

114TH CONGRESS
1ST SESSION

H. R. 4276

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2015

Mr. KENNEDY (for himself, Mr. TONKO, Ms. MATSUI, Ms. CLARKE of New York, and Ms. CASTOR of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Behavioral Health Cov-
5 erage Transparency Act of 2015”.

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

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

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

9 “(A) DISCLOSURE REQUIREMENTS.—

10 “(i) REGULATIONS.—Not later than
11 June 30, 2016, the Secretary, in coopera-
12 tion with the Secretaries of Labor and the
13 Treasury, as appropriate, shall issue addi-
14 tional regulations for carrying out this sec-
15 tion, including an explanation of docu-
16 ments that must be disclosed by plans and
17 issuers, the process governing such disclo-
18 sures by plans and issuers, and analyses
19 that must be conducted by plans and
20 issuers by a group health plan or health in-
21 surance issuer offering health insurance
22 coverage in the group or individual market
23 in order for such plan or issuer to dem-
24 onstrate compliance with the provisions of
25 this section.

1 “(ii) DISCLOSURE REQUIREMENTS.—
2 Documents required to be disclosed by a
3 group health plan or health insurance
4 issuer offering health insurance coverage in
5 the group or individual market under
6 clause (i) shall include an annual report
7 that details the specific analyses performed
8 to ensure compliance of such plan or cov-
9 erage with the law and regulations. At a
10 minimum, with respect to the application
11 of non-quantitative treatment limitations
12 (in this paragraph referred to as NQTLs)
13 to benefits under the plan or coverage,
14 such report shall—

15 “(I) identify the specific factors
16 the plan or coverage used in per-
17 forming its NQTL analysis;

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

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

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

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

19 “(iii) GUIDANCE.—The Secretary, in
20 cooperation with the Secretaries of Labor
21 and the Treasury, as appropriate, shall
22 issue guidance to group health plans and
23 health insurance issuers offering health in-
24 surance coverage in the group or individual
25 markets on how to satisfy the requirements

1 of this section with respect to making in-
2 formation available to current and poten-
3 tial participants and beneficiaries. Such in-
4 formation shall include certificate of cov-
5 erage documents and instruments under
6 which the plan or coverage involved is ad-
7 ministered and operated that specify, in-
8 clude, or refer to procedures, formulas, and
9 methodologies applied to determine a par-
10 ticipant or beneficiary's benefit under the
11 plan or coverage, regardless of whether
12 such information is contained in a docu-
13 ment designated as the 'plan document'.
14 Such guidance shall include a disclosure of
15 how the plan or coverage involved has pro-
16 vided that processes, strategies, evidentiary
17 standards, and other factors used in apply-
18 ing the NQTL to mental health or sub-
19 stance use disorder benefits are com-
20 parable to, and applied no more stringently
21 than, the processes, strategies, evidentiary
22 standards, or other factors used in apply-
23 ing the limitation with respect to medical
24 and surgical benefits in the same classi-
25 fication.

1 “(iv) DEFINITIONS.—In this para-
2 graph and paragraph (7), the terms ‘non-
3 quantitative treatment limitations’, ‘com-
4 parable to’, and ‘applied no more strin-
5 gently than’ have the meanings given such
6 terms in sections 146 and 147 of title 45,
7 Code of Federal Regulations (or any suc-
8 cessor regulation).

9 “(B) ENFORCEMENT.—

10 “(i) PROCESS FOR COMPLAINTS.—The
11 Secretary, in cooperation with the Secre-
12 taries of Labor and the Treasury, as ap-
13 propriate, shall, with respect to group
14 health plans and health insurance issuers
15 offering health insurance coverage in the
16 group or individual market, issue guidance
17 to clarify the process and timeline for cur-
18 rent and potential participants and bene-
19 ficiaries (and authorized representatives
20 and health care providers of such partici-
21 pants and beneficiaries) with respect to
22 such plans and coverage to file formal
23 complaints of such plans or issuers being
24 in violation of this section, including guid-
25 ance, by plan type, on the relevant State,

1 regional, and national offices with which
2 such complaints should be filed.

3 “(ii) AUTHORITY FOR PUBLIC EN-
4 FORCEMENT.—The Secretary, in consulta-
5 tion with the Secretaries of Labor and the
6 Treasury, shall make available to the pub-
7 lic on the Consumer Parity Portal website
8 established under paragraph (7) de-identi-
9 fied information on audits and investiga-
10 tions of group health plans and health in-
11 surance issuers conducted under this sec-
12 tion.

