

110TH CONGRESS
1ST SESSION

S. 558

To provide parity between health insurance coverage of mental health benefits and benefits for medical and surgical services.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2007

Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. ENZI, Mr. BROWN, Mr. SMITH, Mr. FEINGOLD, Mr. COLEMAN, Mr. LAUTENBERG, Mr. WARNER, Mrs. BOXER, Ms. MURKOWSKI, Mr. AKAKA, Mr. ROBERTS, Mr. CARDIN, Mr. HATCH, Ms. CANTWELL, Ms. COLLINS, Ms. STABENOW, Ms. SNOWE, Mr. BIDEN, Mr. GRAHAM, and Mr. NELSON of Nebraska) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide parity between health insurance coverage of mental health benefits and benefits for medical and surgical services.

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 “Mental Health Parity
5 Act of 2007”.

1 **SEC. 2. MENTAL HEALTH PARITY.**

2 (a) AMENDMENTS OF ERISA.—Subpart B of part 7
3 of title I of the Employee Retirement Income Security Act
4 of 1974 is amended by inserting after section 712 (29
5 U.S.C. 1185a) the following:

6 **“SEC. 712A. MENTAL HEALTH PARITY.**

7 “(a) IN GENERAL.—In the case of a group health
8 plan (or health insurance coverage offered in connection
9 with such a plan) that provides both medical and surgical
10 benefits and mental health benefits, such plan or coverage
11 shall ensure that—

12 “(1) the financial requirements applicable to
13 such mental health benefits are no more restrictive
14 than the financial requirements applied to substan-
15 tially all medical and surgical benefits covered by the
16 plan (or coverage), including deductibles, copay-
17 ments, coinsurance, out-of-pocket expenses, and an-
18 nual and lifetime limits, except that the plan (or cov-
19 erage) may not establish separate cost sharing re-
20 quirements that are applicable only with respect to
21 mental health benefits; and

22 “(2) the treatment limitations applicable to
23 such mental health benefits are no more restrictive
24 than the treatment limitations applied to substan-
25 tially all medical and surgical benefits covered by the
26 plan (or coverage), including limits on the frequency

1 of treatment, number of visits, days of coverage, or
 2 other similar limits on the scope or duration of
 3 treatment.

4 “(b) CLARIFICATIONS.—In the case of a group health
 5 plan (or health insurance coverage offered in connection
 6 with such a plan) that provides both medical and surgical
 7 benefits and mental health benefits, such plan or coverage
 8 shall not be prohibited from—

9 “(1) negotiating separate reimbursement or
 10 provider payment rates and service delivery systems
 11 for different benefits consistent with subsection (a);

12 “(2) managing the provision of mental health
 13 benefits in order to provide medically necessary serv-
 14 ices for covered benefits, including through the use
 15 of any utilization review, authorization or manage-
 16 ment practices, the application of medical necessity
 17 and appropriateness criteria applicable to behavioral
 18 health, and the contracting with and use of a net-
 19 work of providers; or

20 “(3) applying the provisions of this section in a
 21 manner that takes into consideration similar treat-
 22 ment settings or similar treatments.

23 “(c) IN- AND OUT-OF-NETWORK.—

24 “(1) IN GENERAL.—In the case of a group
 25 health plan (or health insurance coverage offered in

1 connection with such a plan) that provides both
 2 medical and surgical benefits and mental health ben-
 3 efits, and that provides such benefits on both an in-
 4 and out-of-network basis pursuant to the terms of
 5 the plan (or coverage), such plan (or coverage) shall
 6 ensure that the requirements of this section are ap-
 7 plied to both in- and out-of-network services by com-
 8 paring in-network medical and surgical benefits to
 9 in-network mental health benefits and out-of-net-
 10 work medical and surgical benefits to out-of-network
 11 mental health benefits, except that in no event shall
 12 this subsection require the provision of out-of-net-
 13 work coverage for mental health benefits even in the
 14 case where out-of-network coverage is provided for
 15 medical and surgical benefits.

16 “(2) CLARIFICATION.—Nothing in paragraph
 17 (1) shall be construed as requiring that a group
 18 health plan (or coverage in connection with such a
 19 plan) eliminate an out-of-network provider option
 20 from such plan (or coverage) pursuant to the terms
 21 of the plan (or coverage).

