

[COMMITTEE PRINT]

[SHOWING THE TEXT OF THE BILL AS APPROVED BY THE SUBCOMMITTEE
ON HEALTH ON OCTOBER 10, 2007]

110TH CONGRESS
1ST SESSION

H. R. 1424

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.

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. PASCARELL, 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

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
8 this 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
market

Sec. 5. 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
3 or coverage does not include a treatment limit
4 (as defined in subparagraph (D)) on substan-
5 tially all medical and surgical benefits in any
6 category of items or services, the plan or cov-
7 erage may not impose any treatment limit on
8 mental health and substance-related disorder
9 benefits that are classified in the same category
10 of items or services.

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 cov-
15 erage may not impose such a treatment limit on
16 mental health and substance-related disorder
17 benefits for items and services within such cat-
18 egory that are more restrictive than the pre-
19 dominant treatment limit that is applicable to
20 medical and surgical benefits for items and
21 services within such category.

22 “(C) CATEGORIES OF ITEMS AND SERV-
23 ICES FOR APPLICATION OF TREATMENT LIMITS
24 AND BENEFICIARY FINANCIAL REQUIRE-
25 MENTS.—For purposes of this paragraph and

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

9 “(i) INPATIENT, IN-NETWORK.—Items
10 and services furnished on an inpatient
11 basis and within a network of providers es-
12 tablished or recognized under such plan or
13 coverage.

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

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

24 “(iv) OUTPATIENT, OUT-OF-NET-
25 WORK.—Items and services furnished on

1 an outpatient basis and outside any net-
2 work of providers established or recognized
3 under such plan or coverage.

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

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

18 “(4) BENEFICIARY FINANCIAL REQUIRE-
19 MENTS.—

20 “(A) NO BENEFICIARY FINANCIAL RE-
21 QUIREMENT.—If the plan or coverage does not
22 include a beneficiary financial requirement (as
23 defined in subparagraph (C)) on substantially
24 all medical and surgical benefits within a cat-
25 egory of items and services (specified under

1 paragraph (3)(C)), the plan or coverage may
2 not impose such a beneficiary financial require-
3 ment on mental health and substance-related
4 disorder benefits for items and services within
5 such category.

6 “(B) BENEFICIARY FINANCIAL REQUIRE-
7 MENT.—

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

1 egory and shall not distinguish in the ap-
2 plication of such requirement between such
3 medical and surgical benefits and such
4 mental health and substance-related dis-
5 order benefits.

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

21 “(C) BENEFICIARY FINANCIAL REQUIRE-
22 MENT DEFINED.—For purposes of this para-
23 graph, the term ‘beneficiary financial require-
24 ment’ includes, with respect to a plan or cov-
25 erage, any deductible, coinsurance, co-payment,

1 other cost sharing, and limitation on the total
2 amount that may be paid by a participant or
3 beneficiary with respect to benefits under the
4 plan or coverage, but does not include the appli-
5 cation of any aggregate lifetime limit or annual
6 limit.”; and

7 (2) in subsection (b)—

8 (A) by striking “construed—” and all that
9 follows through “(1) as requiring” and insert-
10 ing “construed as requiring”;

11 (B) by striking “; or” and inserting a pe-
12 riod; and

13 (C) by striking paragraph (2).

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

17 (1) by striking “mental health benefits” and in-
18 serting “mental health and substance-related dis-
19 order benefits” each place it appears; and

20 (2) in paragraph (4) of subsection (e)—

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

24 (B) by striking “benefits with respect to
25 mental health services” and inserting “benefits

1 with respect to services for mental health condi-
2 tions or substance-related disorders”; and

3 (C) by striking “, but does not include
4 benefits with respect to treatment of substances
5 abuse or chemical dependency”.

