

110TH CONGRESS  
1ST SESSION

# H. R. 1424

[Report No. 110-]

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, and section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2007

Mr. KENNEDY (for himself, Mr. RAMSTAD, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALEXANDER, Mr. ALLEN, Mr. ANDREWS, Mr. ARCURI, Mr. BACA, Mr. BACHUS, Mr. BAIRD, Ms. BALDWIN, Mr. BARROW, Ms. BEAN, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOREN, Mr. BOSWELL, Mr. BOUCHER, Mr. BOYD of Florida, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Ms. CORRINE BROWN of Florida, Mr. BUTTERFIELD, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDOZA, Mr. CARNAHAN, Mr. CARNEY, Ms. CARSON, Ms. CASTOR, Mr. CHANDLER, Mrs. CHRISTENSEN, Ms. CLARKE, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONYERS, Mr. COOPER, Mr. COSTA, Mr. COSTELLO, Mr. COURTNEY, Mr. CROWLEY, Mrs. CUBIN, Mr. CUELLAR, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mrs. DAVIS of California, Mr. LINCOLN DAVIS of Tennessee, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DICKS, Mr. DOGGETT, Mr. DONNELLY, Mr. DOYLE, Mr. EDWARDS, Mr. ELLISON, Mr. ELLSWORTH, Mr. EMANUEL, Mrs. EMERSON, Mr. ENGEL, Mr. ENGLISH of Pennsylvania, Ms. ESHOO, Mr. ETHERIDGE, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FERGUSON, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FRELINGHUYSEN, Ms. GIFFORDS, Mr. GILCHREST, Mrs. GILLIBRAND, Mr. GONZALEZ, Mr. GORDON of Tennessee, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HARE, Ms. HARMAN, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HIGGINS, Mr. HINCHEY, Mr. HINOJOSA, Ms. HIRONO, Mr. HODES, Mr. HOLDEN, Mr. HOLT, Mr. HONDA, Ms. HOOLEY, Mr. HOYER, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mrs.

JONES of Ohio, Mr. KAGEN, Mr. KANJORSKI, Ms. KAPTUR, Mr. KELLER of Florida, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KING of New York, Mr. KIRK, Mr. KLEIN of Florida, Mr. KUCINICH, Mr. LAHOOD, Mr. LAMPSON, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mr. LATOURETTE, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOBIONDO, Mr. LOEBSACK, Ms. ZOE LOFGREN of California, Mrs. LOWEY, Mr. LYNCH, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MARSHALL, Mr. MATHESON, Ms. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCHUGH, Mr. MCINTYRE, Mr. MCNERNEY, Mr. MCNULTY, Mr. MEEHAN, Mr. MEEK of Florida, Mr. MEEKS of New York, Mr. MICA, Mr. MICHAUD, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mr. MOLLOHAN, Mr. MOORE of Kansas, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. MURPHY of Connecticut, Mr. TIM MURPHY of Pennsylvania, Mr. MURTHA, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. OBEY, Mr. OLVER, Mr. ORTIZ, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETERSON of Minnesota, Mr. PICKERING, Mr. PLATTS, Mr. POMEROY, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. RANGEL, Mr. RENZI, Mr. REYES, Mr. RODRIGUEZ, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN of Ohio, Mr. SALAZAR, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SARBANES, Mr. SAXTON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mrs. SCHMIDT, Ms. WASSERMAN SCHULTZ, Ms. SCHWARTZ, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SESTAK, Mr. SHAYS, Ms. SHEAPORTER, Mr. SHERMAN, Mr. SIRES, Mr. SKELTON, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. SMITH of New Jersey, Mr. SNYDER, Ms. SOLIS, Mr. SPACE, Mr. SPRATT, Mr. STARK, Mr. STUPAK, Mr. SULLIVAN, Ms. SUTTON, Mr. TANNER, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TOWNS, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. UPTON, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Mr. VISCLOSKY, Mr. WALSH of New York, Mr. WALZ of Minnesota, Mr. WAMP, Ms. WATERS, Ms. WATSON, Mr. WATT, Mr. WAXMAN, Mr. WEINER, Mr. WELCH of Vermont, Mr. WEXLER, Mr. WILSON of Ohio, Mr. WILSON of South Carolina, Ms. WOOLSEY, Mr. WU, Mr. WYNN, Mr. YARMUTH, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER --, 2007

Reported from the Committee on Ways and Means with an amendment

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

[For text of introduced bill, see copy of bill as introduced on May 9, 2007]

# A BILL

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, and section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans.

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; TABLE OF CONTENTS.**

4       (a) *SHORT TITLE.*—*This Act may be cited as the*  
5 *“Paul Wellstone Mental Health and Addiction Equity Act*  
6 *of 2007”.*

7       (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
8 *Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Amendments to the Employee Retirement Income Security Act of 1974.*

*Sec. 3. Amendments to the Public Health Service Act relating to the group mar-*  
*ket.*

*Sec. 4. Amendments to the Internal Revenue Code of 1986.*

*Sec. 5. Government Accountability Office studies and reports.*

9 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
10 **COME SECURITY ACT OF 1974.**

11       (a) *EXTENSION OF PARITY TO TREATMENT LIMITS*  
12 *AND BENEFICIARY FINANCIAL REQUIREMENTS.*—*Section*  
13 *712 of the Employee Retirement Income Security Act of*  
14 *1974 (29 U.S.C. 1185a) is amended—*

15               (1) *in subsection (a), by adding at the end the*  
16 *following new paragraphs:*

1           “(3) *TREATMENT LIMITS.*—

2                   “(A) *NO TREATMENT LIMIT.*—*If the plan or*  
3                   *coverage does not include a treatment limit (as*  
4                   *defined in subparagraph (D)) on substantially*  
5                   *all medical and surgical benefits in any category*  
6                   *of items or services, the plan or coverage may*  
7                   *not impose any treatment limit on mental health*  
8                   *and substance-related disorder benefits that are*  
9                   *classified in the same category of items or serv-*  
10                   *ices.*

11                   “(B) *TREATMENT LIMIT.*—*If the plan or*  
12                   *coverage includes a treatment limit on substan-*  
13                   *tially all medical and surgical benefits in any*  
14                   *category of items or services, the plan or coverage*  
15                   *may not impose such a treatment limit on men-*  
16                   *tal health and substance-related disorder benefits*  
17                   *for items and services within such category that*  
18                   *are more restrictive than the predominant treat-*  
19                   *ment limit that is applicable to medical and sur-*  
20                   *gical benefits for items and services within such*  
21                   *category.*

22                   “(C) *CATEGORIES OF ITEMS AND SERVICES*  
23                   *FOR APPLICATION OF TREATMENT LIMITS AND*  
24                   *BENEFICIARY FINANCIAL REQUIREMENTS.*—*For*  
25                   *purposes of this paragraph and paragraph (4),*

1           *there shall be the following four categories of*  
2           *items and services for benefits, whether medical*  
3           *and surgical benefits or mental health and sub-*  
4           *stance-related disorder benefits, and all medical*  
5           *and surgical benefits and all mental health and*  
6           *substance related benefits shall be classified into*  
7           *one of the following categories:*

8                   “(i) *INPATIENT, IN-NETWORK.—Items*  
9                   *and services furnished on an inpatient basis*  
10                   *and within a network of providers estab-*  
11                   *lished or recognized under such plan or cov-*  
12                   *erage.*