22 “(d) SMALL EMPLOYER EXEMPTION.—

23 “(1) IN GENERAL.—This section shall not apply
 24 to any group health plan (and group health insur-
 25 ance coverage offered in connection with a group

1 health plan) for any plan year of any employer who
2 employed an average of at least 2 (or 1 in the case
3 of an employer residing in a State that permits
4 small groups to include a single individual) but not
5 more than 50 employees on business days during the
6 preceding calendar year.

7 “(2) APPLICATION OF CERTAIN RULES IN DE-
8 TERMINATION OF EMPLOYER SIZE.—For purposes of
9 this subsection:

10 “(A) APPLICATION OF AGGREGATION RULE
11 FOR EMPLOYERS.—Rules similar to the rules
12 under subsections (b), (c), (m), and (o) of sec-
13 tion 414 of the Internal Revenue Code of 1986
14 shall apply for purposes of treating persons as
15 a single employer.

16 “(B) EMPLOYERS NOT IN EXISTENCE IN
17 PRECEDING YEAR.—In the case of an employer
18 which was not in existence throughout the pre-
19 ceding calendar year, the determination of
20 whether such employer is a small employer shall
21 be based on the average number of employees
22 that it is reasonably expected such employer
23 will employ on business days in the current cal-
24 endar year.

1 “(C) PREDECESSORS.—Any reference in
2 this paragraph to an employer shall include a
3 reference to any predecessor of such employer.

4 “(e) COST EXEMPTION.—

5 “(1) IN GENERAL.—With respect to a group
6 health plan (or health insurance coverage offered in
7 connections with such a plan), if the application of
8 this section to such plan (or coverage) results in an
9 increase for the plan year involved of the actual total
10 costs of coverage with respect to medical and sur-
11 gical benefits and mental health benefits under the
12 plan (as determined and certified under paragraph
13 (3)) by an amount that exceeds the applicable per-
14 centage described in paragraph (2) of the actual
15 total plan costs, the provisions of this section shall
16 not apply to such plan (or coverage) during the fol-
17 lowing plan year, and such exemption shall apply to
18 the plan (or coverage) for 1 plan year. An employer
19 may elect to continue to apply mental health parity
20 pursuant to this section with respect to the group
21 health plan (or coverage) involved regardless of any
22 increase in total costs.

23 “(2) APPLICABLE PERCENTAGE.—With respect
24 to a plan (or coverage), the applicable percentage de-
25 scribed in this paragraph shall be—

1 “(A) 2 percent in the case of the first plan
2 year in which this section is applied; and

3 “(B) 1 percent in the case of each subse-
4 quent plan year.

5 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
6 minations as to increases in actual costs under a
7 plan (or coverage) for purposes of this section shall
8 be made by a qualified actuary who is a member in
9 good standing of the American Academy of Actu-
10 aries. Such determinations shall be certified by the
11 actuary and be made available to the general public.

12 “(4) 6-MONTH DETERMINATIONS.—If a group
13 health plan (or a health insurance issuer offering
14 coverage in connections with a group health plan)
15 seeks an exemption under this subsection, deter-
16 minations under paragraph (1) shall be made after
17 such plan (or coverage) has complied with this sec-
18 tion for the first 6 months of the plan year involved.

19 “(5) NOTIFICATION.—An election to modify
20 coverage of mental health benefits as permitted
21 under this subsection shall be treated as a material
22 modification in the terms of the plan as described in
23 section 102(a)(1) and shall be subject to the applica-
24 ble notice requirements under section 104(b)(1).

1 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
 2 tion shall be construed to require a group health plan (or
 3 health insurance coverage offered in connection with such
 4 a plan) to provide any mental health benefits.

5 “(g) MENTAL HEALTH BENEFITS.—In this section,
 6 the term ‘mental health benefits’ means benefits with re-
 7 spect to mental health services (including substance abuse
 8 treatment) as defined under the terms of the group health
 9 plan or coverage.”.

