

1 “(3) *REASONABLE CAUSE EXCEPTION.*—No pen-
2 alty shall be imposed under this subsection if it is
3 shown that there is reasonable cause for the under-
4 statement and the tax return preparer acted in good
5 faith.”.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall apply—

8 (1) in the case of a position other than a posi-
9 tion described in subparagraph (C) of section
10 6694(a)(2) of the Internal Revenue Code of 1986 (as
11 amended by this section), to returns prepared after
12 May 25, 2007, and

13 (2) in the case of a position described in such
14 subparagraph (C), to returns prepared for taxable
15 years ending after the date of the enactment of this
16 Act.

17 ***Subtitle B—Paul Wellstone and***
18 ***Pete Domenici Mental Health***
19 ***Parity and Addiction Equity Act***
20 ***of 2008***

21 ***SEC. 511. SHORT TITLE.***

22 This subtitle may be cited as the “Paul Wellstone and
23 Pete Domenici Mental Health Parity and Addiction Equity
24 Act of 2008”.

1 **SEC. 512. MENTAL HEALTH PARITY.**

2 (a) *AMENDMENTS TO ERISA.*—Section 712 of the *Em-*
3 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*
4 *1185a)* is amended—

5 (1) *in subsection (a), by adding at the end the*
6 *following:*

7 “(3) *FINANCIAL REQUIREMENTS AND TREATMENT*
8 *LIMITATIONS.*—

9 “(A) *IN GENERAL.*—*In the case of a group*
10 *health plan (or health insurance coverage offered*
11 *in connection with such a plan) that provides*
12 *both medical and surgical benefits and mental*
13 *health or substance use disorder benefits, such*
14 *plan or coverage shall ensure that—*

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

25 “(ii) *the treatment limitations applica-*
26 *ble to such mental health or substance use*

1 *disorder benefits are no more restrictive*
2 *than the predominant treatment limitations*
3 *applied to substantially all medical and*
4 *surgical benefits covered by the plan (or*
5 *coverage) and there are no separate treat-*
6 *ment limitations that are applicable only*
7 *with respect to mental health or substance*
8 *use disorder benefits.*

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

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

16 “(ii) *PREDOMINANT.—A financial re-*
17 *quirement or treatment limit is considered*
18 *to be predominant if it is the most common*
19 *or frequent of such type of limit or require-*
20 *ment.*

21 “(iii) *TREATMENT LIMITATION.—The*
22 *term ‘treatment limitation’ includes limits*
23 *on the frequency of treatment, number of*
24 *visits, days of coverage, or other similar*

1 *limits on the scope or duration of treat-*
2 *ment.*

3 “(4) *AVAILABILITY OF PLAN INFORMATION.—The*
4 *criteria for medical necessity determinations made*
5 *under the plan with respect to mental health or sub-*
6 *stance use disorder benefits (or the health insurance*
7 *coverage offered in connection with the plan with re-*
8 *spect to such benefits) shall be made available by the*
9 *plan administrator (or the health insurance issuer of-*
10 *fering such coverage) in accordance with regulations*
11 *to any current or potential participant, beneficiary,*
12 *or contracting provider upon request. The reason for*
13 *any denial under the plan (or coverage) of reimburse-*
14 *ment or payment for services with respect to mental*
15 *health or substance use disorder benefits in the case*
16 *of any participant or beneficiary shall, on request or*
17 *as otherwise required, be made available by the plan*
18 *administrator (or the health insurance issuer offering*
19 *such coverage) to the participant or beneficiary in ac-*
20 *cordance with regulations.*

21 “(5) *OUT-OF-NETWORK PROVIDERS.—In the case*
22 *of a plan or coverage that provides both medical and*
23 *surgical benefits and mental health or substance use*
24 *disorder benefits, if the plan or coverage provides cov-*
25 *erage for medical or surgical benefits provided by out-*

1 *of-network providers, the plan or coverage shall pro-*
2 *vide coverage for mental health or substance use dis-*
3 *order benefits provided by out-of-network providers in*
4 *a manner that is consistent with the requirements of*
5 *this section.”;*