13                   “(ii) *INPATIENT, OUT-OF-NETWORK.—*  
14                   *Items and services furnished on an inpa-*  
15                   *tient basis and outside any network of pro-*  
16                   *viders established or recognized under such*  
17                   *plan or coverage.*

18                   “(iii) *OUTPATIENT, IN-NETWORK.—*  
19                   *Items and services furnished on an out-*  
20                   *patient basis and within a network of pro-*  
21                   *viders established or recognized under such*  
22                   *plan or coverage.*

23                   “(iv) *OUTPATIENT, OUT-OF-NET-*  
24                   *WORK.—Items and services furnished on an*  
25                   *outpatient basis and outside any network of*

1            *providers established or recognized under*  
2            *such plan or coverage.*

3            *“(D) TREATMENT LIMIT DEFINED.—For*  
4            *purposes of this paragraph, the term ‘treatment*  
5            *limit’ means, with respect to a plan or coverage,*  
6            *limitation on the frequency of treatment, number*  
7            *of visits or days of coverage, or other similar*  
8            *limit on the duration or scope of treatment*  
9            *under the plan or coverage.*

10           *“(E) PREDOMINANCE.—For purposes of this*  
11           *subsection, a treatment limit or financial re-*  
12           *quirement with respect to a category of items*  
13           *and services is considered to be predominant if*  
14           *it is the most common or frequent of such type*  
15           *of limit or requirement with respect to such cat-*  
16           *egory of items and services.*

17           *“(4) BENEFICIARY FINANCIAL REQUIREMENTS.—*

18           *“(A) NO BENEFICIARY FINANCIAL REQUIRE-*  
19           *MENT.—If the plan or coverage does not include*  
20           *a beneficiary financial requirement (as defined*  
21           *in subparagraph (C)) on substantially all med-*  
22           *ical and surgical benefits within a category of*  
23           *items and services (specified under paragraph*  
24           *(3)(C)), the plan or coverage may not impose*  
25           *such a beneficiary financial requirement on*

1           *mental health and substance-related disorder*  
2           *benefits for items and services within such cat-*  
3           *egory.*

4           “(B) *BENEFICIARY FINANCIAL REQUIRE-*  
5           *MENT.—*

6                   “(i) *TREATMENT OF DEDUCTIBLES,*  
7                   *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*  
8                   *NANCIAL REQUIREMENTS.—If the plan or*  
9                   *coverage includes a deductible, a limitation*  
10                   *on out-of-pocket expenses, or similar bene-*  
11                   *ficiary financial requirement that does not*  
12                   *apply separately to individual items and*  
13                   *services on substantially all medical and*  
14                   *surgical benefits within a category of items*  
15                   *and services (as specified in paragraph*  
16                   *(3)(C)), the plan or coverage shall apply*  
17                   *such requirement (or, if there is more than*  
18                   *one such requirement for such category of*  
19                   *items and services, the predominant re-*  
20                   *quirement for such category) both to med-*  
21                   *ical and surgical benefits within such cat-*  
22                   *egory and to mental health and substance-*  
23                   *related disorder benefits within such cat-*  
24                   *egory and shall not distinguish in the ap-*  
25                   *plication of such requirement between such*

1           *medical and surgical benefits and such*  
2           *mental health and substance-related dis-*  
3           *order benefits.*

4                   “(i) *OTHER FINANCIAL REQUIRE-*  
5           *MENTS.—If the plan or coverage includes a*  
6           *beneficiary financial requirement not de-*  
7           *scribed in clause (i) on substantially all*  
8           *medical and surgical benefits within a cat-*  
9           *egory of items and services, the plan or cov-*  
10          *erage may not impose such financial re-*  
11          *quirement on mental health and substance-*  
12          *related disorder benefits for items and serv-*  
13          *ices within such category in a way that is*  
14          *more costly to the participant or beneficiary*  
15          *than the predominant beneficiary financial*  
16          *requirement applicable to medical and sur-*  
17          *gical benefits for items and services within*  
18          *such category.*

19                   “(C) *BENEFICIARY FINANCIAL REQUIRE-*  
20          *MENT DEFINED.—For purposes of this para-*  
21          *graph, the term ‘beneficiary financial require-*  
22          *ment’ includes, with respect to a plan or cov-*  
23          *erage, any deductible, coinsurance, co-payment,*  
24          *other cost sharing, and limitation on the total*  
25          *amount that may be paid by a participant or*

1           *beneficiary with respect to benefits under the*  
2           *plan or coverage, but does not include the appli-*  
3           *cation of any aggregate lifetime limit or annual*  
4           *limit.”; and*

5           *(2) in subsection (b)—*

6                   *(A) by striking “construed—” and all that*  
7           *follows through “(1) as requiring” and inserting*  
8           *“construed as requiring”;*

9                   *(B) by striking “; or” and inserting a pe-*  
10          *riod; and*

11                  *(C) by striking paragraph (2).*

12          ***(b) EXPANSION TO SUBSTANCE-RELATED DISORDER***  
13          ***BENEFITS AND REVISION OF DEFINITION.—Such section is***  
14          ***further amended—***

15                  *(1) by striking “mental health benefits” and in-*  
16          *serting “mental health and substance-related disorder*  
17          *benefits” each place it appears; and*

18                  *(2) in paragraph (4) of subsection (e)—*

19                    *(A) by striking “MENTAL HEALTH BENE-*  
20          *FITS” and inserting “MENTAL HEALTH AND*  
21          *SUBSTANCE-RELATED DISORDER BENEFITS”;*

22                    *(B) by striking “benefits with respect to*  
23          *mental health services” and inserting “benefits*  
24          *with respect to services for mental health condi-*  
25          *tions or substance-related disorders”; and*

1                   (C) by striking “, but does not include bene-  
2                   fits with respect to treatment of substances abuse  
3                   or chemical dependency”.

4           (c) AVAILABILITY OF PLAN INFORMATION ABOUT CRI-  
5   TERIA FOR MEDICAL NECESSITY.—Subsection (a) of such  
6   section, as amended by subsection (a)(1), is further amend-  
7   ed by adding at the end the following new paragraph:

8                   “(5) AVAILABILITY OF PLAN INFORMATION.—The  
9                   criteria for medical necessity determinations made  
10                  under the plan with respect to mental health and sub-  
11                  stance-related disorder benefits (or the health insur-  
12                  ance coverage offered in connection with the plan  
13                  with respect to such benefits) shall be made available  
14                  by the plan administrator (or the health insurance  
15                  issuer offering such coverage) to any current or poten-  
16                  tial participant, beneficiary, or contracting provider  
17                  upon request. The reason for any denial under the  
18                  plan (or coverage) of reimbursement or payment for  
19                  services with respect to mental health and substance-  
20                  related disorder benefits in the case of any partici-  
21                  pant or beneficiary shall, upon request, be made  
22                  available by the plan administrator (or the health in-  
23                  surance issuer offering such coverage) to the partici-  
24                  pant or beneficiary.”.

