110TH CONGRESS
1ST SESSION

H. R. 1424

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, and section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2007

Mr. KENNEDY (for himself, Mr. RAMSTAD, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALEXANDER, Mr. ALLEN, Mr. ANDREWS, Mr. ARCURI, Mr. BACA, Mr. BACHUS, Mr. BAIRD, Ms. BALDWIN, Mr. BARROW, Ms. BEAN, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOREN, Mr. BOSWELL, Mr. BOUCHER, Mr. BOYD of Florida, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Ms. CORRINE BROWN of Florida, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDOZA, Mr. CARNAHAN, Mr. CARNEY, Ms. CARSON, Ms. CASTOR, Mr. CHANDLER, Mrs. CHRISTENSEN, Ms. CLARKE, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONYERS, Mr. COOPER, Mr. COSTA, Mr. COSTELLO, Mr. COURTNEY, Mr. CROWLEY, Mrs. CUBIN, Mr. CUELLAR, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. LINCOLN DAVIS of Tennessee, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DICKS, Mr. DOGGETT, Mr. DONNELLY, Mr. DOYLE, Mr. EDWARDS, Mr. ELLISON, Mr. ELLSWORTH, Mr. EMANUEL, Mrs. EMERSON, Mr. ENGEL, Mr. ENGLISH of Pennsylvania, Ms. ESHOO, Mr. ETHERIDGE, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FERGUSON, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FRELINGHUYSEN, Ms. GIFFORDS, Mr. GILCHREST, Mrs. GILLIBRAND, Mr. GONZALEZ, Mr. GORDON of Tennessee, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HARE, Ms. HARMAN, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Ms. HIRONO, Mr. HODES, Mr. HOLDEN, Mr. HOLT, Mr. HONDA, Ms. HOOLEY, Mr. HOYER, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mrs. JONES of Ohio, Mr. KAGEN, Mr. KANJORSKI, Ms. KAPTUR, Mr. KELLER of Florida, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KING of New

York, Mr. KIRK, Mr. KLEIN of Florida, Mr. KUCINICH, Mr. LAHOOD, Mr. LAMPSON, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mr. LATOURETTE, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOBIONDO, Mr. LOEBSACK, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MARSHALL, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCHUGH, Mr. MCINTYRE, Mr. MCNERNEY, Mr. MCNULTY, Mr. MEEHAN, Mr. MEEK of Florida, Mr. MEEKS of New York, Mr. MICA, Mr. MICHAUD, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mr. MOLLOHAN, Mr. MOORE of Kansas, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. MURPHY of Connecticut, Mr. TIM MURPHY of Pennsylvania, Mr. MURTHA, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. OBEY, Mr. OLVER, Mr. ORTIZ, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETERSON of Minnesota, Mr. PICKERING, Mr. PLATTS, Mr. POMEROY, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. RANGEL, Mr. RENZI, Mr. REYES, Mr. RODRIGUEZ, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN of Ohio, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Mr. SAXTON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mrs. SCHMIDT, Ms. WASSERMAN SCHULTZ, Ms. SCHWARTZ, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SESTAK, Mr. SHAYS, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SIRES, Mr. SKELTON, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. SMITH of New Jersey, Mr. SNYDER, Ms. SOLIS, Mr. SPACE, Mr. SPRATT, Mr. STARK, Mr. STUPAK, Mr. SULLIVAN, Ms. SUTTON, Mr. TANNER, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. UPTON, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Mr. VISCLOSKY, Mr. WALSH of New York, Mr. WALZ of Minnesota, Mr. WAMP, Ms. WATERS, Ms. WATSON, Mr. WATT, Mr. WAXMAN, Mr. WEINER, Mr. WELCH of Vermont, Mr. WEXLER, Mr. WILSON of Ohio, Mr. WILSON of South Carolina, Ms. WOOLSEY, Mr. WU, Mr. WYNN, Mr. YARMUTH, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health

Service Act, and section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Paul Wellstone Mental Health and Addiction Equity Act
6 of 2007".

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Employee Retirement Income Security Act of 1974.
Sec. 3. Amendments to the Public Health Service Act relating to the group market.
Sec. 5. Amendments to the Internal Revenue Code of 1986.
Sec. 5. Government Accountability Office studies and reports.

9 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
10 **COME SECURITY ACT OF 1974.**

11 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
12 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
13 712 of the Employee Retirement Income Security Act of
14 1974 (29 U.S.C. 1185a) is amended—

15 (1) in subsection (a), by adding at the end the
16 following new paragraphs:

17 "(3) TREATMENT LIMITS.—

18 "(A) NO TREATMENT LIMIT.—If the plan
19 or coverage does not include a treatment limit

1 (as defined in subparagraph (D)) on substan-
2 tially all medical and surgical benefits in any
3 category of items or services, the plan or cov-
4 erage may not impose any treatment limit on
5 mental health and substance-related disorder
6 benefits that are classified in the same category
7 of items or services.

8 "(B) TREATMENT LIMIT.—If the plan or
9 coverage includes a treatment limit on substan-
10 tially all medical and surgical benefits in any
11 category of items or services, the plan or cov-
12 erage may not impose such a treatment limit on
13 mental health and substance-related disorder
14 benefits for items and services within such cat-
15 egory that are more restrictive than the pre-
16 dominant treatment limit that is applicable to
17 medical and surgical benefits for items and
18 services within such category.

19 "(C) CATEGORIES OF ITEMS AND SERV-
20 ICES FOR APPLICATION OF TREATMENT LIMITS
21 AND BENEFICIARY FINANCIAL REQUIRE-
22 MENTS.—For purposes of this paragraph and
23 paragraph (4), there shall be the following four
24 categories of items and services for benefits,
25 whether medical and surgical benefits or mental

1 health and substance-related disorder benefits,
2 and all medical and surgical benefits and all
3 mental health and substance related benefits
4 shall be classified into one of the following cat-
5 egories:

6 "(i) INPATIENT, IN-NETWORK.—Items
7 and services furnished on an inpatient
8 basis and within a network of providers es-
9 tablished or recognized under such plan or
10 coverage.

