

110TH CONGRESS
1ST SESSION

S. 558

AN ACT

To provide parity between health insurance coverage of mental health benefits and benefits for medical and surgical services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mental Health Parity
5 Act of 2007”.

1 **SEC. 2. MENTAL HEALTH PARITY.**

2 (a) AMENDMENTS OF ERISA.—Subpart B of part 7
3 of title I of the Employee Retirement Income Security Act
4 of 1974 is amended by inserting after section 712 (29
5 U.S.C. 1185a) the following:

6 **“SEC. 712A. MENTAL HEALTH PARITY.**

7 “(a) IN GENERAL.—In the case of a group health
8 plan (or health insurance coverage offered in connection
9 with such a plan) that provides both medical and surgical
10 benefits and mental health benefits, such plan or coverage
11 shall ensure that—

12 “(1) the financial requirements applicable to
13 such mental health benefits are no more restrictive
14 than the financial requirements applied to substan-
15 tially all medical and surgical benefits covered by the
16 plan (or coverage), including deductibles, copay-
17 ments, coinsurance, out-of-pocket expenses, and an-
18 nual and lifetime limits, except that the plan (or cov-
19 erage) may not establish separate cost sharing re-
20 quirements that are applicable only with respect to
21 mental health benefits; and

22 “(2) the treatment limitations applicable to
23 such mental health benefits are no more restrictive
24 than the treatment limitations applied to substan-
25 tially all medical and surgical benefits covered by the
26 plan (or coverage), including limits on the frequency

1 of treatment, number of visits, days of coverage, or
2 other similar limits on the scope or duration of
3 treatment.

4 “(b) CLARIFICATIONS.—In the case of a group health
5 plan (or health insurance coverage offered in connection
6 with such a plan) that provides both medical and surgical
7 benefits and mental health benefits, and complies with the
8 requirements of subsection (a), such plan or coverage shall
9 not be prohibited from—

10 “(1) negotiating separate reimbursement or
11 provider payment rates and service delivery systems
12 for different benefits consistent with subsection (a);

13 “(2) managing the provision of mental health
14 benefits in order to provide medically necessary serv-
15 ices for covered benefits, including through the use
16 of any utilization review, authorization or manage-
17 ment practices, the application of medical necessity
18 and appropriateness criteria applicable to behavioral
19 health, and the contracting with and use of a net-
20 work of providers; and

21 “(3) applying the provisions of this section in a
22 manner that takes into consideration similar treat-
23 ment settings or similar treatments.

24 “(c) IN- AND OUT-OF-NETWORK.—In the case of a
25 group health plan (or health insurance coverage offered

1 in connection with such a plan) that provides both medical
2 and surgical benefits and mental health benefits, and that
3 provides such benefits on both an in- and out-of-network
4 basis pursuant to the terms of the plan (or coverage), such
5 plan (or coverage) shall ensure that the requirements of
6 this section are applied to both in- and out-of-network
7 services by comparing in-network medical and surgical
8 benefits to in-network mental health benefits and out-of-
9 network medical and surgical benefits to out-of-network
10 mental health benefits.

11 “(d) SMALL EMPLOYER EXEMPTION.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), this section shall not apply to any group
14 health plan (or group health insurance coverage of-
15 fered in connection with a group health plan) for
16 any plan year of any employer who employed an av-
17 erage of at least 2 (or 1 in the case of an employer
18 residing in a State that permits small groups to in-
19 clude a single individual) but not more than 50 em-
20 ployees on business days during the preceding cal-
21 endar year.

22 “(2) NO PREEMPTION OF CERTAIN STATE
23 LAWS.—Nothing in paragraph (1) shall be construed
24 to preempt any State insurance law relating to em-
25 ployers in the State who employed an average of at

1 least 2 (or 1 in the case of an employer residing in
2 a State that permits small groups to include a single
3 individual) but not more than 50 employees on busi-
4 ness days during the preceding calendar year.