6 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
7 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
8 such section, as amended by subsection (a)(1), is further
9 amended by adding at the end the following new para-
10 graph:

11 “(5) AVAILABILITY OF PLAN INFORMATION.—
12 The criteria for medical necessity determinations
13 made under the plan with respect to mental health
14 and substance-related disorder benefits (or the
15 health insurance coverage offered in connection with
16 the plan with respect to such benefits) shall be made
17 available by the plan administrator (or the health in-
18 surance issuer offering such coverage) to any cur-
19 rent or potential participant, beneficiary, or con-
20 tracting provider upon request. The reason for any
21 denial under the plan (or coverage) of reimburse-
22 ment or payment for services with respect to mental
23 health and substance-related disorder benefits in the
24 case of any participant or beneficiary shall, upon re-
25 quest, be made available by the plan administrator

1 (or the health insurance issuer offering such cov-
2 erage) to the participant or beneficiary.”.

3 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
4 section (a) of such section is further amended by adding
5 at the end the following new paragraph:

6 “(6) MINIMUM SCOPE OF COVERAGE AND EQ-
7 UITY IN OUT-OF-NETWORK BENEFITS.—

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

22 “(B) EQUITY IN COVERAGE OF OUT-OF-
23 NETWORK BENEFITS.—

24 “(i) IN GENERAL.—In the case of a
25 plan or coverage that provides both med-

1 ical and surgical benefits and mental
2 health and substance-related disorder bene-
3 fits, if medical and surgical benefits are
4 provided for substantially all items and
5 services in a category specified in clause
6 (ii) furnished outside any network of pro-
7 viders established or recognized under such
8 plan or coverage, the mental health and
9 substance-related disorder benefits shall
10 also be provided for items and services in
11 such category furnished outside any net-
12 work of providers established or recognized
13 under such plan or coverage in accordance
14 with the requirements of this section.

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

1 “(I) EMERGENCY.—Items and
2 services, whether furnished on an in-
3 patient or outpatient basis, required
4 for the treatment of an emergency
5 medical condition (including an emer-
6 gency condition relating to mental
7 health and substance-related dis-
8 orders).

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

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

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

18 “(2) INCREASED COST EXEMPTION.—

19 “(A) IN GENERAL.—With respect to a
20 group health plan (or health insurance coverage
21 offered in connection with such a plan), if the
22 application of this section to such plan (or cov-
23 erage) results in an increase for the plan year
24 involved of the actual total costs of coverage
25 with respect to medical and surgical benefits

1 and mental health and substance-related dis-
2 order benefits under the plan (as determined
3 and certified under subparagraph (C)) by an
4 amount that exceeds the applicable percentage
5 described in subparagraph (B) of the actual
6 total plan costs, the provisions of this section
7 shall not apply to such plan (or coverage) dur-
8 ing the following plan year, and such exemption
9 shall apply to the plan (or coverage) for 1 plan
10 year.

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

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

20 “(ii) 1 percent in the case of each
21 subsequent 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 determina-
3 tions shall be certified by the actuary and be
4 made 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
8 plan) seeks an exemption under this paragraph,
9 determinations under subparagraph (A) shall be
10 made after such plan (or coverage) has com-
11 plied with this section for the first 6 months of
12 the plan year involved.

13 “(E) NOTIFICATION.—An election to mod-
14 ify coverage of mental health and substance-re-
15 lated disorder benefits as permitted under this
16 paragraph shall be treated as a material modi-
17 fication in the terms of the plan as described in
18 section 102(a)(1) and shall be subject to the
19 applicable notice requirements under section
20 104(b)(1).”.

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.—
8 Such section is further amended by inserting after sub-
9 section (e) the following new subsection:

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

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

18 “(2) ERISA.—Nothing in this section shall be
19 construed to affect or modify the provisions of sec-
20 tion 514 with respect to group health plans.”.

21 (i) CONFORMING AMENDMENTS TO HEADING.—

22 (1) IN GENERAL.—The heading of such section
23 is amended to read as follows:

1 **“SEC. 712. Equity in mental health and substance-related dis-**
2 **order benefits.”.**

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1 of such Act is amended by striking
5 the item relating to section 712 and inserting the
6 following new item:

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

7 (j) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to plan years begin-
9 ning on or after January 1, 2008.

