

# Union Calendar No. 575

116<sup>TH</sup> CONGRESS  
2D SESSION

# H. R. 7539

**[Report No. 116–692, Part I]**

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2020

Mr. KENNEDY (for himself, Ms. PORTER, Mr. BILIRAKIS, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, 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

DECEMBER 24, 2020

Additional sponsors: Mr. LUJÁN, Mr. SOTO, and Mr. FITZPATRICK

DECEMBER 24, 2020

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 24, 2020

Committees on Ways and Means and Education and Labor discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 9, 2020]

# **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 “Strengthening Behav-*  
 5 *ioral Health Parity Act”.*

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

8 *(a) PHSA.—*

9 *(1) IN GENERAL.—Title XXVII of the Public*  
 10 *Health Service Act (42 U.S.C. 300gg–11 et seq.) is*  
 11 *amended by adding at the end the following new part:*

12 **“PART D—ADDITIONAL COVERAGE PROVISIONS**

13 **“SEC. 2799A–1. PARITY IN MENTAL HEALTH AND SUB-**  
 14 **STANCE USE DISORDER BENEFITS.**

15 *“(a) IN GENERAL.—*

16 *“(1) AGGREGATE LIFETIME LIMITS.—In the case*  
 17 *of a group health plan or a health insurance issuer*  
 18 *offering group or individual health insurance cov-*  
 19 *erage that provides both medical and surgical benefits*  
 20 *and mental health or substance use disorder bene-*  
 21 *fits—*

22 *“(A) NO LIFETIME LIMIT.—If the plan or*  
 23 *coverage does not include an aggregate lifetime*  
 24 *limit on substantially all medical and surgical*  
 25 *benefits, the plan or coverage may not impose*

1        *any aggregate lifetime limit on mental health or*  
2        *substance use disorder benefits.*

3                “(B) *LIFETIME LIMIT.*—*If the plan or cov-*  
4        *erage includes an aggregate lifetime limit on*  
5        *substantially all medical and surgical benefits*  
6        *(in this paragraph referred to as the ‘applicable*  
7        *lifetime limit’), the plan or coverage shall ei-*  
8        *ther—*

9                “(i) *apply the applicable lifetime limit*  
10        *both to the medical and surgical benefits to*  
11        *which it otherwise would apply and to men-*  
12        *tal health and substance use disorder bene-*  
13        *fits and not distinguish in the application*  
14        *of such limit between such medical and sur-*  
15        *gical benefits and mental health and sub-*  
16        *stance use disorder benefits; or*

17                “(ii) *not include any aggregate lifetime*  
18        *limit on mental health or substance use dis-*  
19        *order benefits that is less than the applica-*  
20        *ble lifetime limit.*

21                “(C) *RULE IN CASE OF DIFFERENT LIM-*  
22        *ITS.*—*In the case of a plan or coverage that is*  
23        *not described in subparagraph (A) or (B) and*  
24        *that includes no or different aggregate lifetime*  
25        *limits on different categories of medical and sur-*

gical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health and substance use disorder benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

“(2) ANNUAL LIMITS.—In the case of a group health plan or a health insurance issuer offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits—

“(A) NO ANNUAL LIMIT.—If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health or substance use disorder benefits.

“(B) ANNUAL LIMIT.—If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the ‘applicable annual limit’), the plan or coverage shall either—

1           “(i) apply the applicable annual limit  
2           both to medical and surgical benefits to  
3           which it otherwise would apply and to men-  
4           tal health and substance use disorder bene-  
5           fits and not distinguish in the application  
6           of such limit between such medical and sur-  
7           gical benefits and mental health and sub-  
8           stance use disorder benefits; or

9           “(ii) not include any annual limit on  
10          mental health or substance use disorder ben-  
11          efits that is less than the applicable annual  
12          limit.

13          “(C) *RULE IN CASE OF DIFFERENT LIM-*  
14          *ITS.—In the case of a plan or coverage that is*  
15          *not described in subparagraph (A) or (B) and*  
16          *that includes no or different annual limits on*  
17          *different categories of medical and surgical bene-*  
18          *fits, the Secretary shall establish rules under*  
19          *which subparagraph (B) is applied to such plan*  
20          *or coverage with respect to mental health and*  
21          *substance use disorder benefits by substituting*  
22          *for the applicable annual limit an average an-*  
23          *ual limit that is computed taking into account*  
24          *the weighted average of the annual limits appli-*  
25          *cable to such categories.*

1           “(3) *FINANCIAL REQUIREMENTS AND TREATMENT*  
2           *LIMITATIONS.—*

3           “(A) *IN GENERAL.—In the case of a group*  
4           *health plan or a health insurance issuer offering*  
5           *group or individual health insurance coverage*  
6           *that provides both medical and surgical benefits*  
7           *and mental health or substance use disorder ben-*  
8           *efits, such plan or coverage shall ensure that—*

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

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

1 *ment limitations that are applicable only*  
 2 *with respect to mental health or substance*  
 3 *use disorder benefits.*

4 *“(B) DEFINITIONS.—In this paragraph:*

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

11 *“(ii) PREDOMINANT.—A financial re-*  
 12 *quirement or treatment limit is considered*  
 13 *to be predominant if it is the most common*  
 14 *or frequent of such type of limit or require-*  
 15 *ment.*

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

22 *“(4) AVAILABILITY OF PLAN INFORMATION.—The*  
 23 *criteria for medical necessity determinations made*  
 24 *under the plan with respect to mental health or sub-*  
 25 *stance use disorder benefits (or the health insurance*



1        *coverage offered in connection with the plan with re-*  
2        *spect to such benefits) shall be made available by the*  
3        *plan administrator (or the health insurance issuer of-*  
4        *fering such coverage) in accordance with regulations*  
5        *to any current or potential participant, beneficiary,*  
6        *or contracting provider upon request. The reason for*  
7        *any denial under the plan (or coverage) of reimburse-*  
8        *ment or payment for services with respect to mental*  
9        *health or substance use disorder benefits in the case*  
10       *of any participant or beneficiary shall, on request or*  
11       *as otherwise required, be made available by the plan*  
12       *administrator (or the health insurance issuer offering*  
13       *such coverage) to the participant or beneficiary in ac-*  
14       *cordance with regulations.*

15            *“(5) OUT-OF-NETWORK PROVIDERS.—In the case*  
16        *of a plan or coverage that provides both medical and*  
17        *surgical benefits and mental health or substance use*  
18        *disorder benefits, if the plan or coverage provides cov-*  
19        *erage for medical or surgical benefits provided by out-*  
20        *of-network providers, the plan or coverage shall pro-*  
21        *vide coverage for mental health or substance use dis-*  
22        *order benefits provided by out-of-network providers in*  
23        *a manner that is consistent with the requirements of*  
24        *this section.*

1           “(6) *COMPLIANCE PROGRAM GUIDANCE DOCU-*  
2       *MENT.*—

3           “(A) *IN GENERAL.*—*Not later than 12*  
4       *months after the date of enactment of the Help-*  
5       *ing Families in Mental Health Crisis Reform*  
6       *Act of 2016, the Secretary, the Secretary of*  
7       *Labor, and the Secretary of the Treasury, in*  
8       *consultation with the Inspector General of the*  
9       *Department of Health and Human Services, the*  
10       *Inspector General of the Department of Labor,*  
11       *and the Inspector General of the Department of*  
12       *the Treasury, shall issue a compliance program*  
13       *guidance document to help improve compliance*  
14       *with this section, section 712 of the Employee*  
15       *Retirement Income Security Act of 1974, and*  
16       *section 9812 of the Internal Revenue Code of*  
17       *1986, as applicable. In carrying out this para-*  
18       *graph, the Secretaries may take into consider-*  
19       *ation the 2016 publication of the Department of*  
20       *Health and Human Services and the Depart-*  
21       *ment of Labor, entitled ‘Warning Signs - Plan*  
22       *or Policy Non-Quantitative Treatment Limita-*  
23       *tions (NQTLs) that Require Additional Analysis*  
24       *to Determine Mental Health Parity Compliance’.*

1                   “(B) *EXAMPLES ILLUSTRATING COMPLIANCE*  
2                   *AND NONCOMPLIANCE.*—

3                   “(i) *IN GENERAL.*—*The compliance*  
4                   *program guidance document required under*  
5                   *this paragraph shall provide illustrative,*  
6                   *de-identified examples (that do not disclose*  
7                   *any protected health information or indi-*  
8                   *vidually identifiable information) of pre-*  
9                   *vious findings of compliance and non-*  
10                  *compliance with this section, section 712 of*  
11                  *the Employee Retirement Income Security*  
12                  *Act of 1974, or section 9812 of the Internal*  
13                  *Revenue Code of 1986, as applicable, based*  
14                  *on investigations of violations of such sec-*  
15                  *tions, including—*

16                  “(I) *examples illustrating require-*  
17                  *ments for information disclosures and*  
18                  *nonquantitative treatment limitations;*  
19                  *and*

20                  “(II) *descriptions of the violations*  
21                  *uncovered during the course of such in-*  
22                  *vestigations.*

23                  “(ii) *NONQUANTITATIVE TREATMENT*  
24                  *LIMITATIONS.*—*To the extent that any ex-*  
25                  *ample described in clause (i) involves a*

1 *finding of compliance or noncompliance*  
2 *with regard to any requirement for non-*  
3 *quantitative treatment limitations, the ex-*  
4 *ample shall provide sufficient detail to fully*  
5 *explain such finding, including a full de-*  
6 *scription of the criteria involved for approv-*  
7 *ing medical and surgical benefits and the*  
8 *criteria involved for approving mental*  
9 *health and substance use disorder benefits.*

10 “(iii) *ACCESS TO ADDITIONAL INFOR-*  
11 *MATION REGARDING COMPLIANCE.—In de-*  
12 *veloping and issuing the compliance pro-*  
13 *gram guidance document required under*  
14 *this paragraph, the Secretaries specified in*  
15 *subparagraph (A)—*

16 “(I) *shall enter into interagency*  
17 *agreements with the Inspector General*  
18 *of the Department of Health and*  
19 *Human Services, the Inspector General*  
20 *of the Department of Labor, and the*  
21 *Inspector General of the Department of*  
22 *the Treasury to share findings of com-*  
23 *pliance and noncompliance with this*  
24 *section, section 712 of the Employee*  
25 *Retirement Income Security Act of*

1           1974, or section 9812 of the Internal  
2           Revenue Code of 1986, as applicable;  
3           and

4           “(II) shall seek to enter into an  
5           agreement with a State to share infor-  
6           mation on findings of compliance and  
7           noncompliance with this section, sec-  
8           tion 712 of the Employee Retirement  
9           Income Security Act of 1974, or section  
10          9812 of the Internal Revenue Code of  
11          1986, as applicable.

