

110TH CONGRESS
2D SESSION

H. R. 6983

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2008

Mr. KENNEDY (for himself, Mr. RAMSTAD, Mr. DINGELL, Mr. RANGEL, Mr. PALLONE, Mr. ANDREWS, Mr. STARK, and Mr. WAXMAN) 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

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, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Paul Wellstone and
3 Pete Domenici Mental Health Parity and Addiction Eq-
4 uity Act of 2008”.

5 **SEC. 2. MENTAL HEALTH PARITY.**

6 (a) AMENDMENTS TO ERISA.—Section 712 of the
7 Employee Retirement Income Security Act of 1974 (29
8 U.S.C. 1185a) is amended—

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

11 “(3) FINANCIAL REQUIREMENTS AND TREAT-
12 MENT LIMITATIONS.—

13 “(A) IN GENERAL.—In the case of a group
14 health plan (or health insurance coverage of-
15 fered in connection with such a plan) that pro-
16 vides both medical and surgical benefits and
17 mental health or substance use disorder bene-
18 fits, such plan or coverage shall ensure that—

19 “(i) the financial requirements appli-
20 cable to such mental health or substance
21 use disorder benefits are no more restric-
22 tive than the predominant financial re-
23 quirements applied to substantially all
24 medical and surgical benefits covered by
25 the plan (or coverage), and there are no
26 separate cost sharing requirements that

1 are applicable only with respect to mental
2 health or substance use disorder benefits;
3 and

4 “(ii) the treatment limitations applica-
5 ble to such mental health or substance use
6 disorder benefits are no more restrictive
7 than the predominant treatment limita-
8 tions applied to substantially all medical
9 and surgical benefits covered by the plan
10 (or coverage) and there are no separate
11 treatment limitations that are applicable
12 only with respect to mental health or sub-
13 stance use disorder benefits.

14 “(B) DEFINITIONS.—In this paragraph:

15 “(i) FINANCIAL REQUIREMENT.—The
16 term ‘financial requirement’ includes
17 deductibles, copayments, coinsurance, and
18 out-of-pocket expenses, but excludes an ag-
19 gregate lifetime limit and an annual limit
20 subject to paragraphs (1) and (2).

21 “(ii) PREDOMINANT.—A financial re-
22 quirement or treatment limit is considered
23 to be predominant if it is the most com-
24 mon or frequent of such type of limit or
25 requirement.

1 “(iii) TREATMENT LIMITATION.—The
2 term ‘treatment limitation’ includes limits
3 on the frequency of treatment, number of
4 visits, days of coverage, or other similar
5 limits on the scope or duration of treat-
6 ment.

7 “(4) AVAILABILITY OF PLAN INFORMATION.—
8 The criteria for medical necessity determinations
9 made under the plan with respect to mental health
10 or substance use disorder benefits (or the health in-
11 surance coverage offered in connection with the plan
12 with respect to such benefits) shall be made avail-
13 able by the plan administrator (or the health insur-
14 ance issuer offering such coverage) in accordance
15 with regulations to any current or potential partici-
16 pant, beneficiary, or contracting provider upon re-
17 quest. The reason for any denial under the plan (or
18 coverage) of reimbursement or payment for services
19 with respect to mental health or substance use dis-
20 order benefits in the case of any participant or bene-
21 ficiary shall, on request or as otherwise required, be
22 made available by the plan administrator (or the
23 health insurance issuer offering such coverage) to
24 the participant or beneficiary in accordance with
25 regulations.

1 “(5) OUT-OF-NETWORK PROVIDERS.—In the
2 case of a plan or coverage that provides both med-
3 ical and surgical benefits and mental health or sub-
4 stance use disorder benefits, if the plan or coverage
5 provides coverage for medical or surgical benefits
6 provided by out-of-network providers, the plan or
7 coverage shall provide coverage for mental health or
8 substance use disorder benefits provided by out-of-
9 network providers in a manner that is consistent
10 with the requirements of this section.”;

11 (2) in subsection (b), by amending paragraph
12 (2) to read as follows:

