SENATE DOCKET, NO. 1493 FILED ON: 1/17/2019

SENATE . . . . . No. 588

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 relative to mental health parity implementation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Cindy F. Friedman	*Fourth Middlesex*	
Mike Connolly	*26th Middlesex*	*1/28/2019*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/28/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/29/2019*
Kenneth I. Gordon	*21st Middlesex*	*1/29/2019*
Marjorie C. Decker	*25th Middlesex*	*1/29/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*1/30/2019*
Kay Khan	*11th Middlesex*	*1/30/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/30/2019*
Jack Patrick Lewis	*7th Middlesex*	*1/31/2019*
John F. Keenan	*Norfolk and Plymouth*	*2/1/2019*
Sean Garballey	*23rd Middlesex*	*2/1/2019*
Liz Miranda	*5th Suffolk*	*2/1/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/1/2019*
Julian Cyr	*Cape and Islands*	*2/1/2019*
David M. Rogers	*24th Middlesex*	*2/1/2019*
Joan B. Lovely	*Second Essex*	*2/15/2019*

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SENATE . . . . . No. 588

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 588) of Cindy F. Friedman, Mike Connolly, Joanne M. Comerford, Jason M. Lewis and other members of the General Court for legislation relative to mental health parity implementation. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

SECTION 1. Chapter 26 of the General Laws is hereby amended by inserting after Section 8L the following section:-

Section 8M. All carriers licensed under chapters 175, 176A, 176B and 176G that provide mental health or substance use disorder benefits, and the group insurance commission, under chapter 32A, or the carriers the group insurance commission contracts with for the administration of any self-insured plans, shall submit an annual report on or before January 31 to the commissioner of insurance, the attorney general, the clerks of the house and senate, and the house and senate chairs of the joint committee on mental health, substance use and recovery, that contains the following information:

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

(b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits, as defined in 45 CFR Part 146.136(c)(2)(ii); provided that, there may be no separate NQTLs that apply to mental health and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits and that the provider reimbursement rate setting shall be included as an NQTL and subject to the analysis specified in subsection (c); and

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

(1) identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

(2) identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;

(3) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to mental health and substance use

disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to medical and surgical benefits;

(4) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits and provider reimbursement rates are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits and provider reimbursement rates; and

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

SECTION 2. Said chapter 26, as appearing in the 2016 Official Edition, is hereby further amended by striking out section 8K and inserting in place thereof the following section:-

Section 8K. The commissioner of insurance shall implement and enforce applicable provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, and any amendments to, and any federal guidance or regulations relevant to, that act, including 45 CFR Part 146.136, 45 CFR Part 147.136, 45 CFR Part 147.160, and 45 CFR Part 156.115(a)(3), and applicable state mental health parity laws, including but not limited to section 22 of chapter 32A, section 47B of chapter 175, section 8A of chapter 176A, section 4A

of chapter 176B and sections 4, 4B and 4M of chapter 176G, in regard to any carrier licensed under chapters 175, 176A, 176B and 176G, or the group insurance commission, by:

(a) proactively ensuring compliance by carriers licensed under chapters 175, 176A, 176B, and 176G, and the group insurance commission or the carriers the group insurance commission contracts with for the administration of any self-insured plans;

(b) evaluating all consumer or provider complaints regarding mental health and substance use disorder coverage for possible parity violations;

(c) performing parity compliance market conduct examinations of carriers that provide mental health or substance use disorder benefits, particularly market conduct examinations that focus on non-quantitative treatment limitations (NQTLs), including but not limited to prior authorization, concurrent review, retrospective review, step-therapy, network admission standards, reimbursement rates, and geographic restrictions;

(d) requesting that carriers that provide mental health or substance use disorder benefits submit comparative analyses during the form review process demonstrating how they design and apply NQTLs, as written and in operation, for mental health and substance use disorder benefits, including provider reimbursement rates, as compared to how they design and apply NQTLs, as written and in operation, for medical and surgical benefits, including provider reimbursement rates; and

(e) updating 211 CMR 154.00, as necessary, to effectuate any provisions of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 that relate to the business of insurance.

