Councilmember David Grosso

Councilmember Vincent C. Gray

Councilmember Robert C. White Jr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To facilitate implementation and enforcement of the federal Mental Health Parity and Addiction Equity Act and strengthen parity provisions within District law.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Behavioral Health Parity Act of 2017".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Department" means the Department of Health Care Finance.

(2) "Health benefits plan" or "plan" shall have the same meaning as provided in § 31-3131(4)

(3) "Medication assisted therapy" means those medications approved by the FDA for the treatment of opioid dependence.

(4) "Step therapy" means treatment for a medical condition with the most inexpensive drug therapy before progressing to other more costly or risky therapies only if necessary.

Sec. 3. Adherence to Federal Parity Law.

All health benefit plans offered by an insurance carrier must meet the requirements of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of

Vincent C. Berg

33 2008 ("MHPAEA").

34 Sec. 4. Annual report to the Department of Health Care Finance.

35 (a) All plans must submit an annual report to the Department of Health Care Finance on
36 or before October 1 of every calendar year containing the following information:

37 (1) A description of the process used to develop or select the medical necessity
38 criteria for mental health benefits, the process used to develop or select the medical necessity
39 criteria for substance use disorder benefits, and the process used to develop or select the medical
40 necessity criteria for medical and surgical benefits.

41 (2) Identification of all non-quantitative treatment limitations ("NQTLs") that are
42 applied to both mental health and substance use disorder benefits and medical and surgical
43 benefits; there may be no separate NQTLs that apply to mental health and substance use disorder
44 benefits but do not apply to medical and surgical benefits within any classification of benefits.

45 (3) The results of an analysis that demonstrates that for the medical necessity
46 criteria described in subsection (2) and for each NQTL identified in subsection (3) of this
47 section, as written and in operation, the processes, strategies, evidentiary standards, or other
48 factors used to apply the medical necessity criteria and each NQTL to mental health and
49 substance use disorder benefits are comparable to, and are applied no more stringently than the
50 processes, strategies, evidentiary standards, or other factors used to apply the medical necessity
51 criteria and each NQTL, as written and in operation, to medical and surgical benefits; at a
52 minimum, the results of the analysis shall:

53 (A) Identify the factors used to determine that an NQTL will apply to a
54 benefit, including factors that were considered but rejected;

55 (B) Identify and define the specific evidentiary standards used to define

56 the factors and any other evidentiary standards relied upon in designing each NQTL;

57 (C) Identify and describe the methods and analyses used, including the

58 results of the analyses, to determine that the processes and strategies used to design each NQTL,

59 as written, for mental health and substance use disorder benefits are comparable to and no more

60 stringent than the processes and strategies used to design each NQTL, as written, for medical and

61 surgical benefits;

62 (D) Identify and describe the methods and analyses used, including the

63 results of the analyses, to the determine that processes and strategies used to apply each NQTL,

64 in operation, for mental health and substance use disorder benefits are comparable to and no

65 more stringent than the processes or strategies used to apply each NQTL, in operation, for

66 medical and surgical benefits;

67 (E) Disclose the specific findings and conclusions reached by the plan or

68 issuer that the results of the analyses above indicate that the plan or issuer is in compliance with

69 this section and the MHPAEA and its implementing regulations, which includes 45 CFR 146.136

70 and any other relevant current or future regulations.

71 Sec 5. Compliance and Enforcement

72 (a) The Department of Health Care Finance shall implement and enforce applicable

73 provisions of the MHPAEA by:

74 (1) Ensuring compliance by individual and group policies;

75 (2) Accepting, evaluating, and responding to complaints regarding such

76 violations;

77 (3) Maintaining and regularly reviewing for possible parity violations a publically

78 available consumer complaint log regarding mental health and substance use disorder coverage;

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80 (4) The Mayor shall adopt rules as may be necessary to effectuate any provisions

81 of the MHPAEA.

82 Sec. 6 Report

83 (a) No later than October 1, 2018, the Department of Health Care Finance shall issue a

84 report to the Council which will include the following:

85 (1) Cover the methodology the DHCF is using to check for compliance with the

86 MHPAEA, 42 U.S.C 18031(j), and any federal regulations or guidance relating to the

87 compliance and oversight of the MHPAEA and 42 U.S.C 18031(j);

88 (2) Detail any educational or corrective actions the regulatory agency has taken to

89 ensure health plan compliance with MHPAEA, 42 U.S.C 18031(j);

90 (3) Detail the regulatory agency's education approaches relating to informing the

91 public about mental health and substance use disorder parity protections under state and federal

92 law.

93 Sec. 7. Defining Mental Health and Substance Use Disorders

94 "Mental health conditions" and "Substance use disorders" mean any condition or disorder

95 that involves a mental health condition or substance use disorder that falls under any of the

96 diagnostic categories listed in the mental disorders section of the current edition of the

97 International Classification of Disease or that is listed in the most recent version of the

98 Diagnostic and Statistical Manual of Mental Disorders.

99 Sec. 8. Utilization Review

100 For any utilization review or benefit determination for the treatment of a substance use

101 disorder, including but not limited to prior authorization and medical necessity determinations,

102 the clinical review criteria shall be no more restrictive than the most recent treatment criteria for
103 addictive, substance-related, and co-occurring conditions established by the American Society of
104 Addiction Medicine. No additional criteria may be used during utilization review or benefit
105 determination for treatment of substance use disorders.

106 Sec. 9. Extending existing parity law

107 (a) The medical assistance program, including any Medicaid managed care organizations
108 and Medicaid Alternative Benefit Plans, shall be subject to the requirements set forth for health
109 benefit plans under this act, and any guidance or regulations issued under that/those section(s).

110 (b) The Department of Health Care Finance shall identify a benchmark set of medical and
111 surgical benefits for inpatient in-network benefits, inpatient out of-network benefits, outpatient
112 in-network benefits, inpatient out-of-network benefits, outpatient in-network benefits, outpatient
113 out-of-network benefits, emergency care benefits, and prescription drug benefits for comparison
114 with Medicaid Fee-For-Service mental health and substance use disorder treatment benefits.
115 These benchmark benefits must not be less comprehensive than the benefits offered by the
116 largest Medicaid managed care organization, determined by Medicaid beneficiary enrollment.

117 (c) As compared against the benchmark benefits identified in subsection (a) of this
118 section, Medicaid Fee-For-Service mental health and substance use disorder benefits shall be
119 subject to the requirements set forth for health benefit plans under this act.

120 Sec. 10. Rulemaking

121 The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act,
122 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules
123 to implement the provisions of this act.

124 Sec. 11. Fiscal impact statement.

125 The council adopts the fiscal impact statement in the committee report as the fiscal
126 impact a statement required by section 4a of the General Legislative Procedures Act of 1975,
127 approved October 16,2006 (120 Stat. 2038; D.C. official Code Section 1-201.47.
128 Sec. 12 . Effective date.
129 This act shall take effect following approval by the Mayor (or in the event of veto by the
130 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
131 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
132 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
133 Columbia Register.