\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Councilmember Vincent C. Gray

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To facilitate implementation and enforcement of the 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 2019”.

Sec. 1. Definitions.

For the purposes of this act, the term:

(1) “Department” means the Department of Health Care Finance.

(2) “Health insurer” or “insurer” shall have the same meaning as provided in § 31-3101(6B)

(3) “Mental health and substance use disorder benefits” means benefits for the treatment of any condition or disorder that involves a mental health condition or substance use disorder that falls under any of the diagnostic categories listed in the mental disorders section of the current edition of the International Classification of Disease or that is listed in the mental disorders section of the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(4) “Nonquantitative treatment limitations” means limitations that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment.

Sec. 2. Annual report to the Department of Health Care Finance.

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

(1) 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.

(2) Identification of all non-quantitative treatment limitations (“NQTLs") that are applied to both mental health and substance use disorder benefits and medical and surgical benefits; 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.

(3) The results of an analysis that demonstrates that for the medical necessity criteria described in subsection (1) and for each NQTL identified in subsection (2) of this section, as written and in operation, the processes, strategies, evidentiary standards, or other factors used to apply the medical necessity criteria and each NQTL to mental health and substance use disorder benefits are comparable to, and are applied no more stringently than the processes, strategies, evidentiary standards, or other factors used to apply the medical necessity criteria and each NQTL, as written and in operation, to medical and surgical benefits; at a minimum, the results of the analysis shall:

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

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

(C) 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;

(D) 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 are comparable to, and are applied no more stringently than, the processes or strategies used to apply each NQTL, in operation, for medical and surgical benefits;

(E) Disclose the specific findings and conclusions reached by the health insurer that the results of the analyses above indicate that the insurer 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).

Sec 3. Compliance and Enforcement

(a) The Department of Health Care Finance 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), which includes:

(1) Ensuring compliance by health insurers;

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

(3) Performing parity compliance market conduct examinations of health insurers, 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.

(4) Requesting that insurers 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 use disorder benefits as compared to how they design and apply nonquantitative treatment limitations, as written and in operation, for medical and surgical benefits.

(5) The Department of Health Care Finance may adopt rules 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.

Sec. 4 Report

(a) No later than October 1, 2019, the Department of Health Care Finance shall issue a report to the Council which will include the following:

(1) Cover the methodology the DHCF 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 the MHPAEA.

(2) Cover the methodology DHCF is using to check for compliance with Chapter 31 or Title 31;

(3) Identify market conduct examinations conducted or completed during the preceding 12-motnh 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. This shall include:

(4) Detail any educational or corrective actions DHCF has taken to ensure health plan compliance with MHPAEA and Chapter 31 or Title 31;

(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 Department finds necessary, posting the report on DHCF’s website.

Sec. 5. Medications for the treatment of substance use disorders

(a) Each health insurer that provides prescription drug benefits for the treatment of substance use disorders 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 use disorders.

(b) Each health insurer that provides prescription drug benefits for the treatment of substance use disorders 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 use disorders.

(c) Each health insurer that provides prescription drug benefits for the treatment of substance use disorders shall place all prescription medications approved by the FDA for the treatment of substance use disorders on the lowest tier of the drug formulary developed and maintained by the insurer.

(d) Each health insurer that provides prescription drug benefits for the treatment of substance use disorders shall not exclude coverage for any prescription medication approved by the FDA for the treatment of substance use disorders and any associated counseling or wraparound services on the grounds that such medications and services were court ordered.

Sec. 6. Rulemaking

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

Sec. 7. Fiscal impact statement.

The council adopts the fiscal impact statement in the committee report as the fiscal impact a statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16,2006 (120 Stat. 2038; D.C. official Code Section 1-201.47.

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.