11 "(ii) INPATIENT, OUT-OF-NETWORK.—
12 Items and services furnished on an inpa-
13 tient basis and outside any network of pro-
14 viders established or recognized under such
15 plan or coverage.

16 "(iii) OUTPATIENT, IN-NETWORK.—
17 Items and services furnished on an out-
18 patient basis and within a network of pro-
19 viders established or recognized under such
20 plan or coverage.

21 "(iv) OUTPATIENT, OUT-OF-NET-
22 WORK.—Items and services furnished on
23 an outpatient basis and outside any net-
24 work of providers established or recognized
25 under such plan or coverage.

1 "(D) TREATMENT LIMIT DEFINED.—For
2 purposes of this paragraph, the term 'treatment
3 limit' means, with respect to a plan or coverage,
4 limitation on the frequency of treatment, num-
5 ber of visits or days of coverage, or other simi-
6 lar limit on the duration or scope of treatment
7 under the plan or coverage.

8 "(E) PREDOMINANCE.—For purposes of
9 this subsection, a treatment limit or financial
10 requirement with respect to a category of items
11 and services is considered to be predominant if
12 it is the most common or frequent of such type
13 of limit or requirement with respect to such cat-
14 egory of items and services.

15 "(4) BENEFICIARY FINANCIAL REQUIRE-
16 MENTS.—

17 "(A) NO BENEFICIARY FINANCIAL RE-
18 QUIREMENT.—If the plan or coverage does not
19 include a beneficiary financial requirement (as
20 defined in subparagraph (C)) on substantially
21 all medical and surgical benefits within a cat-
22 egory of items and services (specified under
23 paragraph (3)(C)), the plan or coverage may
24 not impose such a beneficiary financial require-
25 ment on mental health and substance-related

disorder benefits for items and services within such category.

"(B) BENEFICIARY FINANCIAL REQUIREMENT.—

"(i) TREATMENT OF DEDUCTIBLES, OUT-OF-POCKET LIMITS, AND SIMILAR FINANCIAL REQUIREMENTS.—If the plan or coverage includes a deductible, a limitation on out-of-pocket expenses, or similar beneficiary financial requirement that does not apply separately to individual items and services on substantially all medical and surgical benefits within a category of items and services (as specified in paragraph (3)(C)), the plan or coverage shall apply such requirement (or, if there is more than one such requirement for such category of items and services, the predominant requirement for such category) both to medical and surgical benefits within such category and to mental health and substance-related disorder benefits within such category and shall not distinguish in the application of such requirement between such medical and surgical benefits and such

1 mental health and substance-related dis-
2 order benefits.
3 "(ii) OTHER FINANCIAL REQUIRE-
4 MENTS.—If the plan or coverage includes a
5 beneficiary financial requirement not de-
6 scribed in clause (i) on substantially all
7 medical and surgical benefits within a cat-
8 egory of items and services, the plan or
9 coverage may not impose such financial re-
10 quirement on mental health and substance-
11 related disorder benefits for items and
12 services within such category in a way that
13 is more costly to the participant or bene-
14 ficiary than the predominant beneficiary fi-
15 nancial requirement applicable to medical
16 and surgical benefits for items and services
17 within such category.
18 "(C) BENEFICIARY FINANCIAL REQUIRE-
19 MENT DEFINED.—For purposes of this para-
20 graph, the term 'beneficiary financial require-
21 ment' includes, with respect to a plan or cov-
22 erage, any deductible, coinsurance, co-payment,
23 other cost sharing, and limitation on the total
24 amount that may be paid by a participant or
25 beneficiary with respect to benefits under the

1 plan or coverage, but does not include the appli-
2 cation of any aggregate lifetime limit or annual
3 limit.''; and
4 (2) in subsection (b)—
5 (A) by striking ''construed—'' and all that
6 follows through ''(1) as requiring'' and insert-
7 ing ''construed as requiring'';
8 (B) by striking ''; or'' and inserting a pe-
9 riod; and
10 (C) by striking paragraph (2).
11 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER
12 BENEFITS AND REVISION OF DEFINITION.—Such section
13 is further amended—
14 (1) by striking ''mental health benefits'' and in-
15 serting ''mental health and substance-related dis-
16 order benefits'' each place it appears; and
17 (2) in paragraph (4) of subsection (e)—
18 (A) by striking ''MENTAL HEALTH BENE-
19 FITS'' and inserting ''MENTAL HEALTH AND
20 SUBSTANCE-RELATED DISORDER BENEFITS'';
21 (B) by striking ''benefits with respect to
22 mental health services'' and inserting ''benefits
23 with respect to services for mental health condi-
24 tions or substance-related disorders''; and

1 (C) by striking ", but does not include
2 benefits with respect to treatment of substances
3 abuse or chemical dependency".
4 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
5 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
6 such section, as amended by subsection (a)(1), is further
7 amended by adding at the end the following new para-
8 graph:
9 "(5) AVAILABILITY OF PLAN INFORMATION.—
10 The criteria for medical necessity determinations
11 made under the plan with respect to mental health
12 and substance-related disorder benefits (or the
13 health insurance coverage offered in connection with
14 the plan with respect to such benefits) shall be made
15 available by the plan administrator (or the health in-
16 surance issuer offering such coverage) to any cur-
17 rent or potential participant, beneficiary, or con-
18 tracting provider upon request. The reason for any
19 denial under the plan (or coverage) of reimburse-
20 ment or payment for services with respect to mental
21 health and substance-related disorder benefits in the
22 case of any participant or beneficiary shall, upon re-
23 quest, be made available by the plan administrator
24 (or the health insurance issuer offering such cov-
25 erage) to the participant or beneficiary.".