6 *(2) in subsection (b), by amending paragraph*
7 *(2) to read as follows:*

8 *“(2) in the case of a group health plan (or health*
9 *insurance coverage offered in connection with such a*
10 *plan) that provides mental health or substance use*
11 *disorder benefits, as affecting the terms and condi-*
12 *tions of the plan or coverage relating to such benefits*
13 *under the plan or coverage, except as provided in sub-*
14 *section (a).”;*

15 *(3) in subsection (c)—*

16 *(A) in paragraph (1)(B)—*

17 *(i) by inserting “(or 1 in the case of*
18 *an employer residing in a State that per-*
19 *mits small groups to include a single indi-*
20 *vidual)” after “at least 2” the first place*
21 *that such appears; and*

22 *(ii) by striking “and who employs at*
23 *least 2 employees on the first day of the*
24 *plan year”;* and

1 *(B) by striking paragraph (2) and inserting*
2 *the following:*

3 “(2) *COST EXEMPTION.—*

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

24 “(B) *APPLICABLE PERCENTAGE.—With re-*
25 *spect to a plan (or coverage), the applicable per-*

1 *centage described in this subparagraph shall*
2 *be—*

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

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

8 *“(C) DETERMINATIONS BY ACTUARIES.—*
9 *Determinations as to increases in actual costs*
10 *under a plan (or coverage) for purposes of this*
11 *section shall be made and certified by a qualified*
12 *and licensed actuary who is a member in good*
13 *standing of the American Academy of Actuaries.*
14 *All such determinations shall be in a written re-*
15 *port prepared by the actuary. The report, and*
16 *all underlying documentation relied upon by the*
17 *actuary, shall be maintained by the group health*
18 *plan or health insurance issuer for a period of*
19 *6 years following the notification made under*
20 *subparagraph (E).*

21 *“(D) 6-MONTH DETERMINATIONS.—If a*
22 *group health plan (or a health insurance issuer*
23 *offering coverage in connection with a group*
24 *health plan) seeks an exemption under this para-*
25 *graph, determinations under subparagraph (A)*

1 *shall be made after such plan (or coverage) has*
2 *complied with this section for the first 6 months*
3 *of the plan year involved.*

4 “(E) NOTIFICATION.—

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

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

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

1 “(II) for both the plan year upon
2 which a cost exemption is sought and
3 the year prior, a description of the ac-
4 tual total costs of coverage with respect
5 to medical and surgical benefits and
6 mental health and substance use dis-
7 order benefits under the plan; and

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

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

21 “(I) a breakdown of States by the
22 size and type of employers submitting
23 such notification; and

24 “(II) a summary of the data re-
25 ceived under clause (ii).

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

13 (4) in subsection (e), by striking paragraph (4)
14 and inserting the following:

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

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

25 (5) by striking subsection (f);

1 (6) by inserting after subsection (e) the following:

2 “(f) *SECRETARY REPORT.*—The Secretary shall, by
3 *January 1, 2012, and every two years thereafter, submit*
4 *to the appropriate committees of Congress a report on com-*
5 *pliance of group health plans (and health insurance cov-*
6 *erage offered in connection with such plans) with the re-*
7 *quirements of this section. Such report shall include the re-*
8 *sults of any surveys or audits on compliance of group health*
9 *plans (and health insurance coverage offered in connection*
10 *with such plans) with such requirements and an analysis*
11 *of the reasons for any failures to comply.*

12 “(g) *NOTICE AND ASSISTANCE.*—The Secretary, in co-
13 *operation with the Secretaries of Health and Human Serv-*
14 *ices and Treasury, as appropriate, shall publish and widely*
15 *disseminate guidance and information for group health*
16 *plans, participants and beneficiaries, applicable State and*
17 *local regulatory bodies, and the National Association of In-*
18 *surance Commissioners concerning the requirements of this*
19 *section and shall provide assistance concerning such re-*
20 *quirements and the continued operation of applicable State*
21 *law. Such guidance and information shall inform partici-*
22 *pants and beneficiaries of how they may obtain assistance*
23 *under this section, including, where appropriate, assistance*
24 *from State consumer and insurance agencies.”;*

1 (7) by striking “mental health benefits” and in-
2 serting “mental health and substance use disorder
3 benefits” each place it appears in subsections
4 (a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);
5 and

6 (8) by striking “mental health benefits” and in-
7 serting “mental health or substance use disorder bene-
8 fits” each place it appears (other than in any provi-
9 sion amended by the previous paragraph).

