

Union Calendar No. 328

110TH CONGRESS
2D SESSION

H. R. 1424

[Report No. 110-374, Parts I, II, and III]

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. PASCARELL, 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. SHEAPORTER, 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

OCTOBER 15, 2007

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

OCTOBER 15, 2007

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman]

MARCH 4, 2008

Additional sponsors: Mrs. BONO MACK, Mr. DINGELL, Mr. ALTMIRE, Mr. GERLACH, Mr. EHLERS, Mr. GILLMOR, Mr. DENT, Mr. PATRICK MURPHY of Pennsylvania, Mrs. BOYDA of Kansas, Mr. MITCHELL, Mrs. CAPITO, Mr. MILLER of North Carolina, Mr. CRAMER, Mr. BONNER, Mr. WOLF, Mr. HILL, Mr. MELANCON, Mr. SHULER, and Mr. SMITH of Texas

MARCH 4, 2008

Reported from the Committee on Energy and Commerce with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface italic]

[For text of introduced bill, see copy of bill as introduced on March 9, 2007]

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”.*

1 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 2 *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. 4. Amendments to the Internal Revenue Code of 1986.

Sec. 5. Government Accountability Office studies and reports.

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

5 (a) *EXTENSION OF PARITY TO TREATMENT LIMITS*
 6 *AND BENEFICIARY FINANCIAL REQUIREMENTS.*—*Section*
 7 *712 of the Employee Retirement Income Security Act of*
 8 *1974 (29 U.S.C. 1185a) is amended—*

9 (1) *in subsection (a), by adding at the end the*
 10 *following new paragraphs:*

11 “(3) *TREATMENT LIMITS.*—

12 “(A) *NO TREATMENT LIMIT.*—*If the plan or*
 13 *coverage does not include a treatment limit (as*
 14 *defined in subparagraph (D)) on substantially*
 15 *all medical and surgical benefits in any category*
 16 *of items or services, the plan or coverage may*
 17 *not impose any treatment limit on mental health*
 18 *or substance-related disorder benefits that are*
 19 *classified in the same category of items or serv-*
 20 *ices.*

21 “(B) *TREATMENT LIMIT.*—*If the plan or*
 22 *coverage includes a treatment limit on substan-*

1 *tially all medical and surgical benefits in any*
2 *category of items or services, the plan or coverage*
3 *may not impose such a treatment limit on men-*
4 *tal health or substance-related disorder benefits*
5 *for items and services within such category that*
6 *is more restrictive than the predominant treat-*
7 *ment limit that is applicable to medical and sur-*
8 *gical benefits for items and services within such*
9 *category.*

10 “(C) *CATEGORIES OF ITEMS AND SERVICES*
11 *FOR APPLICATION OF TREATMENT LIMITS AND*
12 *BENEFICIARY FINANCIAL REQUIREMENTS.—For*
13 *purposes of this paragraph and paragraph (4),*
14 *there shall be the following five categories of*
15 *items and services for benefits, whether medical*
16 *and surgical benefits or mental health and sub-*
17 *stance-related disorder benefits, and all medical*
18 *and surgical benefits and all mental health and*
19 *substance related benefits shall be classified into*
20 *one of the following categories:*

21 “(i) *INPATIENT, IN-NETWORK.—Items*
22 *and services not described in clause (v) fur-*
23 *nished on an inpatient basis and within a*
24 *network of providers established or recog-*
25 *nized under such plan or coverage.*

1 “(ii) *INPATIENT, OUT-OF-NETWORK.—*
2 *Items and services not described in clause*
3 *(v) furnished on an inpatient basis and out-*
4 *side any network of providers established or*
5 *recognized under such plan or coverage.*

6 “(iii) *OUTPATIENT, IN-NETWORK.—*
7 *Items and services not described in clause*
8 *(v) furnished on an outpatient basis and*
9 *within a network of providers established or*
10 *recognized under such plan or coverage.*

11 “(iv) *OUTPATIENT, OUT-OF-NET-*
12 *WORK.—Items and services not described in*
13 *clause (v) furnished on an outpatient basis*
14 *and outside any network of providers estab-*
15 *lished or recognized under such plan or cov-*
16 *erage.*

17 “(v) *EMERGENCY CARE.—Items and*
18 *services, whether furnished on an inpatient*
19 *or outpatient basis or within or outside any*
20 *network of providers, required for the treat-*
21 *ment of an emergency medical condition*
22 *(including an emergency condition relating*
23 *to mental health and substance-related dis-*
24 *orders).*

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, number
5 of visits or days of coverage, or other similar
6 limit on the duration or scope of treatment
7 under the plan or coverage.

8 “(E) *PREDOMINANCE.*—For purposes of this
9 subsection, a treatment limit or financial re-
10 quirement 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 REQUIREMENTS.*—

16 “(A) *NO BENEFICIARY FINANCIAL REQUIRE-*
17 *MENT.*—If the plan or coverage does not include
18 a beneficiary financial requirement (as defined
19 in subparagraph (C)) on substantially all med-
20 ical and surgical benefits within a category of
21 items and services (specified under paragraph
22 (3)(C)), the plan or coverage may not impose
23 such a beneficiary financial requirement on
24 mental health or substance-related disorder bene-
25 fits for items and services within such category.

1 “(B) *BENEFICIARY FINANCIAL REQUIRE-*
2 *MENT.—*

3 “(i) *TREATMENT OF DEDUCTIBLES,*
4 *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*
5 *NANCIAL REQUIREMENTS.—If the plan or*
6 *coverage includes a deductible, a limitation*
7 *on out-of-pocket expenses, or similar bene-*
8 *ficiary financial requirement that does not*
9 *apply separately to individual items and*
10 *services on substantially all medical and*
11 *surgical benefits within a category of items*
12 *and services (as specified in paragraph*
13 *(3)(C)), the plan or coverage shall apply*
14 *such requirement (or, if there is more than*
15 *one such requirement for such category of*
16 *items and services, the predominant re-*
17 *quirement for such category) both to med-*
18 *ical and surgical benefits within such cat-*
19 *egory and to mental health and substance-*
20 *related disorder benefits within such cat-*
21 *egory and shall not distinguish in the ap-*
22 *plication of such requirement between such*
23 *medical and surgical benefits and such*
24 *mental health and substance-related dis-*
25 *order benefits.*

1 “(i) *OTHER FINANCIAL REQUIRE-*
2 *MENTS.—If the plan or coverage includes a*
3 *beneficiary financial requirement not de-*
4 *scribed in clause (i) on substantially all*
5 *medical and surgical benefits within a cat-*
6 *egory of items and services, the plan or cov-*
7 *erage may not impose such financial re-*
8 *quirement on mental health or substance-re-*
9 *lated disorder benefits for items and services*
10 *within such category in a way that results*
11 *in greater out-of-pocket expenses to the par-*
12 *ticipant or beneficiary than the predomi-*
13 *nant beneficiary financial requirement ap-*
14 *plicable to medical and surgical benefits for*
15 *items and services within such category.*

16 “(iii) *CONSTRUCTION.—Nothing in*
17 *this subparagraph shall be construed as pro-*
18 *hibiting the plan or coverage from waiving*
19 *the application of any deductible for mental*
20 *health benefits or substance-related disorder*
21 *benefits or both.*

22 “(C) *BENEFICIARY FINANCIAL REQUIRE-*
23 *MENT DEFINED.—For purposes of this para-*
24 *graph, the term ‘beneficiary financial require-*
25 *ment’ includes, with respect to a plan or cov-*

1 *erage, any deductible, coinsurance, co-payment,*
 2 *other cost sharing, and limitation on the total*
 3 *amount that may be paid by a participant or*
 4 *beneficiary with respect to benefits under the*
 5 *plan or coverage, but does not include the appli-*
 6 *cation of any aggregate lifetime limit or annual*
 7 *limit.”; and*

8 *(2) in subsection (b)—*

9 *(A) by striking “construed—” and all that*
 10 *follows through “(1) as requiring” and inserting*
 11 *“construed as requiring”;*

12 *(B) by striking “; or” and inserting a pe-*
 13 *riod; and*

14 *(C) by striking paragraph (2).*

15 *(b) EXPANSION TO SUBSTANCE-RELATED DISORDER*

16 *BENEFITS AND REVISION OF DEFINITION.—Such section is*
 17 *further amended—*

18 *(1) by striking “mental health benefits” and in-*
 19 *serting “mental health or substance-related disorder*
 20 *benefits” each place it appears; and*

21 *(2) in paragraph (4) of subsection (e)—*

22 *(A) by striking “MENTAL HEALTH BENE-*
 23 *FITS” and inserting “MENTAL HEALTH AND*
 24 *SUBSTANCE-RELATED DISORDER BENEFITS”;*

1 (B) by striking “benefits with respect to
2 mental health services” and inserting “benefits
3 with respect to services for mental health condi-
4 tions or substance-related disorders”; and

5 (C) by striking “, but does not include bene-
6 fits with respect to treatment of substance abuse
7 or chemical dependency”.

8 (c) *AVAILABILITY OF PLAN INFORMATION ABOUT CRI-*
9 *TERIA FOR MEDICAL NECESSITY.*—Subsection (a) of such
10 section, as amended by subsection (a)(1), is further amend-
11 ed by adding at the end the following new paragraph:

12 “(5) *AVAILABILITY OF PLAN INFORMATION.*—The
13 criteria for medical necessity determinations made
14 under the plan with respect to mental health and sub-
15 stance-related disorder benefits (or the health insur-
16 ance coverage offered in connection with the plan
17 with respect to such benefits) shall be made available
18 in accordance with regulations by the plan adminis-
19 trator (or the health insurance issuer offering such
20 coverage) to any current or potential participant,
21 beneficiary, or contracting provider upon request. The
22 reason for any denial under the plan (or coverage) of
23 reimbursement or payment for services with respect to
24 mental health and substance-related disorder benefits
25 in the case of any participant or beneficiary shall,

1 upon request, be made available in accordance with
2 regulations by the plan administrator (or the health
3 insurance issuer offering such coverage) to the partici-
4 pant or beneficiary.”.

5 (d) *MINIMUM BENEFIT REQUIREMENTS.*—Subsection
6 (a) of such section is further amended by adding at the end
7 the following new paragraph:

8 “(6) *MINIMUM SCOPE OF COVERAGE AND EQUITY*
9 *IN OUT-OF-NETWORK BENEFITS.*—

10 “(A) *MINIMUM SCOPE OF MENTAL HEALTH*
11 *AND SUBSTANCE-RELATED DISORDER BENE-*
12 *FITS.*—In the case of a group health plan (or
13 health insurance coverage offered in connection
14 with such a plan) that provides any mental
15 health or substance-related disorder benefits, the
16 plan or coverage shall include benefits for any
17 mental health condition and substance-related
18 disorder for which benefits are provided under
19 the benefit plan option offered under chapter 89
20 of title 5, United States Code, with the highest
21 average enrollment as of the beginning of the
22 most recent year beginning on or before the be-
23 ginning of the plan year involved.

24 “(B) *EQUITY IN COVERAGE OF OUT-OF-NET-*
25 *WORK BENEFITS.*—

1 “(i) *IN GENERAL.*—*In the case of a*
2 *plan or coverage that provides both medical*
3 *and surgical benefits and mental health or*
4 *substance-related disorder benefits, if med-*
5 *ical and surgical benefits are provided for*
6 *substantially all items and services in a*
7 *category specified in clause (ii) furnished*
8 *outside any network of providers established*
9 *or recognized under such plan or coverage,*
10 *the mental health and substance-related dis-*
11 *order benefits shall also be provided for*
12 *items and services in such category fur-*
13 *nished outside any network of providers es-*
14 *tablished or recognized under such plan or*
15 *coverage in accordance with the require-*
16 *ments of this section.*

17 “(ii) *CATEGORIES OF ITEMS AND*
18 *SERVICES.*—*For purposes of clause (i), there*
19 *shall be the following three categories of*
20 *items and services for benefits, whether med-*
21 *ical and surgical benefits or mental health*
22 *and substance-related disorder benefits, and*
23 *all medical and surgical benefits and all*
24 *mental health and substance-related dis-*

1 *order benefits shall be classified into one of*
2 *the following categories:*

3 “(I) *EMERGENCY.—Items and*
4 *services, whether furnished on an inpa-*
5 *tient or outpatient basis, required for*
6 *the treatment of an emergency medical*
7 *condition (including an emergency*
8 *condition relating to mental health or*
9 *substance-related disorders).*

10 “(II) *INPATIENT.—Items and*
11 *services not described in subclause (I)*
12 *furnished on an inpatient basis.*

13 “(III) *OUTPATIENT.—Items and*
14 *services not described in subclause (I)*
15 *furnished on an outpatient basis.”.*

16 *(e) CONSTRUCTION.—Subsection (a) of such section is*
17 *further amended by adding at the end the following new*
18 *paragraph:*

19 “(7) *CONSTRUCTION.—Nothing in this section*
20 *shall be construed to limit a group health plan (or*
21 *health insurance offered in connection with such a*
22 *plan) from managing the provision of medical, sur-*
23 *gical, mental health or substance-related disorder ben-*
24 *efits through any of the following methods:*

25 “(A) *the application of utilization review;*

1 “(B) the application of authorization or
2 management practices;

3 “(C) the application of medical necessity
4 and appropriateness criteria; or

5 “(D) other processes intended to ensure that
6 beneficiaries receive appropriate care and medi-
7 cally necessary services for covered benefits;

8 to the extent such methods are recognized both by in-
9 dustry and by providers and are not prohibited under
10 applicable State laws.”.

11 (f) *REVISION OF INCREASED COST EXEMPTION.*—
12 Paragraph (2) of subsection (c) of such section is amended
13 to read as follows:

14 “(2) *INCREASED COST EXEMPTION.*—

15 “(A) *IN GENERAL.*—With respect to a group
16 health plan (or health insurance coverage offered
17 in connection with such a plan), if the applica-
18 tion of this section to such plan (or coverage) re-
19 sults in an increase for the plan year involved
20 of the actual total costs of coverage with respect
21 to medical and surgical benefits and mental
22 health and substance-related disorder benefits
23 under the plan (as determined and certified
24 under subparagraph (C)) by an amount that ex-
25 ceeds the applicable percentage described in sub-

1 *paragraph (B) of the actual total plan costs, the*
2 *provisions of this section shall not apply to such*
3 *plan (or coverage) during the following plan*
4 *year, and such exemption shall apply to the plan*
5 *(or coverage) for 1 plan year.*

6 “(B) *APPLICABLE PERCENTAGE.*—*With re-*
7 *spect to a plan (or coverage), the applicable per-*
8 *centage described in this paragraph shall be—*

9 “(i) *2 percent in the case of the first*
10 *plan year which begins after the effective*
11 *date of the amendments made by section*
12 *101 of the Paul Wellstone Mental Health*
13 *and Addiction Equity Act of 2007; and*

14 “(ii) *1 percent in the case of each sub-*
15 *sequent plan year.*

16 “(C) *DETERMINATIONS BY ACTUARIES.*—
17 *Determinations as to increases in actual costs*
18 *under a plan (or coverage) for purposes of this*
19 *subsection shall be made and certified by a*
20 *qualified and licensed actuary who is a member*
21 *in good standing of the American Academy of*
22 *Actuaries.*

23 “(D) *6-MONTH DETERMINATIONS.*—*If a*
24 *group health plan (or a health insurance issuer*
25 *offering coverage in connection with such a plan)*

1 *seeks an exemption under this paragraph, deter-*
2 *minations under subparagraph (A) shall be*
3 *made after such plan (or coverage) has complied*
4 *with this section for the first 6 months of the*
5 *plan year involved.*

6 “(E) NOTIFICATION.—*An election to modify*
7 *coverage of mental health and substance-related*
8 *disorder benefits as permitted under this para-*
9 *graph shall be treated as a material modification*
10 *in the terms of the plan as described in section*
11 *102(a) and notice of which shall be provided a*
12 *reasonable period in advance of the change.*

13 “(F) NOTIFICATION OF APPROPRIATE AGEN-
14 CY.—

15 “(i) IN GENERAL.—*A group health*
16 *plan that, based on upon a certification de-*
17 *scribed under subparagraph (C), qualifies*
18 *for an exemption under this paragraph,*
19 *and elects to implement the exemption, shall*
20 *notify the Department of Labor of such elec-*
21 *tion.*

22 “(ii) REQUIREMENT.—*A notification*
23 *under clause (i) shall include—*

24 “(I) *a description of the number*
25 *of covered lives under the plan (or cov-*

1 *erage) involved at the time of the noti-*
2 *fication, and as applicable, at the time*
3 *of any prior election of the cost-exemp-*
4 *tion under this paragraph by such*
5 *plan (or coverage);*

6 *“(II) for both the plan year upon*
7 *which a cost exemption is sought and*
8 *the year prior, a description of the ac-*
9 *tual total costs of coverage with respect*
10 *to medical and surgical benefits and*
11 *mental health and substance-related*
12 *disorder benefits under the plan; and*

13 *“(III) for both the plan year upon*
14 *which a cost exemption is sought and*
15 *the year prior, the actual total costs of*
16 *coverage with respect to mental health*
17 *and substance-related disorder benefits*
18 *under the plan.*

19 *“(iii) CONFIDENTIALITY.—A notifica-*
20 *tion under clause (i) shall be confidential.*
21 *The Department of Labor shall make avail-*
22 *able, upon request to the appropriate com-*
23 *mittees of Congress and on not more than*
24 *an annual basis, an anonymous itemization*
25 *of such notifications, that includes—*

1 “(I) a breakdown of States by the
2 size and any type of employers submit-
3 ting such notification; and

4 “(II) a summary of the data re-
5 ceived under clause (ii).

6 “(G) NO IMPACT ON APPLICATION OF STATE
7 LAW.—The fact that a plan or coverage is ex-
8 empt from the provisions of this section under
9 subparagraph (A) shall not affect the application
10 of State law to such plan or coverage.”.

11 (g) 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 (h) ELIMINATION OF SUNSET PROVISION.—Such sec-
20 tion is amended by striking subsection (f).