1 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
2 section (a) of such section is further amended by adding
3 at the end the following new paragraph:
4 “(6) MINIMUM SCOPE OF COVERAGE AND EQ-
5 UITY IN OUT-OF-NETWORK BENEFITS.—
6 “(A) MINIMUM SCOPE OF MENTAL
7 HEALTH AND SUBSTANCE-RELATED DISORDER
8 BENEFITS.—In the case of a group health plan
9 (or health insurance coverage offered in connec-
10 tion with such a plan) that provides any mental
11 health and substance-related disorder benefits,
12 the plan or coverage shall include benefits for
13 any mental health condition or substance-re-
14 lated disorder for which benefits are provided
15 under the benefit plan option offered under
16 chapter 89 of title 5, United States Code, with
17 the highest average enrollment as of the begin-
18 ning of the most recent year beginning on or
19 before the beginning of the plan year involved.
20 “(B) EQUITY IN COVERAGE OF OUT-OF-
21 NETWORK BENEFITS.—
22 “(i) IN GENERAL.—In the case of a
23 plan or coverage that provides both med-
24 ical and surgical benefits and mental
25 health and substance-related disorder bene-

1 fits, if medical and surgical benefits are
2 provided for substantially all items and
3 services in a category specified in clause
4 (ii) furnished outside any network of pro-
5 viders established or recognized under such
6 plan or coverage, the mental health and
7 substance-related disorder benefits shall
8 also be provided for items and services in
9 such category furnished outside any net-
10 work of providers established or recognized
11 under such plan or coverage in accordance
12 with the requirements of this section.

13 "(ii) CATEGORIES OF ITEMS AND
14 SERVICES.—For purposes of clause (i),
15 there shall be the following three categories
16 of items and services for benefits, whether
17 medical and surgical benefits or mental
18 health and substance-related disorder bene-
19 fits, and all medical and surgical benefits
20 and all mental health and substance-re-
21 lated disorder benefits shall be classified
22 into one of the following categories:

23 "(I) EMERGENCY.—Items and
24 services, whether furnished on an in-
25 patient or outpatient basis, required

1 for the treatment of an emergency
2 medical condition (including an emer-
3 gency condition relating to mental
4 health and substance-related dis-
5 orders).
6 ''(II) INPATIENT.—Items and
7 services not described in subclause (I)
8 furnished on an inpatient basis.
9 ''(III) OUTPATIENT.—Items and
10 services not described in subclause (I)
11 furnished on an outpatient basis.''.
12 (e) REVISION OF INCREASED COST EXEMPTION.—
13 Paragraph (2) of subsection (c) of such section is amended
14 to read as follows:
15 ''(2) INCREASED COST EXEMPTION.—
16 ''(A) IN GENERAL.—With respect to a
17 group health plan (or health insurance coverage
18 offered in connection with such a plan), if the
19 application of this section to such plan (or cov-
20 erage) results in an increase for the plan year
21 involved of the actual total costs of coverage
22 with respect to medical and surgical benefits
23 and mental health and substance-related dis-
24 order benefits under the plan (as determined
25 and certified under subparagraph (C)) by an

1 amount that exceeds the applicable percentage
2 described in subparagraph (B) of the actual
3 total plan costs, the provisions of this section
4 shall not apply to such plan (or coverage) dur-
5 ing the following plan year, and such exemption
6 shall apply to the plan (or coverage) for 1 plan
7 year.

8 ''(B) APPLICABLE PERCENTAGE.—With re-
9 spect to a plan (or coverage), the applicable
10 percentage described in this paragraph shall
11 be—

12 ''(i) 2 percent in the case of the first
13 plan year which begins after the date of
14 the enactment of the Paul Wellstone Men-
15 tal Health and Addiction Equity Act of
16 2007; and

17 ''(ii) 1 percent in the case of each
18 subsequent plan year.

19 ''(C) DETERMINATIONS BY ACTUARIES.—
20 Determinations as to increases in actual costs
21 under a plan (or coverage) for purposes of this
22 subsection shall be made by a qualified actuary
23 who is a member in good standing of the Amer-
24 ican Academy of Actuaries. Such determina-

1 tions shall be certified by the actuary and be
2 made available to the general public.
3 "(D) 6-MONTH DETERMINATIONS.—If a
4 group health plan (or a health insurance issuer
5 offering coverage in connection with such a
6 plan) seeks an exemption under this paragraph,
7 determinations under subparagraph (A) shall be
8 made after such plan (or coverage) has com-
9 plied with this section for the first 6 months of
10 the plan year involved.
11 "(E) NOTIFICATION.—An election to mod-
12 ify coverage of mental health and substance-re-
13 lated disorder benefits as permitted under this
14 paragraph shall be treated as a material modi-
15 fication in the terms of the plan as described in
16 section 102(a)(1) and shall be subject to the
17 applicable notice requirements under section
18 104(b)(1).".
19 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
20 ERS.—Subsection (c)(1)(B) of such section is amended—
21 (1) by inserting "(or 1 in the case of an em-
22 ployer residing in a State that permits small groups
23 to include a single individual)" after "at least 2" the
24 first place it appears; and

1 (2) by striking "and who employs at least 2 em-
2 ployees on the first day of the plan year".
3 (g) ELIMINATION OF SUNSET PROVISION.—Such sec-
4 tion is amended by striking out subsection (f).
5 (h) CLARIFICATION REGARDING PREEMPTION.—
6 Such section is further amended by inserting after sub-
7 section (e) the following new subsection:
8 "(f) PREEMPTION, RELATION TO STATE LAWS.—
9 "(1) IN GENERAL.—Nothing in this section
10 shall be construed to preempt any State law that
11 provides greater consumer protections, benefits,
12 methods of access to benefits, rights or remedies
13 that are greater than the protections, benefits, meth-
14 ods of access to benefits, rights or remedies provided
15 under this section.
16 "(2) ERISA.—Nothing in this section shall be
17 construed to affect or modify the provisions of sec-
18 tion 514 with respect to group health plans.".
19 (i) CONFORMING AMENDMENTS TO HEADING.—
20 (1) IN GENERAL.—The heading of such section
21 is amended to read as follows:
22 **"SEC. 712. Equity in mental health and substance-related dis-**
23 **order benefits.".**
24 (2) CLERICAL AMENDMENT.—The table of con-
25 tents in section 1 of such Act is amended by striking

1 the item relating to section 712 and inserting the
2 following new item:

"Sec. 712. Equity in mental health and substance-related disorder benefits.".