1           (d) *MINIMUM BENEFIT REQUIREMENTS.*—Subsection  
2 (a) of such section is further amended by adding at the end  
3 the following new paragraph:

4                   “(6) *MINIMUM SCOPE OF COVERAGE AND EQUITY*  
5 *IN OUT-OF-NETWORK BENEFITS.*—

6                           “(A) *MINIMUM SCOPE OF MENTAL HEALTH*  
7 *AND SUBSTANCE-RELATED DISORDER BENE-*  
8 *FITS.*—In the case of a group health plan (or  
9 health insurance coverage offered in connection  
10 with such a plan) that provides any mental  
11 health and substance-related disorder benefits,  
12 the plan or coverage shall include benefits for  
13 any mental health condition or substance-related  
14 disorder for which benefits are provided under  
15 the benefit plan option offered under chapter 89  
16 of title 5, United States Code, with the highest  
17 average enrollment as of the beginning of the  
18 most recent year beginning on or before the be-  
19 ginning of the plan year involved.

20                           “(B) *EQUITY IN COVERAGE OF OUT-OF-NET-*  
21 *WORK BENEFITS.*—

22                                   “(i) *IN GENERAL.*—In the case of a  
23 plan or coverage that provides both medical  
24 and surgical benefits and mental health and  
25 substance-related disorder benefits, if med-

1            *ical and surgical benefits are provided for*  
2            *substantially all items and services in a*  
3            *category specified in clause (ii) furnished*  
4            *outside any network of providers established*  
5            *or recognized under such plan or coverage,*  
6            *the mental health and substance-related dis-*  
7            *order benefits shall also be provided for*  
8            *items and services in such category fur-*  
9            *nished outside any network of providers es-*  
10           *tablished or recognized under such plan or*  
11           *coverage in accordance with the require-*  
12           *ments of this section.*

13           *“(ii) CATEGORIES OF ITEMS AND*  
14           *SERVICES.—For purposes of clause (i), there*  
15           *shall be the following three categories of*  
16           *items and services for benefits, whether med-*  
17           *ical and surgical benefits or mental health*  
18           *and substance-related disorder benefits, and*  
19           *all medical and surgical benefits and all*  
20           *mental health and substance-related dis-*  
21           *order benefits shall be classified into one of*  
22           *the following categories:*

23           *“(I) EMERGENCY.—Items and*  
24           *services, whether furnished on an inpa-*  
25           *tient or outpatient basis, required for*

1                    *the treatment of an emergency medical*  
2                    *condition (including an emergency*  
3                    *condition relating to mental health*  
4                    *and substance-related disorders).*

5                    *“(II) INPATIENT.—Items and*  
6                    *services not described in subclause (I)*  
7                    *furnished on an inpatient basis.*

8                    *“(III) OUTPATIENT.—Items and*  
9                    *services not described in subclause (I)*  
10                   *furnished on an outpatient basis.”.*

11                  *(e) REVISION OF INCREASED COST EXEMPTION.—*  
12                  *Paragraph (2) of subsection (c) of such section is amended*  
13                  *to read as follows:*

14                  *“(2) INCREASED COST EXEMPTION.—*

15                  *“(A) IN GENERAL.—With respect to a group*  
16                  *health plan (or health insurance coverage offered*  
17                  *in connection with such a plan), if the applica-*  
18                  *tion of this section to such plan (or coverage) re-*  
19                  *sults in an increase for the plan year involved*  
20                  *of the actual total costs of coverage with respect*  
21                  *to medical and surgical benefits and mental*  
22                  *health and substance-related disorder benefits*  
23                  *under the plan (as determined and certified*  
24                  *under subparagraph (C)) by an amount that ex-*  
25                  *ceeds the applicable percentage described in sub-*

1           *paragraph (B) of the actual total plan costs, the*  
2           *provisions of this section shall not apply to such*  
3           *plan (or coverage) during the following plan*  
4           *year, and such exemption shall apply to the plan*  
5           *(or coverage) for 1 plan year.*

6           “(B) *APPLICABLE PERCENTAGE.*—*With re-*  
7           *spect to a plan (or coverage), the applicable per-*  
8           *centage described in this paragraph shall be—*

9                   “(i) *2 percent in the case of the first*  
10                   *plan year which begins after the date of the*  
11                   *enactment of the Paul Wellstone Mental*  
12                   *Health and Addiction Equity Act of 2007;*  
13                   *and*

14                   “(ii) *1 percent in the case of each sub-*  
15                   *sequent plan year.*

16           “(C) *DETERMINATIONS BY ACTUARIES.*—  
17           *Determinations as to increases in actual costs*  
18           *under a plan (or coverage) for purposes of this*  
19           *subsection shall be made by a qualified actuary*  
20           *who is a member in good standing of the Amer-*  
21           *ican Academy of Actuaries. Such determinations*  
22           *shall be certified by the actuary and be made*  
23           *available to the general public.*

24           “(D) *6-MONTH DETERMINATIONS.*—*If a*  
25           *group health plan (or a health insurance issuer*

1           *offering coverage in connection with such a plan)*  
2           *seeks an exemption under this paragraph, deter-*  
3           *minations under subparagraph (A) shall be*  
4           *made after such plan (or coverage) has complied*  
5           *with this section for the first 6 months of the*  
6           *plan year involved.*

7           “(E) *NOTIFICATION.*—*An election to modify*  
8           *coverage of mental health and substance-related*  
9           *disorder benefits as permitted under this para-*  
10          *graph shall be treated as a material modification*  
11          *in the terms of the plan as described in section*  
12          *102(a)(1) and shall be subject to the applicable*  
13          *notice requirements under section 104(b)(1).”.*

14          (f) *CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-*  
15          *ERS.*—*Subsection (c)(1)(B) of such section is amended—*

16                 (1) *by inserting “(or 1 in the case of an em-*  
17                 *ployer residing in a State that permits small groups*  
18                 *to include a single individual)” after “at least 2” the*  
19                 *first place it appears; and*

20                 (2) *by striking “and who employs at least 2 em-*  
21                 *ployees on the first day of the plan year”.*

22          (g) *ELIMINATION OF SUNSET PROVISION.*—*Such sec-*  
23          *tion is amended by striking out subsection (f).*

1       (h) *CLARIFICATION REGARDING PREEMPTION.*—Such  
2 section is further amended by inserting after subsection (e)  
3 the following new subsection:

4       “(f) *PREEMPTION, RELATION TO STATE LAWS.*—

5           “(1) *IN GENERAL.*—Nothing in this section shall  
6 be construed to preempt any State law that provides  
7 greater consumer protections, benefits, methods of ac-  
8 cess to benefits, rights or remedies that are greater  
9 than the protections, benefits, methods of access to  
10 benefits, rights or remedies provided under this sec-  
11 tion.

12           “(2) *ERISA.*—Nothing in this section shall be  
13 construed to affect or modify the provisions of section  
14 514 with respect to group health plans.”.

15       (i) *CONFORMING AMENDMENTS TO HEADING.*—

16           “(1) *IN GENERAL.*—The heading of such section is  
17 amended to read as follows:

18       “**SEC. 712.**”.

19           “(2) *CLERICAL AMENDMENT.*—The table of con-  
20 tents in section 1 of such Act is amended by striking  
21 the item relating to section 712 and inserting the fol-  
22 lowing new item:

“Sec. 712. *Equity in mental health and substance-related disorder benefits.*”.

23       (j) *EFFECTIVE DATE.*—The amendments made by this  
24 section shall apply with respect to plan years beginning on  
25 or after January 1, 2008.