10 **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

11 **ACT RELATING TO THE GROUP MARKET.**

12 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
13 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
14 2705 of the Public Health Service Act (42 U.S.C. 300gg–
15 5) is amended—

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

18 “(3) TREATMENT LIMITS.—

19 “(A) NO TREATMENT LIMIT.—If the plan
20 or coverage does not include a treatment limit
21 (as defined in subparagraph (D)) on substan-
22 tially all medical and surgical benefits in any
23 category of items or services (specified in sub-
24 paragraph (C)), the plan or coverage may not
25 impose any treatment limit on mental health or

1 substance-related disorder benefits that are
2 classified in the same category of items or serv-
3 ices.

4 “(B) TREATMENT LIMIT.—If the plan or
5 coverage includes a treatment limit on substan-
6 tially all medical and surgical benefits in any
7 category of items or services, the plan or cov-
8 erage may not impose such a treatment limit on
9 mental health or substance-related disorder
10 benefits for items and services within such cat-
11 egory that is more restrictive than the predomi-
12 nant treatment limit that is applicable to med-
13 ical and surgical benefits for items and services
14 within such category.

15 “(C) CATEGORIES OF ITEMS AND SERV-
16 ICES FOR APPLICATION OF TREATMENT LIMITS
17 AND BENEFICIARY FINANCIAL REQUIRE-
18 MENTS.—For purposes of this paragraph and
19 paragraph (4), there shall be the following five
20 categories of items and services for benefits,
21 whether medical and surgical benefits or mental
22 health and substance-related disorder benefits,
23 and all medical and surgical benefits and all
24 mental health and substance related benefits

1 shall be classified into one of the following cat-
2 egories:

3 “(i) INPATIENT, IN-NETWORK.—Items
4 and services not described in clause (v)
5 furnished on an inpatient basis and within
6 a network of providers established or rec-
7 ognized under such plan or coverage.

8 “(ii) INPATIENT, OUT-OF-NETWORK.—
9 Items and services not described in clause
10 (v) furnished on an inpatient basis and
11 outside any network of providers estab-
12 lished or recognized under such plan or
13 coverage.

14 “(iii) OUTPATIENT, IN-NETWORK.—
15 Items and services not described in clause
16 (v) furnished on an outpatient basis and
17 within a network of providers established
18 or recognized under such plan or coverage.

19 “(iv) OUTPATIENT, OUT-OF-NET-
20 WORK.—Items and services not described
21 in clause (v) furnished on an outpatient
22 basis and outside any network of providers
23 established or recognized under such plan
24 or coverage.

1 “(v) EMERGENCY CARE.—Items and
2 services, whether furnished on an inpatient
3 or outpatient basis or within or outside
4 any network of providers, required for the
5 treatment of an emergency medical condi-
6 tion (as defined in section 1867(e) of the
7 Social Security Act, including an emer-
8 gency condition relating to mental health
9 and substance-related disorders).

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

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

24 “(4) BENEFICIARY FINANCIAL REQUIRE-
25 MENTS.—

1 “(A) NO BENEFICIARY FINANCIAL RE-
2 QUIREMENT.—If the plan or coverage does not
3 include a beneficiary financial requirement (as
4 defined in subparagraph (C)) on substantially
5 all medical and surgical benefits within a cat-
6 egory of items and services (specified in para-
7 graph (3)(C)), the plan or coverage may not im-
8 pose such a beneficiary financial requirement on
9 mental health or 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
25 more than one such requirement for such

1 category of items and services, the pre-
2 dominant requirement for such category)
3 both to medical and surgical benefits with-
4 in such category and to mental health and
5 substance-related disorder benefits within
6 such category and shall not distinguish in
7 the application of such requirement be-
8 tween such medical and surgical benefits
9 and such mental health and substance-re-
10 lated disorder 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
17 coverage may not impose such financial re-
18 quirement on mental health or substance-
19 related disorder benefits for items and
20 services within such category in a way that
21 is more costly to the participant or bene-
22 ficiary than the predominant beneficiary fi-
23 nancial requirement applicable to medical
24 and surgical benefits for items and services
25 within 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 insert-
15 ing “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
21 is further amended—

22 (1) by striking “mental health benefits” and in-
23 serting “mental health or 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
9 benefits with respect to treatment of substance
10 abuse or chemical dependency”.