12          “(C) RECOMMENDATIONS.—The compliance  
13          program guidance document shall include rec-  
14          ommendations to advance compliance with this  
15          section, section 712 of the Employee Retirement  
16          Income Security Act of 1974, or section 9812 of  
17          the Internal Revenue Code of 1986, as applica-  
18          ble, and encourage the development and use of  
19          internal controls to monitor adherence to appli-  
20          cable statutes, regulations, and program require-  
21          ments. Such internal controls may include illus-  
22          trative examples of nonquantitative treatment  
23          limitations on mental health and substance use  
24          disorder benefits, which may fail to comply with  
25          this section, section 712 of the Employee Retire-

1        *ment Income Security Act of 1974, or section*  
2        *9812 of the Internal Revenue Code of 1986, as*  
3        *applicable, in relation to nonquantitative treat-*  
4        *ment limitations on medical and surgical bene-*  
5        *fits.*

6                “(D) *UPDATING THE COMPLIANCE PROGRAM*  
7        *GUIDANCE DOCUMENT.—The Secretary, the Sec-*  
8        *retary of Labor, and the Secretary of the Treas-*  
9        *ury, in consultation with the Inspector General*  
10       *of the Department of Health and Human Serv-*  
11       *ices, the Inspector General of the Department of*  
12       *Labor, and the Inspector General of the Depart-*  
13       *ment of the Treasury, shall update the compli-*  
14       *ance program guidance document every 2 years*  
15       *to include illustrative, de-identified examples*  
16       *(that do not disclose any protected health infor-*  
17       *mation or individually identifiable information)*  
18       *of previous findings of compliance and non-*  
19       *compliance with this section, section 712 of the*  
20       *Employee Retirement Income Security Act of*  
21       *1974, or section 9812 of the Internal Revenue*  
22       *Code of 1986, as applicable.*

23                “(7) *ADDITIONAL GUIDANCE.—*

24                “(A) *IN GENERAL.—Not later than 12*  
25        *months after the date of enactment of the Help-*

1        *ing Families in Mental Health Crisis Reform*  
2        *Act of 2016, the Secretary, the Secretary of*  
3        *Labor, and the Secretary of the Treasury shall*  
4        *issue guidance to group health plans and health*  
5        *insurance issuers offering group or individual*  
6        *health insurance coverage to assist such plans*  
7        *and issuers in satisfying the requirements of this*  
8        *section, section 712 of the Employee Retirement*  
9        *Income Security Act of 1974, or section 9812 of*  
10       *the Internal Revenue Code of 1986, as applica-*  
11       *ble.*

12        “(B) DISCLOSURE.—

13                “(i) GUIDANCE FOR PLANS AND  
14        *ISSUERS.—The guidance issued under this*  
15        *paragraph shall include clarifying informa-*  
16        *tion and illustrative examples of methods*  
17        *that group health plans and health insur-*  
18        *ance issuers offering group or individual*  
19        *health insurance coverage may use for dis-*  
20        *closing information to ensure compliance*  
21        *with the requirements under this section,*  
22        *section 712 of the Employee Retirement In-*  
23        *come Security Act of 1974, or section 9812*  
24        *of the Internal Revenue Code of 1986, as*  
25        *applicable, (and any regulations promul-*

1           gated pursuant to such sections, as applica-  
2           ble).

3           “(ii) *DOCUMENTS FOR PARTICIPANTS,*  
4           *BENEFICIARIES, CONTRACTING PROVIDERS,*  
5           *OR AUTHORIZED REPRESENTATIVES.—The*  
6           *guidance issued under this paragraph shall*  
7           *include clarifying information and illus-*  
8           *trative examples of methods that group*  
9           *health plans and health insurance issuers*  
10          *offering group or individual health insur-*  
11          *ance coverage may use to provide any par-*  
12          *ticipant, beneficiary, contracting provider,*  
13          *or authorized representative, as applicable,*  
14          *with documents containing information*  
15          *that the health plans or issuers are required*  
16          *to disclose to participants, beneficiaries,*  
17          *contracting providers, or authorized rep-*  
18          *resentatives to ensure compliance with this*  
19          *section, section 712 of the Employee Retire-*  
20          *ment Income Security Act of 1974, or sec-*  
21          *tion 9812 of the Internal Revenue Code of*  
22          *1986, as applicable, compliance with any*  
23          *regulation issued pursuant to such respec-*  
24          *tive section, or compliance with any other*  
25          *applicable law or regulation. Such guidance*



1           *shall include information that is compara-*  
2           *tive in nature with respect to—*

3                   “(I) *nonquantitative treatment*  
4                   *limitations for both medical and sur-*  
5                   *gical benefits and mental health and*  
6                   *substance use disorder benefits;*

7                   “(II) *the processes, strategies, evi-*  
8                   *dentiary standards, and other factors*  
9                   *used to apply the limitations described*  
10                  *in subclause (I); and*

11                  “(III) *the application of the limi-*  
12                  *tations described in subclause (I) to en-*  
13                  *sure that such limitations are applied*  
14                  *in parity with respect to both medical*  
15                  *and surgical benefits and mental*  
16                  *health and substance use disorder bene-*  
17                  *fits.*

18                  “(C) *NONQUANTITATIVE TREATMENT LIM-*  
19                  *TATIONS.—The guidance issued under this para-*  
20                  *graph shall include clarifying information and*  
21                  *illustrative examples of methods, processes, strat-*  
22                  *egies, evidentiary standards, and other factors*  
23                  *that group health plans and health insurance*  
24                  *issuers offering group or individual health insur-*  
25                  *ance coverage may use regarding the develop-*

1        *ment and application of nonquantitative treat-*  
2        *ment limitations to ensure compliance with this*  
3        *section, section 712 of the Employee Retirement*  
4        *Income Security Act of 1974, or section 9812 of*  
5        *the Internal Revenue Code of 1986, as applica-*  
6        *ble, (and any regulations promulgated pursuant*  
7        *to such respective section), including—*

8                *“(i) examples of methods of deter-*  
9                *mining appropriate types of nonquantita-*  
10              *tive treatment limitations with respect to*  
11              *both medical and surgical benefits and men-*  
12              *tal health and substance use disorder bene-*  
13              *fits, including nonquantitative treatment*  
14              *limitations pertaining to—*

15                    *“(I) medical management stand-*  
16                    *ards based on medical necessity or ap-*  
17                    *propriateness, or whether a treatment*  
18                    *is experimental or investigative;*

19                    *“(II) limitations with respect to*  
20                    *prescription drug formulary design;*  
21                    *and*

22                    *“(III) use of fail-first or step ther-*  
23                    *apy protocols;*

24                *“(ii) examples of methods of deter-*  
25                *mining—*

1                   “(I) network admission standards  
2                   (such as credentialing); and

3                   “(II) factors used in provider re-  
4                   imbursement methodologies (such as  
5                   service type, geographic market, de-  
6                   mand for services, and provider sup-  
7                   ply, practice size, training, experience,  
8                   and licensure) as such factors apply to  
9                   network adequacy;

10                  “(iii) examples of sources of informa-  
11                  tion that may serve as evidentiary stand-  
12                  ards for the purposes of making determina-  
13                  tions regarding the development and appli-  
14                  cation of nonquantitative treatment limita-  
15                  tions;

16                  “(iv) examples of specific factors, and  
17                  the evidentiary standards used to evaluate  
18                  such factors, used by such plans or issuers  
19                  in performing a nonquantitative treatment  
20                  limitation analysis;

21                  “(v) examples of how specific evi-  
22                  dentiary standards may be used to deter-  
23                  mine whether treatments are considered ex-  
24                  perimental or investigative;

1           “(vi) examples of how specific evi-  
2           dentiary standards may be applied to each  
3           service category or classification of benefits;

4           “(vii) examples of methods of reaching  
5           appropriate coverage determinations for  
6           new mental health or substance use disorder  
7           treatments, such as evidence-based early  
8           intervention programs for individuals with  
9           a serious mental illness and types of med-  
10          ical management techniques;

11          “(viii) examples of methods of reaching  
12          appropriate coverage determinations for  
13          which there is an indirect relationship be-  
14          tween the covered mental health or sub-  
15          stance use disorder benefit and a traditional  
16          covered medical and surgical benefit, such  
17          as residential treatment or hospitalizations  
18          involving voluntary or involuntary commit-  
19          ment; and

20          “(ix) additional illustrative examples  
21          of methods, processes, strategies, evidentiary  
22          standards, and other factors for which the  
23          Secretary determines that additional guid-  
24          ance is necessary to improve compliance  
25          with this section, section 712 of the Em-

1            *ployee Retirement Income Security Act of*  
2            *1974, or section 9812 of the Internal Rev-*  
3            *enue Code of 1986, as applicable.*

4            “(D) *PUBLIC COMMENT.*—*Prior to issuing*  
5            *any final guidance under this paragraph, the*  
6            *Secretary shall provide a public comment period*  
7            *of not less than 60 days during which any mem-*  
8            *ber of the public may provide comments on a*  
9            *draft of the guidance.*

10          “(8) *COMPLIANCE REQUIREMENTS.*—

11            “(A) *NONQUANTITATIVE TREATMENT LIM-*  
12            *TATION (NQTL) REQUIREMENTS.*—*In the case of a*  
13            *group health plan or a health insurance issuer*  
14            *offering group or individual health insurance*  
15            *coverage that provides both medical and surgical*  
16            *benefits and mental health or substance use dis-*  
17            *order benefits and that imposes nonquantitative*  
18            *treatment limitations (referred to in this section*  
19            *as ‘NQTL’) on mental health or substance use*  
20            *disorder benefits, the plan or issuer offering*  
21            *health insurance coverage shall perform com-*  
22            *parative analyses of the design and application*  
23            *of NQTLs in accordance with subparagraph (B),*  
24            *and, beginning 45 days after the date of enact-*  
25            *ment of this paragraph, make available to the*

1 applicable State authority (or, as applicable, the  
2 Secretary), upon request, the comparative anal-  
3 yses and the following information:

4 “(i) The specific plan or coverage  
5 terms regarding the NQTL, that applies to  
6 such plan or coverage, and a description of  
7 all mental health or substance use disorder  
8 and medical or surgical benefits to which it  
9 applies in each respective benefits classifica-  
10 tion.

