

115TH CONGRESS
2D SESSION

H. R. 4778

To strengthen parity in mental health and substance use disorder benefits.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2018

Mr. KENNEDY (for himself, Ms. MATSUI, Mr. TONKO, Mr. BEN RAY LUJÁN of New Mexico, Mr. ENGEL, Ms. SCHAKOWSKY, Mrs. DINGELL, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, 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

A BILL

To strengthen parity in mental health and substance use disorder benefits.

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.**

4 This Act may be cited as the “Behavioral Health Cov-
5 erage Transparency Act of 2018”.

1 **SEC. 2. STRENGTHENING PARITY IN MENTAL HEALTH AND**
2 **SUBSTANCE USE DISORDER BENEFITS.**

3 (a) PUBLIC HEALTH SERVICE ACT.—Section
4 2726(a) of the Public Health Service Act (42 U.S.C.
5 300gg-26(a)) is amended by adding at the end the fol-
6 lowing new paragraph:

7 “(8) DISCLOSURE AND ENFORCEMENT RE-
8 QUIREMENTS.—

9 “(A) DISCLOSURE REQUIREMENTS.—

10 “(i) REGULATIONS.—Not later than 6
11 months after the date of enactment of this
12 paragraph, the Secretary, in cooperation
13 with the Secretaries of Labor and the
14 Treasury, shall issue regulations for car-
15 rying out this section, including an expla-
16 nation of documents that group health
17 plans and health insurance issuers offering
18 group or individual health insurance cov-
19 erage shall disclose in accordance with
20 clause (ii), the process governing the dis-
21 closure of such documents, and analyses
22 that such plans and issuers shall conduct
23 in order to demonstrate compliance with
24 this section.

25 “(ii) DISCLOSURE REQUIREMENTS.—
26 The documents required to be disclosed by

1 a group health plan or a health insurance
2 issuer offering group or individual health
3 insurance under clause (i) shall include an
4 annual report that details the specific anal-
5 yses performed to ensure compliance of
6 such plan or issuer with this section, in-
7 cluding any regulation promulgated pursu-
8 ant to this section. At a minimum, with re-
9 spect to the application of nonquantitative
10 treatment limitations (in this paragraph
11 referred to as ‘NQTLs’) to benefits under
12 the plan or coverage, such report shall—

13 “(I) identify the specific factors
14 the plan or issuer used in performing
15 its NQTLs analysis;

16 “(II) identify and define the spe-
17 cific evidentiary standards relied on to
18 evaluate such factors;

19 “(III) describe how the evi-
20 dentiary standards are applied to each
21 service category for mental health
22 benefits, substance use disorder bene-
23 fits, medical benefits, and surgical
24 benefits;

1 “(IV) disclose the results of the
2 analyses of the specific evidentiary
3 standards in each service category;
4 and

5 “(V) disclose the specific findings
6 of the plan or issuer in each service
7 category and the conclusions reached
8 with respect to whether the processes,
9 strategies, evidentiary standards, or
10 other factors used in applying the
11 NQTLs to mental health or substance
12 use disorder benefits are comparable
13 to, and applied no more stringently
14 than, the processes, strategies, evi-
15 dentiary standards, or other factors
16 used in applying the NQTLs to med-
17 ical and surgical benefits in the same
18 classification.

19 “(iii) GUIDANCE.—Not later than 6
20 months after the date of enactment of this
21 paragraph, the Secretary, in cooperation
22 with the Secretaries of Labor and the
23 Treasury, shall issue guidance to group
24 health plans and health insurance issuers
25 offering group or individual health insur-

1 ance coverage on how to satisfy the re-
2 quirements of this section, with respect to
3 making information available to current
4 and potential participants and bene-
5 ficiaries. Such information shall include—

6 “(I) certificate of coverage docu-
7 ments and instruments under which
8 the plan or coverage involved is ad-
9 ministered and operated that specify,
10 include, or refer to procedures, for-
11 mulas, and methodologies applied to
12 determine a participant’s or bene-
13 ficiary’s benefit under the plan or cov-
14 erage, regardless of whether such in-
15 formation is contained in a document
16 designated as the ‘plan document’;
17 and

18 “(II) a disclosure of how the plan
19 or issuer involved has provided that
20 processes, strategies, evidentiary
21 standards, and other factors used in
22 applying the NQTLs to mental health
23 or substance use disorder benefits are
24 comparable to, and applied no more
25 stringently than, the processes, strate-

gies, evidentiary standards, or other factors used in applying the NQTLs to medical and surgical benefits in the same classification.