13 “(iii) AUDITS.—

14 “(I) RANDOMIZED AUDITS.—The
15 Secretary in cooperation with the Sec-
16 retaries of Labor and the Treasury, is
17 authorized to conduct randomized au-
18 dits of group health plans and health
19 insurance issuers offering health in-
20 surance coverage in the group or indi-
21 vidual market to determine compli-
22 ance with this section. Such audits
23 shall be conducted on no fewer than
24 twelve plans and issuers per plan
25 year. Information from such audits

1 shall be made plainly available on the
2 Consumer Parity Portal website es-
3 tablished under paragraph (7).

4 “(II) ADDITIONAL AUDITS.—In
5 the case of a group health plan or
6 health insurance issuer offering health
7 insurance coverage in the group or in-
8 dividual market with respect to which
9 any claim has been filed during a plan
10 year, the Secretary may audit the
11 books and records of such plan or
12 issuer to determine compliance with
13 this section. Information detailing the
14 results of the audit shall be made
15 available on the Consumer Parity Por-
16 tal website established under para-
17 graph (7).

18 “(iv) DENIAL RATES.—The Secretary
19 shall collect information on the rates of
20 and reasons for denial by group health
21 plans and health insurance issuers offering
22 health insurance coverage in the group or
23 individual market of claims for outpatient
24 and inpatient mental health and substance
25 use disorder services compared to the rates

1 of and reasons for denial of claims for
2 medical and surgical services. For the first
3 plan year beginning at least two years
4 after the date of the enactment of this
5 paragraph and each subsequent plan year,
6 the Secretary shall submit to the Energy
7 and Commerce Committee of the House of
8 Representatives and the Committee on
9 Health, Education, Labor, and Pensions of
10 the Senate, and make plainly available on
11 the Consumer Parity Portal website under
12 paragraph (7), the information collected
13 under the previous sentence with respect to
14 the previous plan year.

15 “(7) CONSUMER PARITY PORTAL WEBSITE.—
16 The Secretary, in consultation with the Secretaries
17 of Labor and the Treasury, shall establish a one-
18 stop Internet website portal for—

19 “(A) submitting complaints and violations
20 relating to this section, section 712 of the Em-
21 ployee Retirement Income Security Act of 1974,
22 and section 9812 of the Internal Revenue Code
23 of 1986; and

24 “(B) for each of such Secretaries to submit
25 information in order to provide such informa-

1 tion to health care consumers pursuant to para-
2 graph (6), section 712(a)(6) of the Employee
3 Retirement Income Security Act of 1974, and
4 section 9812(a)(6) of the Internal Revenue
5 Code of 1986.

6 Such portal shall have the ability to take basic infor-
7 mation related to the complaint, including name,
8 contact information, and brief narrative, and trans-
9 mit such information in a timely fashion to the ap-
10 propriate State or Federal enforcement agency. Once
11 the consumer information is submitted, such portal
12 shall provide the consumer with contact information
13 for the appropriate enforcement agency to follow-up
14 on the complaint.”.

15 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
16 OF 1974.—Section 712(a) of the Employee Retirement In-
17 come Security Act of 1974 (29 U.S.C. 1185a(a)) is
18 amended by adding at the end the following new para-
19 graph:

20 “(6) DISCLOSURE AND ENFORCEMENT RE-
21 QUIREMENTS.—

22 “(A) DISCLOSURE REQUIREMENTS.—

23 “(i) REGULATIONS.—Not later than
24 June 30, 2016, the Secretary, in coopera-
25 tion with the Secretaries of Health and

1 Human Services and the Treasury, as ap-
2 propriate, shall issue additional regulations
3 for carrying out this section, including an
4 explanation of documents that must be dis-
5 closed by plans and issuers, the process
6 governing such disclosures by plans and
7 issuers, and analyses that must be con-
8 ducted by plans and issuers by a group
9 health plan (and health insurance coverage
10 offered in connection with such a plan) in
11 order for such plan or issuer to dem-
12 onstrate compliance with the provisions of
13 this section.