5 “(3) APPLICATION OF CERTAIN RULES IN DE-
6 TERMINATION OF EMPLOYER SIZE.—For purposes of
7 this subsection:

8 “(A) APPLICATION OF AGGREGATION RULE
9 FOR EMPLOYERS.—Rules similar to the rules
10 under subsections (b), (c), (m), and (o) of sec-
11 tion 414 of the Internal Revenue Code of 1986
12 shall apply for purposes of treating persons as
13 a single employer.

14 “(B) EMPLOYERS NOT IN EXISTENCE IN
15 PRECEDING YEAR.—In the case of an employer
16 which was not in existence throughout the pre-
17 ceeding calendar year, the determination of
18 whether such employer is a small employer shall
19 be based on the average number of employees
20 that it is reasonably expected such employer
21 will employ on business days in the current cal-
22 endar year.

23 “(C) PREDECESSORS.—Any reference in
24 this paragraph to an employer shall include a
25 reference to any predecessor of such employer.

1 “(e) COST EXEMPTION.—

2 “(1) IN GENERAL.—With respect to a group
3 health plan (or health insurance coverage offered in
4 connections with such a plan), if the application of
5 this section to such plan (or coverage) results in an
6 increase for the plan year involved of the actual total
7 costs of coverage with respect to medical and sur-
8 gical benefits and mental health benefits under the
9 plan (as determined and certified under paragraph
10 (3)) by an amount that exceeds the applicable per-
11 centage described in paragraph (2) of the actual
12 total plan costs, the provisions of this section shall
13 not apply to such plan (or coverage) during the fol-
14 lowing plan year, and such exemption shall apply to
15 the plan (or coverage) for 1 plan year. An employer
16 may elect to continue to apply mental health parity
17 pursuant to this section with respect to the group
18 health plan (or coverage) involved regardless of any
19 increase in total costs.

20 “(2) APPLICABLE PERCENTAGE.—With respect
21 to a plan (or coverage), the applicable percentage de-
22 scribed in this paragraph shall be—

23 “(A) 2 percent in the case of the first plan
24 year in which this section is applied; and

1 “(B) 1 percent in the case of each subse-
2 quent plan year.

3 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
4 minations as to increases in actual costs under a
5 plan (or coverage) for purposes of this section shall
6 be made and certified by a qualified and licensed ac-
7 tuary who is a member in good standing of the
8 American Academy of Actuaries. All such determina-
9 tions shall be in a written report prepared by the ac-
10 tuary. The report, and all underlying documentation
11 relied upon by the actuary, shall be maintained by
12 the group health plan or health insurance issuer for
13 a period of 6 years following the notification made
14 under paragraph (6).

15 “(4) 6-MONTH DETERMINATIONS.—If a group
16 health plan (or a health insurance issuer offering
17 coverage in connection with a group health plan)
18 seeks an exemption under this subsection, deter-
19 minations under paragraph (1) shall be made after
20 such plan (or coverage) has complied with this sec-
21 tion for the first 6 months of the plan year involved.

22 “(5) NOTIFICATION.—An election to modify
23 coverage of mental health benefits as permitted
24 under this subsection shall be treated as a material
25 modification in the terms of the plan as described in

1 section 102(a) and shall be subject to the applicable
2 notice requirements under section 104(b)(1).

3 “(6) NOTIFICATION TO APPROPRIATE AGEN-
4 CY.—

5 “(A) IN GENERAL.—A group health plan
6 (or a health insurance issuer offering coverage
7 in connection with a group health plan) that,
8 based upon a certification described under para-
9 graph (3), qualifies for an exemption under this
10 subsection, and elects to implement the exemp-
11 tion, shall notify the Department of Labor or
12 the Department of Health and Human Services,
13 as appropriate, of such election.