21 (i) CLARIFICATION REGARDING PREEMPTION.—Such
22 section is further amended by inserting after subsection (e)
23 the following new subsection:

24 “(f) PREEMPTION, RELATION TO STATE LAWS.—

1 “(1) *IN GENERAL.*—*This part shall not be con-*
2 *strued to supersede any provision of State law which*
3 *establishes, implements, or continues in effect any*
4 *consumer protections, benefits, methods of access to*
5 *benefits, rights, external review programs, or remedies*
6 *solely relating to health insurance issuers in connec-*
7 *tion with group health insurance coverage (including*
8 *benefit mandates or regulation of group health plans*
9 *of 50 or fewer employees) except to the extent that*
10 *such provision prevents the application of a require-*
11 *ment of this part.*

12 “(2) *CONTINUED PREEMPTION WITH RESPECT TO*
13 *GROUP HEALTH PLANS.*—*Nothing in this section shall*
14 *be construed to affect or modify the provisions of sec-*
15 *tion 514 with respect to group health plans.*

16 “(3) *OTHER STATE LAWS.*—*Nothing in this sec-*
17 *tion shall be construed to exempt or relieve any per-*
18 *son from any laws of any State not solely related to*
19 *health insurance issuers in connection with group*
20 *health coverage insofar as they may now or hereafter*
21 *relate to insurance, health plans, or health cov-*
22 *erage.’”.*

23 (j) *CONFORMING AMENDMENTS TO HEADING.*—

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

1 **“SEC. 712. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
2 **RELATED DISORDER BENEFITS.”.**

3 (2) *CLERICAL AMENDMENT.*—*The table of con-*
4 *tents in section 1 of such Act is amended by striking*
5 *the item relating to section 712 and inserting the fol-*
6 *lowing new item:*

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

7 (k) *EFFECTIVE DATE.*—

8 (1) *IN GENERAL.*—*The amendments made by*
9 *this section shall apply with respect to plan years be-*
10 *ginning on or after January 1, 2008.*

11 (2) *SPECIAL RULE FOR COLLECTIVE BARGAINING*
12 *AGREEMENTS.*—*In the case of a group health plan*
13 *maintained pursuant to one or more collective bar-*
14 *gaining agreements between employee representatives*
15 *and one or more employers ratified before the date of*
16 *the enactment of this Act, the amendments made by*
17 *this section shall not apply to plan years beginning*
18 *before the later of—*

19 (A) *the date on which the last of the collec-*
20 *tive bargaining agreements relating to the plan*
21 *terminates (determined without regard to any*
22 *extension thereof agreed to after the date of the*
23 *enactment of this Act), or*

24 (B) *January 1, 2010.*

1 *For purposes of subparagraph (A), any plan amend-*
2 *ment made pursuant to a collective bargaining agree-*
3 *ment relating to the plan which amends the plan sole-*
4 *ly to conform to any requirement imposed under an*
5 *amendment under this section shall not be treated as*
6 *a termination of such collective bargaining agree-*
7 *ment.*

8 *(l) DOL ANNUAL SAMPLE COMPLIANCE.—The Sec-*
9 *retary of Labor shall annually sample and conduct random*
10 *audits of group health plans (and health insurance coverage*
11 *offered in connection with such plans) in order to determine*
12 *their compliance with the amendments made by this Act*
13 *and shall submit to the appropriate committees of Congress*
14 *an annual report on such compliance with such amend-*
15 *ments.*

16 *(m) ASSISTANCE TO PARTICIPANTS AND BENE-*
17 *ficiaries.—The Secretary of Labor shall provide assist-*
18 *ance to participants and beneficiaries of group health plans*
19 *with any questions or problems with compliance with the*
20 *requirements of this Act. The Secretary shall notify partici-*
21 *pants and beneficiaries when they can obtain assistance*
22 *from State consumer and insurance agencies and the Sec-*
23 *retary shall coordinate with State agencies to ensure that*
24 *participants and beneficiaries are protected and afforded*
25 *the rights provided under this Act.*

1 **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
2 **ACT RELATING TO THE GROUP MARKET.**

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

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

9 “(3) *TREATMENT LIMITS.*—

10 “(A) *NO TREATMENT LIMIT.*—If the plan or
11 coverage does not include a treatment limit (as
12 defined in subparagraph (D)) on substantially
13 all medical and surgical benefits in any category
14 of items or services (specified in subparagraph
15 (C)), the plan or coverage may not impose any
16 treatment limit on mental health and substance-
17 related disorder benefits that are classified in the
18 same category of items or services.

19 “(B) *TREATMENT LIMIT.*—If the plan or
20 coverage includes a treatment limit on substan-
21 tially all medical and surgical benefits in any
22 category of items or services, the plan or coverage
23 may not impose such a treatment limit on men-
24 tal health and substance-related disorder benefits
25 for items and services within such category that
26 are more restrictive than the predominant treat-

1 *ment limit that is applicable to medical and sur-*
2 *gical benefits for items and services within such*
3 *category.*

4 “(C) *CATEGORIES OF ITEMS AND SERVICES*
5 *FOR APPLICATION OF TREATMENT LIMITS AND*
6 *BENEFICIARY FINANCIAL REQUIREMENTS.—For*
7 *purposes of this paragraph and paragraph (4),*
8 *there shall be the following four categories of*
9 *items and services for benefits, whether medical*
10 *and surgical benefits or mental health and sub-*
11 *stance-related disorder benefits, and all medical*
12 *and surgical benefits and all mental health and*
13 *substance related benefits shall be classified into*
14 *one of the following categories:*

15 “(i) *INPATIENT, IN-NETWORK.—Items*
16 *and services furnished on an inpatient basis*
17 *and within a network of providers estab-*
18 *lished or recognized under such plan or cov-*
19 *erage.*

20 “(ii) *INPATIENT, OUT-OF-NETWORK.—*
21 *Items and services furnished on an inpa-*
22 *tient basis and outside any network of pro-*
23 *viders established or recognized under such*
24 *plan or coverage.*

1 “(iii) *OUTPATIENT, IN-NETWORK.—*
2 *Items and services furnished on an out-*
3 *patient basis and within a network of pro-*
4 *viders established or recognized under such*
5 *plan or coverage.*

6 “(iv) *OUTPATIENT, OUT-OF-NET-*
7 *WORK.—Items and services furnished on an*
8 *outpatient basis and outside any network of*
9 *providers established or recognized under*
10 *such plan or coverage.*

11 “(D) *TREATMENT LIMIT DEFINED.—For*
12 *purposes of this paragraph, the term ‘treatment*
13 *limit’ means, with respect to a plan or coverage,*
14 *limitation on the frequency of treatment, number*
15 *of visits or days of coverage, or other similar*
16 *limit on the duration or scope of treatment*
17 *under the plan or coverage.*

18 “(E) *PREDOMINANCE.—For purposes of this*
19 *subsection, a treatment limit or financial re-*
20 *quirement with respect to a category of items*
21 *and services is considered to be predominant if*
22 *it is the most common or frequent of such type*
23 *of limit or requirement with respect to such cat-*
24 *egory of items and services.*

25 “(4) *BENEFICIARY FINANCIAL REQUIREMENTS.—*

1 “(A) *NO BENEFICIARY FINANCIAL REQUIRE-*
2 *MENT.—If the plan or coverage does not include*
3 *a beneficiary financial requirement (as defined*
4 *in subparagraph (C)) on substantially all med-*
5 *ical and surgical benefits within a category of*
6 *items and services (specified in paragraph*
7 *(3)(C)), the plan or coverage may not impose*
8 *such a beneficiary financial requirement on*
9 *mental health and substance-related disorder*
10 *benefits for items and services within such cat-*
11 *egory.*

12 “(B) *BENEFICIARY FINANCIAL REQUIRE-*
13 *MENT.—*

14 “(i) *TREATMENT OF DEDUCTIBLES,*
15 *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*
16 *NANCIAL REQUIREMENTS.—If the plan or*
17 *coverage includes a deductible, a limitation*
18 *on out-of-pocket expenses, or similar bene-*
19 *ficiary financial requirement that does not*
20 *apply separately to individual items and*
21 *services on substantially all medical and*
22 *surgical benefits within a category of items*
23 *and services, the plan or coverage shall*
24 *apply such requirement (or, if there is more*
25 *than one such requirement for such category*

1 of items and services, the predominant re-
2 quirement for such category) both to med-
3 ical and surgical benefits within such cat-
4 egory and to mental health and substance-
5 related disorder benefits within such cat-
6 egory and shall not distinguish in the ap-
7 plication of such requirement between such
8 medical and surgical benefits and such
9 mental health and substance-related dis-
10 order benefits.

11 “(ii) *OTHER FINANCIAL REQUIRE-*
12 *MENTS.—If the plan or coverage includes a*
13 *beneficiary financial requirement not de-*
14 *scribed in clause (i) on substantially all*
15 *medical and surgical benefits within a cat-*
16 *egory of items and services, the plan or cov-*
17 *erage may not impose such financial re-*
18 *quirement on mental health and substance-*
19 *related disorder benefits for items and serv-*
20 *ices within such category in a way that is*
21 *more costly to the participant or beneficiary*
22 *than the predominant beneficiary financial*
23 *requirement applicable to medical and sur-*
24 *gical benefits for items and services within*
25 *such category.*

1 “(C) *BENEFICIARY FINANCIAL REQUIRE-*
 2 *MENT DEFINED.*—*For purposes of this para-*
 3 *graph, the term ‘beneficiary financial require-*
 4 *ment’ includes, with respect to a plan or cov-*
 5 *erage, any deductible, coinsurance, co-payment,*
 6 *other cost sharing, and limitation on the total*
 7 *amount that may be paid by a participant or*
 8 *beneficiary with respect to benefits under the*
 9 *plan or coverage, but does not include the appli-*
 10 *cation of any aggregate lifetime limit or annual*
 11 *limit.”; and*

12 (2) *in subsection (b)—*

13 (A) *by striking “construed—” and all that*
 14 *follows through “(1) as requiring” and inserting*
 15 *“construed as requiring”;*

16 (B) *by striking “; or” and inserting a pe-*
 17 *riod; and*

18 (C) *by striking paragraph (2).*

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

22 (1) *by striking “mental health benefits” and in-*
 23 *serting “mental health and substance-related disorder*
 24 *benefits” each place it appears; and*

25 (2) *in paragraph (4) of subsection (e)—*

1 (A) by striking “*MENTAL HEALTH BENE-*
2 *FITS*” and inserting “*MENTAL HEALTH AND*
3 *SUBSTANCE-RELATED DISORDER BENEFITS*”;

4 (B) by striking “*benefits with respect to*
5 *mental health services*” and inserting “*benefits*
6 *with respect to services for mental health condi-*
7 *tions or substance-related disorders*”; and

8 (C) by striking “, but does not include bene-
9 *fits with respect to treatment of substances abuse*
10 *or chemical dependency*”.

11 (c) *AVAILABILITY OF PLAN INFORMATION ABOUT CRI-*
12 *TERIA FOR MEDICAL NECESSITY.*—Subsection (a) of such
13 section, as amended by subsection (a)(1), is further amend-
14 ed by adding at the end the following new paragraph:

15 “(5) *AVAILABILITY OF PLAN INFORMATION.*—The
16 criteria for medical necessity determinations made
17 under the plan with respect to mental health and sub-
18 stance-related disorder benefits (or the health insur-
19 ance coverage offered in connection with the plan
20 with respect to such benefits) shall be made available
21 by the plan administrator (or the health insurance
22 issuer offering such coverage) to any current or poten-
23 tial participant, beneficiary, or contracting provider
24 upon request. The reason for any denial under the
25 plan (or coverage) of reimbursement or payment for

1 *services with respect to mental health and substance-*
2 *related disorder benefits in the case of any partici-*
3 *pant or beneficiary shall, upon request, be made*
4 *available by the plan administrator (or the health in-*
5 *surance issuer offering such coverage) to the partici-*
6 *pant or beneficiary.”.*

7 *(d) MINIMUM BENEFIT REQUIREMENTS.—Subsection*
8 *(a) of such section is further amended by adding at the end*
9 *the following new paragraph:*

10 *“(6) MINIMUM SCOPE OF COVERAGE AND EQUITY*
11 *IN OUT-OF-NETWORK BENEFITS.—*

12 *“(A) MINIMUM SCOPE OF MENTAL HEALTH*
13 *AND SUBSTANCE-RELATED DISORDER BENE-*
14 *FITS.—In the case of a group health plan (or*
15 *health insurance coverage offered in connection*
16 *with such a plan) that provides any mental*
17 *health and substance-related disorder benefits,*
18 *the plan or coverage shall include benefits for*
19 *any mental health condition or substance-related*
20 *disorder for which benefits are provided under*
21 *the benefit plan option offered under chapter 89*
22 *of title 5, United States Code, with the highest*
23 *average enrollment as of the beginning of the*
24 *most recent year beginning on or before the be-*
25 *ginning of the plan year involved.*

1 “(B) *EQUITY IN COVERAGE OF OUT-OF-NET-*
2 *WORK BENEFITS.—*

3 “(i) *IN GENERAL.—In the case of a*
4 *plan or coverage that provides both medical*
5 *and surgical benefits and mental health and*
6 *substance-related disorder benefits, if med-*
7 *ical and surgical benefits are provided for*
8 *substantially all items and services in a*
9 *category specified in clause (ii) furnished*
10 *outside any network of providers established*
11 *or recognized under such plan or coverage,*
12 *the mental health and substance-related dis-*
13 *order benefits shall also be provided for*
14 *items and services in such category fur-*
15 *nished outside any network of providers es-*
16 *tablished or recognized under such plan or*
17 *coverage in accordance with the require-*
18 *ments of this section.*

19 “(ii) *CATEGORIES OF ITEMS AND*
20 *SERVICES.—For purposes of clause (i), there*
21 *shall be the following three categories of*
22 *items and services for benefits, whether med-*
23 *ical and surgical benefits or mental health*
24 *and substance-related disorder benefits, and*
25 *all medical and surgical benefits and all*

1 *mental health and substance-related dis-*
2 *order benefits shall be classified into one of*
3 *the following categories:*

4 “(I) *EMERGENCY.*—*Items and*
5 *services, whether furnished on an inpa-*
6 *tient or outpatient basis, required for*
7 *the treatment of an emergency medical*
8 *condition (including an emergency*
9 *condition relating to mental health*
10 *and substance-related disorders).*

11 “(II) *INPATIENT.*—*Items and*
12 *services not described in subclause (I)*
13 *furnished on an inpatient basis.*

14 “(III) *OUTPATIENT.*—*Items and*
15 *services not described in subclause (I)*
16 *furnished on an outpatient basis.”.*

17 *(e) REVISION OF INCREASED COST EXEMPTION.—*

18 *Paragraph (2) of subsection (c) of such section is amended*
19 *to read as follows:*

20 “(2) *INCREASED COST EXEMPTION.—*

21 “(A) *IN GENERAL.*—*With respect to a group*
22 *health plan (or health insurance coverage offered*
23 *in connection with such a plan), if the applica-*
24 *tion of this section to such plan (or coverage) re-*
25 *sults in an increase for the plan year involved*

1 *of the actual total costs of coverage with respect*
2 *to medical and surgical benefits and mental*
3 *health and substance-related disorder benefits*
4 *under the plan (as determined and certified*
5 *under subparagraph (C)) by an amount that ex-*
6 *ceeds the applicable percentage described in sub-*
7 *paragraph (B) of the actual total plan costs, the*
8 *provisions of this section shall not apply to such*
9 *plan (or coverage) during the following plan*
10 *year, and such exemption shall apply to the plan*
11 *(or coverage) for 1 plan year.*

12 “(B) *APPLICABLE PERCENTAGE.*—*With re-*
13 *spect to a plan (or coverage), the applicable per-*
14 *centage described in this paragraph shall be—*

15 “(i) *2 percent in the case of the first*
16 *plan year which begins after the date of the*
17 *enactment of the Paul Wellstone Mental*
18 *Health and Addiction Equity Act of 2007;*
19 *and*

20 “(ii) *1 percent in the case of each sub-*
21 *sequent plan year.*

22 “(C) *DETERMINATIONS BY ACTUARIES.*—
23 *Determinations as to increases in actual costs*
24 *under a plan (or coverage) for purposes of this*
25 *subsection shall be made by a qualified actuary*

1 *who is a member in good standing of the Amer-*
2 *ican Academy of Actuaries. Such determinations*
3 *shall be certified by the actuary and be made*
4 *available to the general public.*

5 “(D) 6-MONTH DETERMINATIONS.—*If a*
6 *group health plan (or a health insurance issuer*
7 *offering coverage in connection with such a plan)*
8 *seeks an exemption under this paragraph, deter-*
9 *minations under subparagraph (A) shall be*
10 *made after such plan (or coverage) has complied*
11 *with this section for the first 6 months of the*
12 *plan year involved.*

13 “(E) NOTIFICATION.—*A group health plan*
14 *under this part shall comply with the notice re-*
15 *quirement under section 712(c)(2)(E) of the Em-*
16 *ployee Retirement Income Security Act of 1974*
17 *with respect to the a modification of mental*
18 *health and substance-related disorder benefits as*
19 *permitted under this paragraph as if such sec-*
20 *tion applied to such plan.”.*

21 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
22 ERS.—*Subsection (c)(1)(B) of such section is amended—*

23 (1) *by inserting “(or 1 in the case of an em-*
24 *ployer residing in a State that permits small groups*

1 to include a single individual)” after “at least 2” the
2 first place it appears; and

3 (2) by striking “and who employs at least 2 em-
4 ployees on the first day of the plan year”.

5 (g) *ELIMINATION OF SUNSET PROVISION.*—Such sec-
6 tion is amended by striking out subsection (f).

7 (h) *CLARIFICATION REGARDING PREEMPTION.*—Such
8 section is further amended by inserting after subsection (e)
9 the following new subsection:

10 “(f) *PREEMPTION, RELATION TO STATE LAWS.*—

11 “(1) *IN GENERAL.*—Nothing in this section shall
12 be construed to preempt any State law that provides
13 greater consumer protections, benefits, methods of ac-
14 cess to benefits, rights or remedies that are greater
15 than the protections, benefits, methods of access to
16 benefits, rights or remedies provided under this sec-
17 tion.

18 “(2) *CONSTRUCTION.*—Nothing in this section
19 shall be construed to affect or modify the provisions
20 of section 2723 with respect to group health plans.”.

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

1 **“SEC. 2705.”**

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

5 **SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE**
6 **OF 1986.**

7 (a) *EXTENSION OF PARITY TO TREATMENT LIMITS*
8 *AND BENEFICIARY FINANCIAL REQUIREMENTS.*—*Section*
9 *9812 of the Internal Revenue Code of 1986 is amended—*
10 (1) *in subsection (a), by adding at the end the*
11 *following new paragraphs:*

12 “(3) *TREATMENT LIMITS.*—

13 “(A) *NO TREATMENT LIMIT.*—*If the plan*
14 *does not include a treatment limit (as defined in*
15 *subparagraph (D)) on substantially all medical*
16 *and surgical benefits in any category of items or*
17 *services (specified in subparagraph (C)), the*
18 *plan may not impose any treatment limit on*
19 *mental health and substance-related disorder*
20 *benefits that are classified in the same category*
21 *of items or services.*

22 “(B) *TREATMENT LIMIT.*—*If the plan in-*
23 *cludes a treatment limit on substantially all*
24 *medical and surgical benefits in any category of*
25 *items or services, the plan may not impose such*
26 *a treatment limit on mental health and sub-*

1 *stance-related disorder benefits for items and*
2 *services within such category that are more re-*
3 *strictive than the predominant treatment limit*
4 *that is applicable to medical and surgical bene-*
5 *fits for items and services within such category.*

6 “(C) *CATEGORIES OF ITEMS AND SERVICES*
7 *FOR APPLICATION OF TREATMENT LIMITS AND*
8 *BENEFICIARY FINANCIAL REQUIREMENTS.—For*
9 *purposes of this paragraph and paragraph (4),*
10 *there shall be the following four categories of*
11 *items and services for benefits, whether medical*
12 *and surgical benefits or mental health and sub-*
13 *stance-related disorder benefits, and all medical*
14 *and surgical benefits and all mental health and*
15 *substance related benefits shall be classified into*
16 *one of the following categories:*

17 “(i) *INPATIENT, IN-NETWORK.—Items*
18 *and services furnished on an inpatient basis*
19 *and within a network of providers estab-*
20 *lished or recognized under such plan or cov-*
21 *erage.*

22 “(ii) *INPATIENT, OUT-OF-NETWORK.—*
23 *Items and services furnished on an inpa-*
24 *tient basis and outside any network of pro-*

1 *viders established or recognized under such*
2 *plan or coverage.*

3 “(iii) *OUTPATIENT, IN-NETWORK.—*
4 *Items and services furnished on an out-*
5 *patient basis and within a network of pro-*
6 *viders established or recognized under such*
7 *plan or coverage.*

8 “(iv) *OUTPATIENT, OUT-OF-NET-*
9 *WORK.—Items and services furnished on an*
10 *outpatient basis and outside any network of*
11 *providers established or recognized under*
12 *such plan or coverage.*

13 “(D) *TREATMENT LIMIT DEFINED.—For*
14 *purposes of this paragraph, the term ‘treatment*
15 *limit’ means, with respect to a plan, limitation*
16 *on the frequency of treatment, number of visits*
17 *or days of coverage, or other similar limit on the*
18 *duration or scope of treatment under the plan.*

19 “(E) *PREDOMINANCE.—For purposes of this*
20 *subsection, a treatment limit or financial re-*
21 *quirement with respect to a category of items*
22 *and services is considered to be predominant if*
23 *it is the most common or frequent of such type*
24 *of limit or requirement with respect to such cat-*
25 *egory of items and services.*

1 “(4) *BENEFICIARY FINANCIAL REQUIREMENTS.*—

2 “(A) *NO BENEFICIARY FINANCIAL REQUIRE-*
3 *MENT.*—*If the plan does not include a bene-*
4 *ficiary financial requirement (as defined in sub-*
5 *paragraph (C)) on substantially all medical and*
6 *surgical benefits within a category of items and*
7 *services (specified in paragraph (3)(C)), the plan*
8 *may not impose such a beneficiary financial re-*
9 *quirement on mental health and substance-re-*
10 *lated disorder benefits for items and services*
11 *within such category.*

12 “(B) *BENEFICIARY FINANCIAL REQUIRE-*
13 *MENT.*—

14 “(i) *TREATMENT OF DEDUCTIBLES,*
15 *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*
16 *NANCIAL REQUIREMENTS.*—*If the plan or*
17 *coverage includes a deductible, a limitation*
18 *on out-of-pocket expenses, or similar bene-*
19 *ficiary financial requirement that does not*
20 *apply separately to individual items and*
21 *services on substantially all medical and*
22 *surgical benefits within a category of items*
23 *and services, the plan or coverage shall*
24 *apply such requirement (or, if there is more*
25 *than one such requirement for such category*

1 of items and services, the predominant re-
2 quirement for such category) both to med-
3 ical and surgical benefits within such cat-
4 egory and to mental health and substance-
5 related disorder benefits within such cat-
6 egory and shall not distinguish in the ap-
7 plication of such requirement between such
8 medical and surgical benefits and such
9 mental health and substance-related dis-
10 order benefits.

