

**Calendar No. 610**

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 1424**

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IN THE SENATE OF THE UNITED STATES

MARCH 6, 2008

Received and read the first time

MARCH 7, 2008

Read the second time and placed on the calendar

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**AN ACT**

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, 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, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, and for other purposes.

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. ORGANIZATION OF ACT INTO DIVISIONS; TABLE**  
 4 **OF CONTENTS.**

5 (a) DIVISIONS.—This Act is organized into two divi-  
 6 sions as follows:

7 (1) Division A—Paul Wellstone Mental Health  
 8 and Addiction Equity Act of 2008.

9 (2) Division B—Genetic Information Non-  
 10 discrimination Act of 2008.

11 (b) TABLE OF CONTENTS.—The table of contents of  
 12 this Act is as follows:

Sec. 1. Organization of Act into divisions; table of contents.

DIVISION A—PAUL WELLSTONE MENTAL HEALTH AND  
 ADDICTION EQUITY ACT OF 2008

Sec. 101. Short title.

Sec. 102. Amendments to the Employee Retirement Income Security Act of  
 1974.

Sec. 103. Amendments to the Public Health Service Act relating to the group  
 market.

Sec. 104. Amendments to the Internal Revenue Code of 1986.

Sec. 105. Medicaid drug rebate.

Sec. 106. Limitation on Medicare exception to the prohibition on certain physi-  
 cian referrals for hospitals.

Sec. 107. Studies and reports.

DIVISION B—GENETIC INFORMATION NONDISCRIMINATION ACT  
 OF 2008

Sec. 100. Short title; findings.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.

Sec. 102. Amendments to the Public Health Service Act.

Sec. 103. Amendments to the Internal Revenue Code of 1986.

Sec. 104. Amendments to title XVIII of the Social Security Act relating to  
 medigap.

Sec. 105. Privacy and confidentiality.

Sec. 106. Assuring coordination.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE  
BASIS OF GENETIC INFORMATION

- Sec. 201. Definitions.  
 Sec. 202. Employer practices.  
 Sec. 203. Employment agency practices.  
 Sec. 204. Labor organization practices.  
 Sec. 205. Training programs.  
 Sec. 206. Confidentiality of genetic information.  
 Sec. 207. Remedies and enforcement.  
 Sec. 208. Disparate impact.  
 Sec. 209. Construction.  
 Sec. 210. Medical information that is not genetic information.  
 Sec. 211. Regulations.  
 Sec. 212. Authorization of appropriations.  
 Sec. 213. Effective date.

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. Guarantee agency collection retention.  
 Sec. 302. Severability.

1 **DIVISION A—PAUL WELLSTONE**  
 2 **MENTAL HEALTH AND ADDIC-**  
 3 **TION EQUITY ACT OF 2008**

4 **SEC. 101. SHORT TITLE.**

5 This division may be cited as the “Paul Wellstone  
 6 Mental Health and Addiction Equity Act of 2008”.

7 **SEC. 102. AMENDMENTS TO THE EMPLOYEE RETIREMENT**  
 8 **INCOME SECURITY ACT OF 1974.**

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

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

15 “(3) TREATMENT LIMITS.—In the case of a  
 16 group health plan that provides both medical and

1 surgical benefits and mental health or substance-re-  
2 lated disorder benefits—

3 “(A) NO TREATMENT LIMIT.—If the plan  
4 or coverage does not include a treatment limit  
5 (as defined in subparagraph (D)) 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 any treatment limit on  
9 mental health or substance-related disorder  
10 benefits that are classified in the same category  
11 of items or services.

12 “(B) TREATMENT LIMIT.—If the plan or  
13 coverage includes a treatment limit on substan-  
14 tially all medical and surgical benefits in any  
15 category of items or services, the plan or cov-  
16 erage may not impose such a treatment limit on  
17 mental health or substance-related disorder  
18 benefits for items and services within such cat-  
19 egory that is more restrictive than the predomi-  
20 nant treatment limit that is applicable to med-  
21 ical and surgical benefits for items and services  
22 within such category.