11 “(ii) The factors used to determine that  
12 the NQTL will apply to mental health or  
13 substance use disorder benefits and medical  
14 or surgical benefits.

15 “(iii) The evidentiary standards used  
16 for the factors identified in clause (ii), when  
17 applicable, provided that every factor shall  
18 be defined and any other source or evidence  
19 relied upon to design and apply the NQTL  
20 to mental health or substance use disorder  
21 benefits and medical or surgical benefits.

22 “(iv) The comparative analyses dem-  
23 onstrating that the processes, strategies, evi-  
24 dentiary standards, and other factors used  
25 to design the NQTL, as written, and the op-

eration processes and strategies as written and in operation that are used to apply the NQTL for mental health or substance use disorder benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to design the NQTL, as written, and the operation processes and strategies as written and in operation that are used to apply the NQTL to medical or surgical benefits.

“(v) A disclosure of the specific findings and conclusions reached by the plan or coverage that the results of the analyses described in this subparagraph indicate that the plan or coverage is in compliance with this section.

“(B) SECRETARY REQUEST PROCESS.—

“(i) SUBMISSION UPON REQUEST.—  
The Secretary shall request that a group health plan or a health insurance issuer offering group or individual health insurance coverage submit the comparative analyses described in subparagraph (A) for plans that involve potential violations of this sec-

1            *tion or complaints regarding noncompli-*  
2            *ance with this section that concern NQTLs*  
3            *and any other instances in which the Sec-*  
4            *retary determines appropriate. The Sec-*  
5            *retary shall request not fewer than 20 such*  
6            *analyses per year.*

7            “(ii) *ADDITIONAL INFORMATION.—In*  
8            *instances in which the Secretary has con-*  
9            *cluded that the plan or coverage has not*  
10           *submitted sufficient information for the Sec-*  
11           *retary to review the comparative analyses*  
12           *described in subparagraph (A), as requested*  
13           *under clause (i), the Secretary shall specify*  
14           *to the plan or coverage the information the*  
15           *plan or coverage must submit to be respon-*  
16           *sive to the request under clause (i) for the*  
17           *Secretary to review the comparative anal-*  
18           *yses described in subparagraph(A) for com-*  
19           *pliance with this section. Nothing in this*  
20           *paragraph shall require the Secretary to*  
21           *conclude that a plan is in compliance with*  
22           *this section solely based upon the inspection*  
23           *of the comparative analyses described in*  
24           *subparagraph (A), as requested under clause*  
25           *(i).*



1 “(iii) *REQUIRED ACTION.*—

2 “(I) *IN GENERAL.*—*In instances*  
3 *in which the Secretary has reviewed*  
4 *the comparative analyses described in*  
5 *subparagraph (A), as requested under*  
6 *clause (i), and determined that the*  
7 *plan or coverage is not in compliance*  
8 *with this section, the plan or cov-*  
9 *erage—*

10 “(aa) *shall specify to the Sec-*  
11 *retary the actions the plan or cov-*  
12 *erage will take to be in compli-*  
13 *ance with this section and provide*  
14 *to the Secretary comparative*  
15 *analyses described in subpara-*  
16 *graph (A) that demonstrate com-*  
17 *pliance with this section not later*  
18 *than 45 days after the initial de-*  
19 *termination by the Secretary that*  
20 *the plan or coverage is not in*  
21 *compliance; and*

22 “(bb) *following the 45-day*  
23 *corrective action period under*  
24 *item (aa), if the Secretary deter-*  
25 *mines that the plan or coverage*

1                   *still is not in compliance with*  
2                   *this section, not later than 7 days*  
3                   *after such determination, shall no-*  
4                   *tify all individuals enrolled in the*  
5                   *plan or coverage that the plan or*  
6                   *coverage has been determined to be*  
7                   *not in compliance with this sec-*  
8                   *tion.*

9                   “(II) *EXEMPTION FROM DISCLO-*  
10                  *SURE.—Documents or communications*  
11                  *produced in connection with the Sec-*  
12                  *retary’s recommendations to the plan*  
13                  *or coverage shall not be subject to dis-*  
14                  *closure pursuant to section 552 of title*  
15                  *5, United States Code.*

16                  “(iv) *REPORT.—Not later than 1 year*  
17                  *after the date of enactment of this para-*  
18                  *graph, and not later than October 1 of each*  
19                  *year thereafter, the Secretary shall submit*  
20                  *to Congress, and make publicly available, a*  
21                  *report that contains—*

22                         “(I) *a summary of the compara-*  
23                         *tive analyses requested under clause*  
24                         *(i), including the identity of each plan*  
25                         *or coverage that is determined to be*

1           *not in compliance after the final deter-*  
2           *mination by the Secretary described in*  
3           *clause (iii)(I)(bb);*

4           “(II) *the Secretary’s conclusions*  
5           *as to whether each plan or coverage*  
6           *submitted sufficient information for the*  
7           *Secretary to review the comparative*  
8           *analyses requested under clause (i) for*  
9           *compliance with this section;*

10          “(III) *for each plan or coverage*  
11          *that did submit sufficient information*  
12          *for the Secretary to review the com-*  
13          *parative analyses requested under*  
14          *clause (i), the Secretary’s conclusions*  
15          *as to whether and why the plan or cov-*  
16          *erage is in compliance with the re-*  
17          *quirements under this section;*

18          “(IV) *the Secretary’s specifica-*  
19          *tions described in clause (ii) for each*  
20          *plan or coverage that the Secretary de-*  
21          *termined did not submit sufficient in-*  
22          *formation for the Secretary to review*  
23          *the comparative analyses requested*  
24          *under clause (i) for compliance with*  
25          *this section; and*

1           “(V) *the Secretary’s specifications*  
2           *described in clause (iii) of the actions*  
3           *each plan or coverage that the Sec-*  
4           *retary determined is not in compliance*  
5           *with this section must take to be in*  
6           *compliance with this section, including*  
7           *the reason why the Secretary deter-*  
8           *mined the plan or coverage is not in*  
9           *compliance.*

10           “(C) COMPLIANCE PROGRAM GUIDANCE  
11           DOCUMENT UPDATE PROCESS.—

12           “(i) *IN GENERAL.—The Secretary shall*  
13           *include instances of noncompliance that the*  
14           *Secretary discovers upon reviewing the com-*  
15           *parative analyses requested under subpara-*  
16           *graph (B)(i) in the compliance program*  
17           *guidance document described in paragraph*  
18           *(6), as it is updated every 2 years, except*  
19           *that such instances shall not disclose any*  
20           *protected health information or individually*  
21           *identifiable information.*

22           “(ii) *GUIDANCE AND REGULATIONS.—*  
23           *Not later than 18 months after the date of*  
24           *enactment of this paragraph, the Secretary*  
25           *shall finalize any draft or interim guidance*

1           *and regulations relating to mental health*  
2           *parity under this section. Such draft guid-*  
3           *ance shall include guidance to clarify the*  
4           *process and timeline for current and poten-*  
5           *tial participants and beneficiaries (and au-*  
6           *thorized representatives and health care*  
7           *providers of such participants and bene-*  
8           *ficiaries) with respect to plans to file com-*  
9           *plaints of such plans or issuers being in*  
10          *violation of this section, including guidance,*  
11          *by plan type, on the relevant State, re-*  
12          *gional, or national office with which such*  
13          *complaints should be filed.*

14               “(iii) STATE.—The Secretary shall  
15               share information on findings of compliance  
16               and noncompliance discovered upon review-  
17               ing the comparative analyses requested  
18               under subparagraph (B)(i) with the State  
19               where the group health plan is located or  
20               the State where the health insurance issuer  
21               is licensed to do business for coverage offered  
22               by a health insurance issuer in the group  
23               market, in accordance with paragraph  
24               (6)(B)(iii)(II).

1       “(b) *CONSTRUCTION.*—Nothing in this section shall be  
2   *construed*—

3               “(1) *as requiring a group health plan or a*  
4       *health insurance issuer offering group or individual*  
5       *health insurance coverage to provide any mental*  
6       *health or substance use disorder benefits; or*

7               “(2) *in the case of a group health plan or a*  
8       *health insurance issuer offering group or individual*  
9       *health insurance coverage that provides mental health*  
10       *or substance use disorder benefits, as affecting the*  
11       *terms and conditions of the plan or coverage relating*  
12       *to such benefits under the plan or coverage, except as*  
13       *provided in subsection (a).*

14       “(c) *EXEMPTIONS.*—

15               “(1) *SMALL EMPLOYER EXEMPTION.*—This sec-  
16       *tion shall not apply to any group health plan and a*  
17       *health insurance issuer offering group or individual*  
18       *health insurance coverage for any plan year of a*  
19       *small employer (as defined in section 2791(e)(4), ex-*  
20       *cept that for purposes of this paragraph such term*  
21       *shall include employers with 1 employee in the case*  
22       *of an employer residing in a State that permits small*  
23       *groups to include a single individual).*

24               “(2) *COST EXEMPTION.*—

1           “(A) *IN GENERAL.*—With respect to a group  
2           *health plan or a health insurance issuer offering*  
3           *group or individual health insurance coverage, if*  
4           *the application of this section to such plan (or*  
5           *coverage) results in an increase for the plan year*  
6           *involved of the actual total costs of coverage with*  
7           *respect to medical and surgical benefits and*  
8           *mental health and substance use disorder benefits*  
9           *under the plan (as determined and certified*  
10           *under subparagraph (C)) by an amount that ex-*  
11           *ceeds the applicable percentage described in sub-*  
12           *paragraph (B) of the actual total plan costs, the*  
13           *provisions of this section shall not apply to such*  
14           *plan (or coverage) during the following plan*  
15           *year, and such exemption shall apply to the plan*  
16           *(or coverage) for 1 plan year. An employer may*  
17           *elect to continue to apply mental health and sub-*  
18           *stance use disorder parity pursuant to this sec-*  
19           *tion with respect to the group health plan (or*  
20           *coverage) involved regardless of any increase in*  
21           *total costs.*

22           “(B) *APPLICABLE PERCENTAGE.*—With re-  
23           *spect to a plan (or coverage), the applicable per-*  
24           *centage described in this subparagraph shall*  
25           *be—*

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

4                   “(ii) 1 percent in the case of each sub-  
 5                   sequent plan year.