11 “(ii) *OTHER FINANCIAL REQUIRE-*
12 *MENTS.—If the plan includes a beneficiary*
13 *financial requirement not described in*
14 *clause (i) on substantially all medical and*
15 *surgical benefits within a category of items*
16 *and services, the plan may not impose such*
17 *financial requirement on mental health and*
18 *substance-related disorder benefits for items*
19 *and services within such category in a way*
20 *that is more costly to the participant or*
21 *beneficiary than the predominant bene-*
22 *ficiary financial requirement applicable to*
23 *medical and surgical benefits for items and*
24 *services within such category.*

1 “(C) *BENEFICIARY FINANCIAL REQUIRE-*
2 *MENT DEFINED.*—*For purposes of this para-*
3 *graph, the term ‘beneficiary financial require-*
4 *ment’ includes, with respect to a plan, any de-*
5 *ductible, coinsurance, co-payment, other cost*
6 *sharing, and limitation on the total amount that*
7 *may be paid by a participant or beneficiary*
8 *with respect to benefits under the plan, but does*
9 *not include the application of any aggregate life-*
10 *time limit or annual limit.”; and*

11 (2) *in subsection (b)—*

12 (A) *by striking “construed—” and all that*
13 *follows through “(1) as requiring” and inserting*
14 *“construed as requiring”;*

15 (B) *by striking “; or” and inserting a pe-*
16 *riod; and*

17 (C) *by striking paragraph (2).*

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

21 (1) *by striking “mental health benefits” and in-*
22 *serting “mental health and substance-related disorder*
23 *benefits” each place it appears; and*

24 (2) *in paragraph (4) of subsection (e)—*

1 (A) by striking “*MENTAL HEALTH BENE-*
2 *FITS*” in the heading and inserting “*MENTAL*
3 *HEALTH AND SUBSTANCE-RELATED DISORDER*
4 *BENEFITS*”;

5 (B) by striking “*benefits with respect to*
6 *mental health services*” and inserting “*benefits*
7 *with respect to services for mental health condi-*
8 *tions or substance-related disorders*”; and

9 (C) by striking “, but does not include bene-
10 *fits with respect to treatment of substances abuse*
11 *or chemical dependency*”.

12 (c) *AVAILABILITY OF PLAN INFORMATION ABOUT CRI-*
13 *TERIA FOR MEDICAL NECESSITY.*—Subsection (a) of such
14 section, as amended by subsection (a)(1), is further amend-
15 ed by adding at the end the following new paragraph:

16 “(5) *AVAILABILITY OF PLAN INFORMATION.*—The
17 *criteria for medical necessity determinations made*
18 *under the plan with respect to mental health and sub-*
19 *stance-related disorder benefits shall be made avail-*
20 *able by the plan administrator to any current or po-*
21 *tential participant, beneficiary, or contracting pro-*
22 *vider upon request. The reason for any denial under*
23 *the plan of reimbursement or payment for services*
24 *with respect to mental health and substance-related*
25 *disorder benefits in the case of any participant or*

1 *beneficiary shall, upon request, be made available by*
2 *the plan administrator to the participant or bene-*
3 *ficiary.”.*

4 *(d) MINIMUM BENEFIT REQUIREMENTS.—Subsection*
5 *(a) of such section is further amended by adding at the end*
6 *the following new paragraph:*

7 *“(6) MINIMUM SCOPE OF COVERAGE AND EQUITY*
8 *IN OUT-OF-NETWORK BENEFITS.—*

9 *“(A) MINIMUM SCOPE OF MENTAL HEALTH*
10 *AND SUBSTANCE-RELATED DISORDER BENE-*
11 *FITS.—In the case of a group health plan (or*
12 *health insurance coverage offered in connection*
13 *with such a plan) that provides any mental*
14 *health and substance-related disorder benefits,*
15 *the plan or coverage shall include benefits for*
16 *any mental health condition or substance-related*
17 *disorder for which benefits are provided under*
18 *the benefit plan option offered under chapter 89*
19 *of title 5, United States Code, with the highest*
20 *average enrollment as of the beginning of the*
21 *most recent year beginning on or before the be-*
22 *ginning of the plan year involved.*

23 *“(B) EQUITY IN COVERAGE OF OUT-OF-NET-*
24 *WORK BENEFITS.—*

1 “(i) *IN GENERAL.*—*In the case of a*
2 *plan that provides both medical and sur-*
3 *gical benefits and mental health and sub-*
4 *stance-related disorder benefits, if medical*
5 *and surgical benefits are provided for sub-*
6 *stantially all items and services in a cat-*
7 *egory specified in clause (ii) furnished out-*
8 *side any network of providers established or*
9 *recognized under such plan or coverage, the*
10 *mental health and substance-related dis-*
11 *order benefits shall also be provided for*
12 *items and services in such category fur-*
13 *nished outside any network of providers es-*
14 *tablished or recognized under such plan in*
15 *accordance with the requirements of this*
16 *section.*

17 “(ii) *CATEGORIES OF ITEMS AND*
18 *SERVICES.*—*For purposes of clause (i), there*
19 *shall be the following three categories of*
20 *items and services for benefits, whether med-*
21 *ical and surgical benefits or mental health*
22 *and substance-related disorder benefits, and*
23 *all medical and surgical benefits and all*
24 *mental health and substance-related dis-*

1 *order benefits shall be classified into one of*
2 *the following categories:*

3 “(I) *EMERGENCY.—Items and*
4 *services, whether furnished on an inpa-*
5 *tient or outpatient basis, required for*
6 *the treatment of an emergency medical*
7 *condition (including an emergency*
8 *condition relating to mental health*
9 *and substance-related disorders).*

10 “(II) *INPATIENT.—Items and*
11 *services not described in subclause (I)*
12 *furnished on an inpatient basis.*

13 “(III) *OUTPATIENT.—Items and*
14 *services not described in subclause (I)*
15 *furnished on an outpatient basis.”.*

16 *(e) REVISION OF INCREASED COST EXEMPTION.—*
17 *Paragraph (2) of subsection (c) of such section is amended*
18 *to read as follows:*

19 “(2) *INCREASED COST EXEMPTION.—*

20 “(A) *IN GENERAL.—With respect to a group*
21 *health plan, if the application of this section to*
22 *such plan results in an increase for the plan*
23 *year involved of the actual total costs of coverage*
24 *with respect to medical and surgical benefits and*
25 *mental health and substance-related disorder*

1 *benefits under the plan (as determined and cer-*
2 *tified under subparagraph (C)) by an amount*
3 *that exceeds the applicable percentage described*
4 *in subparagraph (B) of the actual total plan*
5 *costs, the provisions of this section shall not*
6 *apply to such plan during the following plan*
7 *year, and such exemption shall apply to the plan*
8 *for 1 plan year.*

9 “(B) *APPLICABLE PERCENTAGE.*—*With re-*
10 *spect to a plan, the applicable percentage de-*
11 *scribed in this paragraph shall be—*

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

17 “(ii) *1 percent in the case of each sub-*
18 *sequent plan year.*

19 “(C) *DETERMINATIONS BY ACTUARIES.*—
20 *Determinations as to increases in actual costs*
21 *under a plan for purposes of this subsection shall*
22 *be made by a qualified actuary who is a member*
23 *in good standing of the American Academy of*
24 *Actuaries. Such determinations shall be certified*

1 *by the actuary and be made available to the gen-*
2 *eral public.*

3 “(D) 6-MONTH DETERMINATIONS.—If a
4 group health plan seeks an exemption under this
5 paragraph, determinations under subparagraph
6 (A) shall be made after such plan has complied
7 with this section for the first 6 months of the
8 plan year involved.”.

9 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
10 ERS.—Subsection (c)(1) of such section is amended to read
11 as follows:

12 “(1) SMALL EMPLOYER EXEMPTION.—

13 “(A) IN GENERAL.—This section shall not
14 apply to any group health plan for any plan
15 year of a small employer.

16 “(B) SMALL EMPLOYER.—For purposes of
17 subparagraph (A), the term ‘small employer’
18 means, with respect to a calendar year and a
19 plan year, an employer who employed an aver-
20 age of at least 2 (or 1 in the case of an employer
21 residing in a State that permits small groups to
22 include a single individual) but not more than
23 50 employees on business days during the pre-
24 ceding calendar year. For purposes of the pre-
25 ceding sentence, all persons treated as a single

1 *employer under subsection (b), (c), (m), or (o) of*
 2 *section 414 shall be treated as 1 employer and*
 3 *rules similar to rules of subparagraphs (B) and*
 4 *(C) of section 4980D(d)(2) shall apply.”.*

5 *(g) ELIMINATION OF SUNSET PROVISION.—Such sec-*
 6 *tion is amended by striking subsection (f).*

7 *(h) CONFORMING AMENDMENTS TO HEADING.—*

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

10 **“SEC. 9812.”**

11 *(2) CLERICAL AMENDMENT.—The table of sec-*
 12 *tions for subchapter B of chapter 100 of the Internal*
 13 *Revenue Code of 1986 is amended by striking the item*
 14 *relating to section 9812 and inserting the following*
 15 *new item:*

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

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

19 **SEC. 5. STUDIES AND REPORTS.**

20 *(a) IMPLEMENTATION OF ACT.—*

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

25 *(A) the cost of health insurance coverage;*

1 (B) access to health insurance coverage (in-
2 cluding the availability of in-network providers);

3 (C) the quality of health care;

4 (D) Medicare, Medicaid, and State and
5 local mental health and substance abuse treat-
6 ment spending;

7 (E) the number of individuals with private
8 insurance who received publicly funded health
9 care for mental health and substance-related dis-
10 orders;

11 (F) spending on public services, such as the
12 criminal justice system, special education, and
13 income assistance programs;

14 (G) the use of medical management of men-
15 tal health and substance-related disorder benefits
16 and medical necessity determinations by group
17 health plans (and health insurance issuers offer-
18 ing health insurance coverage in connection with
19 such plans) and timely access by participants
20 and beneficiaries to clinically-indicated care for
21 mental health and substance-use disorders; and

22 (H) other matters as determined appro-
23 priate by the Comptroller General.

24 (2) *REPORT.*—Not later than 2 years after the
25 date of enactment of this Act, the Comptroller General

1 *shall prepare and submit to the appropriate commit-*
2 *tees of the Congress a report containing the results of*
3 *the study conducted under paragraph (1).*

4 ***(b) GAO REPORT ON UNIFORM PATIENT PLACEMENT***
5 ***CRITERIA.***—*Not later than 18 months after the date of the*
6 *enactment of this Act, the Comptroller General shall submit*
7 *to the appropriate committees of each House of the Congress*
8 *a report on availability of uniform patient placement cri-*
9 *teria for mental health and substance-related disorders that*
10 *could be used by group health plans and health insurance*
11 *issuers to guide determinations of medical necessity and the*
12 *extent to which health plans utilize such criteria. If such*
13 *criteria do not exist, the report shall include recommenda-*
14 *tions on a process for developing such criteria.*

15 ***(c) DOL BIENNIAL REPORT ON OBSTACLES IN OB-***
16 ***TAINING COVERAGE.***—*Every two years, the Secretary of*
17 *Labor, in consultation with the Secretaries of Health and*
18 *Human Services and the Treasury, shall submit to the ap-*
19 *propriate committees of each House of the Congress a report*
20 *on obstacles that individuals face in obtaining mental*
21 *health and substance-related disorder care under their*
22 *health plans.*

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) **SHORT TITLE.**—This Act may be cited as
3 the “Paul Wellstone Mental Health and Addic-
4 tion Equity Act of 2007”.

5 (b) **TABLE OF CONTENTS.**—The table of con-
6 tents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to the Employee Retirement Income Secu-
rity Act of 1974.

Sec. 3. Amendments to the Public Health Service Act relating
to the group market.

Sec. 4. Amendments to the Internal Revenue Code of 1986.

Sec. 5. Government Accountability Office studies and reports.

7 SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-
8 COME SECURITY ACT OF 1974.

9 (a) **EXTENSION OF PARITY TO TREATMENT**
10 **LIMITS AND BENEFICIARY FINANCIAL REQUIRE-**
11 **MENTS.**—Section 712 of the Employee Retire-
12 **ment Income Security Act of 1974 (29 U.S.C.**
13 **1185a) is amended—**

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

16 “(3) **TREATMENT LIMITS.**—

17 “(A) **NO TREATMENT LIMIT.**—If the
18 plan or coverage does not include a
19 treatment limit (as defined in sub-
20 paragraph (D)) on substantially all
21 medical and surgical benefits in any
22 category of items or services, the plan

1 or coverage may not impose any
2 treatment limit on mental health and
3 substance-related disorder benefits
4 that are classified in the same cat-
5 egory of items or services.

6 “(B) TREATMENT LIMIT.—If the plan
7 or coverage includes a treatment
8 limit on substantially all medical and
9 surgical benefits in any category of
10 items or services, the plan or cov-
11 erage may not impose such a treat-
12 ment limit on mental health and sub-
13 stance-related disorder benefits for
14 items and services within such cat-
15 egory that are more restrictive than
16 the predominant treatment limit that
17 is applicable to medical and surgical
18 benefits for items and services within
19 such category.

20 “(C) CATEGORIES OF ITEMS AND
21 SERVICES FOR APPLICATION OF TREAT-
22 MENT LIMITS AND BENEFICIARY FINAN-
23 CIAL REQUIREMENTS.—For purposes of
24 this paragraph and paragraph (4),
25 there shall be the following four cat-

1 **egories of items and services for ben-**
2 **efits, whether medical and surgical**
3 **benefits or mental health and sub-**
4 **stance-related disorder benefits, and**
5 **all medical and surgical benefits and**
6 **all mental health and substance re-**
7 **lated benefits shall be classified into**
8 **one of the following categories:**

9 **“(i) INPATIENT, IN-NETWORK.—**

10 **Items and services furnished on**
11 **an inpatient basis and within a**
12 **network of providers established**
13 **or recognized under such plan or**
14 **coverage.**

15 **“(ii) INPATIENT, OUT-OF-NET-**

16 **WORK.—Items and services fur-**
17 **nished on an inpatient basis and**
18 **outside any network of providers**
19 **established or recognized under**
20 **such plan or coverage.**

21 **“(iii) OUTPATIENT, IN-NET-**

22 **WORK.—Items and services fur-**
23 **nished on an outpatient basis and**
24 **within a network of providers es-**

1 **tablished or recognized under**
2 **such plan or coverage.**

3 **“(iv) OUTPATIENT, OUT-OF-NET-**
4 **WORK.—Items and services fur-**
5 **nished on an outpatient basis and**
6 **outside any network of providers**
7 **established or recognized under**
8 **such plan or coverage.**

9 **“(D) TREATMENT LIMIT DEFINED.—**
10 **For purposes of this paragraph, the**
11 **term ‘treatment limit’ means, with re-**
12 **spect to a plan or coverage, limitation**
13 **on the frequency of treatment, num-**
14 **ber of visits or days of coverage, or**
15 **other similar limit on the duration or**
16 **scope of treatment under the plan or**
17 **coverage.**

18 **“(E) PREDOMINANCE.—For pur-**
19 **poses of this subsection, a treatment**
20 **limit or financial requirement with**
21 **respect to a category of items and**
22 **services is considered to be predomi-**
23 **nant if it is the most common or fre-**
24 **quent of such type of limit or require-**

1 **ment with respect to such category of**
2 **items and services.**

3 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
4 **MENTS.—**

5 **“(A) NO BENEFICIARY FINANCIAL RE-**
6 **QUIREMENT.—If the plan or coverage**
7 **does not include a beneficiary finan-**
8 **cial requirement (as defined in sub-**
9 **paragraph (C)) on substantially all**
10 **medical and surgical benefits within**
11 **a category of items and services**
12 **(specified under paragraph (3)(C)),**
13 **the plan or coverage may not impose**
14 **such a beneficiary financial require-**
15 **ment on mental health and sub-**
16 **stance-related disorder benefits for**
17 **items and services within such cat-**
18 **egory.**

19 **“(B) BENEFICIARY FINANCIAL RE-**
20 **QUIREMENT.—**

21 **“(i) TREATMENT OF**
22 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
23 **ITS, AND SIMILAR FINANCIAL RE-**
24 **QUIREMENTS.—If the plan or cov-**
25 **erage includes a deductible, a lim-**

1 **itation on out-of-pocket expenses,**
2 **or similar beneficiary financial**
3 **requirement that does not apply**
4 **separately to individual items and**
5 **services on substantially all med-**
6 **ical and surgical benefits within a**
7 **category of items and services (as**
8 **specified in paragraph (3)(C)), the**
9 **plan or coverage shall apply such**
10 **requirement (or, if there is more**
11 **than one such requirement for**
12 **such category of items and serv-**
13 **ices, the predominant require-**
14 **ment for such category) both to**
15 **medical and surgical benefits**
16 **within such category and to men-**
17 **tal health and substance-related**
18 **disorder benefits within such cat-**
19 **egory and shall not distinguish in**
20 **the application of such require-**
21 **ment between such medical and**
22 **surgical benefits and such mental**
23 **health and substance-related dis-**
24 **order benefits.**

1 **“(ii) OTHER FINANCIAL REQUIRE-**
2 **MENTS.—If the plan or coverage**
3 **includes a beneficiary financial**
4 **requirement not described in**
5 **clause (i) on substantially all med-**
6 **ical and surgical benefits within a**
7 **category of items and services,**
8 **the plan or coverage may not im-**
9 **pose such financial requirement**
10 **on mental health and substance-**
11 **related disorder benefits for items**
12 **and services within such category**
13 **in a way that is more costly to the**
14 **participant or beneficiary than**
15 **the predominant beneficiary fi-**
16 **nancial requirement applicable to**
17 **medical and surgical benefits for**
18 **items and services within such**
19 **category.**

20 **“(C) BENEFICIARY FINANCIAL RE-**
21 **QUIREMENT DEFINED.—For purposes of**
22 **this paragraph, the term ‘beneficiary**
23 **financial requirement’ includes, with**
24 **respect to a plan or coverage, any de-**
25 **ductible, coinsurance, co-payment,**

1 **other cost sharing, and limitation on**
2 **the total amount that may be paid by**
3 **a participant or beneficiary with re-**
4 **spect to benefits under the plan or**
5 **coverage, but does not include the ap-**
6 **plication of any aggregate lifetime**
7 **limit or annual limit.”; and**

8 **(2) in subsection (b)—**

9 **(A) by striking “construed—” and**
10 **all that follows through “(1) as requir-**
11 **ing” and inserting “construed as re-**
12 **quiring”;**

13 **(B) by striking “; or” and insert-**
14 **ing a period; and**

15 **(C) by striking paragraph (2).**

16 **(b) EXPANSION TO SUBSTANCE-RELATED DIS-**
17 **ORDER BENEFITS AND REVISION OF DEFINI-**
18 **TION.—Such section is further amended—**

19 **(1) by striking “mental health bene-**
20 **fits” and inserting “mental health and**
21 **substance-related disorder benefits” each**
22 **place it appears; and**

23 **(2) in paragraph (4) of subsection**
24 **(e)—**

1 (A) by striking “MENTAL HEALTH
2 BENEFITS” and inserting “MENTAL
3 HEALTH AND SUBSTANCE-RELATED DIS-
4 ORDER BENEFITS”;

5 (B) by striking “benefits with re-
6 spect to mental health services” and
7 inserting “benefits with respect to
8 services for mental health conditions
9 or substance-related disorders”; and

10 (C) by striking “, but does not in-
11 clude benefits with respect to treat-
12 ment of substances abuse or chemical
13 dependency”.