“(iv) DEFINITIONS.—In this paragraph and paragraph (7), the terms ‘non-quantitative treatment limitations’, ‘comparable to’, and ‘applied no more stringently than’ have the meanings given such terms in sections 146.136 and 147.160 of title 45, Code of Federal Regulations (or any successor regulation).

“(B) ENFORCEMENT.—

“(i) PROCESS FOR COMPLAINTS.—Not later than 6 months after the date of enactment of this paragraph, the Secretary, in cooperation with the Secretaries of Labor and the Treasury, shall, with respect to group health plans and health insurance issuers offering group or individual health insurance coverage, issue guidance to clarify the process and timeline for current and potential participants and beneficiaries (and authorized representatives and health care providers

1 of such participants and beneficiaries) with
2 respect to such plans and coverage to file
3 formal complaints of such plans or issuers
4 being in violation of this section, including
5 guidance, by plan type, on the relevant
6 State, regional, and national offices with
7 which such complaints should be filed.

8 “(ii) AUDITS.—

9 “(I) RANDOMIZED AUDITS.—Be-
10 ginning 1 year after the date of enact-
11 ment of this paragraph, the Secretary,
12 in cooperation with the Secretaries of
13 Labor and the Treasury, as applica-
14 ble, shall conduct randomized audits
15 of group health plans and health in-
16 surance issuers offering group or indi-
17 vidual health insurance coverage to
18 determine compliance with this sec-
19 tion. Such audits shall be conducted
20 on no fewer than 12 plans or cov-
21 erages per plan year.

22 “(II) ADDITIONAL AUDITS.—Be-
23 ginning 1 year after the date of enact-
24 ment of this paragraph, in the case of
25 a group health plan or health insur-

1 ance issuer offering group or indi-
2 vidual health insurance coverage with
3 respect to which any claim has been
4 filed during a plan year, the Sec-
5 retary, in cooperation with the Secre-
6 taries of Labor and the Treasury, as
7 applicable, may audit the books and
8 records of such plan or issuer to de-
9 termine compliance with this section.

10 “(iii) DENIAL RATES.—The Secretary,
11 in cooperation with the Secretaries of
12 Labor and the Treasury, shall collect infor-
13 mation on the rates of and reasons for de-
14 nial by group health plans and health in-
15 surance issuers offering group or indi-
16 vidual health insurance coverage of claims
17 for outpatient and inpatient mental health
18 and substance use disorder benefits com-
19 pared to the rates of and reasons for de-
20 nial of claims for medical and surgical ben-
21 efits. For the first plan year that begins on
22 or after the date that is 2 years after the
23 date of enactment of this paragraph, and
24 each subsequent plan year, the Secretary,
25 in such cooperation, shall submit to the

Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the information collected under the previous sentence with respect to the previous plan year.

“(C) EFFECTIVE DATE.—Any requirements of group health plans and health insurance issuers offering group or individual health insurance coverage that are included in the regulations issued under subparagraph (A)(i), including the requirement described in subparagraph (A)(ii) to disclose documents, shall have an effective date of 1 year after the date of enactment of this paragraph.”.

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 712(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(a)) is amended by adding at the end the following new paragraph:

“(6) DISCLOSURE AND ENFORCEMENT REQUIREMENTS.—

“(A) DISCLOSURE REQUIREMENTS.—

“(i) REGULATIONS.—Not later than 6 months after the date of enactment of this

1 paragraph, the Secretary, in cooperation
2 with the Secretaries of Health and Human
3 Services and the Treasury, shall issue reg-
4 ulations for carrying out this section, in-
5 cluding an explanation of documents that a
6 group health plan (or health insurance
7 issuer offering health insurance coverage in
8 connection with such a plan) shall disclose
9 in accordance with clause (ii), the process
10 governing the disclosure of such docu-
11 ments, and analyses that such plans and
12 issuers shall conduct in order to dem-
13 onstrate compliance with this section.