14 “(B) REQUIREMENT.—A notification
15 under subparagraph (A) shall include—

16 “(i) a description of the number of
17 covered lives under the plan (or coverage)
18 involved at the time of the notification, and
19 as applicable, at the time of any prior elec-
20 tion of the cost-exemption under this sub-
21 section by such plan (or coverage);

22 “(ii) for both the plan year upon
23 which a cost exemption is sought and the
24 year prior, a description of the actual total
25 costs of coverage with respect to medical

1 and surgical benefits and mental health
2 benefits under the plan; and

3 “(iii) for both the plan year upon
4 which a cost exemption is sought and the
5 year prior, the actual total costs of cov-
6 erage with respect to mental health bene-
7 fits under the plan.

8 “(C) CONFIDENTIALITY.—A notification
9 under subparagraph (A) shall be confidential.
10 The Department of Labor and the Department
11 of Health and Human Services shall make
12 available, upon request and on not more than
13 an annual basis, an anonymous itemization of
14 such notifications, that includes—

15 “(i) a breakdown of States by the size
16 and type of employers submitting such no-
17 tification; and

18 “(ii) a summary of the data received
19 under subparagraph (B).

20 “(7) AUDITS BY APPROPRIATE AGENCIES.—To
21 determine compliance with this subsection, the De-
22 partment of Labor and the Department of Health
23 and Human Services, as appropriate, may audit the
24 books and records of a group health plan or health
25 insurance issuer relating to an exemption, including

1 any actuarial reports prepared pursuant to para-
2 graph (3), during the 6 year period following the no-
3 tification of such exemption under paragraph (6). A
4 State agency receiving a notification under para-
5 graph (6) may also conduct such an audit with re-
6 spect to an exemption covered by such notification.

7 “(f) MENTAL HEALTH BENEFITS.—In this section,
8 the term ‘mental health benefits’ means benefits with re-
9 spect to mental health services (including substance use
10 disorder treatment) as defined under the terms of the
11 group health plan or coverage, and when applicable as may
12 be defined under State law when applicable to health in-
13 surance coverage offered in connection with a group health
14 plan.”.

15 (b) PUBLIC HEALTH SERVICE ACT.—Subpart 2 of
16 part A of title XXVII of the Public Health Service Act
17 is amended by inserting after section 2705 (42 U.S.C.
18 300gg–5) the following:

19 **“SEC. 2705A. MENTAL HEALTH PARITY.**

20 “(a) IN GENERAL.—In the case of a group health
21 plan (or health insurance coverage offered in connection
22 with such a plan) that provides both medical and surgical
23 benefits and mental health benefits, such plan or coverage
24 shall ensure that—

1 “(1) the financial requirements applicable to
2 such mental health benefits are no more restrictive
3 than the financial requirements applied to substan-
4 tially all medical and surgical benefits covered by the
5 plan (or coverage), including deductibles, copay-
6 ments, coinsurance, out-of-pocket expenses, and an-
7 nual and lifetime limits, except that the plan (or cov-
8 erage) may not establish separate cost sharing re-
9 quirements that are applicable only with respect to
10 mental health benefits; and

11 “(2) the treatment limitations applicable to
12 such mental health benefits are no more restrictive
13 than the treatment limitations applied to substan-
14 tially all medical and surgical benefits covered by the
15 plan (or coverage), including limits on the frequency
16 of treatment, number of visits, days of coverage, or
17 other similar limits on the scope or duration of
18 treatment.

19 “(b) CLARIFICATIONS.—In the case of a group health
20 plan (or health insurance coverage offered in connection
21 with such a plan) that provides both medical and surgical
22 benefits and mental health benefits, and complies with the
23 requirements of subsection (a), such plan or coverage shall
24 not be prohibited from—

1 “(1) negotiating separate reimbursement or
2 provider payment rates and service delivery systems
3 for different benefits consistent with subsection (a);

4 “(2) managing the provision of mental health
5 benefits in order to provide medically necessary serv-
6 ices for covered benefits, including through the use
7 of any utilization review, authorization or manage-
8 ment practices, the application of medical necessity
9 and appropriateness criteria applicable to behavioral
10 health, and the contracting with and use of a net-
11 work of providers; and

12 “(3) applying the provisions of this section in a
13 manner that takes into consideration similar treat-
14 ment settings or similar treatments.