14 (c) AVAILABILITY OF PLAN INFORMATION
15 ABOUT CRITERIA FOR MEDICAL NECESSITY.—
16 Subsection (a) of such section, as amended by
17 subsection (a)(1), is further amended by add-
18 ing at the end the following new paragraph:

19 “(5) AVAILABILITY OF PLAN INFORMA-
20 TION.—The criteria for medical necessity
21 determinations made under the plan with
22 respect to mental health and substance-
23 related disorder benefits (or the health
24 insurance coverage offered in connection
25 with the plan with respect to such bene-

1 fits) shall be made available by the plan
2 administrator (or the health insurance
3 issuer offering such coverage) to any cur-
4 rent or potential participant, beneficiary,
5 or contracting provider upon request.
6 The reason for any denial under the plan
7 (or coverage) of reimbursement or pay-
8 ment for services with respect to mental
9 health and substance-related disorder
10 benefits in the case of any participant or
11 beneficiary shall, upon request, be made
12 available by the plan administrator (or
13 the health insurance issuer offering such
14 coverage) to the participant or bene-
15 ficiary.”.

16 (d) **MINIMUM BENEFIT REQUIREMENTS.—**
17 Subsection (a) of such section is further
18 amended by adding at the end the following
19 new paragraph:

20 “(6) **MINIMUM SCOPE OF COVERAGE AND**
21 **EQUITY IN OUT-OF-NETWORK BENEFITS.—**

22 “(A) **MINIMUM SCOPE OF MENTAL**
23 **HEALTH AND SUBSTANCE-RELATED DIS-**
24 **ORDER BENEFITS.—In the case of a**
25 **group health plan (or health insur-**

1 **ance coverage offered in connection**
2 **with such a plan) that provides any**
3 **mental health and substance-related**
4 **disorder benefits, the plan or cov-**
5 **erage shall include benefits for any**
6 **mental health condition or substance-**
7 **related disorder for which benefits**
8 **are provided under the benefit plan**
9 **option offered under chapter 89 of**
10 **title 5, United States Code, with the**
11 **highest average enrollment as of the**
12 **beginning of the most recent year be-**
13 **ginning on or before the beginning of**
14 **the plan year involved.**

15 **“(B) EQUITY IN COVERAGE OF OUT-**
16 **OF-NETWORK BENEFITS.—**

17 **“(i) IN GENERAL.—In the case**
18 **of a plan or coverage that pro-**
19 **vides both medical and surgical**
20 **benefits and mental health and**
21 **substance-related disorder bene-**
22 **fits, if medical and surgical bene-**
23 **fits are provided for substantially**
24 **all items and services in a cat-**
25 **egory specified in clause (ii) fur-**

1 nished outside any network of
2 providers established or recog-
3 nized under such plan or cov-
4 erage, the mental health and sub-
5 stance-related disorder benefits
6 shall also be provided for items
7 and services in such category fur-
8 nished outside any network of
9 providers established or recog-
10 nized under such plan or cov-
11 erage in accordance with the re-
12 quirements of this section.

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

1 **“(I) EMERGENCY.—Items**
2 **and services, whether fur-**
3 **nished on an inpatient or out-**
4 **patient basis, required for the**
5 **treatment of an emergency**
6 **medical condition (including**
7 **an emergency condition relat-**
8 **ing to mental health and sub-**
9 **stance-related disorders).**

10 **“(II) INPATIENT.—Items**
11 **and services not described in**
12 **subclause (I) furnished on an**
13 **inpatient basis.**

14 **“(III) OUTPATIENT.—Items**
15 **and services not described in**
16 **subclause (I) furnished on an**
17 **outpatient basis.”.**

18 **(e) REVISION OF INCREASED COST EXEMP-**
19 **TION.—Paragraph (2) of subsection (c) of such**
20 **section is amended to read as follows:**

21 **“(2) INCREASED COST EXEMPTION.—**

22 **“(A) IN GENERAL.—With respect to**
23 **a group health plan (or health insur-**
24 **ance coverage offered in connection**
25 **with such a plan), if the application**

1 of this section to such plan (or cov-
2 erage) results in an increase for the
3 plan year involved of the actual total
4 costs of coverage with respect to med-
5 ical and surgical benefits and mental
6 health and substance-related disorder
7 benefits under the plan (as deter-
8 mined and certified under subpara-
9 graph (C)) by an amount that exceeds
10 the applicable percentage described
11 in subparagraph (B) of the actual
12 total plan costs, the provisions of this
13 section shall not apply to such plan
14 (or coverage) during the following
15 plan year, and such exemption shall
16 apply to the plan (or coverage) for 1
17 plan year.

18 “(B) APPLICABLE PERCENTAGE.—

19 With respect to a plan (or coverage),
20 the applicable percentage described
21 in this paragraph shall be—

22 “(i) 2 percent in the case of
23 the first plan year which begins
24 after the date of the enactment of
25 the Paul Wellstone Mental Health

1 **and Addiction Equity Act of 2007;**
2 **and**

3 **“(ii) 1 percent in the case of**
4 **each subsequent plan year.**

5 **“(C) DETERMINATIONS BY ACTU-**
6 **ARIES.—Determinations as to in-**
7 **creases in actual costs under a plan**
8 **(or coverage) for purposes of this sub-**
9 **section shall be made by a qualified**
10 **actuary who is a member in good**
11 **standing of the American Academy of**
12 **Actuaries. Such determinations shall**
13 **be certified by the actuary and be**
14 **made available to the general public.**

15 **“(D) 6-MONTH DETERMINATIONS.—If**
16 **a group health plan (or a health in-**
17 **surance issuer offering coverage in**
18 **connection with such a plan) seeks an**
19 **exemption under this paragraph, de-**
20 **terminations under subparagraph (A)**
21 **shall be made after such plan (or cov-**
22 **erage) has complied with this section**
23 **for the first 6 months of the plan year**
24 **involved.**

1 **“(E) NOTIFICATION.—An election to**
2 **modify coverage of mental health and**
3 **substance-related disorder benefits as**
4 **permitted under this paragraph shall**
5 **be treated as a material modification**
6 **in the terms of the plan as described**
7 **in section 102(a)(1) and shall be sub-**
8 **ject to the applicable notice require-**
9 **ments under section 104(b)(1).”.**

10 **(f) CHANGE IN EXCLUSION FOR SMALLEST EM-**
11 **PLOYERS.—Subsection (c)(1)(B) of such section**
12 **is amended—**

13 **(1) by inserting “(or 1 in the case of**
14 **an employer residing in a State that per-**
15 **mits small groups to include a single indi-**
16 **vidual)” after “at least 2” the first place it**
17 **appears; and**

18 **(2) by striking “and who employs at**
19 **least 2 employees on the first day of the**
20 **plan year”.**

21 **(g) ELIMINATION OF SUNSET PROVISION.—**
22 **Such section is amended by striking out sub-**
23 **section (f).**

24 **(h) CLARIFICATION REGARDING PREEMP-**
25 **TION.—Such section is further amended by in-**

1 **serting after subsection (e) the following new**
2 **subsection:**

3 **“(f) PREEMPTION, RELATION TO STATE**
4 **LAWS.—**

5 **“(1) IN GENERAL.—Nothing in this sec-**
6 **tion shall be construed to preempt any**
7 **State law that provides greater consumer**
8 **protections, benefits, methods of access**
9 **to benefits, rights or remedies that are**
10 **greater than the protections, benefits,**
11 **methods of access to benefits, rights or**
12 **remedies provided under this section.**

13 **“(2) ERISA.—Nothing in this section**
14 **shall be construed to affect or modify the**
15 **provisions of section 514 with respect to**
16 **group health plans.”.**

17 **(i) CONFORMING AMENDMENTS TO HEAD-**
18 **ING.—**

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

21 **“SEC. 712.”.**

22 **(2) CLERICAL AMENDMENT.—The table**
23 **of contents in section 1 of such Act is**
24 **amended by striking the item relating to**

1 **stance-related disorder benefits that**
2 **are classified in the same category of**
3 **items or services.**

4 **“(B) TREATMENT LIMIT.—If the plan**
5 **or coverage includes a treatment**
6 **limit on substantially all medical and**
7 **surgical benefits in any category of**
8 **items or services, the plan or cov-**
9 **erage may not impose such a treat-**
10 **ment limit on mental health and sub-**
11 **stance-related disorder benefits for**
12 **items and services within such cat-**
13 **egory that are more restrictive than**
14 **the predominant treatment limit that**
15 **is applicable to medical and surgical**
16 **benefits for items and services within**
17 **such category.**

18 **“(C) CATEGORIES OF ITEMS AND**
19 **SERVICES FOR APPLICATION OF TREAT-**
20 **MENT LIMITS AND BENEFICIARY FINAN-**
21 **CIAL REQUIREMENTS.—For purposes of**
22 **this paragraph and paragraph (4),**
23 **there shall be the following four cat-**
24 **egories of items and services for ben-**
25 **efits, whether medical and surgical**

1 **benefits or mental health and sub-**
2 **stance-related disorder benefits, and**
3 **all medical and surgical benefits and**
4 **all mental health and substance re-**
5 **lated benefits shall be classified into**
6 **one of the following categories:**

7 “(i) **INPATIENT, IN-NETWORK.—**

8 **Items and services furnished on**
9 **an inpatient basis and within a**
10 **network of providers established**
11 **or recognized under such plan or**
12 **coverage.**

13 “(ii) **INPATIENT, OUT-OF-NET-**

14 **WORK.—Items and services fur-**
15 **nished on an inpatient basis and**
16 **outside any network of providers**
17 **established or recognized under**
18 **such plan or coverage.**

19 “(iii) **OUTPATIENT, IN-NET-**

20 **WORK.—Items and services fur-**
21 **nished on an outpatient basis and**
22 **within a network of providers es-**
23 **tablished or recognized under**
24 **such plan or coverage.**

1 “(iv) **OUTPATIENT, OUT-OF-NET-**
2 **WORK.—**Items and services fur-
3 **nished on an outpatient basis and**
4 **outside any network of providers**
5 **established or recognized under**
6 **such plan or coverage.**

7 “(D) **TREATMENT LIMIT DEFINED.—**
8 **For purposes of this paragraph, the**
9 **term ‘treatment limit’ means, with re-**
10 **spect to a plan or coverage, limitation**
11 **on the frequency of treatment, num-**
12 **ber of visits or days of coverage, or**
13 **other similar limit on the duration or**
14 **scope of treatment under the plan or**
15 **coverage.**

16 “(E) **PREDOMINANCE.—**For pur-
17 **poses of this subsection, a treatment**
18 **limit or financial requirement with**
19 **respect to a category of items and**
20 **services is considered to be predomi-**
21 **nant if it is the most common or fre-**
22 **quent of such type of limit or require-**
23 **ment with respect to such category of**
24 **items and services.**

1 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
2 **MENTS.—**

3 **“(A) NO BENEFICIARY FINANCIAL RE-**
4 **QUIREMENT.—If the plan or coverage**
5 **does not include a beneficiary finan-**
6 **cial requirement (as defined in sub-**
7 **paragraph (C)) on substantially all**
8 **medical and surgical benefits within**
9 **a category of items and services**
10 **(specified in paragraph (3)(C)), the**
11 **plan or coverage may not impose**
12 **such a beneficiary financial require-**
13 **ment on mental health and sub-**
14 **stance-related disorder benefits for**
15 **items and services within such cat-**
16 **egory.**

17 **“(B) BENEFICIARY FINANCIAL RE-**
18 **QUIREMENT.—**

19 **“(i) TREATMENT OF**
20 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
21 **ITS, AND SIMILAR FINANCIAL RE-**
22 **QUIREMENTS.—If the plan or cov-**
23 **erage includes a deductible, a lim-**
24 **itation on out-of-pocket expenses,**
25 **or similar beneficiary financial**

1 requirement that does not apply
2 separately to individual items and
3 services on substantially all med-
4 ical and surgical benefits within a
5 category of items and services,
6 the plan or coverage shall apply
7 such requirement (or, if there is
8 more than one such requirement
9 for such category of items and
10 services, the predominant re-
11 quirement for such category) both
12 to medical and surgical benefits
13 within such category and to men-
14 tal health and substance-related
15 disorder benefits within such cat-
16 egory and shall not distinguish in
17 the application of such require-
18 ment between such medical and
19 surgical benefits and such mental
20 health and substance-related dis-
21 order benefits.

22 “(ii) OTHER FINANCIAL REQUIRE-
23 MENTS.—If the plan or coverage
24 includes a beneficiary financial
25 requirement not described in

1 **clause (i) on substantially all med-**
2 **ical and surgical benefits within a**
3 **category of items and services,**
4 **the plan or coverage may not im-**
5 **pose such financial requirement**
6 **on mental health and substance-**
7 **related disorder benefits for items**
8 **and services within such category**
9 **in a way that is more costly to the**
10 **participant or beneficiary than**
11 **the predominant beneficiary fi-**
12 **nancial requirement applicable to**
13 **medical and surgical benefits for**
14 **items and services within such**
15 **category.**

16 **“(C) BENEFICIARY FINANCIAL RE-**
17 **QUIREMENT DEFINED.—For purposes of**
18 **this paragraph, the term ‘beneficiary**
19 **financial requirement’ includes, with**
20 **respect to a plan or coverage, any de-**
21 **ductible, coinsurance, co-payment,**
22 **other cost sharing, and limitation on**
23 **the total amount that may be paid by**
24 **a participant or beneficiary with re-**
25 **spect to benefits under the plan or**

1 coverage, but does not include the ap-
2 plication of any aggregate lifetime
3 limit or annual limit.”; and

4 (2) in subsection (b)—

5 (A) by striking “construed—” and
6 all that follows through “(1) as requir-
7 ing” and inserting “construed as re-
8 quiring”;

9 (B) by striking “; or” and insert-
10 ing a period; and

11 (C) by striking paragraph (2).

12 (b) **EXPANSION TO SUBSTANCE-RELATED DIS-**
13 **ORDER BENEFITS AND REVISION OF DEFINI-**
14 **TION.—Such section is further amended—**

15 (1) by striking “mental health bene-
16 fits” and inserting “mental health and
17 substance-related disorder benefits” each
18 place it appears; and

19 (2) in paragraph (4) of subsection
20 (e)—

21 (A) by striking “**MENTAL HEALTH**
22 **BENEFITS**” and inserting “**MENTAL**
23 **HEALTH AND SUBSTANCE-RELATED DIS-**
24 **ORDER BENEFITS**”;

1 **(B) by striking “benefits with re-**
2 **spect to mental health services” and**
3 **inserting “benefits with respect to**
4 **services for mental health conditions**
5 **or substance-related disorders”;** and

6 **(C) by striking “, but does not in-**
7 **clude benefits with respect to treat-**
8 **ment of substances abuse or chemical**
9 **dependency”.**

10 **(c) AVAILABILITY OF PLAN INFORMATION**
11 **ABOUT CRITERIA FOR MEDICAL NECESSITY.—**

12 **Subsection (a) of such section, as amended by**
13 **subsection (a)(1), is further amended by add-**
14 **ing at the end the following new paragraph:**

15 **“(5) AVAILABILITY OF PLAN INFORMA-**
16 **TION.—The criteria for medical necessity**
17 **determinations made under the plan with**
18 **respect to mental health and substance-**
19 **related disorder benefits (or the health**
20 **insurance coverage offered in connection**
21 **with the plan with respect to such bene-**
22 **fits) shall be made available by the plan**
23 **administrator (or the health insurance**
24 **issuer offering such coverage) to any cur-**
25 **rent or potential participant, beneficiary,**

1 or contracting provider upon request.
2 The reason for any denial under the plan
3 (or coverage) of reimbursement or pay-
4 ment for services with respect to mental
5 health and substance-related disorder
6 benefits in the case of any participant or
7 beneficiary shall, upon request, be made
8 available by the plan administrator (or
9 the health insurance issuer offering such
10 coverage) to the participant or bene-
11 ficiary.”.

12 (d) **MINIMUM BENEFIT REQUIREMENTS.—**
13 Subsection (a) of such section is further
14 amended by adding at the end the following
15 new paragraph:

16 “(6) **MINIMUM SCOPE OF COVERAGE AND**
17 **EQUITY IN OUT-OF-NETWORK BENEFITS.—**

18 “(A) **MINIMUM SCOPE OF MENTAL**
19 **HEALTH AND SUBSTANCE-RELATED DIS-**
20 **ORDER BENEFITS.—**In the case of a
21 group health plan (or health insur-
22 ance coverage offered in connection
23 with such a plan) that provides any
24 mental health and substance-related
25 disorder benefits, the plan or cov-

1 erage shall include benefits for any
2 mental health condition or substance-
3 related disorder for which benefits
4 are provided under the benefit plan
5 option offered under chapter 89 of
6 title 5, United States Code, with the
7 highest average enrollment as of the
8 beginning of the most recent year be-
9 ginning on or before the beginning of
10 the plan year involved.

11 “(B) EQUITY IN COVERAGE OF OUT-
12 OF-NETWORK BENEFITS.—

13 “(i) IN GENERAL.—In the case
14 of a plan or coverage that pro-
15 vides both medical and surgical
16 benefits and mental health and
17 substance-related disorder bene-
18 fits, if medical and surgical bene-
19 fits are provided for substantially
20 all items and services in a cat-
21 egory specified in clause (ii) fur-
22 nished outside any network of
23 providers established or recog-
24 nized under such plan or cov-
25 erage, the mental health and sub-

1 **stance-related disorder benefits**
2 **shall also be provided for items**
3 **and services in such category fur-**
4 **nished outside any network of**
5 **providers established or recog-**
6 **nized under such plan or cov-**
7 **erage in accordance with the re-**
8 **quirements of this section.**

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

22 **“(I) EMERGENCY.—Items**
23 **and services, whether fur-**
24 **nished on an inpatient or out-**
25 **patient basis, required for the**

1 treatment of an emergency
2 medical condition (including
3 an emergency condition relat-
4 ing to mental health and sub-
5 stance-related disorders).

6 “(II) INPATIENT.—Items
7 and services not described in
8 subclause (I) furnished on an
9 inpatient basis.