14 “(ii) DISCLOSURE REQUIREMENTS.—

15 The documents required to be disclosed by
16 a group health plan (or a health insurance
17 issuer offering health insurance coverage in
18 connection with such a plan) under clause
19 (i) shall include an annual report that de-
20 tails the specific analyses performed to en-
21 sure compliance of such plan or issuer with
22 this section, including any regulation pro-
23 mulgated pursuant to this section. At a
24 minimum, with respect to the application
25 of nonquantitative treatment limitations

(in this paragraph referred to as ‘NQTLs’) to benefits under the plan or coverage, such report shall—

“(I) identify the specific factors the plan or issuer used in performing its NQTLs analysis;

“(II) identify and define the specific evidentiary standards relied on to evaluate such factors;

“(III) describe how the evidentiary standards are applied to each service category for mental health benefits, substance use disorder benefits, medical benefits, and surgical benefits;

“(IV) disclose the results of the analyses of the specific evidentiary standards in each service category; and

“(V) disclose the specific findings of the plan or issuer in each service category and the conclusions reached with respect to whether the processes, strategies, evidentiary standards, or other factors used in applying the

1 NQTLs to mental health or substance
2 use disorder benefits are comparable
3 to, and applied no more stringently
4 than, the processes, strategies, evi-
5 dentiary standards, or other factors
6 used in applying the NQTLs to med-
7 ical and surgical benefits in the same
8 classification.

9 “(iii) GUIDANCE.—Not later than 6
10 months after the date of enactment of this
11 paragraph, the Secretary, in cooperation
12 with the Secretaries of Health and Human
13 Services and the Treasury, shall issue
14 guidance to group health plans (and health
15 insurance issuers offering health insurance
16 coverage in connection with such plans) on
17 how to satisfy the requirements of this sec-
18 tion, with respect to making information
19 available to current and potential partici-
20 pants and beneficiaries. Such information
21 shall include—

22 “(I) certificate of coverage docu-
23 ments and instruments under which
24 the plan or coverage involved is ad-
25 ministered and operated that specify,

1 include, or refer to procedures, for-
2 mulas, and methodologies applied to
3 determine a participant's or bene-
4 ficiary's benefit under the plan or cov-
5 erage, regardless of whether such in-
6 formation is contained in a document
7 designated as the 'plan document';
8 and

9 “(II) a disclosure of how the plan
10 or issuer involved has provided that
11 processes, strategies, evidentiary
12 standards, and other factors used in
13 applying the NQTLs to mental health
14 or substance use disorder benefits are
15 comparable to, and applied no more
16 stringently than, the processes, strate-
17 gies, evidentiary standards, or other
18 factors used in applying the NQTLs
19 to medical and surgical benefits in the
20 same classification.

21 “(iv) DEFINITIONS.—In this para-
22 graph, the terms ‘nonquantitative treat-
23 ment limitations’, ‘comparable to’, and ‘ap-
24 plied no more stringently than’ have the
25 meanings given such terms in sections

1 146.136 and 147.160 of title 45, Code of
2 Federal Regulations (or any successor reg-
3 ulation).

4 “(B) ENFORCEMENT.—

5 “(i) PROCESS FOR COMPLAINTS.—Not
6 later than 6 months after the date of en-
7 actment of this paragraph, the Secretary,
8 in cooperation with the Secretaries of
9 Health and Human Services and the
10 Treasury, shall, with respect to group
11 health plans (and health insurance issuers
12 offering health insurance coverage in con-
13 nection with such plans), issue guidance to
14 clarify the process and timeline for current
15 and potential participants and beneficiaries
16 (and authorized representatives and health
17 care providers of such participants and
18 beneficiaries) with respect to such plans
19 and coverage to file formal complaints of
20 such plans or issuers being in violation of
21 this section, including guidance, by plan
22 type, on the relevant State, regional, and
23 national offices with which such complaints
24 should be filed.

25 “(ii) AUDITS.—

1 “(I) RANDOMIZED AUDITS.—Be-
2 ginning 1 year after the date of enact-
3 ment of this paragraph, the Secretary,
4 in cooperation with the Secretaries of
5 Health and Human Services and the
6 Treasury, as applicable, shall conduct
7 randomized audits of group health
8 plans (and health insurance issuers
9 offering health insurance coverage in
10 connection with such plans) to deter-
11 mine compliance with this section.
12 Such audits shall be conducted on no
13 fewer than 12 plans or coverages per
14 plan year.

15 “(II) ADDITIONAL AUDITS.—Be-
16 ginning 1 year after the date of enact-
17 ment of this paragraph, in the case of
18 a group health plan (or health insur-
19 ance issuer offering health insurance
20 coverage in connection with such a
21 plan) with respect to which any claim
22 has been filed during a plan year, the
23 Secretary, in cooperation with the
24 Secretaries of Health and Human
25 Services and the Treasury, as applica-

1 ble, may audit the books and records
2 of such plan or issuer to determine
3 compliance with this section.