10 (b) PUBLIC HEALTH SERVICE ACT.—Subpart 1 of
 11 part A of title XXVII of the Public Health Service Act
 12 is amended by inserting after section 2705 (42 U.S.C.
 13 300gg–5) the following:

14 **“SEC. 2705A. MENTAL HEALTH PARITY.**

15 “(a) IN GENERAL.—In the case of a group health
 16 plan (or health insurance coverage offered in connection
 17 with such a plan) that provides both medical and surgical
 18 benefits and mental health benefits, such plan or coverage
 19 shall ensure that—

20 “(1) the financial requirements applicable to
 21 such mental health benefits are no more restrictive
 22 than the financial requirements applied to substan-
 23 tially all medical and surgical benefits covered by the
 24 plan (or coverage), including deductibles, copay-
 25 ments, coinsurance, out-of-pocket expenses, and an-

1 nual and lifetime limits, except that the plan (or cov-
2 erage) may not establish separate cost sharing re-
3 quirements that are applicable only with respect to
4 mental health benefits; and

5 “(2) the treatment limitations applicable to
6 such mental health benefits are no more restrictive
7 than the treatment limitations applied to substan-
8 tially all medical and surgical benefits covered by the
9 plan (or coverage), including limits on the frequency
10 of treatment, number of visits, days of coverage, or
11 other similar limits on the scope or duration of
12 treatment.

13 “(b) CLARIFICATIONS.—In the case of a group health
14 plan (or health insurance coverage offered in connection
15 with such a plan) that provides both medical and surgical
16 benefits and mental health benefits, such plan or coverage
17 shall not be prohibited from—

18 “(1) negotiating separate reimbursement or
19 provider payment rates and service delivery systems
20 for different benefits consistent with subsection (a);

21 “(2) managing the provision of mental health
22 benefits in order to provide medically necessary serv-
23 ices for covered benefits, including through the use
24 of any utilization review, authorization or manage-
25 ment practices, the application of medical necessity

1 and appropriateness criteria applicable to behavioral
 2 health, and the contracting with and use of a net-
 3 work of providers; or

4 “(3) be prohibited from applying the provisions
 5 of this section in a manner that takes into consider-
 6 ation similar treatment settings or similar treat-
 7 ments.

8 “(c) IN- AND OUT-OF-NETWORK.—

9 “(1) IN GENERAL.—In the case of a group
 10 health plan (or health insurance coverage offered in
 11 connection with such a plan) that provides both
 12 medical and surgical benefits and mental health ben-
 13 efits, and that provides such benefits on both an in-
 14 and out-of-network basis pursuant to the terms of
 15 the plan (or coverage), such plan (or coverage) shall
 16 ensure that the requirements of this section are ap-
 17 plied to both in- and out-of-network services by com-
 18 paring in-network medical and surgical benefits to
 19 in-network mental health benefits and out-of-net-
 20 work medical and surgical benefits to out-of-network
 21 mental health benefits, except that in no event shall
 22 this subsection require the provision of out-of-net-
 23 work coverage for mental health benefits even in the
 24 case where out-of-network coverage is provided for
 25 medical and surgical benefits.

1 “(2) CLARIFICATION.—Nothing in paragraph
2 (1) shall be construed as requiring that a group
3 health plan (or coverage in connection with such a
4 plan) eliminate an out-of-network provider option
5 from such plan (or coverage) pursuant to the terms
6 of the plan (or coverage).

7 “(d) SMALL EMPLOYER EXEMPTION.—

8 “(1) IN GENERAL.—This section shall not apply
9 to any group health plan (and group health insur-
10 ance coverage offered in connection with a group
11 health plan) for any plan year of any employer who
12 employed an average of at least 2 (or 1 in the case
13 of an employer residing in a State that permits
14 small groups to include a single individual) but not
15 more than 50 employees on business days during the
16 preceding calendar year.

17 “(2) APPLICATION OF CERTAIN RULES IN DE-
18 TERMINATION OF EMPLOYER SIZE.—For purposes of
19 this subsection:

20 “(A) APPLICATION OF AGGREGATION RULE
21 FOR EMPLOYERS.—Rules similar to the rules
22 under subsections (b), (c), (m), and (o) of sec-
23 tion 414 of the Internal Revenue Code of 1986
24 shall apply for purposes of treating persons as
25 a single employer.

1 “(B) EMPLOYERS NOT IN EXISTENCE IN
 2 PRECEDING YEAR.—In the case of an employer
 3 which was not in existence throughout the pre-
 4 ceding calendar year, the determination of
 5 whether such employer is a small employer shall
 6 be based on the average number of employees
 7 that it is reasonably expected such employer
 8 will employ on business days in the current cal-
 9 endar year.

