

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:	
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/28/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/28/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/29/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/29/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/1/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/1/2019</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/15/2019</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/10/2019</i>

SENATE No. 588

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:

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, the attorney general, the clerks of the house and senate, and the
8 house and senate chairs of the joint committee on mental health, substance use and recovery, that
9 contains the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 (b) identification of all non-quantitative treatment limitations (NQTLs) that are applied to
132 mental health and substance use disorder benefits and medical and surgical benefits within each
133 classification of benefits, as defined in 42 CFR Part 438.910(b)(2) and 42 CFR Part
134 440.395(b)(2)(ii); provided that, there may be no separate NQTLs that apply to mental health and
135 substance use disorder benefits but do not apply to medical and surgical benefits within any
136 classification of benefits and that the provider reimbursement rate setting shall be included as an
137 NQTL and subject to the analysis specified in; and

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

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

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

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

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

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

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

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

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

170 (1) cover the methodology the commissioner is using to check for compliance with the
171 federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of
172 2008 (MHPAEA), and any federal regulations or guidance relating to the compliance and
173 oversight of MHPAEA;

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

177 (3) identify market conduct examinations conducted or completed during the preceding
178 12-month period regarding compliance with parity in mental health and substance use disorder
179 benefits under state and federal laws and summarize the results of such market conduct
180 examinations; and

181 (4) detail any educational or corrective actions the commissioner has taken to ensure
182 carrier compliance with MHPAEA and section 22 of chapter 32A, section 47B of chapter 175,
183 section 8A of chapter 176A, section 4A of chapter 176B and sections 4, 4B and 4M of chapter
184 176G.

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