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

16 “(5) AVAILABILITY OF PLAN INFORMATION.—
17 The criteria for medical necessity determinations
18 made under the plan with respect to mental health
19 and substance-related disorder benefits (or the
20 health insurance coverage offered in connection with
21 the plan with respect to such benefits) shall be made
22 available by the plan administrator (or the health in-
23 surance issuer offering such coverage) to any cur-
24 rent or potential participant, beneficiary, or con-
25 tracting provider upon request. The reason for any

1 denial under the plan (or coverage) of reimburse-
2 ment or payment for services with respect to mental
3 health and substance-related disorder benefits in the
4 case of any participant or beneficiary shall, upon re-
5 quest, be made available by the plan administrator
6 (or the health insurance issuer offering such cov-
7 erage) to the participant or beneficiary.”.

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

11 “(6) MINIMUM SCOPE OF COVERAGE AND EQ-
12 UITY IN OUT-OF-NETWORK BENEFITS.—

13 “(A) MINIMUM SCOPE OF MENTAL
14 HEALTH AND SUBSTANCE-RELATED DISORDER
15 BENEFITS.—In the case of a group health plan
16 (or health insurance coverage offered in connec-
17 tion with such a plan) that provides any mental
18 health or substance-related disorder benefits,
19 the plan or coverage shall include benefits for
20 any mental health condition or substance-re-
21 lated disorder included in the most recent edi-
22 tion of the Diagnostic and Statistical Manual of
23 Mental Disorders published by the American
24 Psychiatric Association.

1 “(B) EQUITY IN COVERAGE OF OUT-OF-
2 NETWORK BENEFITS.—

3 “(i) IN GENERAL.—In the case of a
4 group health plan (or health insurance cov-
5 erage offered in connection with such a
6 plan) that provides both medical and sur-
7 gical benefits and mental health or sub-
8 stance-related disorder benefits, if medical
9 and surgical benefits are provided for sub-
10 stantially all items and services in a cat-
11 egory specified in clause (ii) furnished out-
12 side any network of providers established
13 or recognized under such plan or coverage,
14 the mental health and substance-related
15 disorder benefits shall also be provided for
16 items and services in such category fur-
17 nished outside any network of providers es-
18 tablished or recognized under such plan or
19 coverage in accordance with the require-
20 ments of this section.

21 “(ii) CATEGORIES OF ITEMS AND
22 SERVICES.—For purposes of clause (i),
23 there shall be the following three categories
24 of items and services for benefits, whether
25 medical and surgical benefits or mental

1 health and substance-related disorder bene-
2 fits, and all medical and surgical benefits
3 and all mental health and substance-re-
4 lated disorder benefits shall be classified
5 into one of the following categories:

6 “(I) EMERGENCY.—Items and
7 services, whether furnished on an in-
8 patient or outpatient basis, required
9 for the treatment of an emergency
10 medical condition (including an emer-
11 gency condition relating to mental
12 health or substance-related disorders).

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

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

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

22 “(2) INCREASED COST EXEMPTION.—

23 “(A) IN GENERAL.—With respect to a
24 group health plan (or health insurance coverage
25 offered in connection with such a plan), if the

1 application of this section to such plan (or cov-
2 erage) results in an increase for the plan year
3 involved of the actual total costs of coverage
4 with respect to medical and surgical benefits
5 and mental health and substance-related dis-
6 order benefits under the plan (as determined
7 and certified under subparagraph (C)) by an
8 amount that exceeds the applicable percentage
9 described in subparagraph (B) of the actual
10 total plan costs, the provisions of this section
11 shall not apply to such plan (or coverage) dur-
12 ing the following plan year, and such exemption
13 shall apply to the plan (or coverage) for 1 plan
14 year.

