

116TH CONGRESS
1ST SESSION

S. 1737

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

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Mr. MURPHY (for himself and Mr. CASSIDY) introduced the following bill;
which was read twice and referred to the Committee on Health, Edu-
cation, Labor, and Pensions

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 “Mental Health Parity
5 Compliance Act”.

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

8 (a) EMPLOYEE RETIREMENT INCOME SECURITY ACT
9 OF 1974.—Section 712(a) of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1185a(a)) is
2 amended by adding at the end the following:

3 “(6) COMPLIANCE REQUIREMENTS.—

4 “(A) NONQUANTITATIVE TREATMENT LIM-
5 ITATION (NQTL) REQUIREMENTS.—In the case
6 of a group health plan (or health insurance cov-
7 erage offered in connection with such a plan)
8 that provides both medical and surgical benefits
9 and mental health or substance use disorder
10 benefits, the plan or coverage shall perform
11 comparative analyses about the design and ap-
12 plication of nonquantitative treatment limita-
13 tions (referred to in this paragraph as the
14 ‘NQTL’) in accordance with the following proc-
15 ess, and make available to the Secretary upon
16 request within 60 days beginning January 1,
17 2020, and immediately upon request beginning
18 January 1, 2021 the following information:

19 “(i) The specific plan or coverage lan-
20 guage regarding the NQTL and a descrip-
21 tion of all mental health or substance use
22 disorder and medical/surgical services to
23 which it applies in each respective benefits
24 classification.

1 “(ii) The factors used to determine
2 that an NQTL will apply to mental health
3 or substance use disorder benefits and
4 medical/surgical benefits, including factors
5 that were considered but rejected.

6 “(iii) The evidentiary standard (both
7 identified and deidentified) for each of the
8 factors identified in clause (ii) and any
9 other evidence relied upon to design and
10 apply the NQTL to mental health or sub-
11 stance use disorder benefits and medical/
12 surgical benefits.

13 “(iv) The comparative analyses dem-
14 onstrating that the processes and strate-
15 gies used to design the NQTL, as written,
16 and the as written processes and strategies
17 used to apply the NQTL for mental health
18 or substance use disorder benefits are com-
19 parable to, and are applied no more strin-
20 gently than, the processes and strategies
21 used to design the NQTL, as written, and
22 the as written processes and strategies
23 used to apply the NQTL to medical/sur-
24 gical benefits.

1 “(v) The comparative analyses dem-
2 onstrating that the processes and strate-
3 gies used to apply the NQTL, in operation,
4 for mental health and substance use dis-
5 order benefits are comparable to, and are
6 applied no more stringently than, the proc-
7 esses and strategies used to apply each
8 NQTL, in operation, for medical and sur-
9 gical benefits.

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

16 “(B) SECRETARY REQUEST PROCESS.—

17 “(i) SUBMISSION UPON COMPLAINT.—
18 The Secretary shall request that a group
19 health plan (or health insurance coverage
20 offered in connection with such a plan)
21 submit the comparative analyses described
22 in subparagraph (A) if the Secretary has
23 received any complaints about such a plan
24 or coverage that involve mental health or
25 substance use disorder benefits.

1 “(ii) RANDOM SUBMISSIONS.—The
2 Secretary shall request the comparative
3 analyses described in subparagraph (A)
4 from no fewer than 50 plans or coverages
5 selected at random, annually, and such
6 plans or coverages shall not be the same
7 plans or coverages for which the compara-
8 tive analyses are requested under clause
9 (i).

10 “(iii) ADDITIONAL INFORMATION.—In
11 instances in which the Secretary has con-
12 cluded that the plan or coverage has not
13 submitted sufficient information for the
14 Secretary to review the comparative anal-
15 yses described in subparagraph (A), as re-
16 quested under clauses (i) and (ii), the Sec-
17 retary shall specify to the plan or coverage
18 the additional information the plan or cov-
19 erage must submit for the Secretary to re-
20 view the comparative analyses described in
21 subparagraph (A) for compliance with this
22 section.

23 “(iv) REQUIRED ACTION.—In in-
24 stances in which the Secretary has re-
25 viewed the comparative analyses described

1 in subparagraph (A), as requested under
2 clauses (i) and (ii), and determined that
3 the plan or coverage is not in compliance
4 with this section, the Secretary shall speci-
5 fy to the plan or coverage the actions the
6 plan or coverage must take to be in compli-
7 ance with this section.