4 “(iii) DENIAL RATES.—The Secretary,
5 in cooperation with the Secretaries of
6 Health and Human Services and the
7 Treasury, shall collect information on the
8 rates of and reasons for denial by group
9 health plans (and health insurance issuers
10 offering health insurance coverage in con-
11 nection with such plans) of claims for out-
12 patient and inpatient mental health and
13 substance use disorder benefits compared
14 to the rates of and reasons for denial of
15 claims for medical and surgical benefits.
16 For the first plan year that begins on or
17 after the date that is 2 years after the date
18 of enactment of this paragraph, and each
19 subsequent plan year, the Secretary, in
20 such cooperation, shall submit to the Com-
21 mittee on Energy and Commerce of the
22 House of Representatives and the Com-
23 mittee on Health, Education, Labor, and
24 Pensions of the Senate the information col-

1 lected under the previous sentence with re-
2 spect to the previous plan year.

3 “(C) EFFECTIVE DATE.—Any require-
4 ments of group health plans (or health insur-
5 ance issuers offering health insurance coverage
6 in connection with such plans) that are included
7 in the regulations issued under subparagraph
8 (A)(i), including the requirement described in
9 subparagraph (A)(ii) to disclose documents,
10 shall have an effective date of 1 year after the
11 date of enactment of this paragraph.”.

12 (c) INTERNAL REVENUE CODE OF 1986.—Section
13 9812(a) of the Internal Revenue Code of 1986 is amended
14 by adding at the end the following new paragraph:

15 “(6) DISCLOSURE AND ENFORCEMENT RE-
16 QUIREMENTS.—

17 “(A) DISCLOSURE REQUIREMENTS.—

18 “(i) REGULATIONS.—Not later than 6
19 months after the date of enactment of this
20 paragraph, the Secretary, in cooperation
21 with the Secretaries of Health and Human
22 Services and Labor, shall issue regulations
23 for carrying out this section, including an
24 explanation of documents that group
25 health plans shall disclose in accordance

1 with clause (ii), the process governing the
2 disclosure of such documents, and analyses
3 that such plans shall conduct in order to
4 demonstrate compliance with this section.

5 “(ii) DISCLOSURE REQUIREMENTS.—
6 The documents required to be disclosed by
7 a group health plan under clause (i) shall
8 include an annual report that details the
9 specific analyses performed to ensure com-
10 pliance of such plan with this section, in-
11 cluding any regulation promulgated pursu-
12 ant to such section. At a minimum, with
13 respect to the application of nonquantita-
14 tive treatment limitations (in this para-
15 graph referred to as ‘NQTLs’) to benefits
16 under the plan, such report shall—

17 “(I) identify the specific factors
18 the plan used in performing its
19 NQTLs analysis;

20 “(II) identify and define the spe-
21 cific evidentiary standards relied on to
22 evaluate such factors;

23 “(III) describe how the evi-
24 dentiary standards are applied to each
25 service category for mental health

benefits, substance use disorder benefits, medical benefits, and surgical benefits;

“(IV) disclose the results of the analyses of the specific evidentiary standards in each service category; and

“(V) disclose the specific findings of the plan in each service category and the conclusions reached with respect to whether the processes, strategies, evidentiary standards, or other factors used in applying the NQTLs to mental health or substance use disorder benefits are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the NQTLs to medical and surgical benefits in the same classification.

“(iii) GUIDANCE.—Not later than 6 months after the date of enactment of this paragraph, the Secretary, in cooperation with the Secretaries of Health and Human

1 Services and Labor, shall issue guidance to
2 group health plans on how to satisfy the
3 requirements of this section, with respect
4 to making information available to current
5 and potential participants and bene-
6 ficiaries. Such information shall include—

7 “(I) certificate of coverage docu-
8 ments and instruments under which
9 the plan involved is administered and
10 operated that specify, include, or refer
11 to procedures, formulas, and meth-
12 odologies applied to determine a par-
13 ticipant’s or beneficiary’s benefit
14 under the plan, regardless of whether
15 such information is contained in a
16 document designated as the ‘plan doc-
17 ument’; and

18 “(II) a disclosure of how the plan
19 involved has provided that processes,
20 strategies, evidentiary standards, and
21 other factors used in applying the
22 NQTLs to mental health or substance
23 use disorder benefits are comparable
24 to, and applied no more stringently
25 than, the processes, strategies, evi-

1 dentiary standards, or other factors
2 used in applying the NQTLs to med-
3 ical and surgical benefits in the same
4 classification.