13 “(2) in the case of a group health plan (or
14 health insurance coverage offered in connection with
15 such a plan) that provides mental health or sub-
16 stance use disorder benefits, as affecting the terms
17 and conditions of the plan or coverage relating to
18 such benefits under the plan or coverage, except as
19 provided in subsection (a).”;

20 (3) in subsection (c)—

21 (A) in paragraph (1)(B)—

22 (i) by inserting “(or 1 in the case of
23 an employer residing in a State that per-
24 mits small groups to include a single indi-

1 vidual)” after “at least 2” the first place
2 that such appears; and

3 (ii) by striking “and who employs at
4 least 2 employees on the first day of the
5 plan year”; and

6 (B) by striking paragraph (2) and insert-
7 ing the following:

8 “(2) COST EXEMPTION.—

9 “(A) IN GENERAL.—With respect to a
10 group health plan (or health insurance coverage
11 offered in connection with such a plan), if the
12 application of this section to such plan (or cov-
13 erage) results in an increase for the plan year
14 involved of the actual total costs of coverage
15 with respect to medical and surgical benefits
16 and mental health and substance use disorder
17 benefits under the plan (as determined and cer-
18 tified under subparagraph (C)) by an amount
19 that exceeds the applicable percentage described
20 in subparagraph (B) of the actual total plan
21 costs, the provisions of this section shall not
22 apply to such plan (or coverage) during the fol-
23 lowing plan year, and such exemption shall
24 apply to the plan (or coverage) for 1 plan year.
25 An employer may elect to continue to apply

1 mental health and substance use disorder parity
2 pursuant to this section with respect to the
3 group health plan (or coverage) involved regard-
4 less of any increase in total costs.

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

9 “(i) 2 percent in the case of the first
10 plan year in which this section is applied;
11 and

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

14 “(C) DETERMINATIONS BY ACTUARIES.—
15 Determinations as to increases in actual costs
16 under a plan (or coverage) for purposes of this
17 section shall be made and certified by a quali-
18 fied and licensed actuary who is a member in
19 good standing of the American Academy of Ac-
20 tuaries. All such determinations shall be in a
21 written report prepared by the actuary. The re-
22 port, and all underlying documentation relied
23 upon by the actuary, shall be maintained by the
24 group health plan or health insurance issuer for

1 a period of 6 years following the notification
2 made under subparagraph (E).

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

11 “(E) NOTIFICATION.—

12 “(i) IN GENERAL.—A group health
13 plan (or a health insurance issuer offering
14 coverage in connection with a group health
15 plan) that, based upon a certification de-
16 scribed under subparagraph (C), qualifies
17 for an exemption under this paragraph,
18 and elects to implement the exemption,
19 shall promptly notify the Secretary, the ap-
20 propriate State agencies, and participants
21 and beneficiaries in the plan of such elec-
22 tion.

23 “(ii) REQUIREMENT.—A notification
24 to the Secretary under clause (i) shall in-
25 clude—

1 “(I) a description of the number
2 of covered lives under the plan (or
3 coverage) involved at the time of the
4 notification, and as applicable, at the
5 time of any prior election of the cost-
6 exemption under this paragraph by
7 such plan (or coverage);

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

15 “(III) for both the plan year
16 upon which a cost exemption is sought
17 and the year prior, the actual total
18 costs of coverage with respect to men-
19 tal health and substance use disorder
20 benefits under the plan.

21 “(iii) CONFIDENTIALITY.—A notifica-
22 tion to the Secretary under clause (i) shall
23 be confidential. The Secretary shall make
24 available, upon request and on not more
25 than an annual basis, an anonymous

1 itemization of such notifications, that in-
2 cludes—

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

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

8 “(F) AUDITS BY APPROPRIATE AGEN-
9 CIES.—To determine compliance with this para-
10 graph, the Secretary may audit the books and
11 records of a group health plan or health insur-
12 ance issuer relating to an exemption, including
13 any actuarial reports prepared pursuant to sub-
14 paragraph (C), during the 6-year period fol-
15 lowing the notification of such exemption under
16 subparagraph (E). A State agency receiving a
17 notification under subparagraph (E) may also
18 conduct such an audit with respect to an ex-
19 emption covered by such notification.”;

20 (4) in subsection (e), by striking paragraph (4)
21 and inserting the following:

22 “(4) MENTAL HEALTH BENEFITS.—The term
23 ‘mental health benefits’ means benefits with respect
24 to services for mental health conditions, as defined

1 under the terms of the plan and in accordance with
2 applicable Federal and State law.

3 “(5) SUBSTANCE USE DISORDER BENEFITS.—

4 The term ‘substance use disorder benefits’ means
5 benefits with respect to services for substance use
6 disorders, as defined under the terms of the plan
7 and in accordance with applicable Federal and State
8 law.”;

9 (5) by striking subsection (f);

10 (6) by inserting after subsection (e) the fol-
11 lowing:

12 “(f) SECRETARY REPORT.—The Secretary shall, by
13 January 1, 2012, and every two years thereafter, submit
14 to the appropriate committees of Congress a report on
15 compliance of group health plans (and health insurance
16 coverage offered in connection with such plans) with the
17 requirements of this section. Such report shall include the
18 results of any surveys or audits on compliance of group
19 health plans (and health insurance coverage offered in
20 connection with such plans) with such requirements and
21 an analysis of the reasons for any failures to comply.

22 “(g) NOTICE AND ASSISTANCE.—The Secretary, in
23 cooperation with the Secretaries of Health and Human
24 Services and Treasury, as appropriate, shall publish and
25 widely disseminate guidance and information for group

1 health plans, participants and beneficiaries, applicable
2 State and local regulatory bodies, and the National Asso-
3 ciation of Insurance Commissioners concerning the re-
4 quirements of this section and shall provide assistance
5 concerning such requirements and the continued operation
6 of applicable State law. Such guidance and information
7 shall inform participants and beneficiaries of how they
8 may obtain assistance under this section, including, where
9 appropriate, assistance from State consumer and insur-
10 ance agencies.”;

11 (7) by striking “mental health benefits” and in-
12 serting “mental health and substance use disorder
13 benefits” each place it appears in subsections
14 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
15 and

16 (8) by striking “mental health benefits” and in-
17 serting “mental health or substance use disorder
18 benefits” each place it appears (other than in any
19 provision amended by the previous paragraph).

20 (b) AMENDMENTS TO PUBLIC HEALTH SERVICE
21 ACT.—Section 2705 of the Public Health Service Act (42
22 U.S.C. 300gg–5) is amended—

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

1 “(3) FINANCIAL REQUIREMENTS AND TREAT-
2 MENT LIMITATIONS.—

3 “(A) IN GENERAL.—In the case of a group
4 health plan (or health insurance coverage of-
5 fered in connection with such a plan) that pro-
6 vides both medical and surgical benefits and
7 mental health or substance use disorder bene-
8 fits, such plan or coverage shall ensure that—

9 “(i) the financial requirements appli-
10 cable to such mental health or substance
11 use disorder benefits are no more restric-
12 tive than the predominant financial re-
13 quirements applied to substantially all
14 medical and surgical benefits covered by
15 the plan (or coverage), and there are no
16 separate cost sharing requirements that
17 are applicable only with respect to mental
18 health or substance use disorder benefits;
19 and

20 “(ii) the treatment limitations applica-
21 ble to such mental health or substance use
22 disorder benefits are no more restrictive
23 than the predominant treatment limita-
24 tions applied to substantially all medical
25 and surgical benefits covered by the plan

1 (or coverage) and there are no separate
2 treatment limitations that are applicable
3 only with respect to mental health or sub-
4 stance use disorder benefits.

5 “(B) DEFINITIONS.—In this paragraph:

6 “(i) FINANCIAL REQUIREMENT.—The
7 term ‘financial requirement’ includes
8 deductibles, copayments, coinsurance, and
9 out-of-pocket expenses, but excludes an ag-
10 gregate lifetime limit and an annual limit
11 subject to paragraphs (1) and (2),

12 “(ii) PREDOMINANT.—A financial re-
13 quirement or treatment limit is considered
14 to be predominant if it is the most com-
15 mon or frequent of such type of limit or
16 requirement.

17 “(iii) TREATMENT LIMITATION.—The
18 term ‘treatment limitation’ includes limits
19 on the frequency of treatment, number of
20 visits, days of coverage, or other similar
21 limits on the scope or duration of treat-
22 ment.

23 “(4) AVAILABILITY OF PLAN INFORMATION.—

24 The criteria for medical necessity determinations
25 made under the plan with respect to mental health

1 or substance use disorder benefits (or the health in-
2 surance coverage offered in connection with the plan
3 with respect to such benefits) shall be made avail-
4 able by the plan administrator (or the health insur-
5 ance issuer offering such coverage) in accordance
6 with regulations to any current or potential partici-
7 pant, beneficiary, or contracting provider upon re-
8 quest. The reason for any denial under the plan (or
9 coverage) of reimbursement or payment for services
10 with respect to mental health or substance use dis-
11 order benefits in the case of any participant or bene-
12 ficiary shall, on request or as otherwise required, be
13 made available by the plan administrator (or the
14 health insurance issuer offering such coverage) to
15 the participant or beneficiary in accordance with
16 regulations.

17 “(5) OUT-OF-NETWORK PROVIDERS.—In the
18 case of a plan or coverage that provides both med-
19 ical and surgical benefits and mental health or sub-
20 stance use disorder benefits, if the plan or coverage
21 provides coverage for medical or surgical benefits
22 provided by out-of-network providers, the plan or
23 coverage shall provide coverage for mental health or
24 substance use disorder benefits provided by out-of-

1 network providers in a manner that is consistent
2 with the requirements of this section.”;

3 (2) in subsection (b), by amending paragraph
4 (2) to read as follows:

5 “(2) in the case of a group health plan (or
6 health insurance coverage offered in connection with
7 such a plan) that provides mental health or sub-
8 stance use disorder benefits, as affecting the terms
9 and conditions of the plan or coverage relating to
10 such benefits under the plan or coverage, except as
11 provided in subsection (a).”;

12 (3) in subsection (c)—

13 (A) in paragraph (1), by inserting before
14 the period the following: “(as defined in section
15 2791(e)(4), except that for purposes of this
16 paragraph such term shall include employers
17 with 1 employee in the case of an employer re-
18 siding in a State that permits small groups to
19 include a single individual)”;

20 (B) by striking paragraph (2) and insert-
21 ing the following:

22 “(2) COST EXEMPTION.—

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

1 application of this section to such plan (or cov-
2 erage) results in an increase for the plan year
3 involved of the actual total costs of coverage
4 with respect to medical and surgical benefits
5 and mental health and substance use disorder
6 benefits under the plan (as determined and cer-
7 tified under subparagraph (C)) by an amount
8 that exceeds the applicable percentage described
9 in subparagraph (B) of the actual total plan
10 costs, the provisions of this section shall not
11 apply to such plan (or coverage) during the fol-
12 lowing plan year, and such exemption shall
13 apply to the plan (or coverage) for 1 plan year.
14 An employer may elect to continue to apply
15 mental health and substance use disorder parity
16 pursuant to this section with respect to the
17 group health plan (or coverage) involved regard-
18 less of any increase in total costs.

19 “(B) APPLICABLE PERCENTAGE.—With re-
20 spect to a plan (or coverage), the applicable
21 percentage described in this subparagraph shall
22 be—

23 “(i) 2 percent in the case of the first
24 plan year in which this section is applied;
25 and

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

3 “(C) DETERMINATIONS BY ACTUARIES.—
4 Determinations as to increases in actual costs
5 under a plan (or coverage) for purposes of this
6 section shall be made and certified by a quali-
7 fied and licensed actuary who is a member in
8 good standing of the American Academy of Ac-
9 tuaries. All such determinations shall be in a
10 written report prepared by the actuary. The re-
11 port, and all underlying documentation relied
12 upon by the actuary, shall be maintained by the
13 group health plan or health insurance issuer for
14 a period of 6 years following the notification
15 made under subparagraph (E).

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

24 “(E) NOTIFICATION.—

1 “(i) IN GENERAL.—A group health
2 plan (or a health insurance issuer offering
3 coverage in connection with a group health
4 plan) that, based upon a certification de-
5 scribed under subparagraph (C), qualifies
6 for an exemption under this paragraph,
7 and elects to implement the exemption,
8 shall promptly notify the Secretary, the ap-
9 propriate State agencies, and participants
10 and beneficiaries in the plan of such elec-
11 tion.

12 “(ii) REQUIREMENT.—A notification
13 to the Secretary under clause (i) shall in-
14 clude—

15 “(I) a description of the number
16 of covered lives under the plan (or
17 coverage) involved at the time of the
18 notification, and as applicable, at the
19 time of any prior election of the cost-
20 exemption under this paragraph by
21 such plan (or coverage);

22 “(II) for both the plan year upon
23 which a cost exemption is sought and
24 the year prior, a description of the ac-
25 tual total costs of coverage with re-

1 spect to medical and surgical benefits
2 and mental health and substance use
3 disorder benefits under the plan; and

4 “(III) for both the plan year
5 upon which a cost exemption is sought
6 and the year prior, the actual total
7 costs of coverage with respect to men-
8 tal health and substance use disorder
9 benefits under the plan.

10 “(iii) CONFIDENTIALITY.—A notifica-
11 tion to the Secretary under clause (i) shall
12 be confidential. The Secretary shall make
13 available, upon request and on not more
14 than an annual basis, an anonymous
15 itemization of such notifications, that in-
16 cludes—

17 “(I) a breakdown of States by
18 the size and type of employers submit-
19 ting such notification; and

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

22 “(F) AUDITS BY APPROPRIATE AGEN-
23 CIES.—To determine compliance with this para-
24 graph, the Secretary may audit the books and
25 records of a group health plan or health insur-

1 ance issuer relating to an exemption, including
2 any actuarial reports prepared pursuant to sub-
3 paragraph (C), during the 6-year period fol-
4 lowing the notification of such exemption under
5 subparagraph (E). A State agency receiving a
6 notification under subparagraph (E) may also
7 conduct such an audit with respect to an ex-
8 emption covered by such notification.”;

9 (4) in subsection (e), by striking paragraph (4)
10 and inserting the following:

11 “(4) MENTAL HEALTH BENEFITS.—The term
12 ‘mental health benefits’ means benefits with respect
13 to services for mental health conditions, as defined
14 under the terms of the plan and in accordance with
15 applicable Federal and State law.

16 “(5) SUBSTANCE USE DISORDER BENEFITS.—
17 The term ‘substance use disorder benefits’ means
18 benefits with respect to services for substance use
19 disorders, as defined under the terms of the plan
20 and in accordance with applicable Federal and State
21 law.”;

22 (5) by striking subsection (f);

23 (6) by striking “mental health benefits” and in-
24 serting “mental health and substance use disorder
25 benefits” each place it appears in subsections

1 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
2 and

3 (7) by striking “mental health benefits” and in-
4 sserting “mental health or substance use disorder
5 benefits” each place it appears (other than in any
6 provision amended by the previous paragraph).

7 (c) AMENDMENTS TO INTERNAL REVENUE CODE.—
8 Section 9812 of the Internal Revenue Code of 1986 is
9 amended—

10 (1) in subsection (a), by adding at the end the
11 following:

12 “(3) FINANCIAL REQUIREMENTS AND TREAT-
13 MENT LIMITATIONS.—

14 “(A) IN GENERAL.—In the case of a group
15 health plan that provides both medical and sur-
16 gical benefits and mental health or substance
17 use disorder benefits, such plan shall ensure
18 that—

19 “(i) the financial requirements appli-
20 cable to such mental health or substance
21 use disorder benefits are no more restric-
22 tive than the predominant financial re-
23 quirements applied to substantially all
24 medical and surgical benefits covered by
25 the plan, and there are no separate cost

1 sharing requirements that are applicable
2 only with respect to mental health or sub-
3 stance use disorder benefits; and

4 “(ii) the treatment limitations applica-
5 ble to such mental health or substance use
6 disorder benefits are no more restrictive
7 than the predominant treatment limita-
8 tions applied to substantially all medical
9 and surgical benefits covered by the plan
10 and there are no separate treatment limi-
11 tations that are applicable only with re-
12 spect to mental health or substance use
13 disorder benefits.

14 “(B) DEFINITIONS.—In this paragraph:

15 “(i) FINANCIAL REQUIREMENT.—The
16 term ‘financial requirement’ includes
17 deductibles, copayments, coinsurance, and
18 out-of-pocket expenses, but excludes an ag-
19 gregate lifetime limit and an annual limit
20 subject to paragraphs (1) and (2),

21 “(ii) PREDOMINANT.—A financial re-
22 quirement or treatment limit is considered
23 to be predominant if it is the most com-
24 mon or frequent of such type of limit or
25 requirement.

1 “(iii) TREATMENT LIMITATION.—The
2 term ‘treatment limitation’ includes limits
3 on the frequency of treatment, number of
4 visits, days of coverage, or other similar
5 limits on the scope or duration of treat-
6 ment.

7 “(4) AVAILABILITY OF PLAN INFORMATION.—
8 The criteria for medical necessity determinations
9 made under the plan with respect to mental health
10 or substance use disorder benefits shall be made
11 available by the plan administrator in accordance
12 with regulations to any current or potential partici-
13 pant, beneficiary, or contracting provider upon re-
14 quest. The reason for any denial under the plan of
15 reimbursement or payment for services with respect
16 to mental health or substance use disorder benefits
17 in the case of any participant or beneficiary shall, on
18 request or as otherwise required, be made available
19 by the plan administrator to the participant or bene-
20 ficiary in accordance with regulations.

21 “(5) OUT-OF-NETWORK PROVIDERS.—In the
22 case of a plan that provides both medical and sur-
23 gical benefits and mental health or substance use
24 disorder benefits, if the plan provides coverage for
25 medical or surgical benefits provided by out-of-net-

1 work providers, the plan shall provide coverage for
2 mental health or substance use disorder benefits pro-
3 vided by out-of-network providers in a manner that
4 is consistent with the requirements of this section.”;

5 (2) in subsection (b), by amending paragraph
6 (2) to read as follows:

7 “(2) in the case of a group health plan that
8 provides mental health or substance use disorder
9 benefits, as affecting the terms and conditions of the
10 plan relating to such benefits under the plan, except
11 as provided in subsection (a).”;

12 (3) in subsection (c)—

13 (A) by amending paragraph (1) to read as
14 follows:

15 “(1) SMALL EMPLOYER EXEMPTION.—

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

19 “(B) SMALL EMPLOYER.—For purposes of
20 subparagraph (A), the term ‘small employer’
21 means, with respect to a calendar year and a
22 plan year, an employer who employed an aver-
23 age of at least 2 (or 1 in the case of an em-
24 ployer residing in a State that permits small
25 groups to include a single individual) but not

1 more than 50 employees on business days dur-
2 ing the preceding calendar year. For purposes
3 of the preceding sentence, all persons treated as
4 a single employer under subsection (b), (c),
5 (m), or (o) of section 414 shall be treated as 1
6 employer and rules similar to rules of subpara-
7 graphs (B) and (C) of section 4980D(d)(2)
8 shall apply.”; and

9 (B) by striking paragraph (2) and insert-
10 ing the following:

11 “(2) COST EXEMPTION.—

12 “(A) IN GENERAL.—With respect to a
13 group health plan, if the application of this sec-
14 tion to such plan results in an increase for the
15 plan year involved of the actual total costs of
16 coverage with respect to medical and surgical
17 benefits and mental health and substance use
18 disorder benefits under the plan (as determined
19 and certified under subparagraph (C)) by an
20 amount that exceeds the applicable percentage
21 described in subparagraph (B) of the actual
22 total plan costs, the provisions of this section
23 shall not apply to such plan during the fol-
24 lowing plan year, and such exemption shall
25 apply to the plan for 1 plan year. An employer

1 may elect to continue to apply mental health
2 and substance use disorder parity pursuant to
3 this section with respect to the group health
4 plan involved regardless of any increase in total
5 costs.