10 (b) *AMENDMENTS TO PUBLIC HEALTH SERVICE*
11 *ACT.*—Section 2705 of the Public Health Service Act (42
12 *U.S.C. 300gg–5*) is amended—

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

15 “(3) *FINANCIAL REQUIREMENTS AND TREATMENT*
16 *LIMITATIONS.*—

17 “(A) *IN GENERAL.*—In the case of a group
18 health plan (or health insurance coverage offered
19 in connection with such a plan) that provides
20 both medical and surgical benefits and mental
21 health or substance use disorder benefits, such
22 plan or coverage shall ensure that—

23 “(i) the financial requirements appli-
24 cable to such mental health or substance use
25 disorder benefits are no more restrictive

1 *than the predominant financial require-*
2 *ments applied to substantially all medical*
3 *and surgical benefits covered by the plan (or*
4 *coverage), and there are no separate cost*
5 *sharing requirements that are applicable*
6 *only with respect to mental health or sub-*
7 *stance use disorder benefits; and*

8 “(ii) *the treatment limitations applica-*
9 *ble to such mental health or substance use*
10 *disorder benefits are no more restrictive*
11 *than the predominant treatment limitations*
12 *applied to substantially all medical and*
13 *surgical benefits covered by the plan (or*
14 *coverage) and there are no separate treat-*
15 *ment limitations that are applicable only*
16 *with respect to mental health or substance*
17 *use disorder benefits.*

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

19 “(i) *FINANCIAL REQUIREMENT.—The*
20 *term ‘financial requirement’ includes*
21 *deductibles, copayments, coinsurance, and*
22 *out-of-pocket expenses, but excludes an ag-*
23 *gregate lifetime limit and an annual limit*
24 *subject to paragraphs (1) and (2).*

1 “(ii) *PREDOMINANT*.—A financial re-
2 quirement or treatment limit is considered
3 to be predominant if it is the most common
4 or frequent of such type of limit or require-
5 ment.

6 “(iii) *TREATMENT LIMITATION*.—The
7 term ‘treatment limitation’ includes limits
8 on the frequency of treatment, number of
9 visits, days of coverage, or other similar
10 limits on the scope or duration of treat-
11 ment.

12 “(4) *AVAILABILITY OF PLAN INFORMATION*.—The
13 criteria for medical necessity determinations made
14 under the plan with respect to mental health or sub-
15 stance use disorder benefits (or the health insurance
16 coverage offered in connection with the plan with re-
17 spect to such benefits) shall be made available by the
18 plan administrator (or the health insurance issuer of-
19 fering such coverage) in accordance with regulations
20 to any current or potential participant, beneficiary,
21 or contracting provider upon request. The reason for
22 any denial under the plan (or coverage) of reimburse-
23 ment or payment for services with respect to mental
24 health or substance use disorder benefits in the case
25 of any participant or beneficiary shall, on request or

1 *as otherwise required, be made available by the plan*
2 *administrator (or the health insurance issuer offering*
3 *such coverage) to the participant or beneficiary in ac-*
4 *cordance with regulations.*

5 “(5) *OUT-OF-NETWORK PROVIDERS.—In the case*
6 *of a plan or coverage that provides both medical and*
7 *surgical benefits and mental health or substance use*
8 *disorder benefits, if the plan or coverage provides cov-*
9 *erage for medical or surgical benefits provided by out-*
10 *of-network providers, the plan or coverage shall pro-*
11 *vide coverage for mental health or substance use dis-*
12 *order benefits provided by out-of-network providers in*
13 *a manner that is consistent with the requirements of*
14 *this section.”;*