8 “(v) REPORT.—Not later than 1 year
9 after the date of enactment of this para-
10 graph, and annually thereafter, the Sec-
11 retary shall submit to the Committee on
12 Education and Labor of the House of Rep-
13 resentatives and the Committee on Health,
14 Education, Labor, and Pensions of the
15 Senate a report that contains—

16 “(I) each of the comparative
17 analyses requested under clauses (i)
18 and (ii), except that the identity of
19 each plan or coverage and any con-
20 tracted entity of a plan or coverage
21 shall be redacted;

22 “(II) the Secretary’s conclusions
23 as to whether each plan or coverage
24 submitted sufficient information for
25 the Secretary to review the compara-

1 tive analyses requested under clauses
2 (i) and (ii) for compliance with this
3 section;

4 “(III) for each plan or coverage
5 that did submit sufficient information
6 for the Secretary to review the com-
7 parative analyses requested under
8 clause (i), the Secretary’s conclusions
9 as to whether the plan or coverage is
10 in compliance with this section;

11 “(IV) the Secretary’s specifica-
12 tions described in clause (iii) for each
13 plan or coverage that the Secretary
14 determined did not submit sufficient
15 information for the Secretary to re-
16 view the comparative analyses re-
17 quested under clauses (i) and (ii) for
18 compliance with this section; and

19 “(V) the Secretary’s specifica-
20 tions described in clause (iv) of the
21 actions each plan or coverage that the
22 Secretary determined is not in compli-
23 ance with this section must take to be
24 in compliance with this section.

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

3 “(i) IN GENERAL.—The Secretary
4 shall include select instances of noncompli-
5 ance that the Secretary discovers upon re-
6 viewing the comparative analyses requested
7 under clauses (i) and (ii) of subparagraph
8 (B) in the compliance program guidance
9 document described in section 2726(a)(6)
10 of the Public Health Service Act, as it is
11 updated every 2 years, except that all in-
12 stances shall be deidentified and such in-
13 stances shall not disclose any protected
14 health information or individually identifi-
15 able information.

16 “(ii) INSPECTOR GENERAL.—Any in-
17 stances of noncompliance the Secretary
18 discovers upon reviewing the comparative
19 analyses requested under clauses (i) and
20 (ii) of subparagraph (B) shall be shared
21 with Inspector General of the Department
22 of Health and Human Services, the Inspec-
23 tor General of the Department of Labor,
24 and the Inspector General of the Depart-
25 ment of the Treasury, in accordance with

1 section 2726(a)(6)(B)(iii)(I) of the Public
2 Health Service Act.

3 “(iii) STATE.—Any instances of non-
4 compliance the Secretary discovers upon
5 reviewing the comparative analyses re-
6 quested under clauses (i) and (ii) of sub-
7 paragraph (B) shall be shared with a
8 State, in accordance with section
9 2726(a)(6)(B)(iii)(II) of the Public Health
10 Service Act.”.

11 (b) INTERNAL REVENUE CODE OF 1986.—Section
12 9812(a) of the Internal Revenue Code of 1986 is amended
13 by adding at the end the following:

14 “(6) COMPLIANCE REQUIREMENTS.—

15 “(A) NONQUANTITATIVE TREATMENT LIM-
16 ITATION (NQTL) REQUIREMENTS.—In the case
17 of a group health plan that provides both med-
18 ical and surgical benefits and mental health or
19 substance use disorder benefits, the plan shall
20 perform comparative analyses about the design
21 and application of nonquantitative treatment
22 limitations (referred to in this paragraph as the
23 ‘NQTL’) in accordance with the following proc-
24 ess, and make available to the Secretary upon
25 request within 60 days beginning January 1,

1 2020, and immediately upon request beginning
2 January 1, 2021 the following information:

3 “(i) The specific plan language re-
4 garding the NQTL and a description of all
5 mental health or substance use disorder
6 and medical/surgical services to which it
7 applies in each respective benefits classi-
8 fication.

9 “(ii) The factors used to determine
10 that an NQTL will apply to mental health
11 or substance use disorder benefits and
12 medical/surgical benefits, including factors
13 that were considered but rejected.

14 “(iii) The evidentiary standard (both
15 identified and deidentified) for each of the
16 factors identified in clause (ii) and any
17 other evidence relied upon to design and
18 apply the NQTL to mental health or sub-
19 stance use disorder benefits and medical/
20 surgical benefits.