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

19                   “(D) 6-MONTH DETERMINATIONS.—If a  
 20                   group health plan (or a health insurance issuer  
 21                   offering coverage in connection with a group  
 22                   health plan) seeks an exemption under this para-  
 23                   graph, determinations under subparagraph (A)  
 24                   shall be made after such plan (or coverage) has



1           *complied with this section for the first 6 months*  
 2           *of the plan year involved.*

3           “(E) NOTIFICATION.—

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

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

17                           “(I) a description of the number  
 18                           of covered lives under the plan (or cov-  
 19                           erage) involved at the time of the noti-  
 20                           fication, and as applicable, at the time  
 21                           of any prior election of the cost-exemp-  
 22                           tion under this paragraph by such  
 23                           plan (or coverage);

24                           “(II) for both the plan year upon  
 25                           which a cost exemption is sought and

1           *the year prior, a description of the ac-*  
 2           *tual total costs of coverage with respect*  
 3           *to medical and surgical benefits and*  
 4           *mental health and substance use dis-*  
 5           *order benefits under the plan; and*

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

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

19                    *“(I) a breakdown of States by the*  
 20          *size and type of employers submitting*  
 21          *such notification; and*

22                    *“(II) a summary of the data re-*  
 23          *ceived under clause (ii).*

24                    *“(F) AUDITS BY APPROPRIATE AGENCIES.—*

25           *To determine compliance with this paragraph,*

1           *the Secretary may audit the books and records of*  
 2           *a group health plan or health insurance issuer*  
 3           *relating to an exemption, including any actu-*  
 4           *arial reports prepared pursuant to subparagraph*  
 5           *(C), during the 6 year period following the noti-*  
 6           *fication of such exemption under subparagraph*  
 7           *(E). A State agency receiving a notification*  
 8           *under subparagraph (E) may also conduct such*  
 9           *an audit with respect to an exemption covered*  
 10          *by such notification.*

11          “(d) *SEPARATE APPLICATION TO EACH OPTION OF-*  
 12          *FERED.—In the case of a group health plan that offers a*  
 13          *participant or beneficiary two or more benefit package op-*  
 14          *tions under the plan, the requirements of this section shall*  
 15          *be applied separately with respect to each such option.*

16          “(e) *DEFINITIONS.—For purposes of this section—*

17                 “(1) *AGGREGATE LIFETIME LIMIT.—The term*  
 18                 *‘aggregate lifetime limit’ means, with respect to bene-*  
 19                 *fits under a group health plan or health insurance*  
 20                 *coverage, a dollar limitation on the total amount that*  
 21                 *may be paid with respect to such benefits under the*  
 22                 *plan or health insurance coverage with respect to an*  
 23                 *individual or other coverage unit.*

24                 “(2) *ANNUAL LIMIT.—The term ‘annual limit’*  
 25                 *means, with respect to benefits under a group health*

1     *plan or health insurance coverage, a dollar limitation*  
 2     *on the total amount of benefits that may be paid with*  
 3     *respect to such benefits in a 12-month period under*  
 4     *the plan or health insurance coverage with respect to*  
 5     *an individual or other coverage unit.*

6             “(3) *MEDICAL OR SURGICAL BENEFITS.*—*The*  
 7     *term ‘medical or surgical benefits’ means benefits*  
 8     *with respect to medical or surgical services, as defined*  
 9     *under the terms of the plan or coverage (as the case*  
 10    *may be), but does not include mental health or sub-*  
 11    *stance use disorder benefits.*

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

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

22            “(2) *SUNSET.*—*Section 2726 of the Public Health*  
 23    *Service Act (42 U.S.C. 300gg–26) is amended by add-*  
 24    *ing at the end the following new subsection*

1       “(f) *SUNSET.*—*The provisions of this section shall have*  
 2   *no force or effect after the date of the enactment of the*  
 3   *Strengthening Behavioral Health Parity Act.*”.

4           (3) *ADMINISTRATION; CONFORMING AMEND-*  
 5   *MENTS.*—

6           (A) *APPLICATION OF IMPLEMENTATION*  
 7   *REGULATIONS.*—*The provisions of sections*  
 8   *146.136 and 147.160 of title 45, Code of Federal*  
 9   *Regulations shall apply to section 2799A–1 of*  
 10   *the Public Health Service Act, as added by para-*  
 11   *graph (1), in the same manner as such provi-*  
 12   *sions applied to section 2726 of the Public*  
 13   *Health Service Act (42 U.S.C. 300gg–26) before*  
 14   *the date of the enactment of this Act.*

15          (B) *CONFORMING AMENDMENTS.*—

16           (i) *Section 2722 of the Public Health*  
 17   *Service Act (42 U.S.C. 300gg–21) is amend-*  
 18   *ed—*

19           (I) *in subsection (a)(1), by insert-*  
 20   *ing “and part D” after “subparts 1*  
 21   *and 2”;*

22           (II) *in subsection (b), by inserting*  
 23   *“and part D” after “subparts 1 and*  
 24   *2”;*

1                   (III) in subsection (c)(1), by in-  
 2                   serting “and part D” after “subparts 1  
 3                   and 2”;

4                   (IV) in subsection (c)(2), by in-  
 5                   serting “and part D” after “subparts 1  
 6                   and 2”;

7                   (V) in subsection (c)(3), by insert-  
 8                   ing “and part D” after “this part”;  
 9                   and

10                  (VI) in subsection (d), in the mat-  
 11                  ter preceding paragraph (1), by insert-  
 12                  ing “and part D” after “this part”.

13                  (ii) Section 2723 of the Public Health  
 14                  Service Act (42 U.S.C. 300gg–22) is amend-  
 15                  ed—

16                   (I) in subsection (a)(1), by insert-  
 17                   ing “and part D” after “this part”;

18                   (II) in subsection (a)(2), by in-  
 19                   serting “or part D” after “this part”;

20                   (III) in subsection (b)(1), by in-  
 21                   serting “or part D” after “this part”;

22                   (IV) in subsection (b)(2)(A), by  
 23                   inserting “or part D” after “this  
 24                   part”; and

1 (V) in subsection (b)(2)(C)(ii), by  
 2 inserting “and part D” after “this  
 3 part”.

4 (iii) Section 2724 of the Public Health  
 5 Service Act (42 U.S.C. 300gg-23) is amend-  
 6 ed—

7 (I) in subsection (a)(1)—

8 (aa) by striking “this part  
 9 and part C insofar as it relates to  
 10 this part” and inserting “this  
 11 part, part D, and part C insofar  
 12 as it relates to this part or part  
 13 D”; and

14 (bb) by inserting “or part D”  
 15 after “requirement of this part”;

16 (II) in subsection (a)(2), by in-  
 17 serting “or part D” after “this part”;  
 18 and

19 (III) in subsection (c), by insert-  
 20 ing “or part D” after “this part (other  
 21 than section 2704)”.

22 (b) ERISA.—Section 712(a) of the Employee Retire-  
 23 ment Income Security Act of 1974 (1185a(a)) is amended  
 24 by adding at the end the following new paragraphs:

1           “(6) *COMPLIANCE PROGRAM GUIDANCE DOCU-*  
2       *MENT.*—

3           “(A) *IN GENERAL.*—*Not later than 12*  
4       *months after the date of enactment of the Help-*  
5       *ing Families in Mental Health Crisis Reform*  
6       *Act of 2016, the Secretary, the Secretary of*  
7       *Health and Human Services, and the Secretary*  
8       *of the Treasury, in consultation with the Inspec-*  
9       *tor General of the Department of Health and*  
10       *Human Services, the Inspector General of the*  
11       *Department of Labor, and the Inspector General*  
12       *of the Department of the Treasury, shall issue a*  
13       *compliance program guidance document to help*  
14       *improve compliance with this section, section*  
15       *2799A–1 of the Public Health Service Act, and*  
16       *section 9812 of the Internal Revenue Code of*  
17       *1986, as applicable. In carrying out this para-*  
18       *graph, the Secretaries may take into consider-*  
19       *ation the 2016 publication of the Department of*  
20       *Health and Human Services and the Depart-*  
21       *ment of Labor, entitled ‘Warning Signs - Plan*  
22       *or Policy Non-Quantitative Treatment Limita-*  
23       *tions (NQTLs) that Require Additional Analysis*  
24       *to Determine Mental Health Parity Compliance’.*



1                   “(B) *EXAMPLES ILLUSTRATING COMPLIANCE*  
2                   *AND NONCOMPLIANCE.*—

3                   “(i) *IN GENERAL.*—*The compliance*  
4                   *program guidance document required under*  
5                   *this paragraph shall provide illustrative,*  
6                   *de-identified examples (that do not disclose*  
7                   *any protected health information or indi-*  
8                   *vidually identifiable information) of pre-*  
9                   *vious findings of compliance and non-*  
10                  *compliance with this section, section*  
11                  *2799A–1 of the Public Health Service Act,*  
12                  *or section 9812 of the Internal Revenue*  
13                  *Code of 1986, as applicable, based on inves-*  
14                  *tigations of violations of such sections, in-*  
15                  *cluding—*

16                  “(I) *examples illustrating require-*  
17                  *ments for information disclosures and*  
18                  *nonquantitative treatment limitations;*  
19                  *and*

20                  “(II) *descriptions of the violations*  
21                  *uncovered during the course of such in-*  
22                  *vestigations.*

23                  “(ii) *NONQUANTITATIVE TREATMENT*  
24                  *LIMITATIONS.*—*To the extent that any ex-*  
25                  *ample described in clause (i) involves a*

1 *finding of compliance or noncompliance*  
2 *with regard to any requirement for non-*  
3 *quantitative treatment limitations, the ex-*  
4 *ample shall provide sufficient detail to fully*  
5 *explain such finding, including a full de-*  
6 *scription of the criteria involved for approv-*  
7 *ing medical and surgical benefits and the*  
8 *criteria involved for approving mental*  
9 *health and substance use disorder benefits.*

10 “(iii) *ACCESS TO ADDITIONAL INFOR-*  
11 *MATION REGARDING COMPLIANCE.—In de-*  
12 *veloping and issuing the compliance pro-*  
13 *gram guidance document required under*  
14 *this paragraph, the Secretaries specified in*  
15 *subparagraph (A)—*