5 “(iv) DEFINITIONS.—In this para-
6 graph, the terms ‘nonquantitative treat-
7 ment limitations’, ‘comparable to’, and ‘ap-
8 plied no more stringently than’ have the
9 meanings given such terms in sections
10 146.136 and 147.160 of title 45, Code of
11 Federal Regulations (or any successor reg-
12 ulation).

13 “(B) ENFORCEMENT.—

14 “(i) PROCESS FOR COMPLAINTS.—Not
15 later than 6 months after the date of en-
16 actment of this paragraph, the Secretary,
17 in cooperation with the Secretaries of
18 Health and Human Services and Labor,
19 shall, with respect to group health plans,
20 issue guidance to clarify the process and
21 timeline for current and potential partici-
22 pants and beneficiaries (and authorized
23 representatives and health care providers
24 of such participants and beneficiaries) with
25 respect to such plans to file formal com-

1 complaints of such plans being in violation of
2 this section, including guidance, by plan
3 type, on the relevant State, regional, and
4 national offices with which such complaints
5 should be filed.

6 “(ii) AUDITS.—

7 “(I) RANDOMIZED AUDITS.—Be-
8 ginning 1 year after the date of enact-
9 ment of this paragraph, the Secretary,
10 in cooperation with the Secretaries of
11 Health and Human Services and
12 Labor, as applicable, shall conduct
13 randomized audits of group health
14 plans to determine compliance with
15 this section. Such audits shall be con-
16 ducted on no fewer than 12 plans per
17 plan year.

18 “(II) ADDITIONAL AUDITS.—Be-
19 ginning 1 year after the date of enact-
20 ment of this paragraph, in the case of
21 a group health plan with respect to
22 which any claim has been filed during
23 a plan year, the Secretary, in coopera-
24 tion with the Secretaries of Health
25 and Human Services and Labor, as

1 applicable, may audit the books and
2 records of such plan to determine
3 compliance with this section.

4 “(iii) DENIAL RATES.—The Secretary,
5 in cooperation with the Secretaries of
6 Health and Human Services and Labor,
7 shall collect information on the rates of
8 and reasons for denial by group health
9 plans of claims for outpatient and inpa-
10 tient mental health and substance use dis-
11 order benefits compared to the rates of
12 and reasons for denial of claims for med-
13 ical and surgical benefits. For the first
14 plan year that begins on or after the date
15 that is 2 years after the date of enactment
16 of this paragraph, and each subsequent
17 plan year, the Secretary, in such coopera-
18 tion, shall submit to the Committee on En-
19 ergy and Commerce of the House of Rep-
20 resentatives and the Committee on Health,
21 Education, Labor, and Pensions of the
22 Senate the information collected under the
23 previous sentence with respect to the pre-
24 vious plan year.

“(C) EFFECTIVE DATE.—Any requirements of group health plans that are included in the regulations issued under subparagraph (A)(i), including the requirement described in subparagraph (A)(ii) to disclose documents, shall have an effective date of 1 year after the date of enactment of this paragraph.”.

**SEC. 3. CONSUMER PARITY UNIT FOR MENTAL HEALTH
AND SUBSTANCE USE DISORDER PARITY VIOLATIONS.**

(a) DEFINITIONS.—In this section:

(1) APPLICABLE STATE AUTHORITY.—The term “applicable State authority” has the meaning given the term in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91).

(2) COVERED PLAN.—The term “covered plan” means any creditable coverage that is subject to any of the mental health parity laws.

(3) CREDITABLE COVERAGE.—The term “creditable coverage” has the meaning given the term in section 2704(c) of the Public Health Service Act (42 U.S.C. 300gg–3(c)).

(4) MENTAL HEALTH PARITY LAWS.—The term “mental health parity laws” means—

1 (A) section 2726 of the Public Health
2 Service Act (42 U.S.C. 300gg-26);

3 (B) section 712 of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C.
5 1185a);

6 (C) section 9812 of the Internal Revenue
7 Code of 1986; or

8 (D) any other law that applies the require-
9 ments under any of the sections described in
10 subparagraph (A), (B), or (C), or requirements
11 that are substantially similar to those provided
12 under any such section, as determined by the
13 Secretary, to creditable coverage.