SECTION 3. Section 16C of chapter 118E of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after paragraph (5) the following paragraph:-

(6) The division shall submit an annual report on or before January 31 to the attorney general, the clerks of the house and senate, and the house and senate chairs of the joint committee on mental health, substance use and recovery, that contains the following information regarding compliance with the Mental Health Parity and Addiction Equity Act by the child health insurance program:

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

(b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits, as defined in 42 CFR Part 457.496(d)(2)(ii); provided, that there may be no separate NQTLs that apply to mental health and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits and that the provider reimbursement rate setting shall be included as an NQTL and subject to the analysis specified in clause (c); and

(c) the results of an analysis that demonstrates that for the medical necessity criteria described in clause (a) and for each NQTL identified in clause (b), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and substance use disorder benefits within each classification of benefits are comparable to, and are applied no more stringently than, the

processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits; provided that, at a minimum, the results of the analysis shall:

(i) identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

(ii) identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;

(iii) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than, the processes and strategies used to design each NQTL, as written, and the as written processes and strategies used to apply the NQTL to medical and surgical benefits;

(iv) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits, including provider reimbursement rates, are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits, including provider reimbursement rates; and

(v) disclose the specific findings and conclusions reached by the division that the results of the analyses above indicate that the child health insurance program is in compliance with this

section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, including but not limited to 42 CFR Part 457.496.

SECTION 4. Said chapter 118E is hereby further amended by inserting after section 77 the following section:-

Section 78: Each Medicaid managed care organization or alternative benefit plan shall submit an annual report on or before January 31 to the division, the attorney general, the clerks of the house and senate, and the house and senate chairs of the joint committee on mental health, substance use and recovery, that contains the following information:

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

(b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to mental health and substance use disorder benefits and medical and surgical benefits within each classification of benefits, as defined in 42 CFR Part 438.910(b)(2) and 42 CFR Part 440.395(b)(2)(ii); provided that, there may be no separate NQTLs that apply to mental health and substance use disorder benefits but do not apply to medical and surgical benefits within any classification of benefits and that the provider reimbursement rate setting shall be included as an NQTL and subject to the analysis specified in; and

(c) the results of an analysis that demonstrates that for the medical necessity criteria described in subsection (a) and for each NQTL identified in subsection (b), as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to mental health and substance use disorder benefits

within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each NQTL to medical and surgical benefits within the corresponding classification of benefits; provided that, at a minimum, the results of the analysis shall:

(1) identify the factors used to determine that an NQTL will apply to a benefit, including factors that were considered but rejected;

(2) identify and define the specific evidentiary standards used to define the factors and any other evidence relied upon in designing each NQTL;

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

(4) provide the comparative analyses, including the results of the analyses, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits, including provider reimbursement rates, are comparable to, and applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits, including provider reimbursement rates; and

(5) disclose the specific findings and conclusions reached by the Medicaid managed care organization or alternative benefit plan that the results of the analyses above indicate that the

Medicaid managed care organization or alternative benefit plan is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, including but not limited to 42 CFR Part 438.910 and 42 CFR Part 440.395.

SECTION 5. Notwithstanding any general or special law to the contrary, not later than June 1, 2020, the commissioner of insurance shall issue a report and educational presentation to the general court and to the office of the attorney general. The report and presentation shall:

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

(2) cover the methodology the commissioner is using to check for compliance with section 22 of chapter 32A, section 47B of chapter 175, section 8A of chapter 176A, section 4A of chapter 176B and sections 4, 4B and 4M of chapter 176G;

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

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

The report shall be written in non-technical, readily understandable language and shall be made available to the public by, among such other means as the commissioner finds appropriate, posting the report on the internet website of the division of insurance.