21 “(iv) The comparative analyses dem-
22 onstrating that the processes and strate-
23 gies used to design the NQTL, as written,
24 and the as written processes and strategies
25 used to apply the NQTL for mental health

1 or substance use disorder benefits are com-
2 parable to, and are applied no more strin-
3 gently than, the processes and strategies
4 used to design the NQTL, as written, and
5 the as written processes and strategies
6 used to apply the NQTL to medical/sur-
7 gical benefits.

8 “(v) The comparative analyses dem-
9 onstrating that the processes and strate-
10 gies used to apply the NQTL, in operation,
11 for mental health and substance use dis-
12 order benefits are comparable to, and are
13 applied no more stringently than, the proc-
14 esses and strategies used to apply each
15 NQTL, in operation, for medical and sur-
16 gical benefits.

17 “(vi) A disclosure of the specific find-
18 ings and conclusions reached by the plan
19 that the results of the analyses described
20 in this subparagraph indicate that the plan
21 or coverage is in compliance with this sec-
22 tion.

23 “(B) SECRETARY REQUEST PROCESS.—

24 “(i) SUBMISSION UPON COMPLAINT.—
25 The Secretary shall request that a group

1 health plan submit the comparative anal-
2 yses described in subparagraph (A) if the
3 Secretary has received any complaints
4 about such a plan that involve mental
5 health or substance use disorder benefits.

6 “(ii) RANDOM SUBMISSIONS.—The
7 Secretary shall request the comparative
8 analyses described in subparagraph (A)
9 from no fewer than 50 plans selected at
10 random, annually, and such plans shall not
11 be the same plans for which the compara-
12 tive analyses are requested under clause
13 (i).

14 “(iii) ADDITIONAL INFORMATION.—In
15 instances in which the Secretary has con-
16 cluded that the plan has not submitted suf-
17 ficient information for the Secretary to re-
18 view the comparative analyses described in
19 subparagraph (A), as requested under
20 clauses (i) and (ii), the Secretary shall
21 specify to the plan the additional informa-
22 tion the plan must submit for the Sec-
23 retary to review the comparative analyses
24 described in subparagraph (A) for compli-
25 ance with this section.

1 “(iv) REQUIRED ACTION.—In in-
2 stances in which the Secretary has re-
3 viewed the comparative analyses described
4 in subparagraph (A), as requested under
5 clauses (i) and (ii), and determined that
6 the plan is not in compliance with this sec-
7 tion, the Secretary shall specify to the plan
8 the actions the plan must take to be in
9 compliance with this section.

10 “(v) REPORT.—Not later than 1 year
11 after the date of enactment of this para-
12 graph, and annually thereafter, the Sec-
13 retary shall submit to the Committee on
14 Ways and Means of the House of Rep-
15 resentatives and the Committee on Finance
16 of the Senate a report that contains—

17 “(I) each of the comparative
18 analyses requested under clauses (i)
19 and (ii), except that the identity of
20 each plan and any contracted entity of
21 a plan shall be redacted;

22 “(II) the Secretary’s conclusions
23 as to whether each plan submitted
24 sufficient information for the Sec-
25 retary to review the comparative anal-

1 yses requested under clauses (i) and
2 (ii) for compliance with this section;

3 “(III) for each plan that did sub-
4 mit sufficient information for the Sec-
5 retary to review the comparative anal-
6 yses requested under clause (i), the
7 Secretary’s conclusions as to whether
8 the plan is in compliance with this
9 section;

10 “(IV) the Secretary’s specifica-
11 tions described in clause (iii) for each
12 plan that the Secretary determined
13 did not submit sufficient information
14 for the Secretary to review the com-
15 parative analyses requested under
16 clauses (i) and (ii) for compliance
17 with this section; and

18 “(V) the Secretary’s specifica-
19 tions described in clause (iv) of the
20 actions each plan that the Secretary
21 determined is not in compliance with
22 this section must take to be in compli-
23 ance with this section.

24 “(C) COMPLIANCE PROGRAM GUIDANCE

25 DOCUMENT UPDATE PROCESS.—

1 “(i) IN GENERAL.—The Secretary
2 shall include select instances of noncompli-
3 ance that the Secretary discovers upon re-
4 viewing the comparative analyses requested
5 under clauses (i) and (ii) of subparagraph
6 (B) in the compliance program guidance
7 document described in section 2726(a)(6)
8 of the Public Health Service Act, as it is
9 updated every 2 years, except that all in-
10 stances shall be deidentified and such in-
11 stances shall not disclose any protected
12 health information or individually identifi-
13 able information.