10 “(C) PREDECESSORS.—Any reference in
 11 this paragraph to an employer shall include a
 12 reference to any predecessor of such employer.

13 “(e) COST EXEMPTION.—

14 “(1) IN GENERAL.—With respect to a group
 15 health plan (or health insurance coverage offered in
 16 connections with such a plan), if the application of
 17 this section to such plan (or coverage) results in an
 18 increase for the plan year involved of the actual total
 19 costs of coverage with respect to medical and sur-
 20 gical benefits and mental health benefits under the
 21 plan (as determined and certified under paragraph
 22 (3)) by an amount that exceeds the applicable per-
 23 centage described in paragraph (2) of the actual
 24 total plan costs, the provisions of this section shall
 25 not apply to such plan (or coverage) during the fol-

lowing plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year. An employer may elect to continue to apply mental health parity pursuant to this section with respect to the group health plan (or coverage) involved regardless of any increase in total costs.

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

“(A) 2 percent in the case of the first plan year in which this section is applied; and

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

“(3) DETERMINATIONS BY ACTUARIES.—Determinations as to increases in actual costs under a plan (or coverage) for purposes of this section shall be made by a qualified actuary who is a member in good standing of the American Academy of Actuaries. Such determinations shall be certified by the actuary and be made available to the general public.

“(4) 6-MONTH DETERMINATIONS.—If a group health plan (or a health insurance issuer offering coverage in connections with a group health plan) seeks an exemption under this subsection, determinations under paragraph (1) shall be made after

1 such plan (or coverage) has complied with this sec-
2 tion for the first 6 months of the plan year involved.

3 “(5) NOTIFICATION.—An election to modify
4 coverage of mental health benefits as permitted
5 under this subsection shall be treated as a material
6 modification in the terms of the plan as described in
7 section 102(a)(1) and shall be subject to the applica-
8 ble notice requirements under section 104(b)(1).

9 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall be construed to require a group health plan (or
11 health insurance coverage offered in connection with such
12 a plan) to provide any mental health benefits.

13 “(g) MENTAL HEALTH BENEFITS.—In this section,
14 the term ‘mental health benefits’ means benefits with re-
15 spect to mental health services (including substance abuse
16 treatment) as defined under the terms of the group health
17 plan or coverage, and when applicable as may be defined
18 under State law when applicable to health insurance cov-
19 erage offered in connection with a group health plan.”.

20 **SEC. 3. EFFECTIVE DATE.**

21 “(a) IN GENERAL.—The provisions of this Act shall
22 apply to group health plans (or health insurance coverage
23 offered in connection with such plans) beginning in the
24 first plan year that begins on or after January 1 of the

1 first calendar year that begins more than 1 year after the
 2 date of the enactment of this Act.

3 (b) TERMINATION OF CERTAIN PROVISIONS.—

4 (1) ERISA.—Section 712 of the Employee Re-
 5 tirement Income Security Act of 1974 (29 U.S.C.
 6 1185a) is amended by striking subsection (f) and in-
 7 serting the following:

8 “(f) SUNSET.—This section shall not apply to bene-
 9 fits for services furnished after the effective date described
 10 in section 3(a) of the Mental Health Parity Act of 2007.”.

11 (2) PHSA.—Section 2705 of the Public Health
 12 Service Act (42 U.S.C. 300gg–5) is amended by
 13 striking subsection (f) and inserting the following:

14 “(f) SUNSET.—This section shall not apply to bene-
 15 fits for services furnished after the effective date described
 16 in section 3(a) of the Mental Health Parity Act of 2007.”.

17 **SEC. 4. SPECIAL PREEMPTION RULE.**

18 (a) ERISA PREEMPTION.—Section 731 of the Em-
 19 ployee Retirement Income Security Act of 1974 (29
 20 U.S.C. 1191) is amended—

21 (1) by redesignating subsections (c) and (d) as
 22 subsections (e) and (f), respectively; and

23 (2) by inserting after subsection (b), the fol-
 24 lowing:

1 “(c) SPECIAL RULE IN CASE OF MENTAL HEALTH
2 PARITY REQUIREMENTS.—

3 “(1) IN GENERAL.—Notwithstanding any provi-
4 sion of section 514 to the contrary, the provisions of
5 this part relating to a group health plan or a health
6 insurance issuer offering coverage in connection with
7 a group health plan shall supercede any provision of
8 State law that establishes, implements, or continues
9 in effect any standard or requirement which differs
10 from the specific standards or requirements con-
11 tained in subsections (a), (b), (c), or (e) of section
12 712A.