15 “(c) IN- AND OUT-OF-NETWORK.—In the case of a
16 group health plan (or health insurance coverage offered
17 in connection with such a plan) that provides both medical
18 and surgical benefits and mental health benefits, and that
19 provides such benefits on both an in- and out-of-network
20 basis pursuant to the terms of the plan (or coverage), such
21 plan (or coverage) shall ensure that the requirements of
22 this section are applied to both in- and out-of-network
23 services by comparing in-network medical and surgical
24 benefits to in-network mental health benefits and out-of-

1 network medical and surgical benefits to out-of-network
2 mental health benefits.

3 “(d) SMALL EMPLOYER EXEMPTION.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), this section shall not apply to any group
6 health plan (or group health insurance coverage of-
7 fered in connection with a group health plan) for
8 any plan year of any employer who employed an av-
9 erage of at least 2 (or 1 in the case of an employer
10 residing in a State that permits small groups to in-
11 clude a single individual) but not more than 50 em-
12 ployees on business days during the preceding cal-
13 endar year.

14 “(2) NO PREEMPTION OF CERTAIN STATE
15 LAWS.—Nothing in paragraph (1) shall be construed
16 to preempt any State insurance law relating to em-
17 ployers in the State who employed an average of at
18 least 2 (or 1 in the case of an employer residing in
19 a State that permits small groups to include a single
20 individual) but not more than 50 employees on busi-
21 ness days during the preceding calendar year.

22 “(3) APPLICATION OF CERTAIN RULES IN DE-
23 TERMINATION OF EMPLOYER SIZE.—For purposes of
24 this subsection:

1 “(A) APPLICATION OF AGGREGATION RULE
2 FOR EMPLOYERS.—Rules similar to the rules
3 under subsections (b), (c), (m), and (o) of sec-
4 tion 414 of the Internal Revenue Code of 1986
5 shall apply for purposes of treating persons as
6 a single employer.

7 “(B) EMPLOYERS NOT IN EXISTENCE IN
8 PRECEDING YEAR.—In the case of an employer
9 which was not in existence throughout the pre-
10 ceding calendar year, the determination of
11 whether such employer is a small employer shall
12 be based on the average number of employees
13 that it is reasonably expected such employer
14 will employ on business days in the current cal-
15 endar year.

16 “(C) PREDECESSORS.—Any reference in
17 this paragraph to an employer shall include a
18 reference to any predecessor of such employer.

19 “(e) COST EXEMPTION.—

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

1 gical benefits and mental health benefits under the
2 plan (as determined and certified under paragraph
3 (3)) by an amount that exceeds the applicable per-
4 centage described in paragraph (2) of the actual
5 total plan costs, the provisions of this section shall
6 not apply to such plan (or coverage) during the fol-
7 lowing plan year, and such exemption shall apply to
8 the plan (or coverage) for 1 plan year. An employer
9 may elect to continue to apply mental health parity
10 pursuant to this section with respect to the group
11 health plan (or coverage) involved regardless of any
12 increase in total costs.

13 “(2) APPLICABLE PERCENTAGE.—With respect
14 to a plan (or coverage), the applicable percentage de-
15 scribed in this paragraph shall be—

16 “(A) 2 percent in the case of the first plan
17 year in which this section is applied; and

18 “(B) 1 percent in the case of each subse-
19 quent plan year.