15 “(B) APPLICABLE PERCENTAGE.—With re-
16 spect to a plan (or coverage), the applicable
17 percentage described in this paragraph shall
18 be—

19 “(i) 2 percent in the case of the first
20 plan year to which this paragraph applies;
21 and

22 “(ii) 1 percent in the case of each
23 subsequent plan year.

24 “(C) DETERMINATIONS BY ACTUARIES.—
25 Determinations as to increases in actual costs

1 under a plan (or coverage) for purposes of this
2 subsection shall be made by a qualified and li-
3 censed actuary who is a member in good stand-
4 ing of the American Academy of Actuaries.
5 Such determinations shall be certified by the
6 actuary and be made available to the general
7 public.

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

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

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

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

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

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

9 (h) CLARIFICATION REGARDING PREEMPTION.—
10 Such section is further amended by inserting after sub-
11 section (e) the following new subsection:

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

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

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

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

1 **“SEC. 2705. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
2 **RELATED DISORDER BENEFITS.”**

3 (j) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this subsection, the amendments made by
6 this section shall apply with respect to plan years be-
7 ginning on or after January 1, 2008.

8 (2) ELIMINATION OF SUNSET.—The amend-
9 ment made by subsection (g) shall apply to benefits
10 for services furnished after December 31, 2007.

11 (3) SPECIAL RULE FOR COLLECTIVE BAR-
12 GAINING AGREEMENTS.—In the case of a group
13 health plan maintained pursuant to one or more col-
14 lective bargaining agreements between employee rep-
15 resentatives and one or more employers ratified be-
16 fore the date of the enactment of this Act, the
17 amendments made by this section shall not apply to
18 plan years beginning before the later of—

19 (A) the date on which the last of the col-
20 lective bargaining agreements relating to the
21 plan terminates (determined without regard to
22 any extension thereof agreed to after the date
23 of the enactment of this Act), or

24 (B) January 1, 2010.

25 For purposes of subparagraph (A), any plan amend-
26 ment made pursuant to a collective bargaining

1 agreement relating to the plan which amends the
2 plan solely to conform to any requirement imposed
3 under an amendment under this section shall not be
4 treated as a termination of such collective bar-
5 gaining agreement.

6 (k) CONSTRUCTION REGARDING USE OF MEDICAL
7 MANAGEMENT TOOLS.—Nothing in this Act shall be con-
8 strued to prohibit a group health plan or health insurance
9 issuer from using medical management tools as long as
10 such management tools are based on valid medical evi-
11 dence and are relevant to the patient whose medical treat-
12 ment is under review.

13 **SEC. 4. AMENDMENTS TO THE INTERNAL REVENUE CODE**
14 **OF 1986.**

15 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
16 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
17 9812 of the Internal Revenue Code of 1986 is amended—

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

20 “(3) TREATMENT LIMITS.—

21 “(A) NO TREATMENT LIMIT.—If the plan
22 does not include a treatment limit (as defined
23 in subparagraph (D)) on substantially all med-
24 ical and surgical benefits in any category of
25 items or services (specified in subparagraph

1 (C)), the plan may not impose any treatment
2 limit on mental health and substance-related
3 disorder benefits that are classified in the same
4 category of items or services.

5 “(B) TREATMENT LIMIT.—If the plan in-
6 cludes a treatment limit on substantially all
7 medical and surgical benefits in any category of
8 items or services, the plan may not impose such
9 a treatment limit on mental health and sub-
10 stance-related disorder benefits for items and
11 services within such category that are more re-
12 strictive than the predominant treatment limit
13 that is applicable to medical and surgical bene-
14 fits for items and services within such category.