10 “(III) OUTPATIENT.—Items
11 and services not described in
12 subclause (I) furnished on an
13 outpatient basis.”.

14 (e) REVISION OF INCREASED COST EXEMP-
15 TION.—Paragraph (2) of subsection (c) of such
16 section is amended to read as follows:

17 “(2) INCREASED COST EXEMPTION.—

18 “(A) IN GENERAL.—With respect to
19 a group health plan (or health insur-
20 ance coverage offered in connection
21 with such a plan), if the application
22 of this section to such plan (or cov-
23 erage) results in an increase for the
24 plan year involved of the actual total
25 costs of coverage with respect to med-

1 ical and surgical benefits and mental
2 health and substance-related disorder
3 benefits under the plan (as deter-
4 mined and certified under subpara-
5 graph (C)) by an amount that exceeds
6 the applicable percentage described
7 in subparagraph (B) of the actual
8 total plan costs, the provisions of this
9 section shall not apply to such plan
10 (or coverage) during the following
11 plan year, and such exemption shall
12 apply to the plan (or coverage) for 1
13 plan year.

14 “(B) APPLICABLE PERCENTAGE.—
15 With respect to a plan (or coverage),
16 the applicable percentage described
17 in this paragraph shall be—

18 “(i) 2 percent in the case of
19 the first plan year which begins
20 after the date of the enactment of
21 the Paul Wellstone Mental Health
22 and Addiction Equity Act of 2007;
23 and

24 “(ii) 1 percent in the case of
25 each subsequent plan year.

1 **“(C) DETERMINATIONS BY ACTU-**
2 **ARIES.—Determinations as to in-**
3 **creases in actual costs under a plan**
4 **(or coverage) for purposes of this sub-**
5 **section shall be made by a qualified**
6 **actuary who is a member in good**
7 **standing of the American Academy of**
8 **Actuaries. Such determinations shall**
9 **be certified by the actuary and be**
10 **made available to the general public.**

11 **“(D) 6-MONTH DETERMINATIONS.—If**
12 **a group health plan (or a health in-**
13 **surance issuer offering coverage in**
14 **connection with such a plan) seeks an**
15 **exemption under this paragraph, de-**
16 **terminations under subparagraph (A)**
17 **shall be made after such plan (or cov-**
18 **erage) has complied with this section**
19 **for the first 6 months of the plan year**
20 **involved.**

21 **“(E) NOTIFICATION.—A group**
22 **health plan under this part shall com-**
23 **ply with the notice requirement**
24 **under section 712(c)(2)(E) of the Em-**
25 **ployee Retirement Income Security**

1 **Act of 1974 with respect to the a**
2 **modification of mental health and**
3 **substance-related disorder benefits as**
4 **permitted under this paragraph as if**
5 **such section applied to such plan.”.**

6 **(f) CHANGE IN EXCLUSION FOR SMALLEST EM-**
7 **PLOYERS.—Subsection (c)(1)(B) of such section**
8 **is amended—**

9 **(1) by inserting “(or 1 in the case of**
10 **an employer residing in a State that per-**
11 **mits small groups to include a single indi-**
12 **vidual)” after “at least 2” the first place it**
13 **appears; and**

14 **(2) by striking “and who employs at**
15 **least 2 employees on the first day of the**
16 **plan year”.**

17 **(g) ELIMINATION OF SUNSET PROVISION.—**
18 **Such section is amended by striking out sub-**
19 **section (f).**

20 **(h) CLARIFICATION REGARDING PREEMP-**
21 **TION.—Such section is further amended by in-**
22 **serting after subsection (e) the following new**
23 **subsection:**

24 **“(f) PREEMPTION, RELATION TO STATE**
25 **LAWS.—**

1 **MENTS.—Section 9812 of the Internal Revenue**
2 **Code of 1986 is amended—**

3 **(1) in subsection (a), by adding at the**
4 **end the following new paragraphs:**

5 **“(3) TREATMENT LIMITS.—In the case of**
6 **a group health plan that provides both**
7 **medical and surgical benefits and mental**
8 **health or substance-related disorder ben-**
9 **efits—**

10 **“(A) NO TREATMENT LIMIT.—If the**
11 **plan does not include a treatment**
12 **limit (as defined in subparagraph (D))**
13 **on substantially all medical and sur-**
14 **gical benefits in any category of items**
15 **or services (specified in subpara-**
16 **graph (C)), the plan may not impose**
17 **any treatment limit on mental health**
18 **or substance-related disorder benefits**
19 **that are classified in the same cat-**
20 **egory of items or services.**

21 **“(B) TREATMENT LIMIT.—If the plan**
22 **includes a treatment limit on sub-**
23 **stantially all medical and surgical**
24 **benefits in any category of items or**
25 **services, the plan may not impose**

1 **such a treatment limit on mental**
2 **health or substance-related disorder**
3 **benefits for items and services within**
4 **such category that is more restrictive**
5 **than the predominant treatment limit**
6 **that is applicable to medical and sur-**
7 **gical benefits for items and services**
8 **within such category.**

9 **“(C) CATEGORIES OF ITEMS AND**
10 **SERVICES FOR APPLICATION OF TREAT-**
11 **MENT LIMITS AND BENEFICIARY FINAN-**
12 **CIAL REQUIREMENTS.—For purposes of**
13 **this paragraph and paragraph (4),**
14 **there shall be the following five cat-**
15 **egories of items and services for ben-**
16 **efits, whether medical and surgical**
17 **benefits or mental health and sub-**
18 **stance-related disorder benefits, and**
19 **all medical and surgical benefits and**
20 **all mental health and substance re-**
21 **lated benefits shall be classified into**
22 **one of the following categories:**

23 **“(i) INPATIENT, IN-NETWORK.—**
24 **Items and services not described**
25 **in clause (v) furnished on an in-**

1 patient basis and within a net-
2 work of providers established or
3 recognized under such plan.

4 “(ii) INPATIENT, OUT-OF-NET-
5 WORK.—Items and services not de-
6 scribed in clause (v) furnished on
7 an inpatient basis and outside
8 any network of providers estab-
9 lished or recognized under such
10 plan.

11 “(iii) OUTPATIENT, IN-NET-
12 WORK.—Items and services not de-
13 scribed in clause (v) furnished on
14 an outpatient basis and within a
15 network of providers established
16 or recognized under such plan.

17 “(iv) OUTPATIENT, OUT-OF-NET-
18 WORK.—Items and services not de-
19 scribed in clause (v) furnished on
20 an outpatient basis and outside
21 any network of providers estab-
22 lished or recognized under such
23 plan.

24 “(v) EMERGENCY CARE.—Items
25 and services, whether furnished

1 **on an inpatient or outpatient**
2 **basis or within or outside any**
3 **network of providers, required**
4 **for the treatment of an emer-**
5 **gency medical condition (includ-**
6 **ing an emergency condition relat-**
7 **ing to mental health or substance-**
8 **related disorders).**

9 **“(D) TREATMENT LIMIT DEFINED.—**

10 **For purposes of this paragraph, the**
11 **term ‘treatment limit’ means, with re-**
12 **spect to a plan, limitation on the fre-**
13 **quency of treatment, number of visits**
14 **or days of coverage, or other similar**
15 **limit on the duration or scope of**
16 **treatment under the plan.**

17 **“(E) PREDOMINANCE.—For pur-**
18 **poses of this subsection, a treatment**
19 **limit or financial requirement with**
20 **respect to a category of items and**
21 **services is considered to be predomi-**
22 **nant if it is the most common or fre-**
23 **quent of such type of limit or require-**
24 **ment with respect to such category of**
25 **items and services.**

1 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
2 **MENTS.—In the case of a group health**
3 **plan that provides both medical and sur-**
4 **gical benefits and mental health or sub-**
5 **stance-related disorder benefits—**

6 **“(A) NO BENEFICIARY FINANCIAL RE-**
7 **QUIREMENT.—If the plan does not in-**
8 **clude a beneficiary financial require-**
9 **ment (as defined in subparagraph**
10 **(C)) on substantially all medical and**
11 **surgical benefits within a category of**
12 **items and services (specified in para-**
13 **graph (3)(C)), the plan may not im-**
14 **pose such a beneficiary financial re-**
15 **quirement on mental health or sub-**
16 **stance-related disorder benefits for**
17 **items and services within such cat-**
18 **egory.**

19 **“(B) BENEFICIARY FINANCIAL RE-**
20 **QUIREMENT.—**

21 **“(i) TREATMENT OF**
22 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
23 **ITS, AND SIMILAR FINANCIAL RE-**
24 **QUIREMENTS.—If the plan includes**
25 **a deductible, a limitation on out-**

1 of-pocket expenses, or similar
2 beneficiary financial requirement
3 that does not apply separately to
4 individual items and services on
5 substantially all medical and sur-
6 gical benefits within a category of
7 items and services, the plan shall
8 apply such requirement (or, if
9 there is more than one such re-
10 quirement for such category of
11 items and services, the predomi-
12 nant requirement for such cat-
13 egory) both to medical and sur-
14 gical benefits within such cat-
15 egory and to mental health and
16 substance-related disorder bene-
17 fits within such category and
18 shall not distinguish in the appli-
19 cation of such requirement be-
20 tween such medical and surgical
21 benefits and such mental health
22 and substance-related disorder
23 benefits.

24 “(ii) OTHER FINANCIAL REQUIRE-
25 MENTS.—If the plan includes a

1 **beneficiary financial requirement**
2 **not described in clause (i) on sub-**
3 **stantially all medical and surgical**
4 **benefits within a category of**
5 **items and services, the plan may**
6 **not impose such financial re-**
7 **quirement on mental health or**
8 **substance-related disorder bene-**
9 **fits for items and services within**
10 **such category in a way that re-**
11 **sults in greater out-of-pocket ex-**
12 **penses to the participant or bene-**
13 **ficiary than the predominant ben-**
14 **eficiary financial requirement ap-**
15 **plicable to medical and surgical**
16 **benefits for items and services**
17 **within such category.**

18 **“(iii) CONSTRUCTION.—Nothing**
19 **in this subparagraph shall be con-**
20 **strued as prohibiting the plan**
21 **from waiving the application of**
22 **any deductible for mental health**
23 **benefits or substance-related dis-**
24 **order benefits or both.**

1 **“(C) BENEFICIARY FINANCIAL RE-**
2 **QUIREMENT DEFINED.—For purposes of**
3 **this paragraph, the term ‘beneficiary**
4 **financial requirement’ includes, with**
5 **respect to a plan, any deductible, co-**
6 **insurance, co-payment, other cost**
7 **sharing, and limitation on the total**
8 **amount that may be paid by a partici-**
9 **pant or beneficiary with respect to**
10 **benefits under the plan, but does not**
11 **include the application of any aggre-**
12 **gate lifetime limit or annual limit.”,**
13 **and**

14 **(2) in subsection (b)—**

15 **(A) by striking “construed—” and**
16 **all that follows through “(1) as requir-**
17 **ing” and inserting “construed as re-**
18 **quiring”,**

19 **(B) by striking “; or” and insert-**
20 **ing a period, and**

21 **(C) by striking paragraph (2).**

22 **(b) EXPANSION TO SUBSTANCE-RELATED DIS-**
23 **ORDER BENEFITS AND REVISION OF DEFINI-**
24 **TION.—Section 9812 of such Code is further**
25 **amended—**

1 (1) by striking “mental health bene-
2 fits” each place it appears (other than in
3 any provision amended by paragraph (2))
4 and inserting “mental health or sub-
5 stance-related disorder benefits”,

6 (2) by striking “mental health bene-
7 fits” each place it appears in subsections
8 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and
9 (a)(2)(C) and inserting “mental health
10 and substance-related disorder benefits”,
11 and

12 (3) in subsection (e), by striking para-
13 graph (4) and inserting the following new
14 paragraphs:

15 “(4) MENTAL HEALTH BENEFITS.—The
16 term ‘mental health benefits’ means bene-
17 fits with respect to services for mental
18 health conditions, as defined under the
19 terms of the plan, but does not include
20 substance-related disorder benefits.

21 “(5) SUBSTANCE-RELATED DISORDER
22 BENEFITS.—The term ‘substance-related
23 disorder benefits’ means benefits with re-
24 spect to services for substance-related

1 **disorders, as defined under the terms of**
2 **the plan.”.**

3 **(c) AVAILABILITY OF PLAN INFORMATION**
4 **ABOUT CRITERIA FOR MEDICAL NECESSITY.—**
5 **Subsection (a) of section 9812 of such Code, as**
6 **amended by subsection (a)(1), is further**
7 **amended by adding at the end the following**
8 **new paragraph:**

9 **“(5) AVAILABILITY OF PLAN INFORMA-**
10 **TION.—The criteria for medical necessity**
11 **determinations made under the plan with**
12 **respect to mental health and substance-**
13 **related disorder benefits shall be made**
14 **available by the plan administrator to**
15 **any current or potential participant, ben-**
16 **eficiary, or contracting provider upon re-**
17 **quest. The reason for any denial under**
18 **the plan of reimbursement or payment**
19 **for services with respect to mental health**
20 **and substance-related disorder benefits**
21 **in the case of any participant or bene-**
22 **fiary shall, upon request, be made avail-**
23 **able by the plan administrator to the par-**
24 **ticipant or beneficiary.”.**

1 **(d) MINIMUM BENEFIT REQUIREMENTS.—**
2 **Subsection (a) of section 9812 of such Code is**
3 **further amended by adding at the end the fol-**
4 **lowing new paragraph:**

5 **“(6) MINIMUM SCOPE OF COVERAGE AND**
6 **EQUITY IN OUT-OF-NETWORK BENEFITS.—**

7 **“(A) MINIMUM SCOPE OF MENTAL**
8 **HEALTH AND SUBSTANCE-RELATED DIS-**
9 **ORDER BENEFITS.—In the case of a**
10 **group health plan that provides any**
11 **mental health or substance-related**
12 **disorder benefits, the plan shall in-**
13 **clude benefits for any mental health**
14 **condition or substance-related dis-**
15 **order included in the most recent edi-**
16 **tion of the Diagnostic and Statistical**
17 **Manual of Mental Disorders pub-**
18 **lished by the American Psychiatric**
19 **Association.**

20 **“(B) EQUITY IN COVERAGE OF OUT-**
21 **OF-NETWORK BENEFITS.—**

22 **“(i) IN GENERAL.—In the case**
23 **of a group health plan that pro-**
24 **vides both medical and surgical**
25 **benefits and mental health or**

1 **substance-related disorder bene-**
2 **fits, if medical and surgical bene-**
3 **fits are provided for substantially**
4 **all items and services in a cat-**
5 **egory specified in clause (ii) fur-**
6 **nished outside any network of**
7 **providers established or recog-**
8 **nized under such plan, the mental**
9 **health and substance-related dis-**
10 **order benefits shall also be pro-**
11 **vided for items and services in**
12 **such category furnished outside**
13 **any network of providers estab-**
14 **lished or recognized under such**
15 **plan in accordance with the re-**
16 **quirements of this section.**

17 **“(ii) CATEGORIES OF ITEMS AND**
18 **SERVICES.—For purposes of clause**
19 **(i), there shall be the following**
20 **three categories of items and**
21 **services for benefits, whether**
22 **medical and surgical benefits or**
23 **mental health and substance-re-**
24 **lated disorder benefits, and all**
25 **medical and surgical benefits and**

1 **all mental health and substance-**
2 **related disorder benefits shall be**
3 **classified into one of the fol-**
4 **lowing categories:**

5 **“(I) EMERGENCY.—Items**
6 **and services, whether fur-**
7 **nished on an inpatient or out-**
8 **patient basis, required for the**
9 **treatment of an emergency**
10 **medical condition (including**
11 **an emergency condition relat-**
12 **ing to mental health or sub-**
13 **stance-related disorders).**

14 **“(II) INPATIENT.—Items**
15 **and services not described in**
16 **subclause (I) furnished on an**
17 **inpatient basis.**

18 **“(III) OUTPATIENT.—Items**
19 **and services not described in**
20 **subclause (I) furnished on an**
21 **outpatient basis.”.**

22 **(e) REVISION OF INCREASED COST EXEMP-**
23 **TION.—Paragraph (2) of section 9812(c) of such**
24 **Code is amended to read as follows:**

25 **“(2) INCREASED COST EXEMPTION.—**

1 **“(A) IN GENERAL.—With respect to**
2 **a group health plan, if the application**
3 **of this section to such plan results in**
4 **an increase for the plan year involved**
5 **of the actual total costs of coverage**
6 **with respect to medical and surgical**
7 **benefits and mental health and sub-**
8 **stance-related disorder benefits**
9 **under the plan (as determined and**
10 **certified under subparagraph (C)) by**
11 **an amount that exceeds the applica-**
12 **ble percentage described in subpara-**
13 **graph (B) of the actual total plan**
14 **costs, the provisions of this section**
15 **shall not apply to such plan during**
16 **the following plan year, and such ex-**
17 **emption shall apply to the plan for 1**
18 **plan year.**

19 **“(B) APPLICABLE PERCENTAGE.—**
20 **With respect to a plan, the applicable**
21 **percentage described in this para-**
22 **graph shall be—**

23 **“(i) 2 percent in the case of**
24 **the first plan year to which this**
25 **paragraph applies, and**

1 “(ii) 1 percent in the case of
2 each subsequent plan year.

3 “(C) DETERMINATIONS BY ACTU-
4 ARIES.—Determinations as to in-
5 creases in actual costs under a plan
6 for purposes of this subsection shall
7 be made by a qualified and licensed
8 actuary who is a member in good
9 standing of the American Academy of
10 Actuaries. Such determinations shall
11 be certified by the actuary and be
12 made available to the general public.

13 “(D) 6-MONTH DETERMINATIONS.—If
14 a group health plan seeks an exemp-
15 tion under this paragraph, deter-
16 minations under subparagraph (A)
17 shall be made after such plan has
18 complied with this section for the
19 first 6 months of the plan year in-
20 volved.”.

21 (f) CHANGE IN EXCLUSION FOR SMALLEST EM-
22 PLOYERS.—Paragraph (1) of section 9812(c) of
23 such Code is amended to read as follows:

24 “(1) SMALL EMPLOYER EXEMPTION.—

1 “(A) **IN GENERAL.**—This section
2 shall not apply to any group health
3 plan for any plan year of a small em-
4 ployer.

5 “(B) **SMALL EMPLOYER.**—For pur-
6 poses of subparagraph (A), the term
7 ‘small employer’ means, with respect
8 to a calendar year and a plan year, an
9 employer who employed an average
10 of at least 2 (or 1 in the case of an em-
11 ployer residing in a State that per-
12 mits small groups to include a single
13 individual) but not more than 50 em-
14 ployees on business days during the
15 preceding calendar year. For pur-
16 poses of the preceding sentence, all
17 persons treated as a single employer
18 under subsection (b), (c), (m), or (o) of
19 section 414 shall be treated as 1 em-
20 ployer and rules similar to rules of
21 subparagraphs (B) and (C) of section
22 4980D(d)(2) shall apply.”.

23 **(g) ELIMINATION OF SUNSET PROVISION.**—
24 Section 9812 of such Code is amended by
25 striking subsection (f).

1 **(h) CONFORMING AMENDMENTS TO HEAD-**
2 **ING.—**

3 **(1) IN GENERAL.—The heading of sec-**
4 **tion 9812 of such Code is amended to**
5 **read as follows:**

6 **“SEC. 9812. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
7 **RELATED DISORDER BENEFITS.”.**

8 **(2) CLERICAL AMENDMENT.—The table**
9 **of sections for subchapter B of chapter**
10 **100 of such Code is amended by striking**
11 **the item relating to section 9812 and in-**
12 **serting the following new item:**

“Sec. 9812. Equity in mental health and substance-related dis-
order benefits.”.