3 (j) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to plan years begin-
5 ning on or after January 1, 2008.

6 **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
7 **ACT RELATING TO THE GROUP MARKET.**

8 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
9 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
10 2705 of the Public Health Service Act (42 U.S.C. 300gg–
11 5) is amended—

12 (1) in subsection (a), by adding at the end the
13 following new paragraphs:

14 "(3) TREATMENT LIMITS.—

15 "(A) NO TREATMENT LIMIT.—If the plan
16 or coverage does not include a treatment limit
17 (as defined in subparagraph (D)) on substan-
18 tially all medical and surgical benefits in any
19 category of items or services (specified in sub-
20 paragraph (C)), the plan or coverage may not
21 impose any treatment limit on mental health
22 and substance-related disorder benefits that are
23 classified in the same category of items or serv-
24 ices.

1 "(B) TREATMENT LIMIT.—If the plan or
2 coverage includes a treatment limit on substan-
3 tially all medical and surgical benefits in any
4 category of items or services, the plan or cov-
5 erage may not impose such a treatment limit on
6 mental health and substance-related disorder
7 benefits for items and services within such cat-
8 egory that are more restrictive than the pre-
9 dominant treatment limit that is applicable to
10 medical and surgical benefits for items and
11 services within such category.

12 "(C) CATEGORIES OF ITEMS AND SERV-
13 ICES FOR APPLICATION OF TREATMENT LIMITS
14 AND BENEFICIARY FINANCIAL REQUIRE-
15 MENTS.—For purposes of this paragraph and
16 paragraph (4), there shall be the following four
17 categories of items and services for benefits,
18 whether medical and surgical benefits or mental
19 health and substance-related disorder benefits,
20 and all medical and surgical benefits and all
21 mental health and substance related benefits
22 shall be classified into one of the following cat-
23 egories:

24 "(i) INPATIENT, IN-NETWORK.—Items
25 and services furnished on an inpatient

1 basis and within a network of providers es-
2 tablished or recognized under such plan or
3 coverage.

4 ''(ii) INPATIENT, OUT-OF-NETWORK.—
5 Items and services furnished on an inpa-
6 tient basis and outside any network of pro-
7 viders established or recognized under such
8 plan or coverage.

9 ''(iii) OUTPATIENT, IN-NETWORK.—
10 Items and services furnished on an out-
11 patient basis and within a network of pro-
12 viders established or recognized under such
13 plan or coverage.

14 ''(iv) OUTPATIENT, OUT-OF-NET-
15 WORK.—Items and services furnished on
16 an outpatient basis and outside any net-
17 work of providers established or recognized
18 under such plan or coverage.

19 ''(D) TREATMENT LIMIT DEFINED.—For
20 purposes of this paragraph, the term 'treatment
21 limit' means, with respect to a plan or coverage,
22 limitation on the frequency of treatment, num-
23 ber of visits or days of coverage, or other simi-
24 lar limit on the duration or scope of treatment
25 under the plan or coverage.

1 "(E) PREDOMINANCE.—For purposes of
2 this subsection, a treatment limit or financial
3 requirement with respect to a category of items
4 and services is considered to be predominant if
5 it is the most common or frequent of such type
6 of limit or requirement with respect to such cat-
7 egory of items and services.
8 "(4) BENEFICIARY FINANCIAL REQUIRE-
9 MENTS.—
10 "(A) NO BENEFICIARY FINANCIAL RE-
11 QUIREMENT.—If the plan or coverage does not
12 include a beneficiary financial requirement (as
13 defined in subparagraph (C)) on substantially
14 all medical and surgical benefits within a cat-
15 egory of items and services (specified in para-
16 graph (3)(C)), the plan or coverage may not im-
17 pose such a beneficiary financial requirement on
18 mental health and substance-related disorder
19 benefits for items and services within such cat-
20 egory.
21 "(B) BENEFICIARY FINANCIAL REQUIRE-
22 MENT.—
23 "(i) TREATMENT OF DEDUCTIBLES,
24 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
25 NANCIAL REQUIREMENTS.—If the plan or

1 coverage includes a deductible, a limitation
2 on out-of-pocket expenses, or similar bene-
3 ficiary financial requirement that does not
4 apply separately to individual items and
5 services on substantially all medical and
6 surgical benefits within a category of items
7 and services, the plan or coverage shall
8 apply such requirement (or, if there is
9 more than one such requirement for such
10 category of items and services, the pre-
11 dominant requirement for such category)
12 both to medical and surgical benefits with-
13 in such category and to mental health and
14 substance-related disorder benefits within
15 such category and shall not distinguish in
16 the application of such requirement be-
17 tween such medical and surgical benefits
18 and such mental health and substance-re-
19 lated disorder benefits.

20 "(ii) OTHER FINANCIAL REQUIRE-
21 MENTS.—If the plan or coverage includes a
22 beneficiary financial requirement not de-
23 scribed in clause (i) on substantially all
24 medical and surgical benefits within a cat-
25 egory of items and services, the plan or

1 coverage may not impose such financial re-
2 quirement on mental health and substance-
3 related disorder benefits for items and
4 services within such category in a way that
5 is more costly to the participant or bene-
6 ficiary than the predominant beneficiary fi-
7 nancial requirement applicable to medical
8 and surgical benefits for items and services
9 within such category.
10 ''(C) BENEFICIARY FINANCIAL REQUIRE-
11 MENT DEFINED.—For purposes of this para-
12 graph, the term 'beneficiary financial require-
13 ment' includes, with respect to a plan or cov-
14 erage, any deductible, coinsurance, co-payment,
15 other cost sharing, and limitation on the total
16 amount that may be paid by a participant or
17 beneficiary with respect to benefits under the
18 plan or coverage, but does not include the appli-
19 cation of any aggregate lifetime limit or annual
20 limit.''; and
21 (2) in subsection (b)—
22 (A) by striking ''construed—'' and all that
23 follows through ''(1) as requiring'' and insert-
24 ing ''construed as requiring'';

1 (B) by striking "; or" and inserting a period; and

3 (C) by striking paragraph (2).