14 “(ii) INSPECTOR GENERAL.—Any in-
15 stances of noncompliance the Secretary
16 discovers upon reviewing the comparative
17 analyses requested under clauses (i) and
18 (ii) of subparagraph (B) shall be shared
19 with Inspector General of the Department
20 of Health and Human Services, the Inspec-
21 tor General of the Department of Labor,
22 and the Inspector General of the Depart-
23 ment of the Treasury, in accordance with
24 section 2726(a)(6)(B)(iii)(I) of the Public
25 Health Service Act.

1 “(iii) STATE.—Any instances of non-
2 compliance the Secretary discovers upon
3 reviewing the comparative analyses re-
4 quested under clauses (i) and (ii) of sub-
5 paragraph (B) shall be shared with a
6 State, in accordance with section
7 2726(a)(6)(B)(iii)(II) of the Public Health
8 Service Act.”.

9 (c) PUBLIC HEALTH SERVICE ACT.—Section 2726 of
10 the Public Health Service Act (42 U.S.C. 300gg–26) is
11 amended—

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

14 “(8) COMPLIANCE REQUIREMENTS.—

15 “(A) NONQUANTITATIVE TREATMENT LIM-
16 ITATION (NQTL) REQUIREMENTS.—In the case
17 of a group health plan or a health insurance
18 issuer offering group or individual health insur-
19 ance coverage that provides both medical and
20 surgical benefits and mental health or sub-
21 stance use disorder benefits, the plan or issuer
22 offering group or individual health insurance
23 coverage shall perform comparative analyses
24 about the design and application of non-
25 quantitative treatment limitations (referred to

1 in this paragraph as the ‘NQTL’) in accordance
2 with the following process, and make available
3 to State, or to the Secretary as permitted under
4 subsections (a)(2) and (b)(1) of section 2723,
5 upon request within 60 days beginning January
6 1, 2020, and immediately upon request begin-
7 ning January 1, 2021, the following informa-
8 tion:

9 “(i) The specific plan or coverage lan-
10 guage regarding the NQTL and a descrip-
11 tion of all mental health or substance use
12 disorder and medical/surgical services to
13 which it applies in each respective benefits
14 classification.

15 “(ii) The factors used to determine
16 that an NQTL will apply to mental health
17 or substance use disorder benefits and
18 medical/surgical benefits, including factors
19 that were considered but rejected.

20 “(iii) The evidentiary standard (both
21 identified and deidentified) for each of the
22 factors identified in clause (ii) and any
23 other evidence relied upon to design and
24 apply the NQTL to mental health or sub-

1 stance use disorder benefits and medical/
2 surgical benefits.

3 “(iv) The comparative analyses dem-
4 onstrating that the processes and strate-
5 gies used to design the NQTL, as written,
6 and the as written processes and strategies
7 used to apply the NQTL for mental health
8 or substance use disorder benefits are com-
9 parable to, and are applied no more strin-
10 gently than, the processes and strategies
11 used to design the NQTL, as written, and
12 the as written processes and strategies
13 used to apply the NQTL to medical/sur-
14 gical benefits.

15 “(v) The comparative analyses dem-
16 onstrating that the processes and strate-
17 gies used to apply the NQTL, in operation,
18 for mental health and substance use dis-
19 order benefits are comparable to, and are
20 applied no more stringently than, the proc-
21 esses and strategies used to apply each
22 NQTL, in operation, for medical and sur-
23 gical benefits.

24 “(vi) A disclosure of the specific find-
25 ings and conclusions reached by the plan

1 or health insurance issuer offering group
2 or individual health insurance coverage
3 that the results of the analyses described
4 in this subparagraph indicate that the plan
5 or coverage is in compliance with this sec-
6 tion.

7 “(B) SECRETARY REQUEST PROCESS.—

8 “(i) SUBMISSION UPON COMPLAINT.—

9 As permitted under subsections (a)(2) and
10 (b)(1) of section 2723, the Secretary shall
11 request that a group health plan or a
12 health insurance issuer offering group or
13 individual health insurance coverage sub-
14 mit the comparative analyses described in
15 subparagraph (A) if the Secretary has re-
16 ceived any complaints about such a plan or
17 issuer that involve mental health or sub-
18 stance use disorder benefits.