14 “(ii) DISCLOSURE REQUIREMENTS.—
15 Documents required to be disclosed by a
16 group health plan (and health insurance
17 coverage offered in connection with such a
18 plan) under clause (i) shall include an an-
19 nual report that details the specific anal-
20 yses performed to ensure compliance of
21 such plan or coverage with the law and
22 regulations. At a minimum, with respect to
23 the application of non-quantitative treat-
24 ment limitations (in this paragraph re-

1 ferred to as NQTLs) to benefits under the
2 plan or coverage, such report shall—

3 “(I) identify the specific factors
4 the plan or coverage used in per-
5 forming its NQTL analysis;

6 “(II) identify and define the spe-
7 cific evidentiary standards relied on to
8 evaluate the factors;

9 “(III) describe how the evi-
10 dentiary standards are applied to each
11 service category for mental health,
12 substance use disorders, medical bene-
13 fits, and surgical benefits;

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

18 “(V) disclose the specific findings
19 of the plan or coverage in each service
20 category and the conclusions reached
21 with respect to whether the processes,
22 strategies, evidentiary standards, or
23 other factors used in applying the
24 NQTL to mental health or substance
25 use disorder benefits are comparable

1 to, and applied no more stringently
2 than, the processes, strategies, evi-
3 dentiary standards, or other factors
4 used in applying the limitation with
5 respect to medical and surgical bene-
6 fits in the same classification.

7 “(iii) GUIDANCE.—The Secretary, in
8 cooperation with the Secretaries of Health
9 and Human Services and the Treasury, as
10 appropriate, shall issue guidance to group
11 health plans (and health insurance cov-
12 erage offered in connection with such a
13 plan) on how to satisfy the requirements of
14 this section with respect to making infor-
15 mation available to current and potential
16 participants and beneficiaries. Such infor-
17 mation shall include certificate of coverage
18 documents and instruments under which
19 the plan or coverage involved is adminis-
20 tered and operated that specify, include, or
21 refer to procedures, formulas, and meth-
22 odologies applied to determine a partici-
23 pant or beneficiary’s benefit under the plan
24 or coverage, regardless of whether such in-
25 formation is contained in a document des-

1 ignated as the ‘plan document’. Such guid-
2 ance shall include a disclosure of how the
3 plan or coverage involved has provided that
4 processes, strategies, evidentiary stand-
5 ards, and other factors used in applying
6 the NQTL to mental health or substance
7 use disorder benefits are comparable to,
8 and applied no more stringently than, the
9 processes, strategies, evidentiary stand-
10 ards, or other factors used in applying the
11 limitation with respect to medical and sur-
12 gical benefits in the same classification.

13 “(iv) DEFINITIONS.—In this para-
14 graph, the terms ‘non-quantitative treat-
15 ment limitations’, ‘comparable to’, and ‘ap-
16 plied no more stringently than’ have the
17 meanings given such terms in sections 146
18 and 147 of title 45, Code of Federal Regu-
19 lations (or any successor regulation).

20 “(B) ENFORCEMENT.—

21 “(i) PROCESS FOR COMPLAINTS.—The
22 Secretary, in cooperation with the Secre-
23 taries of Health and Human Services and
24 the Treasury, as appropriate, shall, with
25 respect to group health plans (and health

1 insurance coverage offered in connection
2 with such a plan), issue guidance to clarify
3 the process and timeline for current and
4 potential participants and beneficiaries
5 (and authorized representatives and health
6 care providers of such participants and
7 beneficiaries) with respect to such plans
8 (and coverage) to file formal complaints of
9 such plans (or coverage) being in violation
10 of this section, including guidance, by plan
11 type, on the relevant State, regional, and
12 national offices with which such complaints
13 should be filed.

14 “(ii) AUTHORITY FOR PUBLIC EN-
15 FORCEMENT.—The Secretary, in consulta-
16 tion with the Secretaries of Labor and the
17 Treasury, shall make available to the pub-
18 lic on the Consumer Parity Portal website
19 established under section 2726(a)(7) of the
20 Public Health Service Act de-identified in-
21 formation on audits and investigations of
22 group health plans (and health insurance
23 coverage offered in connection with such a
24 plan) conducted under this section.

25 “(iii) AUDITS.—

1 “(I) RANDOMIZED AUDITS.—The
2 Secretary in cooperation with the Sec-
3 retaries of Health and Human Serv-
4 ices and the Treasury, is authorized
5 to conduct randomized audits of
6 group health plans (and health insur-
7 ance coverage offered in connection
8 with such a plan) to determine com-
9 pliance with this section. Such audits
10 shall be conducted on no fewer than
11 twelve plans and coverage per plan
12 year. Information from such audits
13 shall be made plainly available on the
14 Consumer Parity Portal website es-
15 tablished under section 2726(a)(7) of
16 the Public Health Service Act.