13 **(i) EFFECTIVE DATE.—**

14 **(1) IN GENERAL.—Except as otherwise**
15 **provided in this subsection, the amend-**
16 **ments made by this section shall apply**
17 **with respect to plan years beginning on**
18 **or after January 1, 2008.**

19 **(2) ELIMINATION OF SUNSET.—The**
20 **amendment made by subsection (g) shall**
21 **apply to benefits for services furnished**
22 **after December 31, 2007.**

23 **(3) SPECIAL RULE FOR COLLECTIVE BAR-**
24 **GAINING AGREEMENTS.—In the case of a**

1 **group health plan maintained pursuant**
2 **to one or more collective bargaining**
3 **agreements between employee represent-**
4 **atives and one or more employers ratified**
5 **before the date of the enactment of this**
6 **Act, the amendments made by this sec-**
7 **tion (other than subsection (g)) shall not**
8 **apply to plan years beginning before the**
9 **later of—**

10 **(A) the date on which the last of**
11 **the collective bargaining agreements**
12 **relating to the plan terminates (deter-**
13 **mined without regard to any exten-**
14 **sion thereof agreed to after the date**
15 **of the enactment of this Act), or**

16 **(B) January 1, 2010.**

17 **For purposes of subparagraph (A), any**
18 **plan amendment made pursuant to a col-**
19 **lective bargaining agreement relating to**
20 **the plan which amends the plan solely to**
21 **conform to any requirement imposed**
22 **under an amendment under this section**
23 **shall not be treated as a termination of**
24 **such collective bargaining agreement.**

1 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDIES**
2 **AND REPORTS.**

3 **(a) IMPLEMENTATION OF ACT.—**

4 **(1) STUDY.—The Comptroller General**
5 **of the United States shall conduct a study**
6 **that evaluates the effect of the implemen-**
7 **tation of the amendments made by this**
8 **Act on—**

9 **(A) the cost of health insurance**
10 **coverage;**

11 **(B) access to health insurance**
12 **coverage (including the availability of**
13 **in-network providers);**

14 **(C) the quality of health care;**

15 **(D) Medicare, Medicaid, and State**
16 **and local mental health and sub-**
17 **stance abuse treatment spending;**

18 **(E) the number of individuals**
19 **with private insurance who received**
20 **publicly funded health care for men-**
21 **tal health and substance-related dis-**
22 **orders;**

23 **(F) spending on public services,**
24 **such as the criminal justice system,**
25 **special education, and income assist-**
26 **ance programs;**

1 **(G) the use of medical manage-**
2 **ment of mental health and substance-**
3 **related disorder benefits and medical**
4 **necessity determinations by group**
5 **health plans (and health insurance**
6 **issuers offering health insurance cov-**
7 **erage in connection with such plans)**
8 **and timely access by participants and**
9 **beneficiaries to clinically-indicated**
10 **care for mental health and substance-**
11 **use disorders; and**

12 **(H) other matters as determined**
13 **appropriate by the Comptroller Gen-**
14 **eral.**

15 **(2) REPORT.—Not later than 2 years**
16 **after the date of enactment of this Act,**
17 **the Comptroller General shall prepare**
18 **and submit to the appropriate commit-**
19 **tees of the Congress a report containing**
20 **the results of the study conducted under**
21 **paragraph (1).**

22 **(b) BIENNIAL REPORT ON OBSTACLES IN OB-**
23 **TAINING COVERAGE.—Every two years, the**
24 **Comptroller General shall submit to each**
25 **House of the Congress a report on obstacles**

1 that individuals face in obtaining mental
2 health and substance-related disorder care
3 under their health plans.

4 (c) UNIFORM PATIENT PLACEMENT CRI-
5 TERIA.—Not later than 18 months after the
6 date of the enactment of this Act, the Comp-
7 troller General shall submit to each House of
8 the Congress a report on availability of uni-
9 form patient placement criteria for mental
10 health and substance-related disorders that
11 could be used by group health plans and
12 health insurance issuers to guide determina-
13 tions of medical necessity and the extent to
14 which health plans utilize such criteria. If
15 such criteria do not exist, the report shall in-
16 clude recommendations on a process for de-
17 veloping such criteria.

18 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

19 (a) SHORT TITLE.—*This Act may be cited as*
20 *the “Paul Wellstone Mental Health and Addic-*
21 *tion Equity Act of 2007”.*

22 (b) TABLE OF CONTENTS.—*The table of con-*
23 *tents of this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to the Employee Retirement Income Secu-
rity Act of 1974.

Sec. 3. Amendments to the Public Health Service Act relating to
the group market.

Sec. 4. Amendments to the Internal Revenue Code of 1986.

Sec. 5. Government Accountability Office studies and reports.

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

3 *(a) EXTENSION OF PARITY TO TREATMENT*
4 *LIMITS AND BENEFICIARY FINANCIAL REQUIRE-*
5 *MENTS.—Section 712 of the Employee Retire-*
6 *ment Income Security Act of 1974 (29 U.S.C.*
7 *1185a) is amended—*

8 *(1) in subsection (a), by adding at the*
9 *end the following new paragraphs:*

10 *“(3) TREATMENT LIMITS.—*

11 *“(A) NO TREATMENT LIMIT.—If the*
12 *plan or coverage does not include a*
13 *treatment limit (as defined in sub-*
14 *paragraph (D)) on substantially all*
15 *medical and surgical benefits in any*
16 *category of items or services, the plan*
17 *or coverage may not impose any treat-*
18 *ment limit on mental health and sub-*
19 *stance-related disorder benefits that*
20 *are classified in the same category of*
21 *items or services.*

22 *“(B) TREATMENT LIMIT.—If the plan*
23 *or coverage includes a treatment limit*
24 *on substantially all medical and sur-*

1 *gical benefits in any category of items*
2 *or services, the plan or coverage may*
3 *not impose such a treatment limit on*
4 *mental health and substance-related*
5 *disorder benefits for items and serv-*
6 *ices within such category that are*
7 *more restrictive than the predominant*
8 *treatment limit that is applicable to*
9 *medical and surgical benefits for*
10 *items and services within such cat-*
11 *egory.*

12 **“(C) CATEGORIES OF ITEMS AND**
13 **SERVICES FOR APPLICATION OF TREAT-**
14 **MENT LIMITS AND BENEFICIARY FINAN-**
15 **CIAL REQUIREMENTS.—For purposes of**
16 **this paragraph and paragraph (4),**
17 **there shall be the following four cat-**
18 **egories of items and services for bene-**
19 **fits, whether medical and surgical**
20 **benefits or mental health and sub-**
21 **stance-related disorder benefits, and**
22 **all medical and surgical benefits and**
23 **all mental health and substance re-**
24 **lated benefits shall be classified into**
25 **one of the following categories:**

1 “(i) *INPATIENT, IN-NETWORK.—*
2 *Items and services furnished on*
3 *an inpatient basis and within a*
4 *network of providers established*
5 *or recognized under such plan or*
6 *coverage.*

7 “(ii) *INPATIENT, OUT-OF-NET-*
8 *WORK.—Items and services fur-*
9 *nished on an inpatient basis and*
10 *outside any network of providers*
11 *established or recognized under*
12 *such plan or coverage.*

13 “(iii) *OUTPATIENT, IN-NET-*
14 *WORK.—Items and services fur-*
15 *nished on an outpatient basis and*
16 *within a network of providers es-*
17 *tablished or recognized under*
18 *such plan or coverage.*

19 “(iv) *OUTPATIENT, OUT-OF-NET-*
20 *WORK.—Items and services fur-*
21 *nished on an outpatient basis and*
22 *outside any network of providers*
23 *established or recognized under*
24 *such plan or coverage.*

1 **“(D) TREATMENT LIMIT DEFINED.—**
2 ***For purposes of this paragraph, the***
3 ***term ‘treatment limit’ means, with re-***
4 ***spect to a plan or coverage, limitation***
5 ***on the frequency of treatment, number***
6 ***of visits or days of coverage, or other***
7 ***similar limit on the duration or scope***
8 ***of treatment under the plan or cov-***
9 ***erage.***

10 **“(E) PREDOMINANCE.—For purposes**
11 ***of this subsection, a treatment limit or***
12 ***financial requirement with respect to***
13 ***a category of items and services is***
14 ***considered to be predominant if it is***
15 ***the most common or frequent of such***
16 ***type of limit or requirement with re-***
17 ***spect to such category of items and***
18 ***services.***

19 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
20 ***MENTS.—***

21 **“(A) NO BENEFICIARY FINANCIAL RE-**
22 ***QUIREMENT.—If the plan or coverage***
23 ***does not include a beneficiary finan-***
24 ***cial requirement (as defined in sub-***
25 ***paragraph (C)) on substantially all***

1 *medical and surgical benefits within*
2 *a category of items and services (spec-*
3 *ified under paragraph (3)(C)), the*
4 *plan or coverage may not impose such*
5 *a beneficiary financial requirement*
6 *on mental health and substance-re-*
7 *lated disorder benefits for items and*
8 *services within such category.*

9 **“(B) BENEFICIARY FINANCIAL RE-**
10 **QUIREMENT.—**

11 **“(i) TREATMENT OF**
12 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
13 **ITS, AND SIMILAR FINANCIAL RE-**
14 **QUIREMENTS.—If the plan or cov-**
15 **erage includes a deductible, a lim-**
16 **itation on out-of-pocket expenses,**
17 **or similar beneficiary financial**
18 **requirement that does not apply**
19 **separately to individual items and**
20 **services on substantially all med-**
21 **ical and surgical benefits within a**
22 **category of items and services (as**
23 **specified in paragraph (3)(C)), the**
24 **plan or coverage shall apply such**
25 **requirement (or, if there is more**

1 *than one such requirement for*
2 *such category of items and serv-*
3 *ices, the predominant requirement*
4 *for such category) both to medical*
5 *and surgical benefits within such*
6 *category and to mental health and*
7 *substance-related disorder bene-*
8 *fits within such category and*
9 *shall not distinguish in the appli-*
10 *cation of such requirement be-*
11 *tween such medical and surgical*
12 *benefits and such mental health*
13 *and substance-related disorder*
14 *benefits.*

15 *“(i) OTHER FINANCIAL REQUIRE-*
16 *MENTS.—If the plan or coverage in-*
17 *cludes a beneficiary financial re-*
18 *quirement not described in clause*
19 *(i) on substantially all medical*
20 *and surgical benefits within a cat-*
21 *egory of items and services, the*
22 *plan or coverage may not impose*
23 *such financial requirement on*
24 *mental health and substance-re-*
25 *lated disorder benefits for items*

1 *and services within such category*
2 *in a way that is more costly to the*
3 *participant or beneficiary than*
4 *the predominant beneficiary fi-*
5 *nancial requirement applicable to*
6 *medical and surgical benefits for*
7 *items and services within such*
8 *category.*

9 “(C) *BENEFICIARY FINANCIAL RE-*
10 *QUIREMENT DEFINED.—For purposes of*
11 *this paragraph, the term ‘beneficiary*
12 *financial requirement’ includes, with*
13 *respect to a plan or coverage, any de-*
14 *ductible, coinsurance, co-payment,*
15 *other cost sharing, and limitation on*
16 *the total amount that may be paid by*
17 *a participant or beneficiary with re-*
18 *spect to benefits under the plan or*
19 *coverage, but does not include the ap-*
20 *plication of any aggregate lifetime*
21 *limit or annual limit.”; and*

22 (2) *in subsection (b)—*

23 (A) *by striking “construed—” and*
24 *all that follows through “(1) as re-*

1 *quiring” and inserting “construed as*
2 *requiring”;*

3 *(B) by striking “; or” and inserting*
4 *a period; and*

5 *(C) by striking paragraph (2).*

6 ***(b) EXPANSION TO SUBSTANCE-RELATED DIS-***
7 ***ORDER BENEFITS AND REVISION OF DEFINITION.—***

8 *Such section is further amended—*

9 *(1) by striking “mental health bene-*
10 *fits” and inserting “mental health and*
11 *substance-related disorder benefits” each*
12 *place it appears; and*

13 *(2) in paragraph (4) of subsection*
14 *(e)—*

15 *(A) by striking “MENTAL HEALTH*
16 *BENEFITS” and inserting “MENTAL*
17 *HEALTH AND SUBSTANCE-RELATED DIS-*
18 *ORDER BENEFITS”;*

19 *(B) by striking “benefits with re-*
20 *spect to mental health services” and*
21 *inserting “benefits with respect to*
22 *services for mental health conditions*
23 *or substance-related disorders”; and*

24 *(C) by striking “, but does not in-*
25 *clude benefits with respect to treat-*

1 *ment of substances abuse or chemical*
2 *dependency”.*

3 **(c) AVAILABILITY OF PLAN INFORMATION**
4 **ABOUT CRITERIA FOR MEDICAL NECESSITY.—Sub-**
5 **section (a) of such section, as amended by sub-**
6 **section (a)(1), is further amended by adding at**
7 **the end the following new paragraph:**

8 **“(5) AVAILABILITY OF PLAN INFORMA-**
9 **TION.—The criteria for medical necessity**
10 **determinations made under the plan with**
11 **respect to mental health and substance-**
12 **related disorder benefits (or the health in-**
13 **surance coverage offered in connection**
14 **with the plan with respect to such bene-**
15 **fits) shall be made available by the plan**
16 **administrator (or the health insurance**
17 **issuer offering such coverage) to any cur-**
18 **rent or potential participant, beneficiary,**
19 **or contracting provider upon request. The**
20 **reason for any denial under the plan (or**
21 **coverage) of reimbursement or payment**
22 **for services with respect to mental health**
23 **and substance-related disorder benefits in**
24 **the case of any participant or beneficiary**
25 **shall, upon request, be made available by**

1 *the plan administrator (or the health in-*
2 *surance issuer offering such coverage) to*
3 *the participant or beneficiary.”.*

4 ***(d) MINIMUM BENEFIT REQUIREMENTS.—Sub-***
5 ***section (a) of such section is further amended***
6 ***by adding at the end the following new para-***
7 ***graph:***

8 ***“(6) MINIMUM SCOPE OF COVERAGE AND***
9 ***EQUITY IN OUT-OF-NETWORK BENEFITS.—***

10 ***“(A) MINIMUM SCOPE OF MENTAL***
11 ***HEALTH AND SUBSTANCE-RELATED DIS-***
12 ***ORDER BENEFITS.—In the case of a***
13 ***group health plan (or health insur-***
14 ***ance coverage offered in connection***
15 ***with such a plan) that provides any***
16 ***mental health and substance-related***
17 ***disorder benefits, the plan or coverage***
18 ***shall include benefits for any mental***
19 ***health condition or substance-related***
20 ***disorder for which benefits are pro-***
21 ***vided under the benefit plan option of-***
22 ***fered under chapter 89 of title 5,***
23 ***United States Code, with the highest***
24 ***average enrollment as of the begin-***
25 ***ning of the most recent year beginning***

1 *on or before the beginning of the plan*
2 *year involved.*

3 **“(B) EQUITY IN COVERAGE OF OUT-**
4 **OF-NETWORK BENEFITS.—**

5 **“(i) IN GENERAL.—***In the case of*
6 *a plan or coverage that provides*
7 *both medical and surgical bene-*
8 *fits and mental health and sub-*
9 *stance-related disorder benefits, if*
10 *medical and surgical benefits are*
11 *provided for substantially all*
12 *items and services in a category*
13 *specified in clause (ii) furnished*
14 *outside any network of providers*
15 *established or recognized under*
16 *such plan or coverage, the mental*
17 *health and substance-related dis-*
18 *order benefits shall also be pro-*
19 *vided for items and services in*
20 *such category furnished outside*
21 *any network of providers estab-*
22 *lished or recognized under such*
23 *plan or coverage in accordance*
24 *with the requirements of this sec-*
25 *tion.*

1 “(ii) **CATEGORIES OF ITEMS AND**
2 **SERVICES.—For purposes of clause**
3 **(i), there shall be the following**
4 **three categories of items and serv-**
5 **ices for benefits, whether medical**
6 **and surgical benefits or mental**
7 **health and substance-related dis-**
8 **order benefits, and all medical**
9 **and surgical benefits and all men-**
10 **tal health and substance-related**
11 **disorder benefits shall be classi-**
12 **fied into one of the following cat-**
13 **egories:**

14 “(I) **EMERGENCY.—Items**
15 **and services, whether fur-**
16 **nished on an inpatient or out-**
17 **patient basis, required for the**
18 **treatment of an emergency**
19 **medical condition (including**
20 **an emergency condition relat-**
21 **ing to mental health and sub-**
22 **stance-related disorders).**

23 “(II) **INPATIENT.—Items**
24 **and services not described in**

1 *subclause (I) furnished on an*
2 *inpatient basis.*

3 **“(III) OUTPATIENT.—Items**
4 ***and services not described in***
5 ***subclause (I) furnished on an***
6 ***outpatient basis.”.***

7 **(e) REVISION OF INCREASED COST EXEMP-**
8 ***TION.—Paragraph (2) of subsection (c) of such***
9 ***section is amended to read as follows:***

10 **“(2) INCREASED COST EXEMPTION.—**

11 **“(A) IN GENERAL.—With respect to**
12 ***a group health plan (or health insur-***
13 ***ance coverage offered in connection***
14 ***with such a plan), if the application***
15 ***of this section to such plan (or cov-***
16 ***erage) results in an increase for the***
17 ***plan year involved of the actual total***
18 ***costs of coverage with respect to med-***
19 ***ical and surgical benefits and mental***
20 ***health and substance-related disorder***
21 ***benefits under the plan (as deter-***
22 ***mined and certified under subpara-***
23 ***graph (C)) by an amount that exceeds***
24 ***the applicable percentage described***
25 ***in subparagraph (B) of the actual***

1 *total plan costs, the provisions of this*
2 *section shall not apply to such plan*
3 *(or coverage) during the following*
4 *plan year, and such exemption shall*
5 *apply to the plan (or coverage) for 1*
6 *plan year.*

7 **“(B) APPLICABLE PERCENTAGE.—**
8 *With respect to a plan (or coverage),*
9 *the applicable percentage described*
10 *in this paragraph shall be—*

11 *“(i) 2 percent in the case of the*
12 *first plan year which begins after*
13 *the date of the enactment of the*
14 *Paul Wellstone Mental Health and*
15 *Addiction Equity Act of 2007; and*

16 *“(ii) 1 percent in the case of*
17 *each subsequent plan year.*

18 **“(C) DETERMINATIONS BY ACTU-**
19 *ARIES.—Determinations as to increases*
20 *in actual costs under a plan (or cov-*
21 *erage) for purposes of this subsection*
22 *shall be made by a qualified actuary*
23 *who is a member in good standing of*
24 *the American Academy of Actuaries.*
25 *Such determinations shall be certified*

1 *by the actuary and be made available*
2 *to the general public.*

3 *“(D) 6-MONTH DETERMINATIONS.—If*
4 *a group health plan (or a health in-*
5 *surance issuer offering coverage in*
6 *connection with such a plan) seeks an*
7 *exemption under this paragraph, de-*
8 *terminations under subparagraph (A)*
9 *shall be made after such plan (or cov-*
10 *erage) has complied with this section*
11 *for the first 6 months of the plan year*
12 *involved.*

13 *“(E) NOTIFICATION.—An election to*
14 *modify coverage of mental health and*
15 *substance-related disorder benefits as*
16 *permitted under this paragraph shall*
17 *be treated as a material modification*
18 *in the terms of the plan as described*
19 *in section 102(a)(1) and shall be sub-*
20 *ject to the applicable notice require-*
21 *ments under section 104(b)(1).”.*

22 *(f) CHANGE IN EXCLUSION FOR SMALLEST EM-*
23 *PLOYERS.—Subsection (c)(1)(B) of such section*
24 *is amended—*

1 (1) *by inserting “(or 1 in the case of an*
2 *employer residing in a State that permits*
3 *small groups to include a single indi-*
4 *vidual)” after “at least 2” the first place it*
5 *appears; and*

6 (2) *by striking “and who employs at*
7 *least 2 employees on the first day of the*
8 *plan year”.*

9 (g) *ELIMINATION OF SUNSET PROVISION.—*
10 *Such section is amended by striking out sub-*
11 *section (f).*

12 (h) *CLARIFICATION REGARDING PREEMP-*
13 *TION.—Such section is further amended by in-*
14 *serting after subsection (e) the following new*
15 *subsection:*

16 “(f) *PREEMPTION, RELATION TO STATE*
17 *LAWS.—*

18 “(1) *IN GENERAL.—Nothing in this sec-*
19 *tion shall be construed to preempt any*
20 *State law that provides greater consumer*
21 *protections, benefits, methods of access to*
22 *benefits, rights or remedies that are great-*
23 *er than the protections, benefits, methods*
24 *of access to benefits, rights or remedies*
25 *provided under this section.*

1 “(2) *ERISA.*—*Nothing in this section*
2 *shall be construed to affect or modify the*
3 *provisions of section 514 with respect to*
4 *group health plans.*”.