23 “(C) CATEGORIES OF ITEMS AND SERV-  
24 ICES FOR APPLICATION OF TREATMENT LIMITS  
25 AND BENEFICIARY FINANCIAL REQUIRE-

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

10                   “(i) INPATIENT, IN-NETWORK.—Items  
11                   and services not described in clause (v)  
12                   furnished on an inpatient basis and within  
13                   a network of providers established or rec-  
14                   ognized under such plan or coverage.

15                   “(ii) INPATIENT, OUT-OF-NETWORK.—  
16                   Items and services not described in clause  
17                   (v) furnished on an inpatient basis and  
18                   outside any network of providers estab-  
19                   lished or recognized under such plan or  
20                   coverage.

21                   “(iii) OUTPATIENT, IN-NETWORK.—  
22                   Items and services not described in clause  
23                   (v) furnished on an outpatient basis and  
24                   within a network of providers established  
25                   or recognized under such plan or coverage.

1           “(iv) OUTPATIENT, OUT-OF-NET-  
2 WORK.—Items and services not described  
3 in clause (v) furnished on an outpatient  
4 basis and outside any network of providers  
5 established or recognized under such plan  
6 or coverage.

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

16           “(D) TREATMENT LIMIT DEFINED.—For  
17 purposes of this paragraph, the term ‘treatment  
18 limit’ means, with respect to a plan or coverage,  
19 limitation on the frequency of treatment, num-  
20 ber of visits or days of coverage, or other simi-  
21 lar limit on the duration or scope of treatment  
22 under the plan or coverage.

23           “(E) PREDOMINANCE.—For purposes of  
24 this subsection, a treatment limit or financial  
25 requirement with respect to a category of items

1 and services is considered to be predominant if  
2 it is the most common or frequent of such type  
3 of limit or requirement with respect to such cat-  
4 egory of items and services.

5 “(4) BENEFICIARY FINANCIAL REQUIRE-  
6 MENTS.—In the case of a group health plan that  
7 provides both medical and surgical benefits and  
8 mental health or substance-related disorder bene-  
9 fits—

10 “(A) NO BENEFICIARY FINANCIAL RE-  
11 QUIREMENT.—If the plan or coverage does not  
12 include a beneficiary financial requirement (as  
13 defined in subparagraph (C)) on substantially  
14 all medical and surgical benefits within a cat-  
15 egory of items and services (specified under  
16 paragraph (3)(C)), the plan or coverage may  
17 not impose such a beneficiary financial require-  
18 ment on mental health or substance-related dis-  
19 order benefits for items and services within  
20 such category.

21 “(B) BENEFICIARY FINANCIAL REQUIRE-  
22 MENT.—

23 “(i) TREATMENT OF DEDUCTIBLES,  
24 OUT-OF-POCKET LIMITS, AND SIMILAR FI-  
25 NANCIAL REQUIREMENTS.—If the plan or

1 coverage includes a deductible, a limitation  
2 on out-of-pocket expenses, or similar bene-  
3 ficiary financial requirement that does not  
4 apply separately to individual items and  
5 services on substantially all medical and  
6 surgical benefits within a category of items  
7 and services (as specified in paragraph  
8 (3)(C)), the plan or coverage shall apply  
9 such requirement (or, if there is more than  
10 one such requirement for such category of  
11 items and services, the predominant re-  
12 quirement for such category) both to med-  
13 ical and surgical benefits within such cat-  
14 egory and to mental health and substance-  
15 related disorder benefits within such cat-  
16 egory and shall not distinguish in the ap-  
17 plication of such requirement between such  
18 medical and surgical benefits and such  
19 mental health and substance-related dis-  
20 order benefits.