15 “(C) CATEGORIES OF ITEMS AND SERV-
16 ICES FOR APPLICATION OF TREATMENT LIMITS
17 AND BENEFICIARY FINANCIAL REQUIRE-
18 MENTS.—For purposes of this paragraph and
19 paragraph (4), there shall be the following four
20 categories of items and services for benefits,
21 whether medical and surgical benefits or mental
22 health and substance-related disorder benefits,
23 and all medical and surgical benefits and all
24 mental health and substance related benefits

1 shall be classified into one of the following cat-
2 egories:

3 “(i) INPATIENT, IN-NETWORK.—Items
4 and services furnished on an inpatient
5 basis and within a network of providers es-
6 tablished or recognized under such plan or
7 coverage.

8 “(ii) INPATIENT, OUT-OF-NETWORK.—
9 Items and services furnished on an inpa-
10 tient basis and outside any network of pro-
11 viders established or recognized under such
12 plan or coverage.

13 “(iii) OUTPATIENT, IN-NETWORK.—
14 Items and services furnished on an out-
15 patient basis and within a network of pro-
16 viders established or recognized under such
17 plan or coverage.

18 “(iv) OUTPATIENT, OUT-OF-NET-
19 WORK.—Items and services furnished on
20 an outpatient basis and outside any net-
21 work of providers established or recognized
22 under such plan or coverage.

23 “(D) TREATMENT LIMIT DEFINED.—For
24 purposes of this paragraph, the term ‘treatment
25 limit’ means, with respect to a plan, limitation

1 on the frequency of treatment, number of visits
2 or days of coverage, or other similar limit on
3 the duration or scope of treatment under the
4 plan.

5 “(E) PREDOMINANCE.—For purposes of
6 this subsection, a treatment limit or financial
7 requirement 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 REQUIRE-
13 MENTS.—

14 “(A) NO BENEFICIARY FINANCIAL RE-
15 QUIREMENT.—If the plan does not include a
16 beneficiary financial requirement (as defined in
17 subparagraph (C)) on substantially all medical
18 and surgical benefits within a category of items
19 and services (specified in paragraph (3)(C)),
20 the plan may not impose such a beneficiary fi-
21 nancial requirement on mental health and sub-
22 stance-related disorder benefits for items and
23 services within such category.

24 “(B) BENEFICIARY FINANCIAL REQUIRE-
25 MENT.—

1 “(i) TREATMENT OF DEDUCTIBLES,
2 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
3 NANCIAL REQUIREMENTS.—If the plan or
4 coverage includes a deductible, a limitation
5 on out-of-pocket expenses, or similar bene-
6 ficiary financial requirement that does not
7 apply separately to individual items and
8 services on substantially all medical and
9 surgical benefits within a category of items
10 and services, the plan or coverage shall
11 apply such requirement (or, if there is
12 more than one such requirement for such
13 category of items and services, the pre-
14 dominant requirement for such category)
15 both to medical and surgical benefits with-
16 in such category and to mental health and
17 substance-related disorder benefits within
18 such category and shall not distinguish in
19 the application of such requirement be-
20 tween such medical and surgical benefits
21 and such mental health and substance-re-
22 lated disorder benefits.

23 “(ii) OTHER FINANCIAL REQUIRE-
24 MENTS.—If the plan includes a beneficiary
25 financial requirement not described in

1 clause (i) on substantially all medical and
2 surgical benefits within a category of items
3 and services, the plan may not impose such
4 financial requirement on mental health and
5 substance-related disorder benefits for
6 items and services within such category in
7 a way that is more costly to the participant
8 or beneficiary than the predominant bene-
9 ficiary financial requirement applicable to
10 medical and surgical benefits for items and
11 services within such category.