16 “(I) *shall enter into interagency*  
17 *agreements with the Inspector General*  
18 *of the Department of Health and*  
19 *Human Services, the Inspector General*  
20 *of the Department of Labor, and the*  
21 *Inspector General of the Department of*  
22 *the Treasury to share findings of com-*  
23 *pliance and noncompliance with this*  
24 *section, section 2799A–1 of the Public*  
25 *Health Service Act, or section 9812 of*

1           *the Internal Revenue Code of 1986, as*  
2           *applicable; and*

3           “(II) *shall seek to enter into an*  
4           *agreement with a State to share infor-*  
5           *mation on findings of compliance and*  
6           *noncompliance with this section, sec-*  
7           *tion 2799A–1 of the Public Health*  
8           *Service Act, or section 9812 of the In-*  
9           *ternal Revenue Code of 1986, as appli-*  
10          *cable.*

11          “(C) *RECOMMENDATIONS.—The compliance*  
12          *program guidance document shall include rec-*  
13          *ommendations to advance compliance with this*  
14          *section, section 2799A–1 of the Public Health*  
15          *Service Act, or section 9812 of the Internal Rev-*  
16          *enue Code of 1986, as applicable, and encourage*  
17          *the development and use of internal controls to*  
18          *monitor adherence to applicable statutes, regula-*  
19          *tions, and program requirements. Such internal*  
20          *controls may include illustrative examples of*  
21          *nonquantitative treatment limitations on mental*  
22          *health and substance use disorder benefits, which*  
23          *may fail to comply with this section, section*  
24          *2799A–1 of the Public Health Service Act, or*  
25          *section 9812 of the Internal Revenue Code of*

1 1986, as applicable, in relation to nonquantita-  
2 tive treatment limitations on medical and sur-  
3 gical benefits.

4 “(D) *UPDATING THE COMPLIANCE PROGRAM*  
5 *GUIDANCE DOCUMENT.*—*The Secretary, the Sec-*  
6 *retary of Health and Human Services, and the*  
7 *Secretary of the Treasury, in consultation with*  
8 *the Inspector General of the Department of*  
9 *Health and Human Services, the Inspector Gen-*  
10 *eral of the Department of Labor, and the Inspec-*  
11 *tor General of the Department of the Treasury,*  
12 *shall update the compliance program guidance*  
13 *document every 2 years to include illustrative,*  
14 *de-identified examples (that do not disclose any*  
15 *protected health information or individually*  
16 *identifiable information) of previous findings of*  
17 *compliance and noncompliance with this section,*  
18 *section 2799A–1 of the Public Health Service*  
19 *Act, or section 9812 of the Internal Revenue*  
20 *Code of 1986, as applicable.*

21 “(7) *ADDITIONAL GUIDANCE.*—

22 “(A) *IN GENERAL.*—*Not later than 12*  
23 *months after the date of enactment of the Help-*  
24 *ing Families in Mental Health Crisis Reform*  
25 *Act of 2016, the Secretary, the Secretary of*

1       *Health and Human Services, and the Secretary*  
2       *of the Treasury shall issue guidance to group*  
3       *health plans and health insurance issuers offer-*  
4       *ing group or individual health insurance cov-*  
5       *erage to assist such plans and issuers in satis-*  
6       *fying the requirements of this section, section*  
7       *2799A–1 of the Public Health Service Act, or*  
8       *section 9812 of the Internal Revenue Code of*  
9       *1986, as applicable.*

10       “(B) *DISCLOSURE.*—

11               “(i) *GUIDANCE FOR PLANS AND*  
12       *ISSUERS.*—*The guidance issued under this*  
13       *paragraph shall include clarifying informa-*  
14       *tion and illustrative examples of methods*  
15       *that group health plans and health insur-*  
16       *ance issuers offering group or individual*  
17       *health insurance coverage may use for dis-*  
18       *closing information to ensure compliance*  
19       *with the requirements under this section,*  
20       *section 2799A–1 of the Public Health Serv-*  
21       *ice Act, or section 9812 of the Internal Rev-*  
22       *enue Code of 1986, as applicable, (and any*  
23       *regulations promulgated pursuant to such*  
24       *sections, as applicable).*

1                   “(ii) *DOCUMENTS FOR PARTICIPANTS,*  
2                   *BENEFICIARIES, CONTRACTING PROVIDERS,*  
3                   *OR AUTHORIZED REPRESENTATIVES.—The*  
4                   *guidance issued under this paragraph shall*  
5                   *include clarifying information and illus-*  
6                   *trative examples of methods that group*  
7                   *health plans and health insurance issuers*  
8                   *offering group or individual health insur-*  
9                   *ance coverage may use to provide any par-*  
10                  *ticipant, beneficiary, contracting provider,*  
11                  *or authorized representative, as applicable,*  
12                  *with documents containing information*  
13                  *that the health plans or issuers are required*  
14                  *to disclose to participants, beneficiaries,*  
15                  *contracting providers, or authorized rep-*  
16                  *resentatives to ensure compliance with this*  
17                  *section, section 2799A–1 of the Public*  
18                  *Health Service Act, or section 9812 of the*  
19                  *Internal Revenue Code of 1986, as applica-*  
20                  *ble, compliance with any regulation issued*  
21                  *pursuant to such respective section, or com-*  
22                  *pliance with any other applicable law or*  
23                  *regulation. Such guidance shall include in-*  
24                  *formation that is comparative in nature*  
25                  *with respect to—*

1                   “(I) nonquantitative treatment  
2                   limitations for both medical and sur-  
3                   gical benefits and mental health and  
4                   substance use disorder benefits;

5                   “(II) the processes, strategies, evi-  
6                   dentiary standards, and other factors  
7                   used to apply the limitations described  
8                   in subclause (I); and

9                   “(III) the application of the limi-  
10                  tations described in subclause (I) to en-  
11                  sure that such limitations are applied  
12                  in parity with respect to both medical  
13                  and surgical benefits and mental  
14                  health and substance use disorder bene-  
15                  fits.

16                  “(C) NONQUANTITATIVE TREATMENT LIM-  
17                  TATIONS.—The guidance issued under this para-  
18                  graph shall include clarifying information and  
19                  illustrative examples of methods, processes, strat-  
20                  egies, evidentiary standards, and other factors  
21                  that group health plans and health insurance  
22                  issuers offering group or individual health insur-  
23                  ance coverage may use regarding the develop-  
24                  ment and application of nonquantitative treat-  
25                  ment limitations to ensure compliance with this

1           *section, section 2799A–1 of the Public Health*  
2           *Service Act, or section 9812 of the Internal Rev-*  
3           *enue Code of 1986, as applicable, (and any regu-*  
4           *lations promulgated pursuant to such respective*  
5           *section), including—*

6                     *“(i) examples of methods of deter-*  
7                     *mining appropriate types of nonquantita-*  
8                     *tive treatment limitations with respect to*  
9                     *both medical and surgical benefits and men-*  
10                    *tal health and substance use disorder bene-*  
11                    *fits, including nonquantitative treatment*  
12                    *limitations pertaining to—*

13                    *“(I) medical management stand-*  
14                    *ards based on medical necessity or ap-*  
15                    *propriateness, or whether a treatment*  
16                    *is experimental or investigative;*

17                    *“(II) limitations with respect to*  
18                    *prescription drug formulary design;*  
19                    *and*

20                    *“(III) use of fail-first or step ther-*  
21                    *apy protocols;*

22                    *“(ii) examples of methods of deter-*  
23                    *mining—*

24                    *“(I) network admission standards*  
25                    *(such as credentialing); and*



1                   “(II) factors used in provider re-  
2                   imbursement methodologies (such as  
3                   service type, geographic market, de-  
4                   mand for services, and provider sup-  
5                   ply, practice size, training, experience,  
6                   and licensure) as such factors apply to  
7                   network adequacy;

8                   “(iii) examples of sources of informa-  
9                   tion that may serve as evidentiary stand-  
10                  ards for the purposes of making determina-  
11                  tions regarding the development and appli-  
12                  cation of nonquantitative treatment limita-  
13                  tions;

14                  “(iv) examples of specific factors, and  
15                  the evidentiary standards used to evaluate  
16                  such factors, used by such plans or issuers  
17                  in performing a nonquantitative treatment  
18                  limitation analysis;

19                  “(v) examples of how specific evi-  
20                  dentiary standards may be used to deter-  
21                  mine whether treatments are considered ex-  
22                  perimental or investigative;

23                  “(vi) examples of how specific evi-  
24                  dentiary standards may be applied to each  
25                  service category or classification of benefits;

1           “(vii) *examples of methods of reaching*  
2           *appropriate coverage determinations for*  
3           *new mental health or substance use disorder*  
4           *treatments, such as evidence-based early*  
5           *intervention programs for individuals with*  
6           *a serious mental illness and types of med-*  
7           *ical management techniques;*

8           “(viii) *examples of methods of reaching*  
9           *appropriate coverage determinations for*  
10           *which there is an indirect relationship be-*  
11           *tween the covered mental health or sub-*  
12           *stance use disorder benefit and a traditional*  
13           *covered medical and surgical benefit, such*  
14           *as residential treatment or hospitalizations*  
15           *involving voluntary or involuntary commit-*  
16           *ment; and*

17           “(ix) *additional illustrative examples*  
18           *of methods, processes, strategies, evidentiary*  
19           *standards, and other factors for which the*  
20           *Secretary determines that additional guid-*  
21           *ance is necessary to improve compliance*  
22           *with this section, section 2799A–1 of the*  
23           *Public Health Service Act, or section 9812*  
24           *of the Internal Revenue Code of 1986, as*  
25           *applicable.*

1           “(D) *PUBLIC COMMENT.*—Prior to issuing  
2           any final guidance under this paragraph, the  
3           Secretary shall provide a public comment period  
4           of not less than 60 days during which any mem-  
5           ber of the public may provide comments on a  
6           draft of the guidance.