5 (i) *CONFORMING AMENDMENTS TO HEAD-*
6 *ING.*—

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

9 “*SEC. 712. Equity in mental health and substance-related dis-*
10 *order benefits.*”.

11 (2) *CLERICAL AMENDMENT.*—*The table*
12 *of contents in section 1 of such Act is*
13 *amended by striking the item relating to*
14 *section 712 and inserting the following*
15 *new item:*

 “*Sec. 712. Equity in mental health and substance-related dis-*
 order benefits.”.

16 (j) *EFFECTIVE DATE.*—*The amendments*
17 *made by this section shall apply with respect*
18 *to plan years beginning on or after January 1,*
19 *2008.*

20 *SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE*
21 *ACT RELATING TO THE GROUP MARKET.*

22 (a) *EXTENSION OF PARITY TO TREATMENT*
23 *LIMITS AND BENEFICIARY FINANCIAL REQUIRE-*

1 *MENTS.—Section 2705 of the Public Health*
2 *Service Act (42 U.S.C. 300gg-5) is amended—*

3 *(1) in subsection (a), by adding at the*
4 *end the following new paragraphs:*

5 *“(3) TREATMENT LIMITS.—*

6 *“(A) NO TREATMENT LIMIT.—If the*
7 *plan or coverage does not include a*
8 *treatment limit (as defined in sub-*
9 *paragraph (D)) on substantially all*
10 *medical and surgical benefits in any*
11 *category of items or services (specified*
12 *in subparagraph (C)), the plan or cov-*
13 *erage may not impose any treatment*
14 *limit on mental health or substance-*
15 *related disorder benefits that are clas-*
16 *sified in the same category of items or*
17 *services.*

18 *“(B) TREATMENT LIMIT.—If the plan*
19 *or coverage includes a treatment limit*
20 *on substantially all medical and sur-*
21 *gical benefits in any category of items*
22 *or services, the plan or coverage may*
23 *not impose such a treatment limit on*
24 *mental health or substance-related*
25 *disorder benefits for items and serv-*

1 *ices within such category that is more*
2 *restrictive than the predominant*
3 *treatment limit that is applicable to*
4 *medical and surgical benefits for*
5 *items and services within such cat-*
6 *egory.*

7 **“(C) CATEGORIES OF ITEMS AND**
8 **SERVICES FOR APPLICATION OF TREAT-**
9 **MENT LIMITS AND BENEFICIARY FINAN-**
10 **CIAL REQUIREMENTS.—For purposes of**
11 **this paragraph and paragraph (4),**
12 **there shall be the following five cat-**
13 **egories of items and services for bene-**
14 **fits, whether medical and surgical**
15 **benefits or mental health and sub-**
16 **stance-related disorder benefits, and**
17 **all medical and surgical benefits and**
18 **all mental health and substance re-**
19 **lated benefits shall be classified into**
20 **one of the following categories:**

21 **“(i) INPATIENT, IN-NETWORK.—**
22 **Items and services not described**
23 **in clause (v) furnished on an in-**
24 **patient basis and within a net-**
25 **work of providers established or**

1 *recognized under such plan or*
2 *coverage.*

3 “(ii) *INPATIENT, OUT-OF-NET-*
4 *WORK.—Items and services not de-*
5 *scribed in clause (v) furnished on*
6 *an inpatient basis and outside*
7 *any network of providers estab-*
8 *lished or recognized under such*
9 *plan or coverage.*

10 “(iii) *OUTPATIENT, IN-NET-*
11 *WORK.—Items and services not de-*
12 *scribed in clause (v) furnished on*
13 *an outpatient basis and within a*
14 *network of providers established*
15 *or recognized under such plan or*
16 *coverage.*

17 “(iv) *OUTPATIENT, OUT-OF-NET-*
18 *WORK.—Items and services not de-*
19 *scribed in clause (v) furnished on*
20 *an outpatient basis and outside*
21 *any network of providers estab-*
22 *lished or recognized under such*
23 *plan or coverage.*

24 “(v) *EMERGENCY CARE.—Items*
25 *and services, whether furnished*

1 *on an inpatient or outpatient*
2 *basis or within or outside any net-*
3 *work of providers, required for the*
4 *treatment of an emergency med-*
5 *ical condition (as defined in sec-*
6 *tion 1867(e) of the Social Security*
7 *Act, including an emergency con-*
8 *dition relating to mental health*
9 *and substance-related disorders).*

10 **“(D) TREATMENT LIMIT DEFINED.—**

11 ***For purposes of this paragraph, the***
12 ***term ‘treatment limit’ means, with re-***
13 ***spect to a plan or coverage, limitation***
14 ***on the frequency of treatment, number***
15 ***of visits or days of coverage, or other***
16 ***similar limit on the duration or scope***
17 ***of treatment under the plan or cov-***
18 ***erage.***

19 **“(E) PREDOMINANCE.—For purposes**
20 ***of this subsection, a treatment limit or***
21 ***financial requirement with respect to***
22 ***a category of items and services is***
23 ***considered to be predominant if it is***
24 ***the most common or frequent of such***
25 ***type of limit or requirement with re-***

1 *spect to such category of items and*
2 *services.*

3 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
4 **MENTS.—**

5 **“(A) NO BENEFICIARY FINANCIAL RE-**
6 **QUIREMENT.—***If the plan or coverage*
7 *does not include a beneficiary finan-*
8 *cial requirement (as defined in sub-*
9 *paragraph (C)) on substantially all*
10 *medical and surgical benefits within*
11 *a category of items and services (spec-*
12 *ified in paragraph (3)(C)), the plan or*
13 *coverage may not impose such a bene-*
14 *ficiary financial requirement on men-*
15 *tal health or substance-related dis-*
16 *order benefits for items and services*
17 *within such category.*

18 **“(B) BENEFICIARY FINANCIAL RE-**
19 **QUIREMENT.—**

20 **“(i) TREATMENT OF**
21 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
22 **ITS, AND SIMILAR FINANCIAL RE-**
23 **QUIREMENTS.—***If the plan or cov-*
24 *erage includes a deductible, a lim-*
25 *itation on out-of-pocket expenses,*

1 *or similar beneficiary financial*
2 *requirement that does not apply*
3 *separately to individual items and*
4 *services on substantially all med-*
5 *ical and surgical benefits within a*
6 *category of items and services, the*
7 *plan or coverage shall apply such*
8 *requirement (or, if there is more*
9 *than one such requirement for*
10 *such category of items and serv-*
11 *ices, the predominant requirement*
12 *for such category) both to medical*
13 *and surgical benefits within such*
14 *category and to mental health and*
15 *substance-related disorder bene-*
16 *fits within such category and*
17 *shall not distinguish in the appli-*
18 *cation of such requirement be-*
19 *tween such medical and surgical*
20 *benefits and such mental health*
21 *and substance-related disorder*
22 *benefits.*

23 *“(i) OTHER FINANCIAL REQUIRE-*
24 *MENTS.—If the plan or coverage in-*
25 *cludes a beneficiary financial re-*

1 *quirement not described in clause*
2 *(i) on substantially all medical*
3 *and surgical benefits within a cat-*
4 *egory of items and services, the*
5 *plan or coverage may not impose*
6 *such financial requirement on*
7 *mental health or substance-re-*
8 *lated disorder benefits for items*
9 *and services within such category*
10 *in a way that is more costly to the*
11 *participant or beneficiary than*
12 *the predominant beneficiary fi-*
13 *nancial requirement applicable to*
14 *medical and surgical benefits for*
15 *items and services within such*
16 *category.*

17 **“(C) BENEFICIARY FINANCIAL RE-**
18 **QUIREMENT DEFINED.—***For purposes of*
19 *this paragraph, the term ‘beneficiary*
20 *financial requirement’ includes, with*
21 *respect to a plan or coverage, any de-*
22 *ductible, coinsurance, co-payment,*
23 *other cost sharing, and limitation on*
24 *the total amount that may be paid by*
25 *a participant or beneficiary with re-*

1 *spect to benefits under the plan or*
 2 *coverage, but does not include the ap-*
 3 *plication of any aggregate lifetime*
 4 *limit or annual limit.”; and*

5 *(2) in subsection (b)—*

6 *(A) by striking “construed—” and*
 7 *all that follows through “(1) as re-*
 8 *quiring” and inserting “construed as*
 9 *requiring”;*

10 *(B) by striking “; or” and inserting*
 11 *a period; and*

12 *(C) by striking paragraph (2).*

13 *(b) EXPANSION TO SUBSTANCE-RELATED DIS-*
 14 *ORDER BENEFITS AND REVISION OF DEFINITION.—*
 15 *Such section is further amended—*

16 *(1) by striking “mental health bene-*
 17 *fits” and inserting “mental health or sub-*
 18 *stance-related disorder benefits” each*
 19 *place it appears; and*

20 *(2) in paragraph (4) of subsection*
 21 *(e)—*

22 *(A) by striking “MENTAL HEALTH*
 23 *BENEFITS” and inserting “MENTAL*
 24 *HEALTH AND SUBSTANCE-RELATED DIS-*
 25 *ORDER BENEFITS”;*

1 ***(B) by striking “benefits with re-***
2 ***spect to mental health services” and***
3 ***inserting “benefits with respect to***
4 ***services for mental health conditions***
5 ***or substance-related disorders”;*** and

6 ***(C) by striking “, but does not in-***
7 ***clude benefits with respect to treat-***
8 ***ment of substance abuse or chemical***
9 ***dependency”.***

10 ***(c) AVAILABILITY OF PLAN INFORMATION***
11 ***ABOUT CRITERIA FOR MEDICAL NECESSITY.—Sub-***
12 ***section (a) of such section, as amended by sub-***
13 ***section (a)(1), is further amended by adding at***
14 ***the end the following new paragraph:***

15 ***“(5) AVAILABILITY OF PLAN INFORMA-***
16 ***TION.—The criteria for medical necessity***
17 ***determinations made under the plan with***
18 ***respect to mental health and substance-***
19 ***related disorder benefits (or the health in-***
20 ***surance coverage offered in connection***
21 ***with the plan with respect to such bene-***
22 ***fits) shall be made available by the plan***
23 ***administrator (or the health insurance***
24 ***issuer offering such coverage) to any cur-***
25 ***rent or potential participant, beneficiary,***

1 *or contracting provider upon request. The*
2 *reason for any denial under the plan (or*
3 *coverage) of reimbursement or payment*
4 *for services with respect to mental health*
5 *and substance-related disorder benefits in*
6 *the case of any participant or beneficiary*
7 *shall, upon request, be made available by*
8 *the plan administrator (or the health in-*
9 *surance issuer offering such coverage) to*
10 *the participant or beneficiary.”.*

11 ***(d) MINIMUM BENEFIT REQUIREMENTS.—Sub-***
12 ***section (a) of such section is further amended***
13 ***by adding at the end the following new para-***
14 ***graph:***

15 ***“(6) MINIMUM SCOPE OF COVERAGE AND***
16 ***EQUITY IN OUT-OF-NETWORK BENEFITS.—***

17 ***“(A) MINIMUM SCOPE OF MENTAL***
18 ***HEALTH AND SUBSTANCE-RELATED DIS-***
19 ***ORDER BENEFITS.—In the case of a***
20 ***group health plan (or health insur-***
21 ***ance coverage offered in connection***
22 ***with such a plan) that provides any***
23 ***mental health or substance-related***
24 ***disorder benefits, the plan or coverage***
25 ***shall include benefits for any mental***

1 *health condition or substance-related*
2 *disorder included in the most recent*
3 *edition of the Diagnostic and Statis-*
4 *tical Manual of Mental Disorders pub-*
5 *lished by the American Psychiatric As-*
6 *sociation.*

7 **“(B) EQUITY IN COVERAGE OF OUT-**
8 **OF-NETWORK BENEFITS.—**

9 **“(i) IN GENERAL.—***In the case of*
10 *a group health plan (or health in-*
11 *surance coverage offered in con-*
12 *nection with such a plan) that*
13 *provides both medical and sur-*
14 *gical benefits and mental health*
15 *or substance-related disorder ben-*
16 *efits, if medical and surgical bene-*
17 *fits are provided for substantially*
18 *all items and services in a cat-*
19 *egory specified in clause (ii) fur-*
20 *nished outside any network of pro-*
21 *viders established or recognized*
22 *under such plan or coverage, the*
23 *mental health and substance-re-*
24 *lated disorder benefits shall also*
25 *be provided for items and services*

1 *in such category furnished outside*
2 *any network of providers estab-*
3 *lished or recognized under such*
4 *plan or coverage in accordance*
5 *with the requirements of this sec-*
6 *tion.*

7 *“(ii) CATEGORIES OF ITEMS AND*
8 *SERVICES.—For purposes of clause*
9 *(i), there shall be the following*
10 *three categories of items and serv-*
11 *ices for benefits, whether medical*
12 *and surgical benefits or mental*
13 *health and substance-related dis-*
14 *order benefits, and all medical*
15 *and surgical benefits and all men-*
16 *tal health and substance-related*
17 *disorder benefits shall be classi-*
18 *fied into one of the following cat-*
19 *egories:*

20 *“(I) EMERGENCY.—Items*
21 *and services, whether fur-*
22 *nished on an inpatient or out-*
23 *patient basis, required for the*
24 *treatment of an emergency*
25 *medical condition (including*

1 *an emergency condition relat-*
2 *ing to mental health or sub-*
3 *stance-related disorders).*

4 **“(II) INPATIENT.—***Items*
5 *and services not described in*
6 *subclause (I) furnished on an*
7 *inpatient basis.*

8 **“(III) OUTPATIENT.—***Items*
9 *and services not described in*
10 *subclause (I) furnished on an*
11 *outpatient basis.”.*

12 **(e) REVISION OF INCREASED COST EXEMP-**
13 **TION.—***Paragraph (2) of subsection (c) of such*
14 *section is amended to read as follows:*

15 **“(2) INCREASED COST EXEMPTION.—**

16 **“(A) IN GENERAL.—***With respect to*
17 *a group health plan (or health insur-*
18 *ance coverage offered in connection*
19 *with such a plan), if the application*
20 *of this section to such plan (or cov-*
21 *erage) results in an increase for the*
22 *plan year involved of the actual total*
23 *costs of coverage with respect to med-*
24 *ical and surgical benefits and mental*
25 *health and substance-related disorder*

1 *benefits under the plan (as deter-*
2 *mined and certified under subpara-*
3 *graph (C)) by an amount that exceeds*
4 *the applicable percentage described*
5 *in subparagraph (B) of the actual*
6 *total plan costs, the provisions of this*
7 *section shall not apply to such plan*
8 *(or coverage) during the following*
9 *plan year, and such exemption shall*
10 *apply to the plan (or coverage) for 1*
11 *plan year.*

12 **“(B) APPLICABLE PERCENTAGE.—**
13 *With respect to a plan (or coverage),*
14 *the applicable percentage described*
15 *in this paragraph shall be—*

16 *“(i) 2 percent in the case of the*
17 *first plan year to which this para-*
18 *graph applies; and*

19 *“(ii) 1 percent in the case of*
20 *each subsequent plan year.*

21 **“(C) DETERMINATIONS BY ACTU-**
22 **ARIES.—***Determinations as to increases*
23 *in actual costs under a plan (or cov-*
24 *erage) for purposes of this subsection*
25 *shall be made by a qualified and li-*

1 *censed actuary who is a member in*
2 *good standing of the American Acad-*
3 *emy of Actuaries. Such determinations*
4 *shall be certified by the actuary and*
5 *be made available to the general pub-*
6 *lic.*

7 *“(D) 6-MONTH DETERMINATIONS.—If*
8 *a group health plan (or a health in-*
9 *surance issuer offering coverage in*
10 *connection with such a plan) seeks an*
11 *exemption under this paragraph, de-*
12 *terminations under subparagraph (A)*
13 *shall be made after such plan (or cov-*
14 *erage) has complied with this section*
15 *for the first 6 months of the plan year*
16 *involved.*

17 *“(E) NOTIFICATION.—A group*
18 *health plan under this part shall com-*
19 *ply with the notice requirement under*
20 *section 712(c)(2)(E) of the Employee*
21 *Retirement Income Security Act of*
22 *1974 with respect to a modification of*
23 *mental health and substance-related*
24 *disorder benefits as permitted under*

1 *this paragraph as if such section ap-*
2 *plied to such plan.”.*

3 **(f) CHANGE IN EXCLUSION FOR SMALLEST EM-**
4 **PLOYERS.—***Subsection (c)(1)(B) of such section*
5 *is amended—*

6 **(1) by inserting “(or 1 in the case of an**
7 **employer residing in a State that permits**
8 **small groups to include a single indi-**
9 **vidual)” after “at least 2” the first place it**
10 **appears; and**

11 **(2) by striking “and who employs at**
12 **least 2 employees on the first day of the**
13 **plan year”.**

14 **(g) ELIMINATION OF SUNSET PROVISION.—**
15 *Such section is amended by striking out sub-*
16 *section (f).*

17 **(h) CLARIFICATION REGARDING PREEMP-**
18 **TION.—***Such section is further amended by in-*
19 *serting after subsection (e) the following new*
20 *subsection:*

21 **“(f) PREEMPTION, RELATION TO STATE**
22 **LAWS.—**

23 **“(1) IN GENERAL.—***Nothing in this sec-*
24 *tion shall be construed to preempt any*
25 *State law that provides greater consumer*

1 *protections, benefits, methods of access to*
2 *benefits, rights or remedies that are great-*
3 *er than the protections, benefits, methods*
4 *of access to benefits, rights or remedies*
5 *provided under this section.*

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

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

13 *“SEC. 2705. EQUITY IN MENTAL HEALTH AND SUBSTANCE-*
14 *RELATED DISORDER BENEFITS.”.*

15 *(j) EFFECTIVE DATE.—*

16 *(1) IN GENERAL.—Except as otherwise*
17 *provided in this subsection, the amend-*
18 *ments made by this section shall apply*
19 *with respect to plan years beginning on or*
20 *after January 1, 2008.*

21 *(2) ELIMINATION OF SUNSET.—The*
22 *amendment made by subsection (g) shall*
23 *apply to benefits for services furnished*
24 *after December 31, 2007.*

1 **(3) SPECIAL RULE FOR COLLECTIVE BAR-**
2 **GAINING AGREEMENTS.—In the case of a**
3 **group health plan maintained pursuant**
4 **to one or more collective bargaining**
5 **agreements between employee representa-**
6 **tives and one or more employers ratified**
7 **before the date of the enactment of this**
8 **Act, the amendments made by this section**
9 **shall not apply to plan years beginning**
10 **before the later of—**