15 (2) *in subsection (b), by amending paragraph*
16 *(2) to read as follows:*

17 “(2) *in the case of a group health plan (or health*
18 *insurance coverage offered in connection with such a*
19 *plan) that provides mental health or substance use*
20 *disorder benefits, as affecting the terms and condi-*
21 *tions of the plan or coverage relating to such benefits*
22 *under the plan or coverage, except as provided in sub-*
23 *section (a).”;*

24 (3) *in subsection (c)—*

1 (A) in paragraph (1), by inserting before
2 the period the following: “(as defined in section
3 2791(e)(4), except that for purposes of this para-
4 graph such term shall include employers with 1
5 employee in the case of an employer residing in
6 a State that permits small groups to include a
7 single individual)”; and

8 (B) by striking paragraph (2) and inserting
9 the following:

10 “(2) *COST EXEMPTION.*—

11 “(A) *IN GENERAL.*—With respect to a group
12 health plan (or health insurance coverage offered
13 in connection with such a plan), if the applica-
14 tion of this section to such plan (or coverage) re-
15 sults in an increase for the plan year involved
16 of the actual total costs of coverage with respect
17 to medical and surgical benefits and mental
18 health and substance use disorder benefits under
19 the plan (as determined and certified under sub-
20 paragraph (C)) by an amount that exceeds the
21 applicable percentage described in subparagraph
22 (B) of the actual total plan costs, the provisions
23 of this section shall not apply to such plan (or
24 coverage) during the following plan year, and
25 such exemption shall apply to the plan (or cov-

1 *erage) for 1 plan year. An employer may elect*
2 *to continue to apply mental health and substance*
3 *use disorder parity pursuant to this section with*
4 *respect to the group health plan (or coverage) in-*
5 *volved regardless of any increase in total costs.*

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

10 “(i) *2 percent in the case of the first*
11 *plan year in which this section is applied;*
12 *and*

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

15 “(C) *DETERMINATIONS BY ACTUARIES.*—
16 *Determinations as to increases in actual costs*
17 *under a plan (or coverage) for purposes of this*
18 *section shall be made and certified by a qualified*
19 *and licensed actuary who is a member in good*
20 *standing of the American Academy of Actuaries.*
21 *All such determinations shall be in a written re-*
22 *port prepared by the actuary. The report, and*
23 *all underlying documentation relied upon by the*
24 *actuary, shall be maintained by the group health*
25 *plan or health insurance issuer for a period of*

1 6 years following the notification made under
2 subparagraph (E).

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

11 “(E) NOTIFICATION.—

12 “(i) IN GENERAL.—A group health
13 plan (or a health insurance issuer offering
14 coverage in connection with a group health
15 plan) that, based upon a certification de-
16 scribed under subparagraph (C), qualifies
17 for an exemption under this paragraph,
18 and elects to implement the exemption, shall
19 promptly notify the Secretary, the appro-
20 priate State agencies, and participants and
21 beneficiaries in the plan of such election.

22 “(ii) REQUIREMENT.—A notification
23 to the Secretary under clause (i) shall in-
24 clude—

1 “(I) a description of the number
2 of covered lives under the plan (or cov-
3 erage) involved at the time of the noti-
4 fication, and as applicable, at the time
5 of any prior election of the cost-exemp-
6 tion under this paragraph by such
7 plan (or coverage);

8 “(II) for both the plan year upon
9 which a cost exemption is sought and
10 the year prior, a description of the ac-
11 tual total costs of coverage with respect
12 to medical and surgical benefits and
13 mental health and substance use dis-
14 order benefits under the plan; and

15 “(III) for both the plan year upon
16 which a cost exemption is sought and
17 the year prior, the actual total costs of
18 coverage with respect to mental health
19 and substance use disorder benefits
20 under the plan.