7           “(8) *COMPLIANCE REQUIREMENTS.*—

8           “(A) *NONQUANTITATIVE TREATMENT LIMI-*  
9           *TATION (NQTL) REQUIREMENTS.*—Beginning 45  
10          days after the date of enactment of this para-  
11          graph, in the case of a group health plan or a  
12          health insurance issuer offering group health in-  
13          surance coverage that provides both medical and  
14          surgical benefits and mental health or substance  
15          use disorder benefits and that imposes non-  
16          quantitative treatment limitations (referred to in  
17          this section as ‘NQTL’) on mental health or sub-  
18          stance use disorder benefits, the plan or issuer of-  
19          fering health insurance coverage shall perform  
20          comparative analyses of the design and applica-  
21          tion of NQTLs in accordance with subparagraph  
22          (B), and make available to the applicable State  
23          authority (or, as applicable, the Secretary), upon  
24          request, the following information:

1           “(i) *The specific plan or coverage*  
2           *terms regarding the NQTL, that applies to*  
3           *such plan or coverage, and a description of*  
4           *all mental health or substance use disorder*  
5           *and medical or surgical benefits to which it*  
6           *applies in each respective benefits classifica-*  
7           *tion.*

8           “(ii) *The factors used to determine that*  
9           *the NQTL will apply to mental health or*  
10           *substance use disorder benefits and medical*  
11           *or surgical benefits.*

12           “(iii) *The evidentiary standards used*  
13           *for the factors identified in clause (ii), when*  
14           *applicable, provided that every factor shall*  
15           *be defined and any other source or evidence*  
16           *relied upon to design and apply the NQTL*  
17           *to mental health or substance use disorder*  
18           *benefits and medical or surgical benefits.*

19           “(iv) *The comparative analyses dem-*  
20           *onstrating that the processes, strategies, evi-*  
21           *dentiary standards, and other factors used*  
22           *to design the NQTL, as written, and the op-*  
23           *eration processes and strategies as written*  
24           *and in operation that are used to apply the*  
25           *NQTL for mental health or substance use*

1            *disorder benefits are comparable to, and are*  
 2            *applied no more stringently than, the proc-*  
 3            *esses, strategies, evidentiary standards, and*  
 4            *other factors used to design the NQTL, as*  
 5            *written, and the operation processes and*  
 6            *strategies as written and in operation that*  
 7            *are used to apply the NQTL to medical or*  
 8            *surgical benefits.*

9            *“(v) A disclosure of the specific find-*  
 10           *ings and conclusions reached by the plan or*  
 11           *coverage that the results of the analyses de-*  
 12           *scribed in this subparagraph indicate that*  
 13           *the plan or coverage is in compliance with*  
 14           *this section.*

15           *“(B) SECRETARY REQUEST PROCESS.—*

16           *“(i) SUBMISSION UPON REQUEST.—*  
 17           *The Secretary shall request that a group*  
 18           *health plan or a health insurance issuer of-*  
 19           *fering group health insurance coverage sub-*  
 20           *mit the comparative analyses described in*  
 21           *subparagraph (A) for plans that involve po-*  
 22           *tential violations of this section or com-*  
 23           *plaints regarding noncompliance with this*  
 24           *section that concern NQTLs and any other*  
 25           *instances in which the Secretary determines*

1           *appropriate. The Secretary shall request not*  
2           *fewer than 20 such analyses per year.*

3           “(ii) *ADDITIONAL INFORMATION.—In*  
4           *instances in which the Secretary has con-*  
5           *cluded that the plan or coverage has not*  
6           *submitted sufficient information for the Sec-*  
7           *retary to review the comparative analyses*  
8           *described in subparagraph (A), as requested*  
9           *under clause (i), the Secretary shall specify*  
10           *to the plan or coverage the information the*  
11           *plan or coverage must submit to be respon-*  
12           *sive to the request under clause (i) for the*  
13           *Secretary to review the comparative anal-*  
14           *yses described in subparagraph(A) for com-*  
15           *pliance with this section. Nothing in this*  
16           *paragraph shall require the Secretary to*  
17           *conclude that a plan is in compliance with*  
18           *this section solely based upon the inspection*  
19           *of the comparative analyses described in*  
20           *subparagraph (A), as requested under clause*  
21           *(i).*

22           “(iii) *REQUIRED ACTION.—*

23           “(I) *IN GENERAL.—In instances*  
24           *in which the Secretary has reviewed*  
25           *the comparative analyses described in*

1           subparagraph (A), as requested under  
2           clause (i), and determined that the  
3           plan or coverage is not in compliance  
4           with this section, the plan or cov-  
5           erage—

6                     “(aa) shall specify to the Sec-  
7                     retary the actions the plan or cov-  
8                     erage will take to be in compli-  
9                     ance with this section and provide  
10                    to the Secretary comparative  
11                    analyses described in subpara-  
12                    graph (A) that demonstrate com-  
13                    pliance with this section not later  
14                    than 45 days after the initial de-  
15                    termination by the Secretary that  
16                    the plan or coverage is not in  
17                    compliance; and

18                    “(bb) following the 45-day  
19                    corrective action period under  
20                    item (aa), if the Secretary deter-  
21                    mines that the plan or coverage  
22                    still is not in compliance with  
23                    this section, not later than 7 days  
24                    after such determination, shall no-  
25                    tify all individuals enrolled in the

1                    *plan or coverage that the plan or*  
2                    *coverage has been determined to be*  
3                    *not in compliance with this sec-*  
4                    *tion.*

5                    “(II) *EXEMPTION FROM DISCLO-*  
6                    *SURE.—Documents or communications*  
7                    *produced in connection with the Sec-*  
8                    *retary’s recommendations to the plan*  
9                    *or coverage shall not be subject to dis-*  
10                   *closure pursuant to section 552 of title*  
11                   *5, United States Code.*

12                   “(iv) *REPORT.—Not later than 1 year*  
13                   *after the date of enactment of this para-*  
14                   *graph, and not later than October 1 of each*  
15                   *year thereafter, the Secretary shall submit*  
16                   *to Congress, and make publicly available, a*  
17                   *report that contains—*

18                   “(I) *a summary of the compara-*  
19                   *tive analyses requested under clause*  
20                   *(i), including the identity of each plan*  
21                   *or coverage that is determined to be*  
22                   *not in compliance after the final deter-*  
23                   *mination by the Secretary described in*  
24                   *clause (iii)(I)(bb);*



1           “(II) the Secretary’s conclusions  
2           as to whether each plan or coverage  
3           submitted sufficient information for the  
4           Secretary to review the comparative  
5           analyses requested under clause (i) for  
6           compliance with this section;

7           “(III) for each plan or coverage  
8           that did submit sufficient information  
9           for the Secretary to review the com-  
10          parative analyses requested under  
11          clause (i), the Secretary’s conclusions  
12          as to whether and why the plan or cov-  
13          erage is in compliance with the re-  
14          quirements under this section;

15          “(IV) the Secretary’s specifica-  
16          tions described in clause (ii) for each  
17          plan or coverage that the Secretary de-  
18          termined did not submit sufficient in-  
19          formation for the Secretary to review  
20          the comparative analyses requested  
21          under clause (i) for compliance with  
22          this section; and

23          “(V) the Secretary’s specifications  
24          described in clause (iii) of the actions  
25          each plan or coverage that the Sec-

1           retary determined is not in compliance  
 2           with this section must take to be in  
 3           compliance with this section, including  
 4           the reason why the Secretary deter-  
 5           mined the plan or coverage is not in  
 6           compliance.

7           “(C) COMPLIANCE PROGRAM GUIDANCE  
 8           DOCUMENT UPDATE PROCESS.—

9           “(i) IN GENERAL.—The Secretary shall  
 10          include instances of noncompliance that the  
 11          Secretary discovers upon reviewing the com-  
 12          parative analyses requested under subpara-  
 13          graph (B)(i) in the compliance program  
 14          guidance document described in paragraph  
 15          (6), as it is updated every 2 years, except  
 16          that such instances shall not disclose any  
 17          protected health information or individually  
 18          identifiable information.

19          “(ii) GUIDANCE AND REGULATIONS.—  
 20          Not later than 18 months after the date of  
 21          enactment of this paragraph, the Secretary  
 22          shall finalize any draft or interim guidance  
 23          and regulations relating to mental health  
 24          parity under this section. Such draft guid-  
 25          ance shall include guidance to clarify the

1            *process and timeline for current and poten-*  
2            *tial participants and beneficiaries (and au-*  
3            *thorized representatives and health care*  
4            *providers of such participants and bene-*  
5            *ficiaries) with respect to plans to file com-*  
6            *plaints of such plans or issuers being in*  
7            *violation of this section, including guidance,*  
8            *by plan type, on the relevant State, re-*  
9            *gional, or national office with which such*  
10           *complaints should be filed.*

11           “(iii) STATE.—The Secretary shall  
12           share information on findings of compliance  
13           and noncompliance discovered upon review-  
14           ing the comparative analyses requested  
15           under subparagraph (B)(i) with the State  
16           where the group health plan is located or  
17           the State where the health insurance issuer  
18           is licensed to do business for coverage offered  
19           by a health insurance issuer in the group  
20           market, in accordance with paragraph  
21           (6)(B)(iii)(II).”.

22           (c) IRC.—Section 9812 of the Internal Revenue Code  
23           of 1986 is amended by adding at the end the following new  
24           paragraphs:

1           “(6) *COMPLIANCE PROGRAM GUIDANCE DOCU-*  
2       *MENT.*—

3           “(A) *IN GENERAL.*—*Not later than 12*  
4       *months after the date of enactment of the Help-*  
5       *ing Families in Mental Health Crisis Reform*  
6       *Act of 2016, the Secretary, the Secretary of*  
7       *Labor, and the Secretary of Health and Human*  
8       *Services, in consultation with the Inspector Gen-*  
9       *eral of the Department of Health and Human*  
10      *Services, the Inspector General of the Depart-*  
11      *ment of Labor, and the Inspector General of the*  
12      *Department of the Treasury, shall issue a com-*  
13      *pliance program guidance document to help im-*  
14      *prove compliance with this section, section 712 of*  
15      *the Employee Retirement Income Security Act of*  
16      *1974, and section 2799A–1 of the Public Health*  
17      *Service Act, as applicable. In carrying out this*  
18      *paragraph, the Secretaries may take into consid-*  
19      *eration the 2016 publication of the Department*  
20      *of Health and Human Services and the Depart-*  
21      *ment of Labor, entitled ‘Warning Signs - Plan*  
22      *or Policy Non-Quantitative Treatment Limita-*  
23      *tions (NQTLs) that Require Additional Analysis*  
24      *to Determine Mental Health Parity Compliance’.*