21 “(ii) OTHER FINANCIAL REQUIRE-  
22 MENTS.—If the plan or coverage includes a  
23 beneficiary financial requirement not de-  
24 scribed in clause (i) on substantially all  
25 medical and surgical benefits within a cat-



1           egory of items and services, the plan or  
2           coverage may not impose such financial re-  
3           quirement on mental health or substance-  
4           related disorder benefits for items and  
5           services within such category in a way that  
6           results in greater out-of-pocket expenses to  
7           the participant or beneficiary than the pre-  
8           dominant beneficiary financial requirement  
9           applicable to medical and surgical benefits  
10          for items and services within such cat-  
11          egory.

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 or cov-  
16          erage, any deductible, coinsurance, co-payment,  
17          other cost sharing, and limitation on the total  
18          amount that may be paid by a participant or  
19          beneficiary with respect to benefits under the  
20          plan or coverage, but does not include the appli-  
21          cation of any aggregate lifetime limit or annual  
22          limit.”; and  
23          (2) in subsection (b)—

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

4 (B) by striking “; or” and inserting a pe-  
5 riod; and

6 (C) by striking paragraph (2).

7 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER  
8 BENEFITS AND REVISION OF DEFINITION.—Such section  
9 is further amended—

10 (1) by striking “mental health benefits” each  
11 place it appears (other than in any provision amend-  
12 ed by paragraph (2)) and inserting “mental health  
13 or substance-related disorder benefits”,

14 (2) by striking “mental health benefits” each  
15 place it appears in subsections (a)(1)(B)(i),  
16 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting  
17 “mental health and substance-related disorder bene-  
18 fits”, and

19 (3) in subsection (e), by striking paragraph (4)  
20 and inserting the following new paragraphs:

21 “(4) MENTAL HEALTH BENEFITS.—The term  
22 ‘mental health benefits’ means benefits with respect  
23 to services for mental health conditions, as defined  
24 under the terms of the plan and in accordance with

1 applicable law, but does not include substance-re-  
2 lated disorder benefits.

3 “(5) SUBSTANCE-RELATED DISORDER BENE-  
4 FITS.—The term ‘substance-related disorder bene-  
5 fits’ means benefits with respect to services for sub-  
6 stance-related disorders, as defined under the terms  
7 of the plan and in accordance with applicable law.”.

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

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

1 disorder benefits in the case of any participant or  
2 beneficiary shall, on request or as otherwise re-  
3 quired, be made available by the plan administrator  
4 (or the health insurance issuer offering such cov-  
5 erage) to the participant or beneficiary in accord-  
6 ance with regulations.”.

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

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

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

24 “(B) EQUITY IN COVERAGE OF OUT-OF-  
25 NETWORK BENEFITS.—

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

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

1           lated disorder benefits shall be classified  
2           into one of the following categories:

3                   “(I) EMERGENCY.—Items and  
4                   services, whether furnished on an in-  
5                   patient or outpatient basis, required  
6                   for the treatment of an emergency  
7                   medical condition (as defined in sec-  
8                   tion 1867(e) of the Social Security  
9                   Act, including an emergency condition  
10                  relating to mental health or sub-  
11                  stance-related disorders).

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

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

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

21                   “(2) INCREASED COST EXEMPTION.—

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

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

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

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

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

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

1 subsection shall be made in writing and pre-  
2 pared and certified by a qualified and licensed  
3 actuary who is a member in good standing of  
4 the American Academy of Actuaries. Such de-  
5 terminations shall be made available by the  
6 plan administrator (or health insurance issuer,  
7 as the case may be) to the general 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.—An election to mod-  
17 ify coverage of mental health and substance-re-  
18 lated disorder benefits as permitted under this  
19 paragraph shall be treated as a material modi-  
20 fication in the terms of the plan as described in  
21 section 102(a) and notice of which shall be pro-  
22 vided a reasonable period in advance of the  
23 change.

24 “(F) NOTIFICATION OF APPROPRIATE  
25 AGENCY.—



1           “(i) IN GENERAL.—A group health  
2 plan that, based on a certification de-  
3 scribed under subparagraph (C), qualifies  
4 for an exemption under this paragraph,  
5 and elects to implement the exemption,  
6 shall notify the Department of Labor of  
7 such election.