21 “(iii) *CONFIDENTIALITY*.—A notifica-
22 tion to the Secretary under clause (i) shall
23 be confidential. The Secretary shall make
24 available, upon request and on not more
25 than an annual basis, an anonymous

1 *itemization of such notifications, that in-*
2 *cludes—*

3 *“(I) a breakdown of States by the*
4 *size and type of employers submitting*
5 *such notification; and*

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

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

9 *To determine compliance with this paragraph,*
10 *the Secretary may audit the books and records of*
11 *a group health plan or health insurance issuer*
12 *relating to an exemption, including any actu-*
13 *arial reports prepared pursuant to subparagraph*
14 *(C), during the 6 year period following the noti-*
15 *fication of such exemption under subparagraph*
16 *(E). A State agency receiving a notification*
17 *under subparagraph (E) may also conduct such*
18 *an audit with respect to an exemption covered*
19 *by such notification.”;*

20 *(4) in subsection (e), by striking paragraph (4)*
21 *and inserting the following:*

22 *“(4) MENTAL HEALTH BENEFITS.—The term*
23 *‘mental health benefits’ means benefits with respect to*
24 *services for mental health conditions, as defined under*

1 *the terms of the plan and in accordance with applica-*
2 *ble Federal and State law.*

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

8 (5) *by striking subsection (f);*

9 (6) *by striking “mental health benefits” and in-*
10 *serting “mental health and substance use disorder*
11 *benefits” each place it appears in subsections*
12 *(a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);*
13 *and*

14 (7) *by striking “mental health benefits” and in-*
15 *serting “mental health or substance use disorder bene-*
16 *fits” each place it appears (other than in any provi-*
17 *sion amended by the previous paragraph).*

18 (c) *AMENDMENTS TO INTERNAL REVENUE CODE.*—
19 *Section 9812 of the Internal Revenue Code of 1986 is*
20 *amended—*

21 (1) *in subsection (a), by adding at the end the*
22 *following:*

23 “(3) *FINANCIAL REQUIREMENTS AND TREATMENT*
24 *LIMITATIONS.*—

1 “(A) *IN GENERAL.*—*In the case of a group*
2 *health plan that provides both medical and sur-*
3 *gical benefits and mental health or substance use*
4 *disorder benefits, such plan shall ensure that—*

5 “(i) *the financial requirements appli-*
6 *cable to such mental health or substance use*
7 *disorder benefits are no more restrictive*
8 *than the predominant financial require-*
9 *ments applied to substantially all medical*
10 *and surgical benefits covered by the plan,*
11 *and there are no separate cost sharing re-*
12 *quirements that are applicable only with re-*
13 *spect to mental health or substance use dis-*
14 *order benefits; and*

15 “(ii) *the treatment limitations applica-*
16 *ble to such mental health or substance use*
17 *disorder benefits are no more restrictive*
18 *than the predominant treatment limitations*
19 *applied to substantially all medical and*
20 *surgical benefits covered by the plan and*
21 *there are no separate treatment limitations*
22 *that are applicable only with respect to*
23 *mental health or substance use disorder ben-*
24 *efits.*

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

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

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

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

18 “(4) *AVAILABILITY OF PLAN INFORMATION.*—*The*
19 *criteria for medical necessity determinations made*
20 *under the plan with respect to mental health or sub-*
21 *stance use disorder benefits shall be made available by*
22 *the plan administrator in accordance with regula-*
23 *tions to any current or potential participant, bene-*
24 *ficiary, or contracting provider upon request. The*
25 *reason for any denial under the plan of reimburse-*

1 *ment or payment for services with respect to mental*
2 *health or substance use disorder benefits in the case*
3 *of any participant or beneficiary shall, on request or*
4 *as otherwise required, be made available by the plan*
5 *administrator to the participant or beneficiary in ac-*
6 *cordance with regulations.*

7 “(5) *OUT-OF-NETWORK PROVIDERS.*—*In the case*
8 *of a plan that provides both medical and surgical*
9 *benefits and mental health or substance use disorder*
10 *benefits, if the plan provides coverage for medical or*
11 *surgical benefits provided by out-of-network providers,*
12 *the plan shall provide coverage for mental health or*
13 *substance use disorder benefits provided by out-of-net-*
14 *work providers in a manner that is consistent with*
15 *the requirements of this section.”;*