12 “(C) BENEFICIARY FINANCIAL REQUIRE-
13 MENT DEFINED.—For purposes of this para-
14 graph, the term ‘beneficiary financial require-
15 ment’ includes, with respect to a plan, any de-
16 ductible, coinsurance, co-payment, other cost
17 sharing, and limitation on the total amount
18 that may be paid by a participant or beneficiary
19 with respect to benefits under the plan, but
20 does not include the application of any aggre-
21 gate lifetime limit or annual limit.”; and

22 (2) in subsection (b)—

23 (A) by striking “construed—” and all that
24 follows through “(1) as requiring” and insert-
25 ing “construed as requiring”;

1 (B) by striking “; or” and inserting a pe-
2 riod; and

3 (C) by striking paragraph (2).

4 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER
5 BENEFITS AND REVISION OF DEFINITION.—Such section
6 is further amended—

7 (1) by striking “mental health benefits” and in-
8 serting “mental health and substance-related dis-
9 order benefits” each place it appears; and

10 (2) in paragraph (4) of subsection (e)—

11 (A) by striking “MENTAL HEALTH BENE-
12 FITS” in the heading and inserting “MENTAL
13 HEALTH AND SUBSTANCE-RELATED DISORDER
14 BENEFITS”;

15 (B) by striking “benefits with respect to
16 mental health services” and inserting “benefits
17 with respect to services for mental health condi-
18 tions or substance-related disorders”; and

19 (C) by striking “, but does not include
20 benefits with respect to treatment of substances
21 abuse or chemical dependency”.

22 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
23 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
24 such section, as amended by subsection (a)(1), is further

1 amended by adding at the end the following new para-
2 graph:

3 “(5) AVAILABILITY OF PLAN INFORMATION.—

4 The criteria for medical necessity determinations
5 made under the plan with respect to mental health
6 and substance-related disorder benefits shall be
7 made available by the plan administrator to any cur-
8 rent or potential participant, beneficiary, or con-
9 tracting provider upon request. The reason for any
10 denial under the plan of reimbursement or payment
11 for services with respect to mental health and sub-
12 stance-related disorder benefits in the case of any
13 participant or beneficiary shall, upon request, be
14 made available by the plan administrator to the par-
15 ticipant or beneficiary.”.

16 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
17 section (a) of such section is further amended by adding
18 at the end the following new paragraph:

19 “(6) MINIMUM SCOPE OF COVERAGE AND EQ-
20 UITY IN OUT-OF-NETWORK BENEFITS.—

21 “(A) MINIMUM SCOPE OF MENTAL
22 HEALTH AND SUBSTANCE-RELATED DISORDER
23 BENEFITS.—In the case of a group health plan
24 (or health insurance coverage offered in connec-
25 tion with such a plan) that provides any mental

1 health and substance-related disorder benefits,
2 the plan or coverage shall include benefits for
3 any mental health condition or substance-re-
4 lated disorder for which benefits are provided
5 under the benefit plan option offered under
6 chapter 89 of title 5, United States Code, with
7 the highest average enrollment as of the begin-
8 ning of the most recent year beginning on or
9 before the beginning of the plan year involved.

10 “(B) EQUITY IN COVERAGE OF OUT-OF-
11 NETWORK BENEFITS.—

12 “(i) IN GENERAL.—In the case of a
13 plan that provides both medical and sur-
14 gical benefits and mental health and sub-
15 stance-related disorder benefits, if medical
16 and surgical benefits are provided for sub-
17 stantially all items and services in a cat-
18 egory specified in clause (ii) furnished out-
19 side any network of providers established
20 or recognized under such plan or coverage,
21 the mental health and substance-related
22 disorder benefits shall also be provided for
23 items and services in such category fur-
24 nished outside any network of providers es-
25 tablished or recognized under such plan in

1 accordance with the requirements of this
2 section.

3 “(ii) CATEGORIES OF ITEMS AND
4 SERVICES.—For purposes of clause (i),
5 there shall be the following three categories
6 of items and services for benefits, whether
7 medical and surgical benefits or mental
8 health and substance-related disorder bene-
9 fits, and all medical and surgical benefits
10 and all mental health and substance-re-
11 lated disorder benefits shall be classified
12 into one of the following categories:

13 “(I) EMERGENCY.—Items and
14 services, whether furnished on an in-
15 patient or outpatient basis, required
16 for the treatment of an emergency
17 medical condition (including an emer-
18 gency condition relating to mental
19 health and substance-related dis-
20 orders).