20 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
21 minations as to increases in actual costs under a
22 plan (or coverage) for purposes of this section shall
23 be made and certified by a qualified and licensed ac-
24 tuary who is a member in good standing of the
25 American Academy of Actuaries. All such determina-

1 tions shall be in a written report prepared by the ac-
2 tuary. The report, and all underlying documentation
3 relied upon by the actuary, shall be maintained by
4 the group health plan or health insurance issuer for
5 a period of 6 years following the notification made
6 under paragraph (6).

7 “(4) 6-MONTH DETERMINATIONS.—If a group
8 health plan (or a health insurance issuer offering
9 coverage in connection with a group health plan)
10 seeks an exemption under this subsection, deter-
11 minations under paragraph (1) shall be made after
12 such plan (or coverage) has complied with this sec-
13 tion for the first 6 months of the plan year involved.

14 “(5) NOTIFICATION.—An election to modify
15 coverage of mental health benefits as permitted
16 under this subsection shall be treated as a material
17 modification in the terms of the plan as described in
18 section 102(a) of the Employee Retirement Income
19 Security Act of 1974 and shall be subject to the ap-
20 plicable notice requirements under section 104(b)(1)
21 of such Act.

22 “(6) NOTIFICATION TO APPROPRIATE AGEN-
23 CY.—

24 “(A) IN GENERAL.—A group health plan
25 (or a health insurance issuer offering coverage

1 in connection with a group health plan) that,
2 based upon a certification described under para-
3 graph (3), qualifies for an exemption under this
4 subsection, and elects to implement the exemp-
5 tion, shall notify the Department of Labor or
6 the Department of Health and Human Services,
7 as appropriate, of such election. A health insur-
8 ance issuer providing health insurance coverage
9 in connection with a group health plan shall
10 provide a copy of such notice to the State insur-
11 ance department or other State agency respon-
12 sible for regulating the terms of such coverage.

13 “(B) REQUIREMENT.—A notification
14 under subparagraph (A) shall include—

15 “(i) a description of the number of
16 covered lives under the plan (or coverage)
17 involved at the time of the notification, and
18 as applicable, at the time of any prior elec-
19 tion of the cost-exemption under this sub-
20 section by such plan (or coverage);

21 “(ii) for both the plan year upon
22 which a cost exemption is sought and the
23 year prior, a description of the actual total
24 costs of coverage with respect to medical

1 and surgical benefits and mental health
2 benefits under the plan; and

3 “(iii) for both the plan year upon
4 which a cost exemption is sought and the
5 year prior, the actual total costs of cov-
6 erage with respect to mental health bene-
7 fits under the plan.

8 “(C) CONFIDENTIALITY.—A notification
9 under subparagraph (A) shall be confidential.
10 The Department of Labor and the Department
11 of Health and Human Services shall make
12 available, upon request and on not more than
13 an annual basis, an anonymous itemization of
14 such notifications, that includes—

15 “(i) a breakdown of States by the size
16 and type of employers submitting such no-
17 tification; and

18 “(ii) a summary of the data received
19 under subparagraph (B).

20 “(7) AUDITS BY APPROPRIATE AGENCIES.—To
21 determine compliance with this subsection, the De-
22 partment of Labor and the Department of Health
23 and Human Services, as appropriate, may audit the
24 books and records of a group health plan or health
25 insurance issuer relating to an exemption, including

1 any actuarial reports prepared pursuant to para-
2 graph (3), during the 6 year period following the no-
3 tification of such exemption under paragraph (6). A
4 State agency receiving a notification under para-
5 graph (6) may also conduct such an audit with re-
6 spect to an exemption covered by such notification.

7 “(f) MENTAL HEALTH BENEFITS.—In this section,
8 the term ‘mental health benefits’ means benefits with re-
9 spect to mental health services (including substance use
10 disorder treatment) as defined under the terms of the
11 group health plan or coverage, and when applicable as may
12 be defined under State law when applicable to health in-
13 surance coverage offered in connection with a group health
14 plan.”.