13 “(2) CLARIFICATIONS.—Nothing in this sub-
14 section shall be construed to preempt State insur-
15 ance laws relating to the individual insurance mar-
16 ket or to small employers (as such term is defined
17 for purposes of section 712A(d)).”.

18 (b) PHSA PREEMPTION.—Section 2723 of the Public
19 Health Service Act (42 U.S.C. 300gg-23) is amended—

20 (1) by redesignating subsections (c) and (d) as
21 subsections (e) and (f), respectively; and

22 (2) by inserting after subsection (b), the fol-
23 lowing:

24 “(c) SPECIAL RULE IN CASE OF MENTAL HEALTH
25 PARITY REQUIREMENTS.—

1 “(1) IN GENERAL.—Notwithstanding any provi-
 2 sion of section 514 of the Employee Retirement In-
 3 come Security Act of 1974 to the contrary, the pro-
 4 visions of this part relating to a group health plan
 5 or a health insurance issuer offering coverage in
 6 connection with a group health plan shall supercede
 7 any provisions of State law that establishes, imple-
 8 ments, or continues in effect any standard or re-
 9 quirement which differs from the specific standards
 10 or requirements contained in subsections (a), (b),
 11 (c), or (e) of section 2705A.

12 “(2) CLARIFICATIONS.—Nothing in this sub-
 13 section shall be construed to preempt State insur-
 14 ance laws relating to the individual insurance mar-
 15 ket or to small employers (as such term is defined
 16 for purposes of section 2705A(d)).”.

17 (c) EFFECTIVE DATE.—The provisions of this section
 18 shall take effect with respect to a State, on the date on
 19 which the provisions of section 2 apply with respect to
 20 group health plans and health insurance coverage offered
 21 in connection with group health plans.

22 **SEC. 5. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

23 (a) GROUP HEALTH PLAN OMBUDSMAN.—

24 (1) DEPARTMENT OF LABOR.—The Secretary
 25 of Labor shall designate an individual within the De-

1 partment of Labor to serve as the group health plan
2 ombudsman for the Department. Such ombudsman
3 shall serve as an initial point of contact to permit
4 individuals to obtain information and provide assist-
5 ance concerning coverage of mental health services
6 under group health plans in accordance with this
7 Act.

8 (2) DEPARTMENT OF HEALTH AND HUMAN
9 SERVICES.—The Secretary of Health and Human
10 Services shall designate an individual within the De-
11 partment of Health and Human Services to serve as
12 the group health plan ombudsman for the Depart-
13 ment. Such ombudsman shall serve as an initial
14 point of contact to permit individuals to obtain in-
15 formation and provide assistance concerning cov-
16 erage of mental health services under health insur-
17 ance coverage issued in connection with group health
18 plans in accordance with this Act.

19 (b) AUDITS.—The Secretary of Labor and the Sec-
20 retary of Health and Human Services shall each provide
21 for the conduct of random audits of group health plans
22 (and health insurance coverage offered in connection with
23 such plans) to ensure that such plans are in compliance
24 with this Act (and the amendments made by this Act).

1 (c) GOVERNMENT ACCOUNTABILITY OFFICE
2 STUDY.—

3 (1) STUDY.—The Comptroller General shall
4 conduct a study that evaluates the effect of the im-
5 plementation of the amendments made by this Act
6 on the cost of health insurance coverage, access to
7 health insurance coverage (including the availability
8 of in-network providers), the quality of health care,
9 the impact on benefits and coverage for mental
10 health and substance abuse, the impact of any addi-
11 tional cost or savings to the plan, the impact on
12 State mental health benefit mandate laws, other im-
13 pact on the business community and the Federal
14 Government, and other issues as determined appro-
15 priate by the Comptroller General.

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

21 (d) REGULATIONS.—Not later than 1 year after the
22 date of enactment of this Act, the Secretary of Labor and
23 the Secretary of Health and Human Services shall jointly
24 promulgate final regulations to carry out this Act.

○