1                   “(B) *EXAMPLES ILLUSTRATING COMPLIANCE*  
2                   *AND NONCOMPLIANCE.*—

3                   “(i) *IN GENERAL.*—*The compliance*  
4                   *program guidance document required under*  
5                   *this paragraph shall provide illustrative,*  
6                   *de-identified examples (that do not disclose*  
7                   *any protected health information or indi-*  
8                   *vidually identifiable information) of pre-*  
9                   *vious findings of compliance and non-*  
10                  *compliance with this section, section 712 of*  
11                  *the Employee Retirement Income Security*  
12                  *Act of 1974, or section 2799A–1 of the Pub-*  
13                  *lic Health Service Act, as applicable, based*  
14                  *on investigations of violations of such sec-*  
15                  *tions, including—*

16                  “(I) *examples illustrating require-*  
17                  *ments for information disclosures and*  
18                  *nonquantitative treatment limitations;*  
19                  *and*

20                  “(II) *descriptions of the violations*  
21                  *uncovered during the course of such in-*  
22                  *vestigations.*

23                  “(ii) *NONQUANTITATIVE TREATMENT*  
24                  *LIMITATIONS.*—*To the extent that any ex-*  
25                  *ample described in clause (i) involves a*

1 *finding of compliance or noncompliance*  
2 *with regard to any requirement for non-*  
3 *quantitative treatment limitations, the ex-*  
4 *ample shall provide sufficient detail to fully*  
5 *explain such finding, including a full de-*  
6 *scription of the criteria involved for approv-*  
7 *ing medical and surgical benefits and the*  
8 *criteria involved for approving mental*  
9 *health and substance use disorder benefits.*

10 “(iii) *ACCESS TO ADDITIONAL INFOR-*  
11 *MATION REGARDING COMPLIANCE.—In de-*  
12 *veloping and issuing the compliance pro-*  
13 *gram guidance document required under*  
14 *this paragraph, the Secretaries specified in*  
15 *subparagraph (A)—*

16 “(I) *shall enter into interagency*  
17 *agreements with the Inspector General*  
18 *of the Department of Health and*  
19 *Human Services, the Inspector General*  
20 *of the Department of Labor, and the*  
21 *Inspector General of the Department of*  
22 *the Treasury to share findings of com-*  
23 *pliance and noncompliance with this*  
24 *section, section 712 of the Employee*  
25 *Retirement Income Security Act of*

1                   1974, or section 2799A–1 of the Public  
2                   Health Service Act, as applicable; and  
3                   “(II) shall seek to enter into an  
4                   agreement with a State to share infor-  
5                   mation on findings of compliance and  
6                   noncompliance with this section, sec-  
7                   tion 712 of the Employee Retirement  
8                   Income Security Act of 1974, or section  
9                   2799A–1 of the Public Health Service  
10                  Act, as applicable.

11                  “(C) RECOMMENDATIONS.—The compliance  
12                  program guidance document shall include rec-  
13                  ommendations to advance compliance with this  
14                  section, section 712 of the Employee Retirement  
15                  Income Security Act of 1974, or section 2799A–  
16                  1 of the Public Health Service Act, as applicable,  
17                  and encourage the development and use of inter-  
18                  nal controls to monitor adherence to applicable  
19                  statutes, regulations, and program requirements.  
20                  Such internal controls may include illustrative  
21                  examples of nonquantitative treatment limita-  
22                  tions on mental health and substance use dis-  
23                  order benefits, which may fail to comply with  
24                  this section, section 712 of the Employee Retire-  
25                  ment Income Security Act of 1974, or section

1       2799A–1 of the Public Health Service Act, as ap-  
2       plicable, in relation to nonquantitative treat-  
3       ment limitations on medical and surgical bene-  
4       fits.

5               “(D) *UPDATING THE COMPLIANCE PROGRAM*  
6       *GUIDANCE DOCUMENT.*—The Secretary, the Sec-  
7       retary of Labor, and the Secretary of Health and  
8       Human Services, in consultation with the In-  
9       specter General of the Department of Health and  
10      Human Services, the Inspector General of the  
11      Department of Labor, and the Inspector General  
12      of the Department of the Treasury, shall update  
13      the compliance program guidance document  
14      every 2 years to include illustrative, de-identified  
15      examples (that do not disclose any protected  
16      health information or individually identifiable  
17      information) of previous findings of compliance  
18      and noncompliance with this section, section 712  
19      of the Employee Retirement Income Security Act  
20      of 1974, or section 2799A–1 of the Public Health  
21      Service Act, as applicable.

22              “(7) *ADDITIONAL GUIDANCE.*—

23              “(A) *IN GENERAL.*—Not later than 12  
24      months after the date of enactment of the Help-  
25      ing Families in Mental Health Crisis Reform



1       *Act of 2016, the Secretary, the Secretary of*  
2       *Labor, and the Secretary of Health and Human*  
3       *Services shall issue guidance to group health*  
4       *plans and health insurance issuers offering*  
5       *group or individual health insurance coverage to*  
6       *assist such plans and issuers in satisfying the re-*  
7       *quirements of this section, section 712 of the Em-*  
8       *ployee Retirement Income Security Act of 1974,*  
9       *or section 2799A–1 of the Public Health Service*  
10      *Act, as applicable.*

11           “(B) *DISCLOSURE.*—

12                   “(i) *GUIDANCE FOR PLANS AND*  
13                   *ISSUERS.*—*The guidance issued under this*  
14                   *paragraph shall include clarifying informa-*  
15                   *tion and illustrative examples of methods*  
16                   *that group health plans and health insur-*  
17                   *ance issuers offering group or individual*  
18                   *health insurance coverage may use for dis-*  
19                   *closing information to ensure compliance*  
20                   *with the requirements under this section,*  
21                   *section 712 of the Employee Retirement In-*  
22                   *come Security Act of 1974, or section*  
23                   *2799A–1 of the Public Health Service Act,*  
24                   *(and any regulations promulgated pursuant*  
25                   *to such sections, as applicable).*

1           “(ii) *DOCUMENTS FOR PARTICIPANTS,*  
2           *BENEFICIARIES, CONTRACTING PROVIDERS,*  
3           *OR AUTHORIZED REPRESENTATIVES.—The*  
4           *guidance issued under this paragraph shall*  
5           *include clarifying information and illus-*  
6           *trative examples of methods that group*  
7           *health plans and health insurance issuers*  
8           *offering group or individual health insur-*  
9           *ance coverage may use to provide any par-*  
10          *ticipant, beneficiary, contracting provider,*  
11          *or authorized representative, as applicable,*  
12          *with documents containing information*  
13          *that the health plans or issuers are required*  
14          *to disclose to participants, beneficiaries,*  
15          *contracting providers, or authorized rep-*  
16          *resentatives to ensure compliance with this*  
17          *section, section 712 of the Employee Retire-*  
18          *ment Income Security Act of 1974, or sec-*  
19          *tion 2799A–1 of the Public Health Service*  
20          *Act, as applicable, compliance with any*  
21          *regulation issued pursuant to such respec-*  
22          *tive section, or compliance with any other*  
23          *applicable law or regulation. Such guidance*  
24          *shall include information that is compara-*  
25          *tive in nature with respect to—*

1                   “(I) nonquantitative treatment  
2                   limitations for both medical and sur-  
3                   gical benefits and mental health and  
4                   substance use disorder benefits;

5                   “(II) the processes, strategies, evi-  
6                   dentiary standards, and other factors  
7                   used to apply the limitations described  
8                   in subclause (I); and

9                   “(III) the application of the limi-  
10                  tations described in subclause (I) to en-  
11                  sure that such limitations are applied  
12                  in parity with respect to both medical  
13                  and surgical benefits and mental  
14                  health and substance use disorder bene-  
15                  fits.

16                  “(C) NONQUANTITATIVE TREATMENT LIM-  
17                  TATIONS.—The guidance issued under this para-  
18                  graph shall include clarifying information and  
19                  illustrative examples of methods, processes, strat-  
20                  egies, evidentiary standards, and other factors  
21                  that group health plans and health insurance  
22                  issuers offering group or individual health insur-  
23                  ance coverage may use regarding the develop-  
24                  ment and application of nonquantitative treat-  
25                  ment limitations to ensure compliance with this

1        *section, section 712 of the Employee Retirement*  
2        *Income Security Act of 1974, or section 2799A–*  
3        *1 of the Public Health Service Act, as applicable,*  
4        *(and any regulations promulgated pursuant to*  
5        *such respective section), including—*

6                *“(i) examples of methods of deter-*  
7                *mining appropriate types of nonquantita-*  
8                *tive treatment limitations with respect to*  
9                *both medical and surgical benefits and men-*  
10              *tal health and substance use disorder bene-*  
11              *fits, including nonquantitative treatment*  
12              *limitations pertaining to—*

13                    *“(I) medical management stand-*  
14                    *ards based on medical necessity or ap-*  
15                    *propriateness, or whether a treatment*  
16                    *is experimental or investigative;*

17                    *“(II) limitations with respect to*  
18                    *prescription drug formulary design;*  
19                    *and*

20                    *“(III) use of fail-first or step ther-*  
21                    *apy protocols;*

22                    *“(ii) examples of methods of deter-*  
23                    *mining—*

24                    *“(I) network admission standards*  
25                    *(such as credentialing); and*

1                   “(II) factors used in provider re-  
2                   imbursement methodologies (such as  
3                   service type, geographic market, de-  
4                   mand for services, and provider sup-  
5                   ply, practice size, training, experience,  
6                   and licensure) as such factors apply to  
7                   network adequacy;

8                   “(iii) examples of sources of informa-  
9                   tion that may serve as evidentiary stand-  
10                  ards for the purposes of making determina-  
11                  tions regarding the development and appli-  
12                  cation of nonquantitative treatment limita-  
13                  tions;

14                  “(iv) examples of specific factors, and  
15                  the evidentiary standards used to evaluate  
16                  such factors, used by such plans or issuers  
17                  in performing a nonquantitative treatment  
18                  limitation analysis;

19                  “(v) examples of how specific evi-  
20                  dentiary standards may be used to deter-  
21                  mine whether treatments are considered ex-  
22                  perimental or investigative;

23                  “(vi) examples of how specific evi-  
24                  dentiary standards may be applied to each  
25                  service category or classification of benefits;

1           “(vii) examples of methods of reaching  
2           appropriate coverage determinations for  
3           new mental health or substance use disorder  
4           treatments, such as evidence-based early  
5           intervention programs for individuals with  
6           a serious mental illness and types of med-  
7           ical management techniques;

8           “(viii) examples of methods of reaching  
9           appropriate coverage determinations for  
10          which there is an indirect relationship be-  
11          tween the covered mental health or sub-  
12          stance use disorder benefit and a traditional  
13          covered medical and surgical benefit, such  
14          as residential treatment or hospitalizations  
15          involving voluntary or involuntary commit-  
16          ment; and

17          “(ix) additional illustrative examples  
18          of methods, processes, strategies, evidentiary  
19          standards, and other factors for which the  
20          Secretary determines that additional guid-  
21          ance is necessary to improve compliance  
22          with this section, section 712 of the Em-  
23          ployee Retirement Income Security Act of  
24          1974, or section 2799A–1 of the Public  
25          Health Service Act, as applicable.

