By Mr. \_\_\_\_\_\_, a petition (accompanied by bill, Senate, No. XXX) of \_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_ and other members of the General Court for legislation relative to mental health parity. Financial Services

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court**

**(2019-2020)**

An Act relative to 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:-

8M: All carriers licensed under chapters 175, 176A, 176B and 176G that provide mental health or substance abuse disorder benefits shall submit an annual report to the commissioner of insurance on or before January 31st, 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 abuse 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 both mental health and substance abuse disorder benefits and medical and surgical benefits within each classification of benefits; there may be no separate NQTLs that apply to mental health and substance abuse disorder benefits but do not apply to medical and surgical benefits within any classification of benefits.

(c) The results of an analysis that demonstrates that for the medical necessity criteria described in item (a) and for each NQTL identified in item (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 abuse 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; 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 abuse 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 abuse 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.

(5) Disclose the specific findings and conclusions reached by the carrier that the results of the analyses above indicate that the carrier is in compliance with this section and the Mental Health Parity and Addiction Equity Act of 2008 and its implementing and related regulations, which includes 45 CFR 146.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3).

SECTION 2. Chapter 26 of the General Laws is hereby amended by striking out section 8K, as so appearing, 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 146.136, 45 CFR 147.136, 45 CFR 147.160, and 45 CFR 156.115(a)(3), and applicable state mental health parity laws, including 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 of the General Laws, in regard to any carrier licensed under chapters 175, 176A, 176B and 176G, which includes:

(a) Proactively ensuring compliance by carriers licensed under chapters 175, 176A, 176B, and 176G.

(b) Evaluating all consumer or provider complaints regarding mental health and substance abuse disorder coverage for possible parity violations.

(c) Performing parity compliance market conduct examinations of carriers that provide mental health or substance abuse disorder benefits, particularly market conduct examinations that focus on nonquantitative treatment limitations such as prior authorization, concurrent review, retrospective review, step-therapy, network admission standards, reimbursement rates, and geographic restrictions, among other nonquantitative treatment limitations.

(d) Requesting that carriers that provide mental health or substance abuse disorder benefits submit comparative analyses during the form review process demonstrating how they design and apply nonquantitative treatment limitations, both as written and in operation, for mental health and substance abuse disorder benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits.

(e) The Commissioner may update 211 CMR 154.00, as may be 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.

(f) Not later than June 1, 2020, the commissioner shall issue a report and educational presentation to the General Court; such 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 of the General Laws.

(3) Identify market conduct examinations conducted or completed during the preceding 12-month period regarding compliance with parity in mental health and substance abuse 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 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 of the General Laws.

(5) The report must 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.

SECTION 3. Section 22 of chapter 32A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after subsection (i) the following subsection:-

(j) Each health plan that is offered by the commission that provides substance abuse disorder benefits:

(i) Shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance abuse disorders;

(ii) Shall not impose any step therapy requirements before the health plan will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse disorders;

(iii) Shall place all prescription medications approved by the FDA for the treatment of substance abuse disorders on the lowest tier of the drug formulary developed and maintained by the health plan; and

(iv) Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

SECTION 4. Section 47B of chapter 175 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after subsection (j) the following subsection:-

(k) Each insurer that provides substance abuse disorder benefits:

(i) Shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance abuse disorders;

(ii) Shall not impose any step therapy requirements before the insurer will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse disorders;

(iii) Shall place all prescription medications approved by the FDA for the treatment of substance abuse disorders on the lowest tier of the drug formulary developed and maintained by the insurer; and

(iv) Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

SECTION 5. Section 8A of chapter 176A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after subsection (i) the following subsection:-

(j) Each non-profit hospital service corporation that provides substance abuse disorder benefits:

(i) Shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance abuse disorders;

(ii) Shall not impose any step therapy requirements before the non-profit hospital service corporation will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse disorders;

(iii) Shall place all prescription medications approved by the FDA for the treatment of substance abuse disorders on the lowest tier of the drug formulary developed and maintained by the non-profit hospital service corporation; and

(iv) Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

SECTION 6. Section 4A of chapter 176B of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after subsection (i) the following subsection:-

(j) Each non-profit medical service corporation that provides substance abuse disorder benefits:

(i) Shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance abuse disorders;

(ii) Shall not impose any step therapy requirements before the non-profit medical service corporation will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse disorders;

(iii) Shall place all prescription medications approved by the FDA for the treatment of substance abuse disorders on the lowest tier of the drug formulary developed and maintained by the non-profit medical service corporation; and

(iv) Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

SECTION 7. Section 4M of chapter 176G of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after subsection (i) the following subsection:-

(j) Each health maintenance organization that provides substance abuse disorder benefits:

(i) Shall not impose any prior authorization requirements on any prescription medication approved by the federal Food and Drug Administration (FDA) for the treatment of substance abuse disorders;

(ii) Shall not impose any step therapy requirements before the health maintenance organization will authorize coverage for a prescription medication approved by the FDA for the treatment of substance abuse disorders;

(iii) Shall place all prescription medications approved by the FDA for the treatment of substance abuse disorders on the lowest tier of the drug formulary developed and maintained by the health maintenance organization; and

(iv) Shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance abuse disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.