1 **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
2 **ACT RELATING TO THE GROUP MARKET.**

3 (a) *EXTENSION OF PARITY TO TREATMENT LIMITS*  
4 *AND BENEFICIARY FINANCIAL REQUIREMENTS.*—Section  
5 2705 of the Public Health Service Act (42 U.S.C. 300gg–  
6 5) is amended—

7 (1) in subsection (a), by adding at the end the  
8 following new paragraphs:

9 “(3) *TREATMENT LIMITS.*—

10 “(A) *NO TREATMENT LIMIT.*—If the plan or  
11 coverage does not include a treatment limit (as  
12 defined in subparagraph (D)) on substantially  
13 all medical and surgical benefits in any category  
14 of items or services (specified in subparagraph  
15 (C)), the plan or coverage may not impose any  
16 treatment limit on mental health and substance-  
17 related disorder benefits that are classified in the  
18 same category of items or services.

19 “(B) *TREATMENT LIMIT.*—If the plan or  
20 coverage includes a treatment limit on substan-  
21 tially all medical and surgical benefits in any  
22 category of items or services, the plan or coverage  
23 may not impose such a treatment limit on men-  
24 tal health and substance-related disorder benefits  
25 for items and services within such category that  
26 are more restrictive than the predominant treat-

1           *ment limit that is applicable to medical and sur-*  
2           *gical benefits for items and services within such*  
3           *category.*

4           “(C) *CATEGORIES OF ITEMS AND SERVICES*  
5           *FOR APPLICATION OF TREATMENT LIMITS AND*  
6           *BENEFICIARY FINANCIAL REQUIREMENTS.—For*  
7           *purposes of this paragraph and paragraph (4),*  
8           *there shall be the following four categories of*  
9           *items and services for benefits, whether medical*  
10           *and surgical benefits or mental health and sub-*  
11           *stance-related disorder benefits, and all medical*  
12           *and surgical benefits and all mental health and*  
13           *substance related benefits shall be classified into*  
14           *one of the following categories:*

15           “(i) *INPATIENT, IN-NETWORK.—Items*  
16           *and services furnished on an inpatient basis*  
17           *and within a network of providers estab-*  
18           *lished or recognized under such plan or cov-*  
19           *erage.*

20           “(ii) *INPATIENT, OUT-OF-NETWORK.—*  
21           *Items and services furnished on an inpa-*  
22           *tient basis and outside any network of pro-*  
23           *viders established or recognized under such*  
24           *plan or coverage.*

1                   “(iii) *OUTPATIENT, IN-NETWORK.—*  
2                   *Items and services furnished on an out-*  
3                   *patient basis and within a network of pro-*  
4                   *viders established or recognized under such*  
5                   *plan or coverage.*

6                   “(iv) *OUTPATIENT, OUT-OF-NET-*  
7                   *WORK.—Items and services furnished on an*  
8                   *outpatient basis and outside any network of*  
9                   *providers established or recognized under*  
10                   *such plan or coverage.*

11                   “(D) *TREATMENT LIMIT DEFINED.—For*  
12                   *purposes of this paragraph, the term ‘treatment*  
13                   *limit’ means, with respect to a plan or coverage,*  
14                   *limitation on the frequency of treatment, number*  
15                   *of visits or days of coverage, or other similar*  
16                   *limit on the duration or scope of treatment*  
17                   *under the plan or coverage.*

18                   “(E) *PREDOMINANCE.—For purposes of this*  
19                   *subsection, a treatment limit or financial re-*  
20                   *quirement with respect to a category of items*  
21                   *and services is considered to be predominant if*  
22                   *it is the most common or frequent of such type*  
23                   *of limit or requirement with respect to such cat-*  
24                   *egory of items and services.*

25                   “(4) *BENEFICIARY FINANCIAL REQUIREMENTS.—*

1           “(A) *NO BENEFICIARY FINANCIAL REQUIRE-*  
2           *MENT.—If the plan or coverage does not include*  
3           *a beneficiary financial requirement (as defined*  
4           *in subparagraph (C)) on substantially all med-*  
5           *ical and surgical benefits within a category of*  
6           *items and services (specified in paragraph*  
7           *(3)(C)), the plan or coverage may not impose*  
8           *such a beneficiary financial requirement on*  
9           *mental health and substance-related disorder*  
10           *benefits for items and services within such cat-*  
11           *egory.*

12           “(B) *BENEFICIARY FINANCIAL REQUIRE-*  
13           *MENT.—*

14                   “(i) *TREATMENT OF DEDUCTIBLES,*  
15                   *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*  
16                   *NANCIAL REQUIREMENTS.—If the plan or*  
17                   *coverage includes a deductible, a limitation*  
18                   *on out-of-pocket expenses, or similar bene-*  
19                   *ficiary financial requirement that does not*  
20                   *apply separately to individual items and*  
21                   *services on substantially all medical and*  
22                   *surgical benefits within a category of items*  
23                   *and services, the plan or coverage shall*  
24                   *apply such requirement (or, if there is more*  
25                   *than one such requirement for such category*

1           of items and services, the predominant re-  
2           quirement for such category) both to med-  
3           ical and surgical benefits within such cat-  
4           egory and to mental health and substance-  
5           related disorder benefits within such cat-  
6           egory and shall not distinguish in the ap-  
7           plication of such requirement between such  
8           medical and surgical benefits and such  
9           mental health and substance-related dis-  
10          order benefits.

11                   “(ii) *OTHER FINANCIAL REQUIRE-*  
12                   *MENTS.—If the plan or coverage includes a*  
13                   *beneficiary financial requirement not de-*  
14                   *scribed in clause (i) on substantially all*  
15                   *medical and surgical benefits within a cat-*  
16                   *egory of items and services, the plan or cov-*  
17                   *erage may not impose such financial re-*  
18                   *quirement on mental health and substance-*  
19                   *related disorder benefits for items and serv-*  
20                   *ices within such category in a way that is*  
21                   *more costly to the participant or beneficiary*  
22                   *than the predominant beneficiary financial*  
23                   *requirement applicable to medical and sur-*  
24                   *gical benefits for items and services within*  
25                   *such category.*

1           “(C) *BENEFICIARY FINANCIAL REQUIRE-*  
2           *MENT DEFINED.*—*For purposes of this para-*  
3           *graph, the term ‘beneficiary financial require-*  
4           *ment’ includes, with respect to a plan or cov-*  
5           *erage, any deductible, coinsurance, co-payment,*  
6           *other cost sharing, and limitation on the total*  
7           *amount that may be paid by a participant or*  
8           *beneficiary with respect to benefits under the*  
9           *plan or coverage, but does not include the appli-*  
10           *cation of any aggregate lifetime limit or annual*  
11           *limit.”; and*

12           (2) *in subsection (b)*—

13                 (A) *by striking “construed—” and all that*  
14                 *follows through “(1) as requiring” and inserting*  
15                 *“construed as requiring”;*

16                 (B) *by striking “; or” and inserting a pe-*  
17                 *riod; and*

18                 (C) *by striking paragraph (2).*

19           (b) *EXPANSION TO SUBSTANCE-RELATED DISORDER*  
20           *BENEFITS AND REVISION OF DEFINITION.*—*Such section is*  
21           *further amended—*

22                 (1) *by striking “mental health benefits” and in-*  
23                 *serting “mental health and substance-related disorder*  
24                 *benefits” each place it appears; and*

25                 (2) *in paragraph (4) of subsection (e)*—

1           (A) by striking “*MENTAL HEALTH BENE-*  
2           *FITS*” and inserting “*MENTAL HEALTH AND*  
3           *SUBSTANCE-RELATED DISORDER BENEFITS*”;

4           (B) by striking “*benefits with respect to*  
5           *mental health services*” and inserting “*benefits*  
6           *with respect to services for mental health condi-*  
7           *tions or substance-related disorders*”; and

8           (C) by striking “, but does not include bene-  
9           *fits with respect to treatment of substances abuse*  
10           *or chemical dependency*”.