16 (2) *in subsection (b), by amending paragraph*
17 *(2) to read as follows:*

18 “(2) *in the case of a group health plan that pro-*
19 *vides mental health or substance use disorder benefits,*
20 *as affecting the terms and conditions of the plan re-*
21 *lating to such benefits under the plan, except as pro-*
22 *vided in subsection (a).”;*

23 (3) *in subsection (c)—*

24 (A) *by amending paragraph (1) to read as*
25 *follows:*

1 “(1) *SMALL EMPLOYER EXEMPTION.*—

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

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

19 (B) *by striking paragraph (2) and inserting*
20 *the following:*

21 “(2) *COST EXEMPTION.*—

22 “(A) *IN GENERAL.*—*With respect to a group*
23 *health plan, if the application of this section to*
24 *such plan results in an increase for the plan*
25 *year involved of the actual total costs of coverage*

1 *with respect to medical and surgical benefits and*
2 *mental health and substance use disorder benefits*
3 *under the plan (as determined and certified*
4 *under subparagraph (C)) by an amount that ex-*
5 *ceeds the applicable percentage described in sub-*
6 *paragraph (B) of the actual total plan costs, the*
7 *provisions of this section shall not apply to such*
8 *plan during the following plan year, and such*
9 *exemption shall apply to the plan for 1 plan*
10 *year. An employer may elect to continue to*
11 *apply mental health and substance use disorder*
12 *parity pursuant to this section with respect to*
13 *the group health plan involved regardless of any*
14 *increase in total costs.*

15 “(B) *APPLICABLE PERCENTAGE.*—*With re-*
16 *spect to a plan, the applicable percentage de-*
17 *scribed in this subparagraph shall be—*

18 “(i) *2 percent in the case of the first*
19 *plan year in which this section is applied;*
20 *and*

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

23 “(C) *DETERMINATIONS BY ACTUARIES.*—
24 *Determinations as to increases in actual costs*
25 *under a plan for purposes of this section shall be*

1 *made and certified by a qualified and licensed*
2 *actuary who is a member in good standing of the*
3 *American Academy of Actuaries. All such deter-*
4 *minations shall be in a written report prepared*
5 *by the actuary. The report, and all underlying*
6 *documentation relied upon by the actuary, shall*
7 *be maintained by the group health plan for a pe-*
8 *riod of 6 years following the notification made*
9 *under subparagraph (E).*

10 “(D) 6-MONTH DETERMINATIONS.—*If a*
11 *group health plan seeks an exemption under this*
12 *paragraph, determinations under subparagraph*
13 *(A) shall be made after such plan has complied*
14 *with this section for the first 6 months of the*
15 *plan year involved.*

16 “(E) NOTIFICATION.—

17 “(i) IN GENERAL.—*A group health*
18 *plan that, based upon a certification de-*
19 *scribed under subparagraph (C), qualifies*
20 *for an exemption under this paragraph,*
21 *and elects to implement the exemption, shall*
22 *promptly notify the Secretary, the appro-*
23 *priate State agencies, and participants and*
24 *beneficiaries in the plan of such election.*

1 “(ii) *REQUIREMENT.*—A notification
2 to the Secretary under clause (i) shall in-
3 clude—

4 “(I) a description of the number
5 of covered lives under the plan involved
6 at the time of the notification, and as
7 applicable, at the time of any prior
8 election of the cost-exemption under
9 this paragraph by such plan;

10 “(II) for both the plan year upon
11 which a cost exemption is sought and
12 the year prior, a description of the ac-
13 tual total costs of coverage with respect
14 to medical and surgical benefits and
15 mental health and substance use dis-
16 order benefits under the plan; and

17 “(III) for both the plan year upon
18 which a cost exemption is sought and
19 the year prior, the actual total costs of
20 coverage with respect to mental health
21 and substance use disorder benefits
22 under the plan.