11 **(A) the date on which the last of**
12 **the collective bargaining agreements**
13 **relating to the plan terminates (deter-**
14 **mined without regard to any exten-**
15 **sion thereof agreed to after the date of**
16 **the enactment of this Act), or**

17 **(B) January 1, 2010.**

18 **For purposes of subparagraph (A), any**
19 **plan amendment made pursuant to a col-**
20 **lective bargaining agreement relating to**
21 **the plan which amends the plan solely to**
22 **conform to any requirement imposed**
23 **under an amendment under this section**
24 **shall not be treated as a termination of**
25 **such collective bargaining agreement.**

1 ***(k) CONSTRUCTION REGARDING USE OF MED-***
 2 ***ICAL MANAGEMENT TOOLS.—Nothing in this Act***
 3 ***shall be construed to prohibit a group health***
 4 ***plan or health insurance issuer from using***
 5 ***medical management tools as long as such***
 6 ***management tools are based on valid medical***
 7 ***evidence and are relevant to the patient whose***
 8 ***medical treatment is under review.***

9 ***SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE***
 10 ***OF 1986.***

11 ***(a) EXTENSION OF PARITY TO TREATMENT***
 12 ***LIMITS AND BENEFICIARY FINANCIAL REQUIRE-***
 13 ***MENTS.—Section 9812 of the Internal Revenue***
 14 ***Code of 1986 is amended—***

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

17 ***“(3) TREATMENT LIMITS.—***

18 ***“(A) NO TREATMENT LIMIT.—If the***
 19 ***plan does not include a treatment***
 20 ***limit (as defined in subparagraph***
 21 ***(D)) on substantially all medical and***
 22 ***surgical benefits in any category of***
 23 ***items or services (specified in sub-***
 24 ***paragraph (C)), the plan may not im-***
 25 ***pose any treatment limit on mental***

1 *health and substance-related disorder*
2 *benefits that are classified in the*
3 *same category of items or services.*

4 *“(B) TREATMENT LIMIT.—If the plan*
5 *includes a treatment limit on substan-*
6 *tially all medical and surgical bene-*
7 *fits in any category of items or serv-*
8 *ices, the plan may not impose such a*
9 *treatment limit on mental health and*
10 *substance-related disorder benefits for*
11 *items and services within such cat-*
12 *egory that are more restrictive than*
13 *the predominant treatment limit that*
14 *is applicable to medical and surgical*
15 *benefits for items and services within*
16 *such category.*

17 *“(C) CATEGORIES OF ITEMS AND*
18 *SERVICES FOR APPLICATION OF TREAT-*
19 *MENT LIMITS AND BENEFICIARY FINAN-*
20 *CIAL REQUIREMENTS.—For purposes of*
21 *this paragraph and paragraph (4),*
22 *there shall be the following four cat-*
23 *egories of items and services for bene-*
24 *fits, whether medical and surgical*
25 *benefits or mental health and sub-*

1 *stance-related disorder benefits, and*
2 *all medical and surgical benefits and*
3 *all mental health and substance re-*
4 *lated benefits shall be classified into*
5 *one of the following categories:*

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

12 “(ii) *INPATIENT, OUT-OF-NET-*
13 *WORK.—Items and services fur-*
14 *nished on an inpatient basis and*
15 *outside any network of providers*
16 *established or recognized under*
17 *such plan or coverage.*

18 “(iii) *OUTPATIENT, IN-NET-*
19 *WORK.—Items and services fur-*
20 *nished on an outpatient basis and*
21 *within a network of providers es-*
22 *tablished or recognized under*
23 *such plan or coverage.*

24 “(iv) *OUTPATIENT, OUT-OF-NET-*
25 *WORK.—Items and services fur-*

1 *nished on an outpatient basis and*
2 *outside any network of providers*
3 *established or recognized under*
4 *such plan or coverage.*

5 **“(D) TREATMENT LIMIT DEFINED.—**
6 *For purposes of this paragraph, the*
7 *term ‘treatment limit’ means, with re-*
8 *spect to a plan, limitation on the fre-*
9 *quency of treatment, number of visits*
10 *or days of coverage, or other similar*
11 *limit on the duration or scope of treat-*
12 *ment under the plan.*

13 **“(E) PREDOMINANCE.—***For purposes*
14 *of this subsection, a treatment limit or*
15 *financial requirement with respect to*
16 *a category of items and services is*
17 *considered to be predominant if it is*
18 *the most common or frequent of such*
19 *type of limit or requirement with re-*
20 *spect to such category of items and*
21 *services.*

22 **“(4) BENEFICIARY FINANCIAL REQUIRE-**
23 **MENTS.—**

24 **“(A) NO BENEFICIARY FINANCIAL RE-**
25 **QUIREMENT.—***If the plan does not in-*

1 *clude a beneficiary financial require-*
2 *ment (as defined in subparagraph*
3 *(C)) on substantially all medical and*
4 *surgical benefits within a category of*
5 *items and services (specified in para-*
6 *graph (3)(C)), the plan may not im-*
7 *pose such a beneficiary financial re-*
8 *quirement on mental health and sub-*
9 *stance-related disorder benefits for*
10 *items and services within such cat-*
11 *egory.*

12 **“(B) BENEFICIARY FINANCIAL RE-**
13 **QUIREMENT.—**

14 **“(i) TREATMENT OF**
15 **DEDUCTIBLES, OUT-OF-POCKET LIM-**
16 **ITS, AND SIMILAR FINANCIAL RE-**
17 **QUIREMENTS.—***If the plan or cov-*
18 *erage includes a deductible, a lim-*
19 *itation on out-of-pocket expenses,*
20 *or similar beneficiary financial*
21 *requirement that does not apply*
22 *separately to individual items and*
23 *services on substantially all med-*
24 *ical and surgical benefits within a*
25 *category of items and services, the*

1 *plan or coverage shall apply such*
2 *requirement (or, if there is more*
3 *than one such requirement for*
4 *such category of items and serv-*
5 *ices, the predominant requirement*
6 *for such category) both to medical*
7 *and surgical benefits within such*
8 *category and to mental health and*
9 *substance-related disorder bene-*
10 *fits within such category and*
11 *shall not distinguish in the appli-*
12 *cation of such requirement be-*
13 *tween such medical and surgical*
14 *benefits and such mental health*
15 *and substance-related disorder*
16 *benefits.*

17 *“(ii) OTHER FINANCIAL REQUIRE-*
18 *MENTS.—If the plan includes a*
19 *beneficiary financial requirement*
20 *not described in clause (i) on sub-*
21 *stantially all medical and sur-*
22 *gical benefits within a category of*
23 *items and services, the plan may*
24 *not impose such financial require-*
25 *ment on mental health and sub-*

1 *stance-related disorder benefits*
2 *for items and services within such*
3 *category in a way that is more*
4 *costly to the participant or bene-*
5 *ficiary than the predominant ben-*
6 *eficiary financial requirement ap-*
7 *plicable to medical and surgical*
8 *benefits for items and services*
9 *within such category.*

10 **“(C) BENEFICIARY FINANCIAL RE-**
11 **QUIREMENT DEFINED.—***For purposes of*
12 *this paragraph, the term ‘beneficiary*
13 *financial requirement’ includes, with*
14 *respect to a plan, any deductible, coin-*
15 *surance, co-payment, other cost shar-*
16 *ing, and limitation on the total*
17 *amount that may be paid by a partici-*
18 *pant or beneficiary with respect to*
19 *benefits under the plan, but does not*
20 *include the application of any aggre-*
21 *gate lifetime limit or annual limit.”;*
22 *and*

23 **(2) in subsection (b)—**

24 **(A) by striking “construed—” and**
25 **all that follows through “(1) as re-**

1 *quiring” and inserting “construed as*
2 *requiring”;*

3 *(B) by striking “; or” and inserting*
4 *a period; and*

5 *(C) by striking paragraph (2).*

6 ***(b) EXPANSION TO SUBSTANCE-RELATED DIS-***
7 ***ORDER BENEFITS AND REVISION OF DEFINITION.—***
8 ***Such section is further amended—***

9 *(1) by striking “mental health bene-*
10 *fits” and inserting “mental health and*
11 *substance-related disorder benefits” each*
12 *place it appears; and*

13 *(2) in paragraph (4) of subsection*
14 *(e)—*

15 *(A) by striking “MENTAL HEALTH*
16 *BENEFITS” in the heading and insert-*
17 *ing “MENTAL HEALTH AND SUBSTANCE-*
18 *RELATED DISORDER BENEFITS”;*

19 *(B) by striking “benefits with re-*
20 *spect to mental health services” and*
21 *inserting “benefits with respect to*
22 *services for mental health conditions*
23 *or substance-related disorders”; and*

24 *(C) by striking “, but does not in-*
25 *clude benefits with respect to treat-*

1 *ment of substances abuse or chemical*
2 *dependency”.*

3 **(c) AVAILABILITY OF PLAN INFORMATION**
4 **ABOUT CRITERIA FOR MEDICAL NECESSITY.—Sub-**
5 **section (a) of such section, as amended by sub-**
6 **section (a)(1), is further amended by adding at**
7 **the end the following new paragraph:**

8 **“(5) AVAILABILITY OF PLAN INFORMA-**
9 **TION.—The criteria for medical necessity**
10 **determinations made under the plan with**
11 **respect to mental health and substance-**
12 **related disorder benefits shall be made**
13 **available by the plan administrator to**
14 **any current or potential participant, ben-**
15 **eficiary, or contracting provider upon re-**
16 **quest. The reason for any denial under**
17 **the plan of reimbursement or payment for**
18 **services with respect to mental health and**
19 **substance-related disorder benefits in the**
20 **case of any participant or beneficiary**
21 **shall, upon request, be made available by**
22 **the plan administrator to the participant**
23 **or beneficiary.”.**

24 **(d) MINIMUM BENEFIT REQUIREMENTS.—Sub-**
25 **section (a) of such section is further amended**

1 *by adding at the end the following new para-*
2 *graph:*

3 “(6) *MINIMUM SCOPE OF COVERAGE AND*
4 *EQUITY IN OUT-OF-NETWORK BENEFITS.—*

5 “(A) *MINIMUM SCOPE OF MENTAL*
6 *HEALTH AND SUBSTANCE-RELATED DIS-*
7 *ORDER BENEFITS.—In the case of a*
8 *group health plan (or health insur-*
9 *ance coverage offered in connection*
10 *with such a plan) that provides any*
11 *mental health and substance-related*
12 *disorder benefits, the plan or coverage*
13 *shall include benefits for any mental*
14 *health condition or substance-related*
15 *disorder for which benefits are pro-*
16 *vided under the benefit plan option of-*
17 *fered under chapter 89 of title 5,*
18 *United States Code, with the highest*
19 *average enrollment as of the begin-*
20 *ning of the most recent year beginning*
21 *on or before the beginning of the plan*
22 *year involved.*

23 “(B) *EQUITY IN COVERAGE OF OUT-*
24 *OF-NETWORK BENEFITS.—*

1 “(i) *IN GENERAL.—In the case of*
2 *a plan that provides both medical*
3 *and surgical benefits and mental*
4 *health and substance-related dis-*
5 *order benefits, if medical and sur-*
6 *gical benefits are provided for*
7 *substantially all items and serv-*
8 *ices in a category specified in*
9 *clause (ii) furnished outside any*
10 *network of providers established*
11 *or recognized under such plan or*
12 *coverage, the mental health and*
13 *substance-related disorder bene-*
14 *fits shall also be provided for*
15 *items and services in such cat-*
16 *egory furnished outside any net-*
17 *work of providers established or*
18 *recognized under such plan in ac-*
19 *cordance with the requirements of*
20 *this section.*

21 “(ii) *CATEGORIES OF ITEMS AND*
22 *SERVICES.—For purposes of clause*
23 *(i), there shall be the following*
24 *three categories of items and serv-*
25 *ices for benefits, whether medical*

1 *and surgical benefits or mental*
2 *health and substance-related dis-*
3 *order benefits, and all medical*
4 *and surgical benefits and all men-*
5 *tal health and substance-related*
6 *disorder benefits shall be classi-*
7 *fied into one of the following cat-*
8 *egories:*

9 “(I) **EMERGENCY.**—*Items*
10 *and services, whether fur-*
11 *nished on an inpatient or out-*
12 *patient basis, required for the*
13 *treatment of an emergency*
14 *medical condition (including*
15 *an emergency condition relat-*
16 *ing to mental health and sub-*
17 *stance-related disorders).*

18 “(II) **INPATIENT.**—*Items*
19 *and services not described in*
20 *subclause (I) furnished on an*
21 *inpatient basis.*

22 “(III) **OUTPATIENT.**—*Items*
23 *and services not described in*
24 *subclause (I) furnished on an*
25 *outpatient basis.”.*

1 ***(e) REVISION OF INCREASED COST EXEMP-***
2 ***TION.—Paragraph (2) of subsection (c) of such***
3 ***section is amended to read as follows:***

4 ***“(2) INCREASED COST EXEMPTION.—***

5 ***“(A) IN GENERAL.—With respect to***
6 ***a group health plan, if the applica-***
7 ***tion of this section to such plan re-***
8 ***sults in an increase for the plan year***
9 ***involved of the actual total costs of***
10 ***coverage with respect to medical and***
11 ***surgical benefits and mental health***
12 ***and substance-related disorder bene-***
13 ***fits under the plan (as determined***
14 ***and certified under subparagraph***
15 ***(C)) by an amount that exceeds the ap-***
16 ***plicable percentage described in sub-***
17 ***paragraph (B) of the actual total plan***
18 ***costs, the provisions of this section***
19 ***shall not apply to such plan during***
20 ***the following plan year, and such ex-***
21 ***emption shall apply to the plan for 1***
22 ***plan year.***

23 ***“(B) APPLICABLE PERCENTAGE.—***
24 ***With respect to a plan, the applicable***

1 *percentage described in this para-*
2 *graph shall be—*

3 *“(i) 2 percent in the case of the*
4 *first plan year which begins after*
5 *the date of the enactment of the*
6 *Paul Wellstone Mental Health and*
7 *Addiction Equity Act of 2007; and*

8 *“(ii) 1 percent in the case of*
9 *each subsequent plan year.*

10 *“(C) DETERMINATIONS BY ACTU-*
11 *ARIES.—Determinations as to increases*
12 *in actual costs under a plan for pur-*
13 *poses of this subsection shall be made*
14 *by a qualified actuary who is a mem-*
15 *ber in good standing of the American*
16 *Academy of Actuaries. Such deter-*
17 *minations shall be certified by the ac-*
18 *tuary and be made available to the*
19 *general public.*

20 *“(D) 6-MONTH DETERMINATIONS.—If*
21 *a group health plan seeks an exemp-*
22 *tion under this paragraph, determina-*
23 *tions under subparagraph (A) shall be*
24 *made after such plan has complied*

1 *with this section for the first 6 months*
2 *of the plan year involved.”.*

3 ***(f) CHANGE IN EXCLUSION FOR SMALLEST EM-***
4 ***PLOYERS.—Subsection (c)(1) of such section is***
5 ***amended to read as follows:***

6 ***“(1) SMALL EMPLOYER EXEMPTION.—***

7 ***“(A) IN GENERAL.—This section***
8 ***shall not apply to any group health***
9 ***plan for any plan year of a small em-***
10 ***ployer.***

11 ***“(B) SMALL EMPLOYER.—For pur-***
12 ***poses of subparagraph (A), the term***
13 ***‘small employer’ means, with respect***
14 ***to a calendar year and a plan year,***
15 ***an employer who employed an average***
16 ***of at least 2 (or 1 in the case of an em-***
17 ***ployer residing in a State that permits***
18 ***small groups to include a single indi-***
19 ***vidual) but not more than 50 employ-***
20 ***ees on business days during the pre-***
21 ***ceding calendar year. For purposes of***
22 ***the preceding sentence, all persons***
23 ***treated as a single employer under***
24 ***subsection (b), (c), (m), or (o) of sec-***
25 ***tion 414 shall be treated as 1 employer***

1 *and rules similar to rules of subpara-*
2 *graphs (B) and (C) of section*
3 *4980D(d)(2) shall apply.”.*

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

7 **(h) CONFORMING AMENDMENTS TO HEAD-**
8 **ING.—**

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

11 *“SEC. 9812. Equity in mental health and substance-related dis-*
12 *order benefits.”.*

13 **(2) CLERICAL AMENDMENT.—***The table*
14 *of sections for subchapter B of chapter*
15 *100 of the Internal Revenue Code of 1986*
16 *is amended by striking the item relating*
17 *to section 9812 and inserting the following*
18 *new item:*

“Sec. 9812. Equity in mental health and substance-related dis-
 order benefits.”.

19 **(i) EFFECTIVE DATE.—***The amendments*
20 *made by this section shall apply with respect*
21 *to plan years beginning on or after January 1,*
22 *2008.*

1 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDIES**
2 **AND REPORTS.**

3 **(a) IMPLEMENTATION OF ACT.—**

4 **(1) STUDY.—***The Comptroller General*
5 *of the United States shall conduct a study*
6 *that evaluates the effect of the implemen-*
7 *tation of the amendments made by this*
8 *Act on—*

9 **(A)** *the cost of health insurance*
10 *coverage;*

11 **(B)** *access to health insurance cov-*
12 *erage (including the availability of in-*
13 *network providers);*

14 **(C)** *the quality of health care;*

15 **(D)** *Medicare, Medicaid, and State*
16 *and local mental health and sub-*
17 *stance abuse treatment spending;*

18 **(E)** *the number of individuals*
19 *with private insurance who received*
20 *publicly funded health care for men-*
21 *tal health and substance-related dis-*
22 *orders;*

23 **(F)** *spending on public services,*
24 *such as the criminal justice system,*
25 *special education, and income assist-*
26 *ance programs;*

1 ***(G) the use of medical manage-***
2 ***ment of mental health and substance-***
3 ***related disorder benefits and medical***
4 ***necessity determinations by group***
5 ***health plans (and health insurance***
6 ***issuers offering health insurance cov-***
7 ***erage in connection with such plans)***
8 ***and timely access by participants and***
9 ***beneficiaries to clinically-indicated***
10 ***care for mental health and substance-***
11 ***use disorders; and***

12 ***(H) other matters as determined***
13 ***appropriate by the Comptroller Gen-***
14 ***eral.***

15 ***(2) REPORT.—Not later than 2 years***
16 ***after the date of enactment of this Act, the***
17 ***Comptroller General shall prepare and***
18 ***submit to the appropriate committees of***
19 ***the Congress a report containing the re-***
20 ***sults of the study conducted under para-***
21 ***graph (1).***

22 ***(b) BIENNIAL REPORT ON OBSTACLES IN OB-***
23 ***TAINING COVERAGE.—Every two years, the***
24 ***Comptroller General shall submit to each***
25 ***House of the Congress a report on obstacles***

1 *that individuals face in obtaining mental*
2 *health and substance-related disorder care*
3 *under their health plans.*

4 (c) *UNIFORM PATIENT PLACEMENT CRI-*
5 *TERIA.—Not later than 18 months after the*
6 *date of the enactment of this Act, the Comp-*
7 *troller General shall submit to each House of*
8 *the Congress a report on availability of uni-*
9 *form patient placement criteria for mental*
10 *health and substance-related disorders that*
11 *could be used by group health plans and*
12 *health insurance issuers to guide determina-*
13 *tions of medical necessity and the extent to*
14 *which health plans utilize such criteria. If*
15 *such criteria do not exist, the report shall in-*
16 *clude recommendations on a process for devel-*
17 *oping such criteria.*

Union Calendar No. 328

110TH CONGRESS
2^D SESSION

H. R. 1424

[Report No. 110-374, Parts I, II, and III]

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.

MARCH 4, 2008

Reported from the Committee on Energy and Commerce with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed