

110TH CONGRESS
2^D SESSION

H. R. 6983

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 23 (legislative day, SEPTEMBER 17), 2008

Received

AN ACT

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,*

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. MENTAL HEALTH PARITY.**

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

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

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

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

21 “(i) the financial requirements appli-
22 cable to such mental health or substance
23 use disorder benefits are no more restric-
24 tive than the predominant financial re-
25 quirements applied to substantially all

1 medical and surgical benefits covered by
2 the plan (or coverage), and there are no
3 separate cost sharing requirements that
4 are applicable only with respect to mental
5 health or substance use disorder benefits;
6 and

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

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

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

24 “(ii) PREDOMINANT.—A financial re-
25 quirement or treatment limit is considered

1 to be predominant if it is the most com-
2 mon or frequent of such type of limit or
3 requirement.

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

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

1 health insurance issuer offering such coverage) to
2 the participant or beneficiary in accordance with
3 regulations.

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

14 (2) in subsection (b), by amending paragraph
15 (2) to read as follows:

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

23 (3) in subsection (c)—

24 (A) in paragraph (1)(B)—

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

6 (ii) by striking “and who employs at
7 least 2 employees on the first day of the
8 plan year”; 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 (or health insurance coverage
14 offered in connection with such a plan), if the
15 application of this section to such plan (or cov-
16 erage) results in an increase for the plan year
17 involved of the actual total costs of coverage
18 with respect to medical and surgical benefits
19 and mental health and substance use disorder
20 benefits under the plan (as determined and cer-
21 tified under subparagraph (C)) by an amount
22 that exceeds the applicable percentage described
23 in subparagraph (B) of the actual total plan
24 costs, the provisions of this section shall not
25 apply to such plan (or coverage) during the fol-

1 lowing plan year, and such exemption shall
2 apply to the plan (or coverage) for 1 plan year.
3 An employer may elect to continue to apply
4 mental health and substance use disorder parity
5 pursuant to this section with respect to the
6 group health plan (or coverage) involved regard-
7 less of any increase in total costs.

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

12 “(i) 2 percent in the case of the first
13 plan year in which this section is applied;
14 and

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

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

1 upon by the actuary, shall be maintained by the
2 group health plan or health insurance issuer for
3 a period of 6 years following the notification
4 made under subparagraph (E).

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

13 “(E) NOTIFICATION.—

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

1 “(ii) REQUIREMENT.—A notification
2 to the Secretary under clause (i) shall in-
3 clude—

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

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

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

24 “(iii) CONFIDENTIALITY.—A notifica-
25 tion to the Secretary under clause (i) shall

1 be confidential. The Secretary shall make
2 available, upon request and on not more
3 than an annual basis, an anonymous
4 itemization of such notifications, that in-
5 cludes—

6 “(I) a breakdown of States by
7 the size and type of employers submit-
8 ting such notification; and

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

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

23 (4) in subsection (e), by striking paragraph (4)
24 and inserting the following:

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

6 “(5) SUBSTANCE USE DISORDER BENEFITS.—
7 The term ‘substance use disorder benefits’ means
8 benefits with respect to services for substance use
9 disorders, as defined under the terms of the plan
10 and in accordance with applicable Federal and State
11 law.”;

12 (5) by striking subsection (f);

13 (6) by inserting after subsection (e) the fol-
14 lowing:

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

1 “(g) NOTICE AND ASSISTANCE.—The Secretary, in
2 cooperation with the Secretaries of Health and Human
3 Services and Treasury, as appropriate, shall publish and
4 widely disseminate guidance and information for group
5 health plans, participants and beneficiaries, applicable
6 State and local regulatory bodies, and the National Asso-
7 ciation of Insurance Commissioners concerning the re-
8 quirements of this section and shall provide assistance
9 concerning such requirements and the continued operation
10 of applicable State law. Such guidance and information
11 shall inform participants and beneficiaries of how they
12 may obtain assistance under this section, including, where
13 appropriate, assistance from State consumer and insur-
14 ance agencies.”;

15 (7) by striking “mental health benefits” and in-
16 sserting “mental health and substance use disorder
17 benefits” each place it appears in subsections
18 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
19 and

20 (8) by striking “mental health benefits” and in-
21 sserting “mental health or substance use disorder
22 benefits” each place it appears (other than in any
23 provision amended by the previous paragraph).

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

4 (1) in subsection (a), by adding at the end the
5 following:

6 “(3) FINANCIAL REQUIREMENTS AND TREAT-
7 MENT LIMITATIONS.—

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

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

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

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

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

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

23 “(iii) TREATMENT LIMITATION.—The
24 term ‘treatment limitation’ includes limits
25 on the frequency of treatment, number of

1 visits, days of coverage, or other similar
2 limits on the scope or duration of treat-
3 ment.

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

23 “(5) OUT-OF-NETWORK PROVIDERS.—In the
24 case of a plan or coverage that provides both med-
25 ical and surgical benefits and mental health or sub-

1 stance use disorder benefits, if the plan or coverage
2 provides coverage for medical or surgical benefits
3 provided by out-of-network providers, the plan or
4 coverage shall provide coverage for mental health or
5 substance use disorder benefits provided by out-of-
6 network providers in a manner that is consistent
7 with the requirements of this section.”;

8 (2) in subsection (b), by amending paragraph
9 (2) to read as follows:

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

17 (3) in subsection (c)—

18 (A) in paragraph (1), by inserting before
19 the period the following: “(as defined in section
20 2791(e)(4), except that for purposes of this
21 paragraph such term shall include employers
22 with 1 employee in the case of an employer re-
23 siding in a State that permits small groups to
24 include a single individual)”;

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

3 “(2) COST EXEMPTION.—

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

1 “(B) APPLICABLE PERCENTAGE.—With re-
2 spect to a plan (or coverage), the applicable
3 percentage described in this subparagraph shall
4 be—

5 “(i) 2 percent in the case of the first
6 plan year in which this section is applied;
7 and

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

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

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

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

6 “(E) NOTIFICATION.—

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

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

21 “(I) a description of the number
22 of covered lives under the plan (or
23 coverage) involved at the time of the
24 notification, and as applicable, at the
25 time of any prior election of the cost-

1 exemption under this paragraph by
2 such plan (or coverage);

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

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

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

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

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

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

15 (4) in subsection (e), by striking paragraph (4)
16 and inserting the following:

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

22 “(5) SUBSTANCE USE DISORDER BENEFITS.—
23 The term ‘substance use disorder benefits’ means
24 benefits with respect to services for substance use
25 disorders, as defined under the terms of the plan

1 and in accordance with applicable Federal and State
2 law.”;

3 (5) by striking subsection (f);

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

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

13 (c) AMENDMENTS TO INTERNAL REVENUE CODE.—
14 Section 9812 of the Internal Revenue Code of 1986 is
15 amended—

16 (1) in subsection (a), by adding at the end the
17 following:

18 “(3) FINANCIAL REQUIREMENTS AND TREAT-
19 MENT LIMITATIONS.—

20 “(A) IN GENERAL.—In the case of a group
21 health plan that provides both medical and sur-
22 gical benefits and mental health or substance
23 use disorder benefits, such plan shall ensure
24 that—

1 “(i) the financial requirements appli-
2 cable to such mental health or substance
3 use disorder benefits are no more restric-
4 tive than the predominant financial re-
5 quirements applied to substantially all
6 medical and surgical benefits covered by
7 the plan, and there are no separate cost
8 sharing requirements that are applicable
9 only with respect to mental health or sub-
10 stance use disorder benefits; and

11 “(ii) the treatment limitations applica-
12 ble to such mental health or substance use
13 disorder benefits are no more restrictive
14 than the predominant treatment limita-
15 tions applied to substantially all medical
16 and surgical benefits covered by the plan
17 and there are no separate treatment limi-
18 tations that are applicable only with re-
19 spect to mental health or substance use
20 disorder benefits.

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

22 “(i) FINANCIAL REQUIREMENT.—The
23 term ‘financial requirement’ includes
24 deductibles, copayments, coinsurance, and
25 out-of-pocket expenses, but excludes an ag-

1 aggregate lifetime limit and an annual limit
2 subject to paragraphs (1) and (2),

3 “(ii) PREDOMINANT.—A financial re-
4 quirement or treatment limit is considered
5 to be predominant if it is the most com-
6 mon or frequent of such type of limit or
7 requirement.

8 “(iii) TREATMENT LIMITATION.—The
9 term ‘treatment limitation’ includes limits
10 on the frequency of treatment, number of
11 visits, days of coverage, or other similar
12 limits on the scope or duration of treat-
13 ment.

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

1 by the plan administrator to the participant or bene-
2 ficiary in accordance with regulations.

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

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

14 “(2) in the case of a group health plan that
15 provides mental health or substance use disorder
16 benefits, as affecting the terms and conditions of the
17 plan relating to such benefits under the plan, except
18 as provided in subsection (a).”;

19 (3) in subsection (c)—

20 (A) by amending paragraph (1) to read as
21 follows:

22 “(1) SMALL EMPLOYER EXEMPTION.—

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

1 “(B) SMALL EMPLOYER.—For purposes of
2 subparagraph (A), the term ‘small employer’
3 means, with respect to a calendar year and a
4 plan year, an employer who employed an aver-
5 age of at least 2 (or 1 in the case of an em-
6 ployer residing in a State that permits small
7 groups to include a single individual) but not
8 more than 50 employees on business days dur-
9 ing the preceding calendar year. For purposes
10 of the preceding sentence, all persons treated as
11 a single employer under subsection (b), (c),
12 (m), or (o) of section 414 shall be treated as 1
13 employer and rules similar to rules of subpara-
14 graphs (B) and (C) of section 4980D(d)(2)
15 shall apply.”; and

16 (B) by striking paragraph (2) and insert-
17 ing the following:

18 “(2) COST EXEMPTION.—

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

1 and certified under subparagraph (C)) by an
2 amount that exceeds the applicable percentage
3 described in subparagraph (B) of the actual
4 total plan costs, the provisions of this section
5 shall not apply to such plan during the fol-
6 lowing plan year, and such exemption shall
7 apply to the plan for 1 plan year. An employer
8 may elect to continue to apply mental health
9 and substance use disorder parity pursuant to
10 this section with respect to the group health
11 plan involved regardless of any increase in total
12 costs.

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

16 “(i) 2 percent in the case of the first
17 plan year in which this section is applied;
18 and

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

21 “(C) DETERMINATIONS BY ACTUARIES.—
22 Determinations as to increases in actual costs
23 under a plan for purposes of this section shall
24 be made and certified by a qualified and li-
25 censed actuary who is a member in good stand-

1 ing of the American Academy of Actuaries. All
2 such determinations shall be in a written report
3 prepared by the actuary. The report, and all
4 underlying documentation relied upon by the
5 actuary, shall be maintained by the group
6 health plan for a period of 6 years following the
7 notification made under subparagraph (E).

8 “(D) 6-MONTH DETERMINATIONS.—If a
9 group health plan seeks an exemption under
10 this paragraph, determinations under subpara-
11 graph (A) shall be made after such plan has
12 complied with this section for the first 6
13 months of the plan year involved.

14 “(E) NOTIFICATION.—

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

1 “(ii) REQUIREMENT.—A notification
2 to the Secretary under clause (i) shall in-
3 clude—

4 “(I) a description of the number
5 of covered lives under the plan in-
6 volved at the time of the notification,
7 and as applicable, at the time of any
8 prior election of the cost-exemption
9 under this paragraph by such plan;

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

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

23 “(iii) CONFIDENTIALITY.—A notifica-
24 tion to the Secretary under clause (i) shall
25 be confidential. The Secretary shall make

1 available, upon request and on not more
2 than an annual basis, an anonymous
3 itemization of such notifications, that in-
4 cludes—

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

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

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

22 (4) in subsection (e), by striking paragraph (4)
23 and inserting the following:

24 “(4) MENTAL HEALTH BENEFITS.—The term
25 ‘mental health benefits’ means benefits with respect

1 to services for mental health conditions, as defined
2 under the terms of the plan and in accordance with
3 applicable Federal and State law.

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

10 (5) by striking subsection (f);

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

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

25 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply with respect to group health
3 plans for plan years beginning after the date that is
4 1 year after the date of enactment of this Act, re-
5 gardless of whether regulations have been issued to
6 carry out such amendments by such effective date,
7 except that the amendments made by subsections
8 (a)(5), (b)(5), and (c)(5), relating to striking of cer-
9 tain sunset provisions, shall take effect on January
10 1, 2009.

11 (2) SPECIAL RULE FOR COLLECTIVE BAR-
12 GAINING AGREEMENTS.—In the case of a group
13 health plan maintained pursuant to one or more col-
14 lective bargaining agreements between employee rep-
15 resentatives and one or more employers ratified be-
16 fore the date of the enactment of this Act, the
17 amendments made by this section shall not apply to
18 plan years beginning before the later of—

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

24 (B) January 1, 2009.

1 For purposes of subparagraph (A), any plan amend-
2 ment made pursuant to a collective bargaining
3 agreement relating to the plan which amends the
4 plan solely to conform to any requirement added by
5 this section shall not be treated as a termination of
6 such collective bargaining agreement.

7 (f) ASSURING COORDINATION.—The Secretary of
8 Health and Human Services, the Secretary of Labor, and
9 the Secretary of the Treasury may ensure, through the
10 execution or revision of an interagency memorandum of
11 understanding among such Secretaries, that—

12 (1) regulations, rulings, and interpretations
13 issued by such Secretaries relating to the same mat-
14 ter over which two or more such Secretaries have re-
15 sponsibility under this section (and the amendments
16 made by this section) are administered so as to have
17 the same effect at all times; and

18 (2) coordination of policies relating to enforcing
19 the same requirements through such Secretaries in
20 order to have a coordinated enforcement strategy
21 that avoids duplication of enforcement efforts and
22 assigns priorities in enforcement.

23 (g) CONFORMING CLERICAL AMENDMENTS.—

24 (1) ERISA HEADING.—

1 (A) IN GENERAL.—The heading of section
2 712 of the Employee Retirement Income Secu-
3 rity Act of 1974 is amended to read as follows:

4 **“SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE**
5 **USE DISORDER BENEFITS.”.**

6 (B) CLERICAL AMENDMENT.—The table of
7 contents in section 1 of such Act is amended by
8 striking the item relating to section 712 and in-
9 serting the following new item:

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

10 (2) PHSA HEADING.—The heading of section
11 2705 of the Public Health Service Act is amended
12 to read as follows:

13 **“SEC. 2705. PARITY IN MENTAL HEALTH AND SUBSTANCE**
14 **USE DISORDER BENEFITS.”.**

15 (3) IRC HEADING.—

16 (A) IN GENERAL.—The heading of section
17 9812 of the Internal Revenue Code of 1986 is
18 amended to read as follows:

19 **“SEC. 9812. PARITY IN MENTAL HEALTH AND SUBSTANCE**
20 **USE DISORDER BENEFITS.”.**

21 (B) CLERICAL AMENDMENT.—The table of
22 sections for subchapter B of chapter 100 of
23 such Code is amended by striking the item re-

1 lating to section 9812 and inserting the fol-
2 lowing new item:

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

3 (h) GAO STUDY ON COVERAGE AND EXCLUSION OF
4 MENTAL HEALTH AND SUBSTANCE USE DISORDER DIAG-
5 NOSES.—

6 (1) IN GENERAL.—The Comptroller General of
7 the United States shall conduct a study that ana-
8 lyzes the specific rates, patterns, and trends in cov-
9 erage and exclusion of specific mental health and
10 substance use disorder diagnoses by health plans
11 and health insurance. The study shall include an
12 analysis of—

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

15 (B) which diagnoses are most commonly
16 covered or excluded;

17 (C) whether implementation of this Act
18 has affected trends in coverage or exclusion of
19 such diagnoses; and

20 (D) the impact of covering or excluding
21 specific diagnoses on participants’ and enroll-
22 ees’ health, their health care coverage, and the
23 costs of delivering health care.

24 (2) REPORTS.—Not later than 3 years after the
25 date of the enactment of this Act, and 2 years after

1 the date of submission the first report under this
2 paragraph, the Comptroller General shall submit to
3 Congress a report on the results of the study con-
4 ducted under paragraph (1).

5 **SEC. 3. DELAY IN APPLICATION OF WORLDWIDE ALLOCA-**
6 **TION OF INTEREST.**

7 (a) IN GENERAL.—Paragraphs (5)(D) and (6) of sec-
8 tion 864(f) of the Internal Revenue Code of 1986 are each
9 amended by striking “December 31, 2010” and inserting
10 “December 31, 2012”.

11 (b) TRANSITION.—Paragraph (7) of section 864(f) of
12 such Code is amended by striking “30 percent” and in-
13 serting “85 percent”.

Passed the House of Representatives September 23,
2008.

Attest: LORRAINE C. MILLER,
Clerk.