23 “(iii) *CONFIDENTIALITY.*—A notifica-
24 tion to the Secretary under clause (i) shall
25 be confidential. The Secretary shall make

1 *available, upon request and on not more*
2 *than an annual basis, an anonymous*
3 *itemization of such notifications, that in-*
4 *cludes—*

5 *“(I) a breakdown of States by the*
6 *size and type of employers submitting*
7 *such notification; and*

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

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

11 *To determine compliance with this paragraph,*
12 *the Secretary may audit the books and records of*
13 *a group health plan relating to an exemption,*
14 *including any actuarial reports prepared pursu-*
15 *ant to subparagraph (C), during the 6 year pe-*
16 *riod following the notification of such exemption*
17 *under subparagraph (E). A State agency receiv-*
18 *ing a notification under subparagraph (E) may*
19 *also conduct such an audit with respect to an ex-*
20 *emption covered by such notification.”;*

21 *(4) in subsection (e), by striking paragraph (4)*
22 *and inserting the following:*

23 *“(4) MENTAL HEALTH BENEFITS.—The term*
24 *‘mental health benefits’ means benefits with respect to*
25 *services for mental health conditions, as defined under*

1 *the terms of the plan and in accordance with applica-*
2 *ble Federal and State law.*

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

8 (5) *by striking subsection (f);*

9 (6) *by striking “mental health benefits” and in-*
10 *serting “mental health and substance use disorder*
11 *benefits” each place it appears in subsections*
12 *(a)(1)(B)(i), (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C);*
13 *and*

14 (7) *by striking “mental health benefits” and in-*
15 *serting “mental health or substance use disorder bene-*
16 *fits” each place it appears (other than in any provi-*
17 *sion amended by the previous paragraph).*

18 (d) *REGULATIONS.*—*Not later than 1 year after the*
19 *date of enactment of this Act, the Secretaries of Labor,*
20 *Health and Human Services, and the Treasury shall issue*
21 *regulations to carry out the amendments made by sub-*
22 *sections (a), (b), and (c), respectively.*

23 (e) *EFFECTIVE DATE.*—

24 (1) *IN GENERAL.*—*The amendments made by*
25 *this section shall apply with respect to group health*

1 *plans for plan years beginning after the date that is*
2 *1 year after the date of enactment of this Act, regard-*
3 *less of whether regulations have been issued to carry*
4 *out such amendments by such effective date, except*
5 *that the amendments made by subsections (a)(5),*
6 *(b)(5), and (c)(5), relating to striking of certain sun-*
7 *set provisions, shall take effect on January 1, 2009.*

8 (2) *SPECIAL RULE FOR COLLECTIVE BARGAINING*
9 *AGREEMENTS.—In the case of a group health plan*
10 *maintained pursuant to one or more collective bar-*
11 *gaining agreements between employee representatives*
12 *and one or more employers ratified before the date of*
13 *the enactment of this Act, the amendments made by*
14 *this section shall not apply to plan years beginning*
15 *before the later of—*

16 (A) *the date on which the last of the collec-*
17 *tive bargaining agreements relating to the plan*
18 *terminates (determined without regard to any*
19 *extension thereof agreed to after the date of the*
20 *enactment of this Act), or*

21 (B) *January 1, 2009.*

22 *For purposes of subparagraph (A), any plan amend-*
23 *ment made pursuant to a collective bargaining agree-*
24 *ment relating to the plan which amends the plan sole-*
25 *ly to conform to any requirement added by this sec-*

1 *tion shall not be treated as a termination of such col-*
2 *lective bargaining agreement.*

3 *(f) ASSURING COORDINATION.—The Secretary of*
4 *Health and Human Services, the Secretary of Labor, and*
5 *the Secretary of the Treasury may ensure, through the exe-*
6 *cution or revision of an interagency memorandum of under-*
7 *standing among such Secretaries, that—*

8 *(1) regulations, rulings, and interpretations*
9 *issued by such Secretaries relating to the same matter*
10 *over which two or more such Secretaries have respon-*
11 *sibility under this section (and the amendments made*
12 *by this section) are administered so as to have the*
13 *same effect at all times; and*