14 (5) SECRETARY.—The term “Secretary” means
15 the Secretary of Health and Human Services.

16 (b) ESTABLISHMENT.—Not later than 6 months after
17 the date of enactment of this Act, the Secretary, in con-
18 sultation with the Secretary of Labor, the Secretary of the
19 Treasury, and the head of any other applicable agency,
20 shall establish a consumer parity unit with functions that
21 include—

22 (1) facilitating the centralized collection of,
23 monitoring of, and response to consumer complaints
24 regarding violations of mental health parity laws

1 through developing and administering, in accordance
2 with subsection (d)—

3 (A) a single, toll-free telephone number;
4 and

5 (B) a public website portal, which may in-
6 clude enhancing a website portal in existence on
7 the date of enactment of this Act; and

8 (2) providing information to health care con-
9 sumers regarding the disclosure requirements and
10 enforcement under section 2726(a)(8) of the Public
11 Health Service Act, section 712(a)(6) of the Em-
12 ployee Retirement Income Security Act of 1974, and
13 section 9812(a)(6) of the Internal Revenue Code of
14 1986, as added by section 2.

15 (c) WEBSITE PORTAL.—The Secretary, in consulta-
16 tion with the Secretary of Labor, the Secretary of the
17 Treasury, and the head of any other applicable agency,
18 shall make available on the website portal established
19 under subsection (b)(1)(B)—

20 (1) any guidance and any reports issued by the
21 Secretary, the Secretary of Labor, or the Secretary
22 of the Treasury, under section 2726 of the Public
23 Health Service Act, section 712 of the Employee Re-
24 tirement Income Security Act of 1974, or section
25 9812 of the Internal Revenue Code of 1986, respec-

1 tively, including the amendments to such sections
2 made by section 2;

3 (2) de-identified information on the results of,
4 or progress on, any concluded or ongoing audits or
5 investigations of the Secretary, the Secretary of
6 Labor, or the Secretary of the Treasury, as applica-
7 ble, under such section 2726, 712, or 9812, respec-
8 tively; and

9 (3) any information on rates of or reasons for
10 denial collected by the Secretary, the Secretary of
11 Labor, or the Secretary of the Treasury, pursuant to
12 subsection (a)(8)(B)(iii) of such section 2726, sub-
13 section (a)(6)(B)(iii) of such section 712, or sub-
14 section (a)(6)(B)(iii) of such section 9812, respec-
15 tively.

16 (d) RESPONSE TO CONSUMER COMPLAINTS AND IN-
17 QUIRIES.—

18 (1) TIMELY RESPONSE TO CONSUMERS.—The
19 Secretary, in consultation with the Secretary of
20 Labor, the Secretary of the Treasury, and the head
21 of any other applicable agency, shall establish rea-
22 sonable procedures for the consumer parity unit es-
23 tablished under this section to provide a timely re-
24 sponse (in writing if appropriate) to consumers re-

1 garding complaints received by the unit against, or
2 inquiries concerning, a covered plan, including—

3 (A) steps that have been taken by the ap-
4 propriate State or Federal enforcement agency
5 in response to the complaint or inquiry of the
6 consumer;

7 (B) any responses received by the appro-
8 priate State or Federal enforcement agency
9 from the covered plan;

10 (C) any follow-up actions or planned fol-
11 low-up actions by the appropriate State or Fed-
12 eral enforcement agency in response to the com-
13 plaint or inquiry of the consumer; and

14 (D) contact information of the appropriate
15 enforcement agency for the consumer to follow
16 up on the complaint or inquiry.

17 (2) TIMELY RESPONSE TO REGULATORS.—A
18 covered plan shall provide a timely response (in writ-
19 ing if appropriate) to the appropriate State or Fed-
20 eral enforcement agency having jurisdiction over
21 such plan concerning a consumer complaint or in-
22 quiry submitted to the consumer parity unit estab-
23 lished under this section including—

1 (A) steps that have been taken by the plan
2 to respond to the complaint or inquiry of the
3 consumer;

4 (B) any responses received by the plan
5 from the consumer; and

6 (C) follow-up actions or planned follow-up
7 actions by the plan in response to the complaint
8 or inquiry of the consumer.