1           “(D) *PUBLIC COMMENT.*—Prior to issuing  
2           any final guidance under this paragraph, the  
3           Secretary shall provide a public comment period  
4           of not less than 60 days during which any mem-  
5           ber of the public may provide comments on a  
6           draft of the guidance.

7           “(8) *COMPLIANCE REQUIREMENTS.*—

8           “(A) *NONQUANTITATIVE TREATMENT LIM-*  
9           *TATION (NQTL) REQUIREMENTS.*—Beginning 45  
10          days after the date of enactment of this para-  
11          graph, in the case of a group health plan that  
12          provides both medical and surgical benefits and  
13          mental health or substance use disorder benefits  
14          and that imposes nonquantitative treatment lim-  
15          itations (referred to in this section as ‘NQTL’)  
16          on mental health or substance use disorder bene-  
17          fits, the plan shall perform comparative analyses  
18          of the design and application of NQTLs in ac-  
19          cordance with subparagraph (B), and make  
20          available to the applicable State authority (or,  
21          as applicable, the Secretary), upon request, the  
22          following information:

23               “(i) *The specific plan terms regarding*  
24               *the NQTL, that applies to such plan or cov-*  
25               *erage, and a description of all mental health*

1           or substance use disorder and medical or  
2           surgical benefits to which it applies in each  
3           respective benefits classification.

4           “(ii) The factors used to determine that  
5           the NQTL will apply to mental health or  
6           substance use disorder benefits and medical  
7           or surgical benefits.

8           “(iii) The evidentiary standards used  
9           for the factors identified in clause (ii), when  
10          applicable, provided that every factor shall  
11          be defined and any other source or evidence  
12          relied upon to design and apply the NQTL  
13          to mental health or substance use disorder  
14          benefits and medical or surgical benefits.

15          “(iv) The comparative analyses dem-  
16          onstrating that the processes, strategies, evi-  
17          dentiary standards, and other factors used  
18          to design the NQTL, as written, and the op-  
19          eration processes and strategies as written  
20          and in operation that are used to apply the  
21          NQTL for mental health or substance use  
22          disorder benefits are comparable to, and are  
23          applied no more stringently than, the proc-  
24          esses, strategies, evidentiary standards, and  
25          other factors used to design the NQTL, as



1           *written, and the operation processes and*  
2           *strategies as written and in operation that*  
3           *are used to apply the NQTL to medical or*  
4           *surgical benefits.*

5           “(v) *A disclosure of the specific find-*  
6           *ings and conclusions reached by the plan*  
7           *that the results of the analyses described in*  
8           *this subparagraph indicate that the plan is*  
9           *in compliance with this section.*

10          “(B) *SECRETARY REQUEST PROCESS.—*

11           “(i) *SUBMISSION UPON REQUEST.—*  
12          *The Secretary shall request that a group*  
13          *health plan submit the comparative anal-*  
14          *yses described in subparagraph (A) for*  
15          *plans that involve potential violations of*  
16          *this section or complaints regarding non-*  
17          *compliance with this section that concern*  
18          *NQTLs and any other instances in which*  
19          *the Secretary determines appropriate. The*  
20          *Secretary shall request not fewer than 20*  
21          *such analyses per year.*

22           “(ii) *ADDITIONAL INFORMATION.—In*  
23          *instances in which the Secretary has con-*  
24          *cluded that the plan has not submitted suf-*  
25          *ficient information for the Secretary to re-*

1 *view the comparative analyses described in*  
2 *subparagraph (A), as requested under clause*  
3 *(i), the Secretary shall specify to the plan*  
4 *the information the plan or coverage must*  
5 *submit to be responsive to the request under*  
6 *clause (i) for the Secretary to review the*  
7 *comparative analyses described in subpara-*  
8 *graph(A) for compliance with this section.*  
9 *Nothing in this paragraph shall require the*  
10 *Secretary to conclude that a plan is in com-*  
11 *pliance with this section solely based upon*  
12 *the inspection of the comparative analyses*  
13 *described in subparagraph (A), as requested*  
14 *under clause (i).*

15 *“(iii) REQUIRED ACTION.—*

16 *“(I) IN GENERAL.—In instances*  
17 *in which the Secretary has reviewed*  
18 *the comparative analyses described in*  
19 *subparagraph (A), as requested under*  
20 *clause (i), and determined that the*  
21 *plan is not in compliance with this*  
22 *section, the plan—*

23 *“(aa) shall specify to the Sec-*  
24 *retary the actions the plan will*  
25 *take to be in compliance with this*

1           section and provide to the Sec-  
2           retary comparative analyses de-  
3           scribed in subparagraph (A) that  
4           demonstrate compliance with this  
5           section not later than 45 days  
6           after the initial determination by  
7           the Secretary that the plan is not  
8           in compliance; and

9                   “(bb) following the 45-day  
10           corrective action period under  
11           item (aa), if the Secretary deter-  
12           mines that the plan still is not in  
13           compliance with this section, not  
14           later than 7 days after such deter-  
15           mination, shall notify all individ-  
16           uals enrolled in the plan or cov-  
17           erage that the plan has been deter-  
18           mined to be not in compliance  
19           with this section.

20                   “(II) EXEMPTION FROM DISCLO-  
21           SURE.—Documents or communications  
22           produced in connection with the Sec-  
23           retary’s recommendations to the plan  
24           or coverage shall not be subject to dis-

1                   *closure pursuant to section 552 of title*  
2                   *5, United States Code.*

3                   “(iv) *REPORT.*—*Not later than 1 year*  
4                   *after the date of enactment of this para-*  
5                   *graph, and not later than October 1 of each*  
6                   *year thereafter, the Secretary shall submit*  
7                   *to Congress, and make publicly available, a*  
8                   *report that contains—*

9                   “(I) *a summary of the compara-*  
10                  *tive analyses requested under clause*  
11                  *(i), including the identity of each plan*  
12                  *that is determined to be not in compli-*  
13                  *ance after the final determination by*  
14                  *the Secretary described in clause*  
15                  *(iii)(I)(bb);*

16                  “(II) *the Secretary’s conclusions*  
17                  *as to whether each plan submitted suf-*  
18                  *ficient information for the Secretary to*  
19                  *review the comparative analyses re-*  
20                  *quested under clause (i) for compliance*  
21                  *with this section;*

22                  “(III) *for each plan that did sub-*  
23                  *mit sufficient information for the Sec-*  
24                  *retary to review the comparative anal-*  
25                  *yses requested under clause (i), the Sec-*

retary's conclusions as to whether and why the plan or coverage is in compliance with the requirements under this section;

“(IV) the Secretary's specifications described in clause (ii) for each plan that the Secretary determined did not submit sufficient information for the Secretary to review the comparative analyses requested under clause (i) for compliance with this section; and

“(V) the Secretary's specifications described in clause (iii) of the actions each plan hat the Secretary determined is not in compliance with this section must take to be in compliance with this section, including the reason why the Secretary determined the plan or coverage is not in compliance.

“(C) COMPLIANCE PROGRAM GUIDANCE  
DOCUMENT UPDATE PROCESS.—

“(i) IN GENERAL.—The Secretary shall include instances of noncompliance that the Secretary discovers upon reviewing the comparative analyses requested under subpara-

1 *graph (B)(i) in the compliance program*  
2 *guidance document described in paragraph*  
3 *(6), as it is updated every 2 years, except*  
4 *that such instances shall not disclose any*  
5 *protected health information or individually*  
6 *identifiable information.*

7 “(ii) *GUIDANCE AND REGULATIONS.—*  
8 *Not later than 18 months after the date of*  
9 *enactment of this paragraph, the Secretary*  
10 *shall finalize any draft or interim guidance*  
11 *and regulations relating to mental health*  
12 *parity under this section. Such draft guid-*  
13 *ance shall include guidance to clarify the*  
14 *process and timeline for current and poten-*  
15 *tial participants and beneficiaries (and au-*  
16 *thorized representatives and health care*  
17 *providers of such participants and bene-*  
18 *ficiaries) with respect to plans to file com-*  
19 *plaints of such plans or issuers being in*  
20 *violation of this section, including guidance,*  
21 *by plan type, on the relevant State, re-*  
22 *gional, or national office with which such*  
23 *complaints should be filed.*

24 “(iii) *STATE.—The Secretary shall*  
25 *share information on findings of compliance*

1                   *and noncompliance discovered upon review-*  
2                   *ing the comparative analyses requested*  
3                   *under subparagraph (B)(i) with the State*  
4                   *where the group health plan is located or*  
5                   *the State where the health insurance issuer*  
6                   *is licensed to do business for coverage offered*  
7                   *by a health insurance issuer in the group*  
8                   *market, in accordance with paragraph*  
9                   *(6)(B)(iii)(II).”.*

10           *(d) IMPLEMENTATION.—The Secretary of Health and*  
11           *Human Services, the Secretary of Labor, and the Secretary*  
12           *of the Treasury may implement the paragraph (8) of section*  
13           *2799A–1(a) of the Public Health Service Act, added by sub-*  
14           *section (a), the paragraph (8) of section 712(a) of the Em-*  
15           *ployee Retirement Income Security Act of 1974, as added by*  
16           *subsection (b), and the paragraph (8) of section 9812(a) of*  
17           *the Internal Revenue Code of 1986, as added by subsection*  
18           *(c), by program instruction, guidance, or otherwise.*

Union Calendar No. 575

116TH CONGRESS  
2D Session

H. R. 7539

[Report No. 116-692, Part I]

A BILL

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

DECEMBER 24, 2020

Reported from the Committee on Energy and Commerce  
with an amendment

DECEMBER 24, 2020

Committees on Ways and Means and Education and  
Labor discharged; committed to the Committee of the  
Whole House on the State of the Union and ordered  
to be printed