15 **SEC. 3. EFFECTIVE DATE.**

16 (a) IN GENERAL.—The provisions of this Act shall
17 apply to group health plans (or health insurance coverage
18 offered in connection with such plans) beginning in the
19 first plan year that begins on or after January 1 of the
20 first calendar year that begins more than 1 year after the
21 date of the enactment of this Act.

22 (b) TERMINATION OF CERTAIN PROVISIONS.—

23 (1) ERISA.—Section 712 of the Employee Re-
24 tirement Income Security Act of 1974 (29 U.S.C.

1 1185a) is amended by striking subsection (f) and in-
2 serting the following:

3 “(f) SUNSET.—This section shall not apply to bene-
4 fits for services furnished after the effective date described
5 in section 3(a) of the Mental Health Parity Act of 2007.”.

6 (2) PHSA.—Section 2705 of the Public Health
7 Service Act (42 U.S.C. 300gg–5) is amended by
8 striking subsection (f) and inserting the following:

9 “(f) SUNSET.—This section shall not apply to bene-
10 fits for services furnished after the effective date described
11 in section 3(a) of the Mental Health Parity Act of 2007.”.

12 **SEC. 4. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

13 (a) GROUP HEALTH PLAN OMBUDSMAN.—

14 (1) DEPARTMENT OF LABOR.—The Secretary
15 of Labor shall designate an individual within the De-
16 partment of Labor to serve as the group health plan
17 ombudsman for the Department. Such ombudsman
18 shall serve as an initial point of contact to permit
19 individuals to obtain information and provide assist-
20 ance concerning coverage of mental health services
21 under group health plans in accordance with this
22 Act.

23 (2) DEPARTMENT OF HEALTH AND HUMAN
24 SERVICES.—The Secretary of Health and Human
25 Services shall designate an individual within the De-

1 partment of Health and Human Services to serve as
2 the group health plan ombudsman for the Depart-
3 ment. Such ombudsman shall serve as an initial
4 point of contact to permit individuals to obtain in-
5 formation and provide assistance concerning cov-
6 erage of mental health services under health insur-
7 ance coverage issued in connection with group health
8 plans in accordance with this Act.

9 (b) AUDITS.—The Secretary of Labor and the Sec-
10 retary of Health and Human Services shall each provide
11 for the conduct of random audits of group health plans
12 (and health insurance coverage offered in connection with
13 such plans) to ensure that such plans are in compliance
14 with this Act (and the amendments made by this Act).

15 (c) GOVERNMENT ACCOUNTABILITY OFFICE
16 STUDY.—

17 (1) STUDY.—The Comptroller General shall
18 conduct a study that evaluates the effect of the im-
19 plementation of the amendments made by this Act
20 on the cost of health insurance coverage, access to
21 health insurance coverage (including the availability
22 of in-network providers), the quality of health care,
23 the impact on benefits and coverage for mental
24 health and substance use disorders, the impact of
25 any additional cost or savings to the plan, the im-

1 pact on out-of-network coverage for mental health
2 benefits (including substance use disorder treat-
3 ment), the impact on State mental health benefit
4 mandate laws, other impact on the business commu-
5 nity and the Federal Government, and other issues
6 as determined appropriate by the Comptroller Gen-
7 eral.

8 (2) REPORT.—Not later than 2 years after the
9 date of enactment of this Act, the Comptroller Gen-
10 eral shall prepare and submit to the appropriate
11 committees of Congress a report containing the re-
12 sults of the study conducted under paragraph (1).

13 (d) REGULATIONS.—Not later than 1 year after the
14 date of enactment of this Act, the Secretary of Labor and
15 the Secretary of Health and Human Services shall jointly
16 promulgate final regulations to carry out this Act.

Passed the Senate September 18, 2007.

Attest:

Secretary.

110TH CONGRESS
1ST SESSION

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To provide parity between health insurance coverage of mental health benefits and benefits for medical and surgical services.