17 “(II) ADDITIONAL AUDITS.—In
18 the case of a group health plan (and
19 health insurance coverage offered in
20 connection with such a plan) with re-
21 spect to which any claim has been
22 filed during a plan year, the Secretary
23 may audit the books and records of
24 such plan (or coverage) to determine
25 compliance with this section. Informa-

1 tion detailing the results of the audit
2 shall be made available on the Con-
3 sumer Parity Portal website estab-
4 lished under section 2726(a)(7) of the
5 Public Health Service Act.

6 “(iv) DENIAL RATES.—The Secretary
7 shall collect information on the rates of
8 and reasons for denial by group health
9 plans (and health insurance coverage of-
10 fered in connection with such a plan) of
11 claims for outpatient and inpatient mental
12 health and substance use disorder services
13 compared to the rates of and reasons for
14 denial of claims for medical and surgical
15 services. For the first plan year beginning
16 at least two years after the date of the en-
17 actment of this paragraph and each subse-
18 quent plan year, the Secretary shall submit
19 to the Energy and Commerce Committee
20 of the House of Representatives and the
21 Committee on Health, Education, Labor,
22 and Pensions of the Senate, and make
23 plainly available on the Consumer Parity
24 Portal website under section 2726(a)(7) of
25 the Public Health Service Act, the infor-

1 mation collected under the previous sen-
2 tence with respect to the previous plan
3 year.”.

4 (c) INTERNAL REVENUE CODE OF 1986.—Section
5 9812(a) of the Internal Revenue Code of 1986 is amended
6 by adding at the end the following new paragraph:

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

9 “(A) DISCLOSURE REQUIREMENTS.—

10 “(i) REGULATIONS.—Not later than
11 June 30, 2016, the Secretary, in coopera-
12 tion with the Secretaries of Health and
13 Human Services and Labor, as appro-
14 priate, shall issue additional regulations for
15 carrying out this section, including an ex-
16 planation of documents that must be dis-
17 closed by plans and issuers, the process
18 governing such disclosures by plans and
19 issuers, and analyses that must be con-
20 ducted by plans and issuers by a group
21 health plan in order for such plan to dem-
22 onstrate compliance with the provisions of
23 this section.

24 “(ii) DISCLOSURE REQUIREMENTS.—

25 Documents required to be disclosed by a

1 group health plan under clause (i) shall in-
2 clude an annual report that details the spe-
3 cific analyses performed to ensure compli-
4 ance of such plan with the law and regula-
5 tions. At a minimum, with respect to the
6 application of non-quantitative treatment
7 limitations (in this paragraph referred to
8 as NQTLs) to benefits under the plan,
9 such report shall—

10 “(I) identify the specific factors
11 the plan used in performing its NQTL
12 analysis;

13 “(II) identify and define the spe-
14 cific evidentiary standards relied on to
15 evaluate the factors;

16 “(III) describe how the evi-
17 dentiary standards are applied to each
18 service category for mental health,
19 substance use disorders, medical bene-
20 fits, and surgical benefits;

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

1 “(V) disclose the specific findings
2 of the plan in each service category
3 and the conclusions reached with re-
4 spect to whether the processes, strate-
5 gies, evidentiary standards, or other
6 factors used in applying the NQTL to
7 mental health or substance use dis-
8 order benefits are comparable to, and
9 applied no more stringently than, the
10 processes, strategies, evidentiary
11 standards, or other factors used in ap-
12 plying the limitation with respect to
13 medical and surgical benefits in the
14 same classification.

15 “(iii) GUIDANCE.—The Secretary, in
16 cooperation with the Secretaries of Health
17 and Human Services and Labor, as appro-
18 priate, shall issue guidance to group health
19 plans on how to satisfy the requirements of
20 this section with respect to making infor-
21 mation available to current and potential
22 participants and beneficiaries. Such infor-
23 mation shall include certificate of coverage
24 documents and instruments under which
25 the plan involved is administered and oper-

1 ated that specify, include, or refer to pro-
2 cedures, formulas, and methodologies ap-
3 plied to determine a participant or bene-
4 ficiary’s benefit under the plan, regardless
5 of whether such information is contained
6 in a document designated as the ‘plan doc-
7 ument’. Such guidance shall include a dis-
8 closure of how the plan involved has pro-
9 vided that processes, strategies, evidentiary
10 standards, and other factors used in apply-
11 ing the NQTL to mental health or sub-
12 stance use disorder benefits are com-
13 parable to, and applied no more stringently
14 than, the processes, strategies, evidentiary
15 standards, or other factors used in apply-
16 ing the limitation with respect to medical
17 and surgical benefits in the same classi-
18 fication.