19 “(ii) RANDOM SUBMISSIONS.—As per-
20 mitted under subsections (a)(2) and (b)(1)
21 of section 2723, the Secretary shall request
22 the comparative analyses described in sub-
23 paragraph (A) from no fewer than 50
24 plans or issuers selected at random, annu-
25 ally, and such plans or issuers shall not be

1 the same plans or issuers for which the
2 comparative analyses are requested under
3 clause (i).

4 “(iii) ADDITIONAL INFORMATION.—In
5 instances in which the Secretary has con-
6 cluded that the plan or issuer has not sub-
7 mitted sufficient information for the Sec-
8 retary to review the comparative analyses
9 described in subparagraph (A), as re-
10 quested under clauses (i) and (ii), the Sec-
11 retary shall specify to the plan or issuer
12 the additional information the plan or
13 issuer must submit for the Secretary to re-
14 view the comparative analyses described in
15 subparagraph (A) for compliance with this
16 section.

17 “(iv) REQUIRED ACTION.—In in-
18 stances in which the Secretary has re-
19 viewed the comparative analyses described
20 in subparagraph (A), as requested under
21 clauses (i) and (ii), and determined that
22 the plan or issuer is not in compliance with
23 this section, the Secretary shall specify to
24 the plan or issuer the actions the plan or

1 issuer must take to be in compliance with
2 this section.

3 “(v) REPORT.—Not later than 1 year
4 after the date of enactment of this para-
5 graph, and annually thereafter, the Sec-
6 retary shall submit to the Committee on
7 Education and Labor of the House of Rep-
8 resentatives and the Committee on Health,
9 Education, Labor, and Pensions of the
10 Senate a report that contains—

11 “(I) each of the comparative
12 analyses requested under clauses (i)
13 and (ii), except that the identity of
14 each plan or issuer and any con-
15 tracted entity of a plan or issuer shall
16 be redacted;

17 “(II) the Secretary’s conclusions
18 as to whether each plan or issuer sub-
19 mitted sufficient information for the
20 Secretary to review the comparative
21 analyses requested under clauses (i)
22 and (ii) for compliance with this sec-
23 tion;

24 “(III) for each plan or issuer
25 that did submit sufficient information

1 for the Secretary to review the com-
2 parative analyses requested under
3 clause (i), the Secretary's conclusions
4 as to whether the plan or issuer is in
5 compliance with this section;

6 “(IV) the Secretary's specifica-
7 tions described in clause (iii) for each
8 plan or issuer that the Secretary de-
9 termined did not submit sufficient in-
10 formation for the Secretary to review
11 the comparative analyses requested
12 under clauses (i) and (ii) for compli-
13 ance with this section; and

14 “(V) the Secretary's specifica-
15 tions described in clause (iv) of the
16 actions each plan or issuer that the
17 Secretary determined is not in compli-
18 ance with this section must take to be
19 in compliance with this section.

20 “(C) COMPLIANCE PROGRAM GUIDANCE

21 DOCUMENT UPDATE PROCESS.—

22 “(i) IN GENERAL.—The Secretary
23 shall include select instances of noncompli-
24 ance that the Secretary discovers upon re-
25 viewing the comparative analyses requested

1 under clauses (i) and (ii) of subparagraph
2 (B) in the compliance program guidance
3 document described in subsection (a)(6), as
4 it is updated every 2 years, except that all
5 instances shall be deidentified and such in-
6 stances shall not disclose any protected
7 health information or individually identifi-
8 able information.

9 “(ii) INSPECTOR GENERAL.—Any in-
10 stances of noncompliance the Secretary
11 discovers upon reviewing the comparative
12 analyses requested under clauses (i) and
13 (ii) of subparagraph (B) shall be shared
14 with Inspector General of the Department
15 of Health and Human Services, the Inspec-
16 tor General of the Department of Labor,
17 and the Inspector General of the Depart-
18 ment of the Treasury, in accordance with
19 subsection (a)(6)(B)(iii)(I).

20 “(iii) STATE.—Any instances of non-
21 compliance the Secretary discovers upon
22 reviewing the comparative analyses re-
23 quested under clauses (i) and (ii) of sub-
24 paragraph (B) shall be shared with a

1 State, in accordance with subsection
2 (a)(6)(B)(iii)(II).”.

○