HOUSE DOCKET, NO. 671 FILED ON: 1/26/2021

HOUSE . . . . . No. 1041

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balser

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

HOUSE DOCKET, NO. 671 FILED ON: 1/26/2021

HOUSE . . . . . No. 1041

By Ms. Balser of Newton, a petition (accompanied by bill, House, No. 1041) of Ruth B. Balser 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:

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, a summary of which shall be sent to the Legislature on or before June 30 each year by the division, 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)(4)(i); 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 processes, strategies, or methodologies for developing and applying the carrier's reimbursement rates for mental health and substance use disorder benefits are comparable to and applied no more stringently than those processes, strategies, or methodologies for developing and applying the carrier's reimbursement rates for medical/surgical benefits.

(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 for 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;

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

(3) provide the comparative analyses, including the results of the analyses subject to paragraph (d)(7) below, 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 for medical and surgical benefits;

(4) provide the comparative analyses, including the results of the analyses subject to paragraph (d)(7) below, performed to determine that the processes and strategies used to apply each NQTL, in operation, for mental health and substance use disorder benefits 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

(5) subject to paragraph (d)(7) below, disclose the 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).

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

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

(d) The commissioner 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. No later than July 1, 2021, the Commissioner shall issue a report to the clerks of the house and senate and the chairs of the house and senate joint committee on mental health substance use and recovery committees, which 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 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;

(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;

(4) detail any educational or corrective actions the commissioner has taken to ensure health 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; and

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

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

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

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

SECTION 2. 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 two paragraphs:-

(6) The division shall submit an annual report on or before January 31 to the attorney general, a summary of which shall be sent to the Legislature on or before June 30 each year, 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)(4)(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 processes, strategies, or methodologies for developing and applying the reimbursement rates for

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

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

(iii) provide the comparative analyses, including the results of the analyses subject to clause (7)(f) below, 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 subject to clause (7)(f) below, 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;

(v) subject to clause (7)(f) below, disclose the 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; and

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

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

(a) cover the methodology the division 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;

(b) identify any action taken by the division 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 action;

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

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

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

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

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

SECTION 3. 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, a summary of which shall be sent to the Legislature on or before June 30 each year by the division, 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(d)(1) and 42 CFR Part 440.395(b)(4)(i); 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 processes, strategies, or methodologies for developing and

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

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

(3) provide the comparative analyses, including the results of the analyses subject to paragraph (7) below, 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 subject to paragraph (7) below, 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) subject to paragraph (7) below, disclose the 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.

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

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