4 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER BENEFITS AND REVISION OF DEFINITION.—Such section is further amended—

7 (1) by striking "mental health benefits" and inserting "mental health and substance-related disorder benefits" each place it appears; and

10 (2) in paragraph (4) of subsection (e)—

11 (A) by striking "MENTAL HEALTH BENEFITS" and inserting "MENTAL HEALTH AND SUBSTANCE-RELATED DISORDER BENEFITS";

14 (B) by striking "benefits with respect to mental health services" and inserting "benefits with respect to services for mental health conditions or substance-related disorders"; and

18 (C) by striking ", but does not include benefits with respect to treatment of substances abuse or chemical dependency".

21 (c) AVAILABILITY OF PLAN INFORMATION ABOUT CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of such section, as amended by subsection (a)(1), is further amended by adding at the end the following new paragraph:

1 "(5) AVAILABILITY OF PLAN INFORMATION.—
2 The criteria for medical necessity determinations
3 made under the plan with respect to mental health
4 and substance-related disorder benefits (or the
5 health insurance coverage offered in connection with
6 the plan with respect to such benefits) shall be made
7 available by the plan administrator (or the health in-
8 surance issuer offering such coverage) to any cur-
9 rent or potential participant, beneficiary, or con-
10 tracting provider upon request. The reason for any
11 denial under the plan (or coverage) of reimburse-
12 ment or payment for services with respect to mental
13 health and substance-related disorder benefits in the
14 case of any participant or beneficiary shall, upon re-
15 quest, be made available by the plan administrator
16 (or the health insurance issuer offering such cov-
17 erage) to the participant or beneficiary.".
18 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
19 section (a) of such section is further amended by adding
20 at the end the following new paragraph:
21 "(6) MINIMUM SCOPE OF COVERAGE AND EQ-
22 UITY IN OUT-OF-NETWORK BENEFITS.—
23 "(A) MINIMUM SCOPE OF MENTAL
24 HEALTH AND SUBSTANCE-RELATED DISORDER
25 BENEFITS.—In the case of a group health plan

1 (or health insurance coverage offered in connec-
2 tion with such a plan) that provides any mental
3 health and substance-related disorder benefits,
4 the plan or coverage shall include benefits for
5 any mental health condition or substance-re-
6 lated disorder for which benefits are provided
7 under the benefit plan option offered under
8 chapter 89 of title 5, United States Code, with
9 the highest average enrollment as of the begin-
10 ning of the most recent year beginning on or
11 before the beginning of the plan year involved.
12 ‘‘(B) EQUITY IN COVERAGE OF OUT-OF-
13 NETWORK BENEFITS.—
14 ‘‘(i) IN GENERAL.—In the case of a
15 plan or coverage that provides both med-
16 ical and surgical benefits and mental
17 health and substance-related disorder bene-
18 fits, if medical and surgical benefits are
19 provided for substantially all items and
20 services in a category specified in clause
21 (ii) furnished outside any network of pro-
22 viders established or recognized under such
23 plan or coverage, the mental health and
24 substance-related disorder benefits shall
25 also be provided for items and services in

1 such category furnished outside any net-
2 work of providers established or recognized
3 under such plan or coverage in accordance
4 with the requirements of this section.
5 "(ii) CATEGORIES OF ITEMS AND
6 SERVICES.—For purposes of clause (i),
7 there shall be the following three categories
8 of items and services for benefits, whether
9 medical and surgical benefits or mental
10 health and substance-related disorder bene-
11 fits, and all medical and surgical benefits
12 and all mental health and substance-re-
13 lated disorder benefits shall be classified
14 into one of the following categories:
15 "(I) EMERGENCY.—Items and
16 services, whether furnished on an in-
17 patient or outpatient basis, required
18 for the treatment of an emergency
19 medical condition (including an emer-
20 gency condition relating to mental
21 health and substance-related dis-
22 orders).
23 "(II) INPATIENT.—Items and
24 services not described in subclause (I)
25 furnished on an inpatient basis.

1 "(III) OUTPATIENT.—Items and
2 services not described in subclause (I)
3 furnished on an outpatient basis.".
4 (e) REVISION OF INCREASED COST EXEMPTION.—
5 Paragraph (2) of subsection (c) of such section is amended
6 to read as follows:
7 "(2) INCREASED COST EXEMPTION.—
8 "(A) IN GENERAL.—With respect to a
9 group health plan (or health insurance coverage
10 offered in connection with such a plan), if the
11 application of this section to such plan (or cov-
12 erage) results in an increase for the plan year
13 involved of the actual total costs of coverage
14 with respect to medical and surgical benefits
15 and mental health and substance-related dis-
16 order benefits under the plan (as determined
17 and certified under subparagraph (C)) by an
18 amount that exceeds the applicable percentage
19 described in subparagraph (B) of the actual
20 total plan costs, the provisions of this section
21 shall not apply to such plan (or coverage) dur-
22 ing the following plan year, and such exemption
23 shall apply to the plan (or coverage) for 1 plan
24 year.