6 “(B) APPLICABLE PERCENTAGE.—With re-
7 spect to a plan, the applicable percentage de-
8 scribed in this subparagraph shall be—

9 “(i) 2 percent in the case of the first
10 plan year in which this section is applied;
11 and

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

14 “(C) DETERMINATIONS BY ACTUARIES.—
15 Determinations as to increases in actual costs
16 under a plan for purposes of this section shall
17 be made and certified by a qualified and li-
18 censed actuary who is a member in good stand-
19 ing of the American Academy of Actuaries. All
20 such determinations shall be in a written report
21 prepared by the actuary. The report, and all
22 underlying documentation relied upon by the
23 actuary, shall be maintained by the group
24 health plan for a period of 6 years following the
25 notification made under subparagraph (E).

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

7 “(E) NOTIFICATION.—

8 “(i) IN GENERAL.—A group health
9 plan that, based upon a certification de-
10 scribed under subparagraph (C), qualifies
11 for an exemption under this paragraph,
12 and elects to implement the exemption,
13 shall promptly notify the Secretary, the ap-
14 propriate State agencies, and participants
15 and beneficiaries in the plan of such elec-
16 tion.

17 “(ii) REQUIREMENT.—A notification
18 to the Secretary under clause (i) shall in-
19 clude—

20 “(I) a description of the number
21 of covered lives under the plan in-
22 volved at the time of the notification,
23 and as applicable, at the time of any
24 prior election of the cost-exemption
25 under this paragraph by such plan;

1 “(II) for both the plan year upon
2 which a cost exemption is sought and
3 the year prior, a description of the ac-
4 tual total costs of coverage with re-
5 spect to medical and surgical benefits
6 and mental health and substance use
7 disorder benefits under the plan; and

8 “(III) for both the plan year
9 upon which a cost exemption is sought
10 and the year prior, the actual total
11 costs of coverage with respect to men-
12 tal health and substance use disorder
13 benefits under the plan.

14 “(iii) CONFIDENTIALITY.—A notifica-
15 tion to the Secretary under clause (i) shall
16 be confidential. The Secretary shall make
17 available, upon request and on not more
18 than an annual basis, an anonymous
19 itemization of such notifications, that in-
20 cludes—

21 “(I) a breakdown of States by
22 the size and type of employers submit-
23 ting such notification; and

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

1 “(F) AUDITS BY APPROPRIATE AGEN-
2 CIES.—To determine compliance with this para-
3 graph, the Secretary may audit the books and
4 records of a group health plan relating to an
5 exemption, including any actuarial reports pre-
6 pared pursuant to subparagraph (C), during
7 the 6-year period following the notification of
8 such exemption under subparagraph (E). A
9 State agency receiving a notification under sub-
10 paragraph (E) may also conduct such an audit
11 with respect to an exemption covered by such
12 notification.”;

13 (4) in subsection (e), by striking paragraph (4)
14 and inserting the following:

15 “(4) MENTAL HEALTH BENEFITS.—The term
16 ‘mental health benefits’ means benefits with respect
17 to services for mental health conditions, as defined
18 under the terms of the plan and in accordance with
19 applicable Federal and State law.

20 “(5) SUBSTANCE USE DISORDER BENEFITS.—
21 The term ‘substance use disorder benefits’ means
22 benefits with respect to services for substance use
23 disorders, as defined under the terms of the plan
24 and in accordance with applicable Federal and State
25 law.”;

1 (5) by striking subsection (f);

2 (6) by striking “mental health benefits” and in-
3 serting “mental health and substance use disorder
4 benefits” each place it appears in subsections
5 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
6 and

7 (7) by striking “mental health benefits” and in-
8 serting “mental health or substance use disorder
9 benefits” each place it appears (other than in any
10 provision amended by the previous paragraph).

11 (d) REGULATIONS.—Not later than 1 year after the
12 date of enactment of this Act, the Secretaries of Labor,
13 Health and Human Services, and the Treasury shall issue
14 regulations to carry out the amendments made by sub-
15 sections (a), (b), and (c), respectively.

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply with respect to group health
19 plans for plan years beginning after the date that is
20 1 year after the date of enactment of this Act, re-
21 gardless of whether regulations have been issued to
22 carry out such amendments by such effective date,
23 except that the amendments made by subsections
24 (a)(5), (b)(5), and (c)(5), relating to striking of cer-

1 tain sunset provisions, shall take effect on January
2 1, 2009.