8           “(ii) REQUIREMENT.—A notification  
9 under clause (i) shall include—

10           “(I) a description of the number  
11 of covered lives under the plan (or  
12 coverage) involved at the time of the  
13 notification, and as applicable, at the  
14 time of any prior election of the cost-  
15 exemption under this paragraph by  
16 such plan (or coverage);

17           “(II) for both the plan year upon  
18 which a cost exemption is sought and  
19 the year prior, a description of the ac-  
20 tual total costs of coverage with re-  
21 spect to medical and surgical benefits  
22 and mental health and substance-re-  
23 lated disorder benefits under the plan;  
24 and

1           “(III) for both the plan year  
2           upon which a cost exemption is sought  
3           and the year prior, the actual total  
4           costs of coverage with respect to men-  
5           tal health and substance-related dis-  
6           order benefits under the plan.

7           “(iii) CONFIDENTIALITY.—A notifica-  
8           tion under clause (i) shall be confidential.  
9           The Department of Labor shall make  
10          available, upon request to the appropriate  
11          committees of Congress and on not more  
12          than an annual basis, an anonymous  
13          itemization of such notifications, that in-  
14          cludes—

15                 “(I) a breakdown of States by  
16                 the size and any type of employers  
17                 submitting such notification; and

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

20           “(G) NO IMPACT ON APPLICATION OF  
21          STATE LAW.—The fact that a plan or coverage  
22          is exempt from the provisions of this section  
23          under subparagraph (A) shall not affect the ap-  
24          plication of State law to such plan or coverage.

1           “(H) CONSTRUCTION.—Nothing in this  
2 paragraph shall be construed as preventing a  
3 group health plan (or health insurance coverage  
4 offered in connection with such a plan) from  
5 complying with the provisions of this section  
6 notwithstanding that the plan or coverage is not  
7 required to comply with such provisions due to  
8 the application of subparagraph (A).”.

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

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

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

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

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

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

23           “(1) IN GENERAL.—This part shall not be con-  
24 strued to supersede any provision of State law which  
25 establishes, implements, or continues in effect any

1 consumer protections, benefits, methods of access to  
2 benefits, rights, external review programs, or rem-  
3 edies solely relating to health insurance issuers in  
4 connection with group health insurance coverage (in-  
5 cluding benefit mandates or regulation of group  
6 health plans of 50 or fewer employees) except to the  
7 extent that such provision prevents the application  
8 of a requirement of this part.

9 “(2) CONTINUED PREEMPTION WITH RESPECT  
10 TO GROUP HEALTH PLANS.—Nothing in this section  
11 shall be construed to affect or modify the provisions  
12 of section 514 with respect to group health plans.

13 “(3) OTHER STATE LAWS.—Nothing in this sec-  
14 tion shall be construed to exempt or relieve any per-  
15 son from any laws of any State not solely related to  
16 health insurance issuers in connection with group  
17 health coverage insofar as they may now or here-  
18 after relate to insurance, health plans, or health cov-  
19 erage.”.

20 (i) CONFORMING AMENDMENTS TO HEADING.—

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

1 **“SEC. 712. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**  
2 **RELATED DISORDER 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.—

8 (1) IN GENERAL.—The amendments made by  
9 this section shall apply with respect to plan years be-  
10 ginning on or after January 1, 2009.

11 (2) 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, 2009.

1 For purposes of subparagraph (A), any plan amend-  
2 ment made pursuant to a collective bargaining  
3 agreement relating to the plan which amends the  
4 plan solely to conform to any requirement added by  
5 this section shall not be treated as a termination of  
6 such collective bargaining agreement.

7 (k) DOL ANNUAL SAMPLE COMPLIANCE.—The Sec-  
8 retary of Labor shall annually sample and conduct random  
9 audits of group health plans (and health insurance cov-  
10 erage offered in connection with such plans) in order to  
11 determine their compliance with the amendments made by  
12 this division and shall submit to the appropriate commit-  
13 tees of Congress an annual report on such compliance with  
14 such amendments. The Secretary shall share the results  
15 of such audits with the Secretaries of Health and Human  
16 Services and of the Treasury.