9 (3) PROVISION OF INFORMATION TO CON-
10 SUMERS.—

11 (A) IN GENERAL.—A covered plan shall, in
12 a timely manner, comply with a consumer re-
13 quest for information in the control or posses-
14 sion of such covered plan concerning the cov-
15 erage the consumer obtained from such covered
16 plan.

17 (B) EXCEPTIONS.—Notwithstanding sub-
18 paragraph (A), a covered plan, and any agency
19 or entity having jurisdiction over a covered
20 plan, may not be required by this paragraph to
21 make available to the consumer any information
22 required to be kept confidential by any other
23 provision of law.

24 (e) REPORTS.—

1 (1) IN GENERAL.—Not later than March 31 of
2 each year, the Secretary, in consultation with the
3 Secretary of Labor, the Secretary of the Treasury,
4 and the head of any other applicable agency, shall
5 submit a report to Congress on the complaints re-
6 ceived by the consumer parity unit established under
7 this section in the prior year regarding covered
8 plans.

9 (2) CONTENTS.—Each such report shall include
10 information and analysis about complaint numbers,
11 complaint types, and, where applicable, information
12 about the resolution of complaints.

13 (3) CONSUMER PARITY UNIT POSTING.—The
14 Secretary shall submit such reports to the consumer
15 parity unit established under this section, and such
16 unit shall post the reports on the website portal es-
17 tablished under subsection (b)(1)(B).

18 (f) DATA SHARING.—Subject to any applicable stand-
19 ards for Federal or State agencies with respect to pro-
20 tecting personally identifiable information and data secu-
21 rity and integrity—

22 (1) the consumer parity unit established under
23 this section shall share consumer complaint informa-
24 tion with the Secretary, and the head of any other
25 applicable Federal or State agency; and

1 (2) the Secretary, and the head of any other
2 applicable Federal or State agency, shall share data
3 relating to consumer complaints regarding covered
4 plans with such unit.

5 (g) PRIVACY CONSIDERATIONS.—

6 (1) IN GENERAL.—In carrying out this section,
7 the consumer parity unit established under this sec-
8 tion and the Secretary, in consultation with the Sec-
9 retary of Labor, the Secretary of the Treasury, and
10 the head of any other applicable agency, shall take
11 measures to ensure that proprietary, personal, or
12 confidential consumer information that is protected
13 from public disclosure under section 552(b) or 552a
14 of title 5, United States Code, or any other provision
15 of law, is not made public under this section.

16 (2) EXCEPTIONS.—The consumer parity unit
17 established under this section may not obtain from
18 a covered plan any personally identifiable informa-
19 tion about a consumer from the records of the cov-
20 ered plan, except—

21 (A) if the records are reasonably described
22 in a request by the consumer parity unit estab-
23 lished under this section, and the consumer pro-
24 vides appropriate permission for the disclosure

1 of such information by the covered plan to such
 2 unit; or

3 (B) as may be specifically permitted or re-
 4 quired under other applicable provisions of law,
 5 including HIPAA privacy and security law as
 6 defined in section 3009(a) of the Public Health
 7 Service Act (42 U.S.C. 300jj–19(a)).

8 (h) COLLABORATION.—

9 (1) AGREEMENTS WITH OTHER AGENCIES.—

10 The Secretary, the Secretary of Labor, the Secretary
 11 of the Treasury, and the head of any other applica-
 12 ble agency, shall enter into a memorandum of under-
 13 standing with any affected Federal regulatory agen-
 14 cy regarding procedures by which any covered plan,
 15 and any other agency having jurisdiction over a cov-
 16 ered plan, shall comply with this section.

17 (2) AGREEMENTS WITH STATES.—To the ex-
 18 tent practicable, an applicable State authority may
 19 receive appropriate complaints from the consumer
 20 parity unit established under this section, if—

21 (A) the applicable State authority has the
 22 functional capacity to receive calls or electronic
 23 reports routed by the unit;

24 (B) the applicable State authority has sat-
 25 isfied any conditions of participation that the

1 unit may establish, including treatment of per-
2 sonally identifiable information and sharing of
3 information on complaint resolution or related
4 compliance procedures and resources; and

5 (C) participation by the applicable State
6 authority includes measures necessary to pro-
7 tect personally identifiable information in ac-
8 cordance with standards that apply to Federal
9 agencies with respect to protecting personally
10 identifiable information and data security and
11 integrity.

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