21 “(II) INPATIENT.—Items and
22 services not described in subclause (I)
23 furnished on an inpatient basis.

1 “(III) OUTPATIENT.—Items and
2 services not described in subclause (I)
3 furnished on an outpatient basis.”.

4 (e) REVISION OF INCREASED COST EXEMPTION.—
5 Paragraph (2) of subsection (c) of such section is amended
6 to read as follows:

7 “(2) INCREASED COST EXEMPTION.—

8 “(A) IN GENERAL.—With respect to a
9 group health plan, if the application of this sec-
10 tion to such plan results in an increase for the
11 plan year involved of the actual total costs of
12 coverage with respect to medical and surgical
13 benefits and mental health and substance-re-
14 lated disorder benefits under the plan (as deter-
15 mined and certified under subparagraph (C)) by
16 an amount that exceeds the applicable percent-
17 age described in subparagraph (B) of the actual
18 total plan costs, the provisions of this section
19 shall not apply to such plan during the fol-
20 lowing plan year, and such exemption shall
21 apply to the plan for 1 plan year.

22 “(B) APPLICABLE PERCENTAGE.—With re-
23 spect to a plan, the applicable percentage de-
24 scribed in this paragraph shall be—

1 “(i) 2 percent in the case of the first
2 plan year which begins after the date of
3 the enactment of the Paul Wellstone Men-
4 tal Health and Addiction Equity Act of
5 2007; and

6 “(ii) 1 percent in the case of each
7 subsequent plan year.

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

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

22 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
23 ERS.—Subsection (c)(1) of such section is amended to
24 read as follows:

25 “(1) SMALL EMPLOYER EXEMPTION.—

1 “(A) IN GENERAL.—This section shall not
2 apply to any group health plan for any plan
3 year of a small employer.

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

19 (g) ELIMINATION OF SUNSET PROVISION.—Such sec-
20 tion is amended by striking subsection (f).

21 (h) CONFORMING AMENDMENTS TO HEADING.—

22 (1) IN GENERAL.—The heading of such section
23 is amended to read as follows:

1 **“SEC. 9812. Equity in mental health and substance-related dis-**
2 **order benefits.”.**

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for subchapter B of chapter 100 of the Inter-
5 nal Revenue Code of 1986 is amended by striking
6 the item relating to section 9812 and inserting the
7 following new item:

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

8 (i) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to plan years begin-
10 ning on or after January 1, 2008.

11 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDIES**
12 **AND REPORTS.**

13 (a) IMPLEMENTATION OF ACT.—

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

18 (A) the cost of health insurance coverage;

19 (B) access to health insurance coverage
20 (including the availability of in-network pro-
21 viders);

22 (C) the quality of health care;

23 (D) Medicare, Medicaid, and State and
24 local mental health and substance abuse treat-
25 ment spending;

1 (E) the number of individuals with private
2 insurance who received publicly funded health
3 care for mental health and substance-related
4 disorders;

5 (F) spending on public services, such as
6 the criminal justice system, special education,
7 and income assistance programs;

8 (G) the use of medical management of
9 mental health and substance-related disorder
10 benefits and medical necessity determinations
11 by group health plans (and health insurance
12 issuers offering health insurance coverage in
13 connection with such plans) and timely access
14 by participants and beneficiaries to clinically-in-
15 dicated care for mental health and substance-
16 use disorders; and

17 (H) other matters as determined appro-
18 priate by the Comptroller General.

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

24 (b) BIENNIAL REPORT ON OBSTACLES IN OBTAIN-
25 ING COVERAGE.—Every two years, the Comptroller Gen-

1 eral shall submit to each House of the Congress a report
2 on obstacles that individuals face in obtaining mental
3 health and substance-related disorder care under their
4 health plans.

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