1 ''(B) APPLICABLE PERCENTAGE.—With re-
2 spect to a plan (or coverage), the applicable
3 percentage described in this paragraph shall
4 be—
5 ''(i) 2 percent in the case of the first
6 plan year which begins after the date of
7 the enactment of the Paul Wellstone Men-
8 tal Health and Addiction Equity Act of
9 2007; and
10 ''(ii) 1 percent in the case of each
11 subsequent plan year.
12 ''(C) DETERMINATIONS BY ACTUARIES.—
13 Determinations as to increases in actual costs
14 under a plan (or coverage) for purposes of this
15 subsection shall be made by a qualified actuary
16 who is a member in good standing of the Amer-
17 ican Academy of Actuaries. Such determina-
18 tions shall be certified by the actuary and be
19 made available to the general public.
20 ''(D) 6-MONTH DETERMINATIONS.—If a
21 group health plan (or a health insurance issuer
22 offering coverage in connection with such a
23 plan) seeks an exemption under this paragraph,
24 determinations under subparagraph (A) shall be
25 made after such plan (or coverage) has com-

1 plied with this section for the first 6 months of
2 the plan year involved.
3 "(E) NOTIFICATION.—A group health plan
4 under this part shall comply with the notice re-
5 quirement under section 712(c)(2)(E) of the
6 Employee Retirement Income Security Act of
7 1974 with respect to the a modification of men-
8 tal health and substance-related disorder bene-
9 fits as permitted under this paragraph as if
10 such section applied to such plan.".
11 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
12 ERS.—Subsection (c)(1)(B) of such section is amended—
13 (1) by inserting "(or 1 in the case of an em-
14 ployer residing in a State that permits small groups
15 to include a single individual)" after "at least 2" the
16 first place it appears; and
17 (2) by striking "and who employs at least 2 em-
18 ployees on the first day of the plan year".
19 (g) ELIMINATION OF SUNSET PROVISION.—Such sec-
20 tion is amended by striking out subsection (f).
21 (h) CLARIFICATION REGARDING PREEMPTION.—
22 Such section is further amended by inserting after sub-
23 section (e) the following new subsection:
24 "(f) PREEMPTION, RELATION TO STATE LAWS.—

1 "(1) IN GENERAL.—Nothing in this section
2 shall be construed to preempt any State law that
3 provides greater consumer protections, benefits,
4 methods of access to benefits, rights or remedies
5 that are greater than the protections, benefits, meth-
6 ods of access to benefits, rights or remedies provided
7 under this section.

8 "(2) CONSTRUCTION.—Nothing in this section
9 shall be construed to affect or modify the provisions
10 of section 2723 with respect to group health plans.".

11 (i) CONFORMING AMENDMENT TO HEADING.—The
12 heading of such section is amended to read as follows:

13 **"SEC. 2705. Equity in mental health and substance-related dis-**
14 **order benefits.".**

15 (j) EFFECTIVE DATE.—The amendments made by
16 this section shall apply with respect to plan years begin-
17 ning on or after January 1, 2008.

18 **SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE**
19 **OF 1986.**

20 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
21 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
22 9812 of the Internal Revenue Code of 1986 is amended—

23 (1) in subsection (a), by adding at the end the
24 following new paragraphs:

25 "(3) TREATMENT LIMITS.—

1 "(A) NO TREATMENT LIMIT.—If the plan
2 does not include a treatment limit (as defined
3 in subparagraph (D)) on substantially all med-
4 ical and surgical benefits in any category of
5 items or services (specified in subparagraph
6 (C)), the plan may not impose any treatment
7 limit on mental health and substance-related
8 disorder benefits that are classified in the same
9 category of items or services.
10 "(B) TREATMENT LIMIT.—If the plan in-
11 cludes a treatment limit on substantially all
12 medical and surgical benefits in any category of
13 items or services, the plan may not impose such
14 a treatment limit on mental health and sub-
15 stance-related disorder benefits for items and
16 services within such category that are more re-
17 strictive than the predominant treatment limit
18 that is applicable to medical and surgical bene-
19 fits for items and services within such category.
20 "(C) CATEGORIES OF ITEMS AND SERV-
21 ICES FOR APPLICATION OF TREATMENT LIMITS
22 AND BENEFICIARY FINANCIAL REQUIRE-
23 MENTS.—For purposes of this paragraph and
24 paragraph (4), there shall be the following four
25 categories of items and services for benefits,

1 whether medical and surgical benefits or mental
2 health and substance-related disorder benefits,
3 and all medical and surgical benefits and all
4 mental health and substance related benefits
5 shall be classified into one of the following cat-
6 egories:
7 "(i) INPATIENT, IN-NETWORK.—Items
8 and services furnished on an inpatient
9 basis and within a network of providers es-
10 tablished or recognized under such plan or
11 coverage.
12 "(ii) INPATIENT, OUT-OF-NETWORK.—
13 Items and services furnished on an inpa-
14 tient basis and outside any network of pro-
15 viders established or recognized under such
16 plan or coverage.
17 "(iii) OUTPATIENT, IN-NETWORK.—
18 Items and services furnished on an out-
19 patient basis and within a network of pro-
20 viders established or recognized under such
21 plan or coverage.
22 "(iv) OUTPATIENT, OUT-OF-NET-
23 WORK.—Items and services furnished on
24 an outpatient basis and outside any net-

1 work of providers established or recognized
2 under such plan or coverage.
3 "(D) TREATMENT LIMIT DEFINED.—For
4 purposes of this paragraph, the term 'treatment
5 limit' means, with respect to a plan, limitation
6 on the frequency of treatment, number of visits
7 or days of coverage, or other similar limit on
8 the duration or scope of treatment under the
9 plan.
10 "(E) PREDOMINANCE.—For purposes of
11 this subsection, a treatment limit or financial
12 requirement with respect to a category of items
13 and services is considered to be predominant if
14 it is the most common or frequent of such type
15 of limit or requirement with respect to such cat-
16 egory of items and services.
17 "(4) BENEFICIARY FINANCIAL REQUIRE-
18 MENTS.—
19 "(A) NO BENEFICIARY FINANCIAL RE-
20 QUIREMENT.—If the plan does not include a
21 beneficiary financial requirement (as defined in
22 subparagraph (C)) on substantially all medical
23 and surgical benefits within a category of items
24 and services (specified in paragraph (3)(C)),
25 the plan may not impose such a beneficiary fi-