17 (l) ASSISTANCE TO PARTICIPANTS AND BENE-  
18 FICIARIES.—The Secretary of Labor shall provide assist-  
19 ance to participants and beneficiaries of group health  
20 plans with any questions or problems with compliance with  
21 the requirements of this division. The Secretary shall no-  
22 tify participants and beneficiaries how they can obtain as-  
23 sistance from State consumer and insurance agencies and  
24 the Secretary shall coordinate with State agencies to en-

1 sure that participants and beneficiaries are protected and  
2 afforded the rights provided under this division.

3 **SEC. 103. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

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

5 (a) EXTENSION OF PARITY TO TREATMENT LIMITS  
6 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section  
7 2705 of the Public Health Service Act (42 U.S.C. 300gg–  
8 5) is amended—

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

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

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

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

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

24           “(i) INPATIENT, IN-NETWORK.—Items  
25 and services not described in clause (v)



1 furnished on an inpatient basis and within  
2 a network of providers established or rec-  
3 ognized under such plan or coverage.

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

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

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

21 “(v) EMERGENCY CARE.—Items and  
22 services, whether furnished on an inpatient  
23 or outpatient basis or within or outside  
24 any network of providers, required for the  
25 treatment of an emergency medical condi-

1           tion (as defined in section 1867(e) of the  
2           Social Security Act, including an emer-  
3           gency condition relating to mental health  
4           or substance-related disorders).

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

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

19          “(4) BENEFICIARY FINANCIAL REQUIRE-  
20          MENTS.—In the case of a group health plan that  
21          provides both medical and surgical benefits and  
22          mental health or substance-related disorder bene-  
23          fits—

24          “(A) NO BENEFICIARY FINANCIAL RE-  
25          QUIREMENT.—If the plan or coverage does not

1 include a beneficiary financial requirement (as  
2 defined in subparagraph (C)) on substantially  
3 all medical and surgical benefits within a cat-  
4 egory of items and services (specified in para-  
5 graph (3)(C)), the plan or coverage may not im-  
6 pose such a beneficiary financial requirement on  
7 mental health or substance-related disorder  
8 benefits for items and services within such cat-  
9 egory.

10 “(B) BENEFICIARY FINANCIAL REQUIRE-  
11 MENT.—

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

1 both to medical and surgical benefits with-  
2 in such category and to mental health and  
3 substance-related disorder benefits within  
4 such category and shall not distinguish in  
5 the application of such requirement be-  
6 tween such medical and surgical benefits  
7 and such mental health and substance-re-  
8 lated disorder benefits.

9 “(ii) OTHER FINANCIAL REQUIRE-  
10 MENTS.—If the plan or coverage includes a  
11 beneficiary financial requirement not de-  
12 scribed in clause (i) on substantially all  
13 medical and surgical benefits within a cat-  
14 egory of items and services, the plan or  
15 coverage may not impose such financial re-  
16 quirement on mental health or substance-  
17 related disorder benefits for items and  
18 services within such category in a way that  
19 results in greater out-of-pocket expenses to  
20 the participant or beneficiary than the pre-  
21 dominant beneficiary financial requirement  
22 applicable to medical and surgical benefits  
23 for items and services within such cat-  
24 egory.

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” each  
23                 place it appears (other than in any provision amend-  
24                 ed by paragraph (2)) and inserting “mental health  
25                 or substance-related disorder benefits”,

1           (2) by striking “mental health benefits” each  
2 place it appears in subsections (a)(1)(B)(i),  
3 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting  
4 “mental health and substance-related disorder bene-  
5 fits”, and

6           (3) in subsection (e), by striking paragraph (4)  
7 and inserting the following new paragraphs:

8           “(4) MENTAL HEALTH BENEFITS.—The term  
9 ‘mental health benefits’ means benefits with respect  
10 to services for mental health conditions, as defined  
11 under the terms of the plan and in accordance with  
12 applicable law, but does not include substance-re-  
13 lated disorder benefits.

