporting process that is

185 significantly different than, contrary to, or more efficient than the NQTL analysis and reporting
186 requirements described in paragraph (6) of this section, the division may promulgate regulations
187 that delineate an NQTL analysis and reporting format that may be used in lieu of the NQTL
188 analysis and reporting requirements described in paragraph (6) of this section.

189 (f) Any proprietary portions of information submitted to the division by a Medicaid
190 managed care organization as a result of the requirements in this section shall not be made public
191 record.

192 SECTION 3. Said chapter 118E is hereby further amended by inserting after section 77
193 the following section:-

194 Section 78: Each Medicaid managed care organization or alternative benefit plan shall
195 submit an annual report on or before January 31 to the division, a summary of which shall be
196 sent to the Legislature on or before June 30 each year by the division, that contains the following
197 information:

198 (a) a description of the process used to develop or select the medical necessity criteria for
199 mental health and substance use disorder benefits and the process used to develop or select the
200 medical necessity criteria for medical and surgical benefits;

201 (b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to
202 mental health and substance use disorder benefits and medical and surgical benefits within each
203 classification of benefits, as defined in 42 CFR Part 438.910(d)(1) and 42 CFR Part
204 440.395(b)(4)(i); provided that, there may be no separate NQTLs that apply to mental health and
205 substance use disorder benefits but do not apply to medical and surgical benefits within any
206 classification of benefits; and that the processes, strategies, or methodologies for developing and

207 applying the reimbursement rates for mental health and substance use disorder benefits are
208 comparable to and applied no more stringently than those processes, strategies, or methodologies
209 for developing and applying the reimbursement rates for medical/surgical benefits; and

210 (c) the results of an analysis that demonstrates that for the medical necessity criteria
211 described in subsection (a) and for each NQTL identified in subsection (b), as written and in
212 operation, the processes, strategies, evidentiary standards, or other factors used in applying the
213 medical necessity criteria and each NQTL to mental health and substance use disorder benefits
214 within each classification of benefits are comparable to, and are applied no more stringently than,
215 the processes, strategies, evidentiary standards, or other factors used in applying the medical
216 necessity criteria and each NQTL to medical and surgical benefits within the corresponding
217 classification of benefits; provided that, at a minimum, the results of the analysis shall:

218 (1) identify the factors used to determine that an NQTL will apply to a benefit;

219 (2) identify any processes, strategies, or evidentiary standards used to define the factors
220 identified in paragraph (1) above;

221 (3) provide the comparative analyses, including the results of the analyses subject to
222 paragraph (7) below, performed to determine that the processes and strategies used to design
223 each NQTL, as written, and the as written processes and strategies used to apply the NQTL to
224 mental health and substance use disorder benefits are comparable to, and are applied no more
225 stringently than, the processes and strategies used to design each NQTL, as written, and the as
226 written processes and strategies used to apply the NQTL to medical and surgical benefits;

227 (4) provide the comparative analyses, including the results of the analyses subject to
228 paragraph (7) below, performed to determine that the processes and strategies used to apply each

229 NQTL, in operation, for mental health and substance use disorder benefits, including provider
230 reimbursement rates, are comparable to, and applied no more stringently than, the processes or
231 strategies used to apply each NQTL, in operation, for medical and surgical benefits, including
232 provider reimbursement rates; and

233 (5) subject to paragraph (7) below, disclose the findings and conclusions reached by the
234 Medicaid managed care organization or alternative benefit plan that the results of the analyses
235 above indicate that the Medicaid managed care organization or alternative benefit plan is in
236 compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and
237 its implementing and related regulations, including but not limited to 42 CFR Part 438.910 and
238 42 CFR Part 440.395.

239 (6) In completing the analyses required under this subsection (c), a Medicaid managed
240 care organization does not have to examine each medical or surgical benefit subject to an NQTL
241 that also applies to mental health and substance use disorder benefits in the classification and is
242 expected to perform the required analyses broadly across each classification of benefits. A
243 Medicaid managed care organization may use any reasonable method to determine how it will
244 select medical and surgical benefits subject to an NQTL in the classification for the purpose of
245 performing the comparative analyses, provided that selecting only certain medical and surgical
246 benefits with the same characteristics as the mental health and substance use disorder benefits
247 subject to the NQTL, and not all medical/surgical benefits sharing the same characteristics as the
248 mental health and substance use disorder benefits subject to the NQTL, in a classification for the
249 purposes of performing the analyses shall not be considered reasonable.

250 (7) Any proprietary portions of information submitted to the division by a Medicaid
251 managed care organization as a result of the requirements in this section shall not be made public
252 record.