1 nancial requirement on mental health and sub-
2 stance-related disorder benefits for items and
3 services within such category.
4 “(B) BENEFICIARY FINANCIAL REQUIRE-
5 MENT.—
6 “(i) TREATMENT OF DEDUCTIBLES,
7 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
8 NANCIAL REQUIREMENTS.—If the plan or
9 coverage includes a deductible, a limitation
10 on out-of-pocket expenses, or similar bene-
11 ficiary financial requirement that does not
12 apply separately to individual items and
13 services on substantially all medical and
14 surgical benefits within a category of items
15 and services, the plan or coverage shall
16 apply such requirement (or, if there is
17 more than one such requirement for such
18 category of items and services, the pre-
19 dominant requirement for such category)
20 both to medical and surgical benefits with-
21 in such category and to mental health and
22 substance-related disorder benefits within
23 such category and shall not distinguish in
24 the application of such requirement be-
25 tween such medical and surgical benefits

1 and such mental health and substance-re-
2 lated disorder benefits.
3 "(ii) OTHER FINANCIAL REQUIRE-
4 MENTS.—If the plan includes a beneficiary
5 financial requirement not described in
6 clause (i) on substantially all medical and
7 surgical benefits within a category of items
8 and services, the plan may not impose such
9 financial requirement on mental health and
10 substance-related disorder benefits for
11 items and services within such category in
12 a way that is more costly to the participant
13 or beneficiary than the predominant bene-
14 ficiary financial requirement applicable to
15 medical and surgical benefits for items and
16 services within such category.
17 "(C) BENEFICIARY FINANCIAL REQUIRE-
18 MENT DEFINED.—For purposes of this para-
19 graph, the term 'beneficiary financial require-
20 ment' includes, with respect to a plan, any de-
21 ductible, coinsurance, co-payment, other cost
22 sharing, and limitation on the total amount
23 that may be paid by a participant or beneficiary
24 with respect to benefits under the plan, but

1 does not include the application of any aggre-
2 gate lifetime limit or annual limit.''; and
3 (2) in subsection (b)—
4 (A) by striking ''construed—'' and all that
5 follows through ''(1) as requiring'' and insert-
6 ing ''construed as requiring'';
7 (B) by striking ''; or'' and inserting a pe-
8 riod; and
9 (C) by striking paragraph (2).
10 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER
11 BENEFITS AND REVISION OF DEFINITION.—Such section
12 is further amended—
13 (1) by striking ''mental health benefits'' and in-
14 serting ''mental health and substance-related dis-
15 order benefits'' each place it appears; and
16 (2) in paragraph (4) of subsection (e)—
17 (A) by striking ''MENTAL HEALTH BENE-
18 FITS'' in the heading and inserting ''MENTAL
19 HEALTH AND SUBSTANCE-RELATED DISORDER
20 BENEFITS'';
21 (B) by striking ''benefits with respect to
22 mental health services'' and inserting ''benefits
23 with respect to services for mental health condi-
24 tions or substance-related disorders''; and

1 (C) by striking ", but does not include
2 benefits with respect to treatment of substances
3 abuse or chemical dependency".

4 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
5 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
6 such section, as amended by subsection (a)(1), is further
7 amended by adding at the end the following new para-
8 graph:

9 "(5) AVAILABILITY OF PLAN INFORMATION.—
10 The criteria for medical necessity determinations
11 made under the plan with respect to mental health
12 and substance-related disorder benefits shall be
13 made available by the plan administrator to any cur-
14 rent or potential participant, beneficiary, or con-
15 tracting provider upon request. The reason for any
16 denial under the plan of reimbursement or payment
17 for services with respect to mental health and sub-
18 stance-related disorder benefits in the case of any
19 participant or beneficiary shall, upon request, be
20 made available by the plan administrator to the par-
21 ticipant or beneficiary.".

22 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
23 section (a) of such section is further amended by adding
24 at the end the following new paragraph:

1 "(6) MINIMUM SCOPE OF COVERAGE AND EQ-
2 UITY IN OUT-OF-NETWORK BENEFITS.—
3 "(A) MINIMUM SCOPE OF MENTAL
4 HEALTH AND SUBSTANCE-RELATED DISORDER
5 BENEFITS.—In the case of a group health plan
6 (or health insurance coverage offered in connec-
7 tion with such a plan) that provides any mental
8 health and substance-related disorder benefits,
9 the plan or coverage shall include benefits for
10 any mental health condition or substance-re-
11 lated disorder for which benefits are provided
12 under the benefit plan option offered under
13 chapter 89 of title 5, United States Code, with
14 the highest average enrollment as of the begin-
15 ning of the most recent year beginning on or
16 before the beginning of the plan year involved.
17 "(B) EQUITY IN COVERAGE OF OUT-OF-
18 NETWORK BENEFITS.—
19 "(i) IN GENERAL.—In the case of a
20 plan that provides both medical and sur-
21 gical benefits and mental health and sub-
22 stance-related disorder benefits, if medical
23 and surgical benefits are provided for sub-
24 stantially all items and services in a cat-
25 egory specified in clause (ii) furnished out-

1 side any network of providers established
2 or recognized under such plan or coverage,
3 the mental health and substance-related
4 disorder benefits shall also be provided for
5 items and services in such category fur-
6 nished outside any network of providers es-
7 tablished or recognized under such plan in
8 accordance with the requirements of this
9 section.