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

11 (A) the date on which the last of the col-
12 lective bargaining agreements relating to the
13 plan terminates (determined without regard to
14 any extension thereof agreed to after the date
15 of the enactment of this Act), or

16 (B) January 1, 2009.

17 For purposes of subparagraph (A), any plan amend-
18 ment made pursuant to a collective bargaining
19 agreement relating to the plan which amends the
20 plan solely to conform to any requirement added by
21 this section shall not be treated as a termination of
22 such collective bargaining agreement.

23 (f) ASSURING COORDINATION.—The Secretary of
24 Health and Human Services, the Secretary of Labor, and
25 the Secretary of the Treasury may ensure, through the

1 execution or revision of an interagency memorandum of
 2 understanding among such Secretaries, that—

3 (1) regulations, rulings, and interpretations
 4 issued by such Secretaries relating to the same mat-
 5 ter over which two or more such Secretaries have re-
 6 sponsibility under this section (and the amendments
 7 made by this section) are administered so as to have
 8 the same effect at all times; and

9 (2) coordination of policies relating to enforcing
 10 the same requirements through such Secretaries in
 11 order to have a coordinated enforcement strategy
 12 that avoids duplication of enforcement efforts and
 13 assigns priorities in enforcement.

14 (g) CONFORMING CLERICAL AMENDMENTS.—

15 (1) ERISA HEADING.—

16 (A) IN GENERAL.—The heading of section
 17 712 of the Employee Retirement Income Secu-
 18 rity Act of 1974 is amended to read as follows:

19 **“SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE**
 20 **USE DISORDER BENEFITS.”.**

21 (B) CLERICAL AMENDMENT.—The table of
 22 contents in section 1 of such Act is amended by
 23 striking the item relating to section 712 and in-
 24 serting the following new item:

“Sec. 712. Parity in mental health and substance use disorder benefits.”.

1 (2) PHSA HEADING.—The heading of section
2 2705 of the Public Health Service Act is amended
3 to read as follows:

4 **“SEC. 2705. PARITY IN MENTAL HEALTH AND SUBSTANCE**
5 **USE DISORDER BENEFITS.”.**

6 (3) IRC HEADING.—

7 (A) IN GENERAL.—The heading of section
8 9812 of the Internal Revenue Code of 1986 is
9 amended to read as follows:

10 **“SEC. 9812. PARITY IN MENTAL HEALTH AND SUBSTANCE**
11 **USE DISORDER BENEFITS.”.**

12 (B) CLERICAL AMENDMENT.—The table of
13 sections for subchapter B of chapter 100 of
14 such Code is amended by striking the item re-
15 lating to section 9812 and inserting the fol-
16 lowing new item:

 “Sec. 9812. Parity in mental health and substance use disorder benefits.”.

17 (h) GAO STUDY ON COVERAGE AND EXCLUSION OF
18 MENTAL HEALTH AND SUBSTANCE USE DISORDER DIAG-
19 NOSES.—

20 (1) IN GENERAL.—The Comptroller General of
21 the United States shall conduct a study that ana-
22 lyzes the specific rates, patterns, and trends in cov-
23 erage and exclusion of specific mental health and
24 substance use disorder diagnoses by health plans

1 and health insurance. The study shall include an
2 analysis of—

3 (A) specific coverage rates for all mental
4 health conditions and substance use disorders;

5 (B) which diagnoses are most commonly
6 covered or excluded;

7 (C) whether implementation of this Act
8 has affected trends in coverage or exclusion of
9 such diagnoses; and

10 (D) the impact of covering or excluding
11 specific diagnoses on participants' and enroll-
12 ees' health, their health care coverage, and the
13 costs of delivering health care.

14 (2) REPORTS.—Not later than 3 years after the
15 date of the enactment of this Act, and 2 years after
16 the date of submission the first report under this
17 paragraph, the Comptroller General shall submit to
18 Congress a report on the results of the study con-
19 ducted under paragraph (1).

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