14 *(2) coordination of policies relating to enforcing*
15 *the same requirements through such Secretaries in*
16 *order to have a coordinated enforcement strategy that*
17 *avoids duplication of enforcement efforts and assigns*
18 *priorities in enforcement.*

19 *(g) CONFORMING CLERICAL AMENDMENTS.—*

20 *(1) ERISA HEADING.—*

21 *(A) IN GENERAL.—The heading of section*
22 *712 of the Employee Retirement Income Security*
23 *Act of 1974 is amended to read as follows:*

1 **“SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE**
2 **USE DISORDER BENEFITS.”.**

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

“Sec. 712. Parity in mental health and substance use disorder benefits.”.

7 (2) *PHSA HEADING.*—*The heading of section*
8 *2705 of the Public Health Service Act is amended to*
9 *read as follows:*

10 **“SEC. 2705. PARITY IN MENTAL HEALTH AND SUBSTANCE**
11 **USE DISORDER BENEFITS.”.**

12 (3) *IRC HEADING.*—

13 (A) *IN GENERAL.*—*The heading of section*
14 *9812 of the Internal Revenue Code of 1986 is*
15 *amended to read as follows:*

16 **“SEC. 9812. PARITY IN MENTAL HEALTH AND SUBSTANCE**
17 **USE DISORDER BENEFITS.”.**

18 (B) *CLERICAL AMENDMENT.*—*The table of*
19 *sections for subchapter B of chapter 100 of such*
20 *Code is amended by striking the item relating to*
21 *section 9812 and inserting the following new*
22 *item:*

“Sec. 9812. Parity in mental health and substance use disorder benefits.”.

1 *(h) GAO STUDY ON COVERAGE AND EXCLUSION OF*
2 *MENTAL HEALTH AND SUBSTANCE USE DISORDER DIAG-*
3 *NOSES.—*

4 *(1) IN GENERAL.—The Comptroller General of*
5 *the United States shall conduct a study that analyzes*
6 *the specific rates, patterns, and trends in coverage*
7 *and exclusion of specific mental health and substance*
8 *use disorder diagnoses by health plans and health in-*
9 *surance. The study shall include an analysis of—*

10 *(A) specific coverage rates for all mental*
11 *health conditions and substance use disorders;*

12 *(B) which diagnoses are most commonly*
13 *covered or excluded;*

14 *(C) whether implementation of this Act has*
15 *affected trends in coverage or exclusion of such*
16 *diagnoses; and*

17 *(D) the impact of covering or excluding spe-*
18 *cific diagnoses on participants' and enrollees'*
19 *health, their health care coverage, and the costs*
20 *of delivering health care.*

21 *(2) REPORTS.—Not later than 3 years after the*
22 *date of the enactment of this Act, and 2 years after*
23 *the date of submission the first report under this*
24 *paragraph, the Comptroller General shall submit to*

1 Congress a report on the results of the study con-
2 ducted under paragraph (1).

3 **TITLE VI—OTHER PROVISIONS**

4 **SEC. 601. SECURE RURAL SCHOOLS AND COMMUNITY SELF-**
5 **DETERMINATION PROGRAM.**

6 (a) *REAUTHORIZATION OF THE SECURE RURAL*
7 *SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT OF*
8 *2000.*—*The Secure Rural Schools and Community Self-De-*
9 *termination Act of 2000 (16 U.S.C. 500 note; Public Law*
10 *106–393) is amended by striking sections 1 through 403*
11 *and inserting the following:*

12 **“SECTION 1. SHORT TITLE.**

13 *“This Act may be cited as the ‘Secure Rural Schools*
14 *and Community Self-Determination Act of 2000’.*

15 **“SEC. 2. PURPOSES.**

16 *“The purposes of this Act are—*

17 *“(1) to stabilize and transition payments to*
18 *counties to provide funding for schools and roads that*
19 *supplements other available funds;*

20 *“(2) to make additional investments in, and cre-*
21 *ate additional employment opportunities through,*
22 *projects that—*

23 *“(A)(i) improve the maintenance of existing*
24 *infrastructure;*