11           (c) *AVAILABILITY OF PLAN INFORMATION ABOUT CRI-*  
12           *TERIA FOR MEDICAL NECESSITY.*—Subsection (a) of such  
13           section, as amended by subsection (a)(1), is further amend-  
14           ed by adding at the end the following new paragraph:

15           “(5) *AVAILABILITY OF PLAN INFORMATION.*—The  
16           *criteria for medical necessity determinations made*  
17           *under the plan with respect to mental health and sub-*  
18           *stance-related disorder benefits (or the health insur-*  
19           *ance coverage offered in connection with the plan*  
20           *with respect to such benefits) shall be made available*  
21           *by the plan administrator (or the health insurance*  
22           *issuer offering such coverage) to any current or poten-*  
23           *tial participant, beneficiary, or contracting provider*  
24           *upon request. The reason for any denial under the*  
25           *plan (or coverage) of reimbursement or payment for*

1        *services with respect to mental health and substance-*  
2        *related disorder benefits in the case of any partici-*  
3        *part or beneficiary shall, upon request, be made*  
4        *available by the plan administrator (or the health in-*  
5        *surance issuer offering such coverage) to the partici-*  
6        *part or beneficiary.”.*

7        *(d) MINIMUM BENEFIT REQUIREMENTS.—Subsection*  
8        *(a) of such section is further amended by adding at the end*  
9        *the following new paragraph:*

10                *“(6) MINIMUM SCOPE OF COVERAGE AND EQUITY*  
11                *IN OUT-OF-NETWORK BENEFITS.—*

12                        *“(A) MINIMUM SCOPE OF MENTAL HEALTH*  
13                        *AND SUBSTANCE-RELATED DISORDER BENE-*  
14                        *FITS.—In the case of a group health plan (or*  
15                        *health insurance coverage offered in connection*  
16                        *with such a plan) that provides any mental*  
17                        *health and substance-related disorder benefits,*  
18                        *the plan or coverage shall include benefits for*  
19                        *any mental health condition or substance-related*  
20                        *disorder for which benefits are provided under*  
21                        *the benefit plan option offered under chapter 89*  
22                        *of title 5, United States Code, with the highest*  
23                        *average enrollment as of the beginning of the*  
24                        *most recent year beginning on or before the be-*  
25                        *ginning of the plan year involved.*

1                   “(B) *EQUITY IN COVERAGE OF OUT-OF-NET-*  
2                   *WORK BENEFITS.—*

3                   “(i) *IN GENERAL.—In the case of a*  
4                   *plan or coverage that provides both medical*  
5                   *and surgical benefits and mental health and*  
6                   *substance-related disorder benefits, if med-*  
7                   *ical and surgical benefits are provided for*  
8                   *substantially all items and services in a*  
9                   *category specified in clause (ii) furnished*  
10                   *outside any network of providers established*  
11                   *or recognized under such plan or coverage,*  
12                   *the mental health and substance-related dis-*  
13                   *order benefits shall also be provided for*  
14                   *items and services in such category fur-*  
15                   *nished outside any network of providers es-*  
16                   *tablished or recognized under such plan or*  
17                   *coverage in accordance with the require-*  
18                   *ments of this section.*

19                   “(ii) *CATEGORIES OF ITEMS AND*  
20                   *SERVICES.—For purposes of clause (i), there*  
21                   *shall be the following three categories of*  
22                   *items and services for benefits, whether med-*  
23                   *ical and surgical benefits or mental health*  
24                   *and substance-related disorder benefits, and*  
25                   *all medical and surgical benefits and all*

1                   *mental health and substance-related dis-*  
2                   *order benefits shall be classified into one of*  
3                   *the following categories:*

4                                 “(I) *EMERGENCY.*—*Items and*  
5                                 *services, whether furnished on an inpa-*  
6                                 *tient or outpatient basis, required for*  
7                                 *the treatment of an emergency medical*  
8                                 *condition (including an emergency*  
9                                 *condition relating to mental health*  
10                                *and substance-related disorders).*

11                                “(II) *INPATIENT.*—*Items and*  
12                                *services not described in subclause (I)*  
13                                *furnished on an inpatient basis.*

14                                “(III) *OUTPATIENT.*—*Items and*  
15                                *services not described in subclause (I)*  
16                                *furnished on an outpatient basis.”.*

17            (e) *REVISION OF INCREASED COST EXEMPTION.*—  
18            *Paragraph (2) of subsection (c) of such section is amended*  
19            *to read as follows:*

20                                “(2) *INCREASED COST EXEMPTION.*—

21                                “(A) *IN GENERAL.*—*With respect to a group*  
22                                *health plan (or health insurance coverage offered*  
23                                *in connection with such a plan), if the applica-*  
24                                *tion of this section to such plan (or coverage) re-*  
25                                *sults in an increase for the plan year involved*

1           *of the actual total costs of coverage with respect*  
2           *to medical and surgical benefits and mental*  
3           *health and substance-related disorder benefits*  
4           *under the plan (as determined and certified*  
5           *under subparagraph (C)) by an amount that ex-*  
6           *ceeds the applicable percentage described in sub-*  
7           *paragraph (B) of the actual total plan costs, the*  
8           *provisions of this section shall not apply to such*  
9           *plan (or coverage) during the following plan*  
10          *year, and such exemption shall apply to the plan*  
11          *(or coverage) for 1 plan year.*

12           “(B) *APPLICABLE PERCENTAGE.*—*With re-*  
13          *spect to a plan (or coverage), the applicable per-*  
14          *centage described in this paragraph shall be—*

15                   “(i) *2 percent in the case of the first*  
16                   *plan year which begins after the date of the*  
17                   *enactment of the Paul Wellstone Mental*  
18                   *Health and Addiction Equity Act of 2007;*  
19                   *and*

20                   “(ii) *1 percent in the case of each sub-*  
21                   *sequent plan year.*

22           “(C) *DETERMINATIONS BY ACTUARIES.*—  
23          *Determinations as to increases in actual costs*  
24          *under a plan (or coverage) for purposes of this*  
25          *subsection shall be made by a qualified actuary*

1           *who is a member in good standing of the Amer-*  
2           *ican Academy of Actuaries. Such determinations*  
3           *shall be certified by the actuary and be made*  
4           *available to the general public.*

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

13          “(E) NOTIFICATION.—*A group health plan*  
14          *under this part shall comply with the notice re-*  
15          *quirement under section 712(c)(2)(E) of the Em-*  
16          *ployee Retirement Income Security Act of 1974*  
17          *with respect to the a modification of mental*  
18          *health and substance-related disorder benefits as*  
19          *permitted under this paragraph as if such sec-*  
20          *tion applied to such plan.”.*

21          (f) *CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-*  
22          *ERS.—Subsection (c)(1)(B) of such section is amended—*

23                  (1) *by inserting “(or 1 in the case of an em-*  
24                  *ployer residing in a State that permits small groups*