10 "(ii) CATEGORIES OF ITEMS AND
11 SERVICES.—For purposes of clause (i),
12 there shall be the following three categories
13 of items and services for benefits, whether
14 medical and surgical benefits or mental
15 health and substance-related disorder bene-
16 fits, and all medical and surgical benefits
17 and all mental health and substance-re-
18 lated disorder benefits shall be classified
19 into one of the following categories:

20 "(I) EMERGENCY.—Items and
21 services, whether furnished on an in-
22 patient or outpatient basis, required
23 for the treatment of an emergency
24 medical condition (including an emer-
25 gency condition relating to mental

1 health and substance-related dis-
2 orders).
3 "(II) INPATIENT.—Items and
4 services not described in subclause (I)
5 furnished on an inpatient basis.
6 "(III) OUTPATIENT.—Items and
7 services not described in subclause (I)
8 furnished on an outpatient basis.".
9 (e) REVISION OF INCREASED COST EXEMPTION.—
10 Paragraph (2) of subsection (c) of such section is amended
11 to read as follows:
12 "(2) INCREASED COST EXEMPTION.—
13 "(A) IN GENERAL.—With respect to a
14 group health plan, if the application of this sec-
15 tion to such plan results in an increase for the
16 plan year involved of the actual total costs of
17 coverage with respect to medical and surgical
18 benefits and mental health and substance-re-
19 lated disorder benefits under the plan (as deter-
20 mined and certified under subparagraph (C)) by
21 an amount that exceeds the applicable percent-
22 age described in subparagraph (B) of the actual
23 total plan costs, the provisions of this section
24 shall not apply to such plan during the fol-

1 lowing plan year, and such exemption shall
2 apply to the plan for 1 plan year.
3 "(B) APPLICABLE PERCENTAGE.—With re-
4 spect to a plan, the applicable percentage de-
5 scribed in this paragraph shall be—
6 "(i) 2 percent in the case of the first
7 plan year which begins after the date of
8 the enactment of the Paul Wellstone Men-
9 tal Health and Addiction Equity Act of
10 2007; and
11 "(ii) 1 percent in the case of each
12 subsequent plan year.
13 "(C) DETERMINATIONS BY ACTUARIES.—
14 Determinations as to increases in actual costs
15 under a plan for purposes of this subsection
16 shall be made by a qualified actuary who is a
17 member in good standing of the American
18 Academy of Actuaries. Such determinations
19 shall be certified by the actuary and be made
20 available to the general public.
21 "(D) 6-MONTH DETERMINATIONS.—If a
22 group health plan seeks an exemption under
23 this paragraph, determinations under subpara-
24 graph (A) shall be made after such plan has

1 complied with this section for the first 6
2 months of the plan year involved.''.
3 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
4 ERS.—Subsection (c)(1) of such section is amended to
5 read as follows:
6 ''(1) SMALL EMPLOYER EXEMPTION.—
7 ''(A) IN GENERAL.—This section shall not
8 apply to any group health plan for any plan
9 year of a small employer.
10 ''(B) SMALL EMPLOYER.—For purposes of
11 subparagraph (A), the term 'small employer'
12 means, with respect to a calendar year and a
13 plan year, an employer who employed an aver-
14 age of at least 2 (or 1 in the case of an em-
15 ployer residing in a State that permits small
16 groups to include a single individual) but not
17 more than 50 employees on business days dur-
18 ing the preceding calendar year. For purposes
19 of the preceding sentence, all persons treated as
20 a single employer under subsection (b), (c),
21 (m), or (o) of section 414 shall be treated as 1
22 employer and rules similar to rules of subpara-
23 graphs (B) and (C) of section 4980D(d)(2)
24 shall apply.''.

(g) ELIMINATION OF SUNSET PROVISION.—Such section is amended by striking subsection (f).

(h) CONFORMING AMENDMENTS TO HEADING.—

(1) IN GENERAL.—The heading of such section is amended to read as follows:

"SEC. 9812. Equity in mental health and substance-related disorder benefits.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 9812 and inserting the following new item:

"Sec. 9812. Equity in mental health and substance-related disorder benefits.".

(i) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2008.

SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDIES AND REPORTS.

(a) IMPLEMENTATION OF ACT.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates the effect of the implementation of the amendments made by this Act on—

(A) the cost of health insurance coverage;

1 (B) access to health insurance coverage
2 (including the availability of in-network pro-
3 viders);
4 (C) the quality of health care;
5 (D) Medicare, Medicaid, and State and
6 local mental health and substance abuse treat-
7 ment spending;
8 (E) the number of individuals with private
9 insurance who received publicly funded health
10 care for mental health and substance-related
11 disorders;
12 (F) spending on public services, such as
13 the criminal justice system, special education,
14 and income assistance programs;
15 (G) the use of medical management of
16 mental health and substance-related disorder
17 benefits and medical necessity determinations
18 by group health plans (and health insurance
19 issuers offering health insurance coverage in
20 connection with such plans) and timely access
21 by participants and beneficiaries to clinically-in-
22 dicated care for mental health and substance-
23 use disorders; and
24 (H) other matters as determined appro-
25 priate by the Comptroller General.

1 (2) REPORT.—Not later than 2 years after the
2 date of enactment of this Act, the Comptroller Gen-
3 eral shall prepare and submit to the appropriate
4 committees of the Congress a report containing the
5 results of the study conducted under paragraph (1).
6 (b) BIANNUAL REPORT ON OBSTACLES IN OBTAIN-
7 ING COVERAGE.—Every two years, the Comptroller Gen-
8 eral shall submit to each House of the Congress a report
9 on obstacles that individuals face in obtaining mental
10 health and substance-related disorder care under their
11 health plans.
12 (c) UNIFORM PATIENT PLACEMENT CRITERIA.—Not
13 later than 18 months after the date of the enactment of
14 this Act, the Comptroller General shall submit to each
15 House of the Congress a report on availability of uniform
16 patient placement criteria for mental health and sub-
17 stance-related disorders that could be used by group
18 health plans and health insurance issuers to guide deter-
19 minations of medical necessity and the extent to which
20 health plans utilize such critiera. If such criteria do not
21 exist, the report shall include recommendations on a proc-
22 ess for developing such criteria.

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