19 “(iv) DEFINITIONS.—In this para-
20 graph, the terms ‘non-quantitative treat-
21 ment limitations’, ‘comparable to’, and ‘ap-
22 plied no more stringently than’ have the
23 meanings given such terms in sections 146
24 and 147 of title 45, Code of Federal Regu-
25 lations (or any successor regulation).

1 “(B) ENFORCEMENT.—

2 “(i) PROCESS FOR COMPLAINTS.—The
3 Secretary, in cooperation with the Secre-
4 taries of Health and Human Services and
5 Labor, as appropriate, shall, with respect
6 to group health plans, issue guidance to
7 clarify the process and timeline for current
8 and potential participants and beneficiaries
9 (and authorized representatives and health
10 care providers of such participants and
11 beneficiaries) with respect to such plans to
12 file formal complaints of such plans being
13 in violation of this section, including guid-
14 ance, by plan type, on the relevant State,
15 regional, and national offices with which
16 such complaints should be filed.

17 “(ii) AUTHORITY FOR PUBLIC EN-
18 FORCEMENT.—The Secretary, in consulta-
19 tion with the Secretaries of Labor and the
20 Treasury, shall make available to the pub-
21 lic on the Consumer Parity Portal website
22 established under section 2726(a)(7) of the
23 Public Health Service Act de-identified in-
24 formation on audits and investigations of

1 group health plans conducted under this
2 section.

3 “(iii) AUDITS.—

4 “(I) RANDOMIZED AUDITS.—The
5 Secretary in cooperation with the Sec-
6 retaries of Health and Human Serv-
7 ices and Labor, is authorized to con-
8 duct randomized audits of group
9 health plans to determine compliance
10 with this section. Such audits shall be
11 conducted on no fewer than twelve
12 plans per plan year. Information from
13 such audits shall be made plainly
14 available on the Consumer Parity Por-
15 tal website established under section
16 2726(a)(7) of the Public Health Serv-
17 ice Act.

18 “(II) ADDITIONAL AUDITS.—In
19 the case of a group health plan with
20 respect to which any claim has been
21 filed during a plan year, the Secretary
22 may audit the books and records of
23 such plan to determine compliance
24 with this section. Information detail-
25 ing the results of the audit shall be

1 made available on the Consumer Par-
2 ity Portal website established under
3 section 2726(a)(7) of the Public
4 Health Service Act.

5 “(iv) DENIAL RATES.—The Secretary
6 shall collect information on the rates of
7 and reasons for denial by group health
8 plans of claims for outpatient and inpa-
9 tient mental health and substance use dis-
10 order services compared to the rates of and
11 reasons for denial of claims for medical
12 and surgical services. For the first plan
13 year beginning at least two years after the
14 date of the enactment of this paragraph
15 and each subsequent plan year, the Sec-
16 retary shall submit to the Energy and
17 Commerce Committee of the House of
18 Representatives and the Committee on
19 Health, Education, Labor, and Pensions of
20 the Senate, and make plainly available on
21 the Consumer Parity Portal website under
22 section 2726(a)(7) of the Public Health
23 Service Act, the information collected
24 under the previous sentence with respect to
25 the previous plan year.”.

1 (d) GAO STUDY ON MENTAL HEALTH AND SUB-
2 STANCE USE PARITY ENFORCEMENT EFFORTS.—Not
3 later than one year after the date of enactment of this
4 Act, the Comptroller General of the United States, in con-
5 sultation with the Secretary of Health and Human Serv-
6 ices, the Secretary of Labor, and the Secretary of the
7 Treasury, shall submit to Congress, and make plainly
8 available on the Consumer Parity Portal website under
9 paragraph (7) of section 2726(a) of the Public Health
10 Service Act (42 U.S.C. 300gg–26(a)), as added by sub-
11 section (a), a report detailing the enforcement efforts of
12 the responsible departments and agencies in implementing
13 sections 2726 of the Public Health Service Act 42 U.S.C.
14 300gg–26), 712 of the Employee Retirement Income Se-
15 curity Act of 1974 (29 U.S.C. 1185a), and 9812 of the
16 Internal Revenue Code of 1986, including—

17 (1) the number of investigations and audits
18 that have been conducted into potential parity viola-
19 tions; and

20 (2) details on the investigation, audits, or en-
21 forcement action that was carried out as a result of
22 such investigations that would not identify the sub-
23 ject of such investigation or enforcement.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
25 authorized to be appropriated \$2,000,000 for each of fis-

1 cal years 2016 through 2020 to carry out this section, in-
2 cluding the amendments made by this section.

○