1        *to include a single individual)” after “at least 2” the*  
2        *first place it appears; and*

3                *(2) by striking “and who employs at least 2 em-*  
4        *ployees on the first day of the plan year”.*

5        *(g) ELIMINATION OF SUNSET PROVISION.—Such sec-*  
6        *tion is amended by striking out subsection (f).*

7        *(h) CLARIFICATION REGARDING PREEMPTION.—Such*  
8        *section is further amended by inserting after subsection (e)*  
9        *the following new subsection:*

10        *“(f) PREEMPTION, RELATION TO STATE LAWS.—*

11                *“(1) IN GENERAL.—Nothing in this section shall*  
12        *be construed to preempt any State law that provides*  
13        *greater consumer protections, benefits, methods of ac-*  
14        *cess to benefits, rights or remedies that are greater*  
15        *than the protections, benefits, methods of access to*  
16        *benefits, rights or remedies provided under this sec-*  
17        *tion.*

18                *“(2) CONSTRUCTION.—Nothing in this section*  
19        *shall be construed to affect or modify the provisions*  
20        *of section 2723 with respect to group health plans.”.*

21        *(i) CONFORMING AMENDMENT TO HEADING.—The*  
22        *heading of such section is amended to read as follows:*

1 **“SEC. 2705.”**

2 (j) *EFFECTIVE DATE.*—*The amendments made by this*  
3 *section shall apply with respect to plan years beginning on*  
4 *or after January 1, 2008.*

5 **SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
6 **OF 1986.**

7 (a) *EXTENSION OF PARITY TO TREATMENT LIMITS*  
8 *AND BENEFICIARY FINANCIAL REQUIREMENTS.*—*Section*  
9 *9812 of the Internal Revenue Code of 1986 is amended—*  
10 (1) *in subsection (a), by adding at the end the*  
11 *following new paragraphs:*

12 “(3) *TREATMENT LIMITS.*—*In the case of a*  
13 *group health plan that provides both medical and*  
14 *surgical benefits and mental health or substance-re-*  
15 *lated disorder benefits—*

16 “(A) *NO TREATMENT LIMIT.*—*If the plan*  
17 *does not include a treatment limit (as defined in*  
18 *subparagraph (D)) on substantially all medical*  
19 *and surgical benefits in any category of items or*  
20 *services (specified in subparagraph (C)), the*  
21 *plan may not impose any treatment limit on*  
22 *mental health or substance-related disorder bene-*  
23 *fits that are classified in the same category of*  
24 *items or services.*

25 “(B) *TREATMENT LIMIT.*—*If the plan in-*  
26 *cludes a treatment limit on substantially all*

1           *medical and surgical benefits in any category of*  
2           *items or services, the plan may not impose such*  
3           *a treatment limit on mental health or substance-*  
4           *related disorder benefits for items and services*  
5           *within such category that is more restrictive*  
6           *than the predominant treatment limit that is*  
7           *applicable to medical and surgical benefits for*  
8           *items and services within such category.*

9           “(C) *CATEGORIES OF ITEMS AND SERVICES*  
10          *FOR APPLICATION OF TREATMENT LIMITS AND*  
11          *BENEFICIARY FINANCIAL REQUIREMENTS.—For*  
12          *purposes of this paragraph and paragraph (4),*  
13          *there shall be the following five categories of*  
14          *items and services for benefits, whether medical*  
15          *and surgical benefits or mental health and sub-*  
16          *stance-related disorder benefits, and all medical*  
17          *and surgical benefits and all mental health and*  
18          *substance related benefits shall be classified into*  
19          *one of the following categories:*

20                 “(i) *INPATIENT, IN-NETWORK.—Items*  
21                 *and services not described in clause (v) fur-*  
22                 *nished on an inpatient basis and within a*  
23                 *network of providers established or recog-*  
24                 *nized under such plan.*

1                   “(ii) *INPATIENT, OUT-OF-NETWORK.*—  
2                   *Items and services not described in clause*  
3                   *(v) furnished on an inpatient basis and out-*  
4                   *side any network of providers established or*  
5                   *recognized under such plan.*

6                   “(iii) *OUTPATIENT, IN-NETWORK.*—  
7                   *Items and services not described in clause*  
8                   *(v) furnished on an outpatient basis and*  
9                   *within a network of providers established or*  
10                   *recognized under such plan.*

11                   “(iv) *OUTPATIENT, OUT-OF-NET-*  
12                   *WORK.*—*Items and services not described in*  
13                   *clause (v) furnished on an outpatient basis*  
14                   *and outside any network of providers estab-*  
15                   *lished or recognized under such plan.*

16                   “(v) *EMERGENCY CARE.*—*Items and*  
17                   *services, whether furnished on an inpatient*  
18                   *or outpatient basis or within or outside any*  
19                   *network of providers, required for the treat-*  
20                   *ment of an emergency medical condition*  
21                   *(including an emergency condition relating*  
22                   *to mental health or substance-related dis-*  
23                   *orders).*

24                   “(D) *TREATMENT LIMIT DEFINED.*—*For*  
25                   *purposes of this paragraph, the term ‘treatment*

1           *limit’ means, with respect to a plan, limitation*  
2           *on the frequency of treatment, number of visits*  
3           *or days of coverage, or other similar limit on the*  
4           *duration or scope of treatment under the plan.*

5           “(E) *PREDOMINANCE.*—*For purposes of this*  
6           *subsection, a treatment limit or financial re-*  
7           *quirement with respect to a category of items*  
8           *and services is considered to be predominant if*  
9           *it is the most common or frequent of such type*  
10           *of limit or requirement with respect to such cat-*  
11           *egory of items and services.*

12           “(4) *BENEFICIARY FINANCIAL REQUIREMENTS.*—  
13           *In the case of a group health plan that provides both*  
14           *medical and surgical benefits and mental health or*  
15           *substance-related disorder benefits—*

16           “(A) *NO BENEFICIARY FINANCIAL REQUIRE-*  
17           *MENT.*—*If the plan does not include a bene-*  
18           *ficiary financial requirement (as defined in sub-*  
19           *paragraph (C)) on substantially all medical and*  
20           *surgical benefits within a category of items and*  
21           *services (specified in paragraph (3)(C)), the plan*  
22           *may not impose such a beneficiary financial re-*  
23           *quirement on mental health or substance-related*  
24           *disorder benefits for items and services within*  
25           *such category.*

1                   “(B) *BENEFICIARY FINANCIAL REQUIRE-*  
2                   *MENT.—*

3                   “(i) *TREATMENT OF DEDUCTIBLES,*  
4                   *OUT-OF-POCKET LIMITS, AND SIMILAR FI-*  
5                   *NANCIAL REQUIREMENTS.—If the plan in-*  
6                   *cludes a deductible, a limitation on out-of-*  
7                   *pocket expenses, or similar beneficiary fi-*  
8                   *nancial requirement that does not apply*  
9                   *separately to individual items and services*  
10                   *on substantially all medical and surgical*  
11                   *benefits within a category of items and serv-*  
12                   *ices, the plan shall apply such requirement*  
13                   *(or, if there is more than one such require-*  
14                   *ment for such category of items and serv-*  
15                   *ices, the predominant requirement for such*  
16                   *category) both to medical and surgical bene-*  
17                   *fits within such category and to mental*  
18                   *health and substance-related disorder bene-*  
19                   *fits within such category and shall not dis-*  
20                   *tinguish in the application of such require-*  
21                   *ment between such medical and surgical*  
22                   *benefits and such mental health and sub-*  
23                   *stance-related disorder benefits.*

24                   “(ii) *OTHER FINANCIAL REQUIRE-*  
25                   *MENTS.—If the plan includes a beneficiary*

1           *financial requirement not described in*  
2           *clause (i) on substantially all medical and*  
3           *surgical benefits within a category of items*  
4           *and services, the plan may not impose such*  
5           *financial requirement on mental health or*  
6           *substance-related disorder benefits for items*  
7           *and services within such category in a way*  
8           *that results in greater out-of-pocket expenses*  
9           *to the participant or beneficiary than the*  
10          *predominant beneficiary financial require-*  
11          *ment applicable to medical and surgical*  
12          *benefits for items and services within such*  
13          *category.*

14                 “(iii) *CONSTRUCTION.—Nothing in*  
15                 *this subparagraph shall be construed as pro-*  
16                 *hibiting the plan from waiving the applica-*  
17                 *tion of any deductible for mental health*  
18                 *benefits or substance-related disorder bene-*  
19                 *fits or both.*

20                 “(C) *BENEFICIARY FINANCIAL REQUIRE-*  
21                 *MENT DEFINED.—For purposes of this para-*  
22                 *graph, the term ‘beneficiary financial require-*  
23                 *ment’ includes, with respect to a plan, any de-*  
24                 *ductible, coinsurance, co-payment, other cost*  
25                 *sharing, and limitation on the total amount that*

1           *may be paid by a participant or beneficiary*  
2           *with respect to benefits under the plan, but does*  
3           *not include the application of any aggregate life-*  
4           *time limit or annual limit.”, and*

5           *(2) in subsection (b)—*

6                   *(A) by striking “construed—” and all that*  
7           *follows through “(1) as requiring” and inserting*  
8           *“construed as requiring”,*

9                   *(B) by striking “; or” and inserting a pe-*  
10          *riod, and*

11                  *(C) by striking paragraph (2).*

12          *(b) EXPANSION TO SUBSTANCE-RELATED DISORDER*

13   *BENEFITS AND REVISION OF DEFINITION.—Section 9812 of*  
14   *such Code is further amended—*

15                  *(1) by striking “mental health benefits” each*  
16          *place it appears (other than in any provision amend-*  
17          *ed by paragraph (2)) and inserting “mental health or*  
18          *substance-related disorder benefits”,*

19                  *(2) by striking “mental health benefits” each*  
20          *place it appears in subsections (a)(1)(B)(i), (a)(1)(C),*  
21          *(a)(2)(B)(i), and (a)(2)(C) and inserting “mental*  
22          *health and substance-related disorder benefits”, and*

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

1           “(4) *MENTAL HEALTH BENEFITS.*—*The term*  
2           *‘mental health benefits’ means benefits with respect to*  
3           *services for mental health conditions, as defined under*  
4           *the terms of the plan, but does not include substance-*  
5           *related disorder benefits.*

6           “(5) *SUBSTANCE-RELATED DISORDER BENE-*  
7           *FITS.*—*The term ‘substance-related disorder benefits’*  
8           *means benefits with respect to services for substance-*  
9           *related disorders, as defined under the terms of the*  
10          *plan.’.*

11          *(c) AVAILABILITY OF PLAN INFORMATION ABOUT CRI-*  
12          *TERIA FOR MEDICAL NECESSITY.*—*Subsection (a) of section*  
13          *9812 of such Code, as amended by subsection (a)(1), is fur-*  
14          *ther amended by adding at the end the following new para-*  
15          *graph:*

16                 “(5) *AVAILABILITY OF PLAN INFORMATION.*—*The*  
17                 *criteria for medical necessity determinations made*  
18                 *under the plan with respect to mental health and sub-*  
19                 *stance-related disorder benefits shall be made avail-*  
20                 *able by the plan administrator to any current or po-*  
21                 *tential participant, beneficiary, or contracting pro-*  
22                 *vider upon request. The reason for any denial under*  
23                 *the plan of reimbursement or payment for services*  
24                 *with respect to mental health and substance-related*  
25                 *disorder benefits in the case of any participant or*

1        *beneficiary shall, upon request, be made available by*  
2        *the plan administrator to the participant or bene-*  
3        *ficiary.”.*

4        *(d) MINIMUM BENEFIT REQUIREMENTS.—Subsection*  
5        *(a) of section 9812 of such Code is further amended by add-*  
6        *ing at the end the following new paragraph:*

7                *“(6) MINIMUM SCOPE OF COVERAGE AND EQUITY*  
8                *IN OUT-OF-NETWORK BENEFITS.—*

9                        *“(A) MINIMUM SCOPE OF MENTAL HEALTH*  
10                        *AND SUBSTANCE-RELATED DISORDER BENE-*  
11                        *FITS.—In the case of a group health plan that*  
12                        *provides any mental health or substance-related*  
13                        *disorder benefits, the plan shall include benefits*  
14                        *for any mental health condition or substance-re-*  
15                        *lated disorder included in the most recent edition*  
16                        *of the Diagnostic and Statistical Manual of*  
17                        *Mental Disorders published by the American*  
18                        *Psychiatric Association.*

19                        *“(B) EQUITY IN COVERAGE OF OUT-OF-NET-*  
20                        *WORK BENEFITS.—*

21                        *“(i) IN GENERAL.—In the case of a*  
22                        *group health plan that provides both med-*  
23                        *ical and surgical benefits and mental health*  
24                        *or substance-related disorder benefits, if*  
25                        *medical and surgical benefits are provided*

1           *for substantially all items and services in a*  
2           *category specified in clause (ii) furnished*  
3           *outside any network of providers established*  
4           *or recognized under such plan, the mental*  
5           *health and substance-related disorder bene-*  
6           *fits shall also be provided for items and*  
7           *services in such category furnished outside*  
8           *any network of providers established or rec-*  
9           *ognized under such plan in accordance with*  
10          *the requirements of this section.*

11           “(ii) *CATEGORIES OF ITEMS AND*  
12           *SERVICES.—For purposes of clause (i), there*  
13           *shall be the following three categories of*  
14           *items and services for benefits, whether med-*  
15           *ical and surgical benefits or mental health*  
16           *and substance-related disorder benefits, and*  
17           *all medical and surgical benefits and all*  
18           *mental health and substance-related dis-*  
19           *order benefits shall be classified into one of*  
20           *the following categories:*

21           “(I) *EMERGENCY.—Items and*  
22           *services, whether furnished on an inpa-*  
23           *tient or outpatient basis, required for*  
24           *the treatment of an emergency medical*  
25           *condition (including an emergency*

1 *condition relating to mental health or*  
2 *substance-related disorders).*

3 *“(II) INPATIENT.—Items and*  
4 *services not described in subclause (I)*  
5 *furnished on an inpatient basis.*

6 *“(III) OUTPATIENT.—Items and*  
7 *services not described in subclause (I)*  
8 *furnished on an outpatient basis.”.*

9 *(e) REVISION OF INCREASED COST EXEMPTION.—*  
10 *Paragraph (2) of section 9812(c) of such Code is amended*  
11 *to read as follows:*

12 *“(2) INCREASED COST EXEMPTION.—*

13 *“(A) IN GENERAL.—With respect to a group*  
14 *health plan, if the application of this section to*  
15 *such plan results in an increase for the plan*  
16 *year involved of the actual total costs of coverage*  
17 *with respect to medical and surgical benefits and*  
18 *mental health and substance-related disorder*  
19 *benefits under the plan (as determined and cer-*  
20 *tified under subparagraph (C)) by an amount*  
21 *that exceeds the applicable percentage described*  
22 *in subparagraph (B) of the actual total plan*  
23 *costs, the provisions of this section shall not*  
24 *apply to such plan during the following plan*

1           *year, and such exemption shall apply to the plan*  
2           *for 1 plan year.*

3           “(B) *APPLICABLE PERCENTAGE.*—*With re-*  
4           *spect to a plan, the applicable percentage de-*  
5           *scribed in this paragraph shall be—*

6                     “(i) *2 percent in the case of the first*  
7                     *plan year to which this paragraph applies,*  
8                     *and*

9                     “(ii) *1 percent in the case of each sub-*  
10                    *sequent plan year.*

11           “(C) *DETERMINATIONS BY ACTUARIES.*—  
12           *Determinations as to increases in actual costs*  
13           *under a plan for purposes of this subsection shall*  
14           *be made by a qualified and licensed actuary who*  
15           *is a member in good standing of the American*  
16           *Academy of Actuaries. Such determinations shall*  
17           *be certified by the actuary and be made available*  
18           *to the general public.*

19           “(D) *6-MONTH DETERMINATIONS.*—*If a*  
20           *group health plan seeks an exemption under this*  
21           *paragraph, determinations under subparagraph*  
22           *(A) shall be made after such plan has complied*  
23           *with this section for the first 6 months of the*  
24           *plan year involved.”.*

1           (f) *CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-*  
2 *ERS.*—Paragraph (1) of section 9812(c) of such Code is  
3 *amended to read as follows:*

4           “(1) *SMALL EMPLOYER EXEMPTION.*—

5                   “(A) *IN GENERAL.*—This section shall not  
6 *apply to any group health plan for any plan*  
7 *year of a small employer.*

8                   “(B) *SMALL EMPLOYER.*—For purposes of  
9 *subparagraph (A), the term ‘small employer’*  
10 *means, with respect to a calendar year and a*  
11 *plan year, an employer who employed an aver-*  
12 *age of at least 2 (or 1 in the case of an employer*  
13 *residing in a State that permits small groups to*  
14 *include a single individual) but not more than*  
15 *50 employees on business days during the pre-*  
16 *ceding calendar year. For purposes of the pre-*  
17 *ceding sentence, all persons treated as a single*  
18 *employer under subsection (b), (c), (m), or (o) of*  
19 *section 414 shall be treated as 1 employer and*  
20 *rules similar to rules of subparagraphs (B) and*  
21 *(C) of section 4980D(d)(2) shall apply.”.*

22           (g) *ELIMINATION OF SUNSET PROVISION.*—Section  
23 *9812 of such Code is amended by striking subsection (f).*

24           (h) *CONFORMING AMENDMENTS TO HEADING.*—

1           (1) *IN GENERAL.*—*The heading of section 9812 of*  
2           *such Code is amended to read as follows:*

3           **“SEC. 9812. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**  
4           **RELATED DISORDER BENEFITS.”.**

5           (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
6           *tions for subchapter B of chapter 100 of such Code is*  
7           *amended by striking the item relating to section 9812*  
8           *and inserting the following new item:*

          “*Sec. 9812. Equity in mental health and substance-related disorder benefits.*”.

9           (i) *EFFECTIVE DATE.*—

10           (1) *IN GENERAL.*—*Except as otherwise provided*  
11           *in this subsection, the amendments made by this sec-*  
12           *tion shall apply with respect to plan years beginning*  
13           *on or after January 1, 2008.*

14           (2) *ELIMINATION OF SUNSET.*—*The amendment*  
15           *made by subsection (g) shall apply to benefits for*  
16           *services furnished after December 31, 2007.*

17           (3) *SPECIAL RULE FOR COLLECTIVE BARGAINING*  
18           *AGREEMENTS.*—*In the case of a group health plan*  
19           *maintained pursuant to one or more collective bar-*  
20           *gaining agreements between employee representatives*  
21           *and one or more employers ratified before the date of*  
22           *the enactment of this Act, the amendments made by*  
23           *this section (other than subsection (g)) shall not apply*  
24           *to plan years beginning before the later of—*

1           (A) the date on which the last of the collec-  
2           tive bargaining agreements relating to the plan  
3           terminates (determined without regard to any  
4           extension thereof agreed to after the date of the  
5           enactment of this Act), or

6           (B) January 1, 2010.

7           For purposes of subparagraph (A), any plan amend-  
8           ment made pursuant to a collective bargaining agree-  
9           ment relating to the plan which amends the plan sole-  
10          ly to conform to any requirement imposed under an  
11          amendment under this section shall not be treated as  
12          a termination of such collective bargaining agree-  
13          ment.

14 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDIES**  
15 **AND REPORTS.**

16          (a) *IMPLEMENTATION OF ACT.*—

17           (1) *STUDY.*—The Comptroller General of the  
18           United States shall conduct a study that evaluates the  
19           effect of the implementation of the amendments made  
20           by this Act on—

21                   (A) the cost of health insurance coverage;

22                   (B) access to health insurance coverage (in-  
23                   cluding the availability of in-network providers);

24                   (C) the quality of health care;

1           (D) Medicare, Medicaid, and State and  
2           local mental health and substance abuse treat-  
3           ment spending;

4           (E) the number of individuals with private  
5           insurance who received publicly funded health  
6           care for mental health and substance-related dis-  
7           orders;

8           (F) spending on public services, such as the  
9           criminal justice system, special education, and  
10          income assistance programs;

11          (G) the use of medical management of men-  
12          tal health and substance-related disorder benefits  
13          and medical necessity determinations by group  
14          health plans (and health insurance issuers offer-  
15          ing health insurance coverage in connection with  
16          such plans) and timely access by participants  
17          and beneficiaries to clinically-indicated care for  
18          mental health and substance-use disorders; and

19          (H) other matters as determined appro-  
20          priate by the Comptroller General.

21          (2) *REPORT.*—Not later than 2 years after the  
22          date of enactment of this Act, the Comptroller General  
23          shall prepare and submit to the appropriate commit-  
24          tees of the Congress a report containing the results of  
25          the study conducted under paragraph (1).

1           **(b) BIENNIAL REPORT ON OBSTACLES IN OBTAINING**  
2 *COVERAGE.*—*Every two years, the Comptroller General*  
3 *shall submit to each House of the Congress a report on ob-*  
4 *stacles that individuals face in obtaining mental health and*  
5 *substance-related disorder care under their health plans.*

6           **(c) UNIFORM PATIENT PLACEMENT CRITERIA.**—*Not*  
7 *later than 18 months after the date of the enactment of this*  
8 *Act, the Comptroller General shall submit to each House*  
9 *of the Congress a report on availability of uniform patient*  
10 *placement criteria for mental health and substance-related*  
11 *disorders that could be used by group health plans and*  
12 *health insurance issuers to guide determinations of medical*  
13 *necessity and the extent to which health plans utilize such*  
14 *criteria. If such criteria do not exist, the report shall in-*  
15 *clude recommendations on a process for developing such cri-*  
16 *teria.*