14           “(5) SUBSTANCE-RELATED DISORDER BENE-  
15 FITS.—The term ‘substance-related disorder bene-  
16 fits’ means benefits with respect to services for sub-  
17 stance-related disorders, as defined under the terms  
18 of the plan and in accordance with applicable law.”.

19           (c) AVAILABILITY OF PLAN INFORMATION ABOUT  
20 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of  
21 such section, as amended by subsection (a)(1), is further  
22 amended by adding at the end the following new para-  
23 graph:

24           “(5) AVAILABILITY OF PLAN INFORMATION.—  
25 The criteria for medical necessity determinations

1 made under the plan with respect to mental health  
2 and substance-related disorder benefits (or the  
3 health insurance coverage offered in connection with  
4 the plan with respect to such benefits) shall be made  
5 available by the plan administrator (or the health in-  
6 surance issuer offering such coverage) in accordance  
7 with regulations to any current or potential partici-  
8 pant, beneficiary, or contracting provider upon re-  
9 quest. The reason for any denial under the plan (or  
10 coverage) of reimbursement or payment for services  
11 with respect to mental health and substance-related  
12 disorder benefits in the case of any participant or  
13 beneficiary shall, on request or as otherwise re-  
14 quired, be made available by the plan administrator  
15 (or the health insurance issuer offering such cov-  
16 erage) to the participant or beneficiary in accord-  
17 ance with regulations.”.

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

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

23 “(A) MINIMUM SCOPE OF MENTAL  
24 HEALTH AND SUBSTANCE-RELATED DISORDER  
25 BENEFITS.—In the case of a group health plan

1 (or health insurance coverage offered in connec-  
2 tion with such a plan) that provides any mental  
3 health or substance-related disorder benefits,  
4 the plan or coverage shall include benefits for  
5 any mental health condition or substance-re-  
6 lated disorder included in the most recent edi-  
7 tion of the Diagnostic and Statistical Manual of  
8 Mental Disorders published by the American  
9 Psychiatric Association.

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

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



1 nished outside any network of providers es-  
2 tablished or recognized under such plan or  
3 coverage in accordance with the require-  
4 ments of this section.

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

15 “(I) EMERGENCY.—Items and  
16 services, whether furnished on an in-  
17 patient or outpatient basis, required  
18 for the treatment of an emergency  
19 medical condition (as defined in sec-  
20 tion 1867(e) of the Social Security  
21 Act, including an emergency condition  
22 relating to mental health or sub-  
23 stance-related disorders).

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

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

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

10                   “(2) INCREASED COST EXEMPTION.—

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

1 shall apply to the plan (or coverage) for 1 plan  
2 year.

3 “(B) APPLICABLE PERCENTAGE.—With re-  
4 spect to a plan (or coverage), the applicable  
5 percentage described in this paragraph shall  
6 be—

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

10 “(ii) 1 percent in the case of each  
11 subsequent plan year.

12 “(C) DETERMINATIONS BY ACTUARIES.—  
13 Determinations as to increases in actual costs  
14 under a plan (or coverage) for purposes of this  
15 subsection shall be made in writing and pre-  
16 pared and certified by a qualified and licensed  
17 actuary who is a member in good standing of  
18 the American Academy of Actuaries. Such de-  
19 terminations shall be made available by the  
20 plan administrator (or health insurance issuer,  
21 as the case may be) to the general public.

22 “(D) 6-MONTH DETERMINATIONS.—If a  
23 group health plan (or a health insurance issuer  
24 offering coverage in connection with such a  
25 plan) seeks an exemption under this paragraph,

1 determinations under subparagraph (A) shall be  
2 made after such plan (or coverage) has com-  
3 plied with this section for the first 6 months of  
4 the plan year involved.

5 “(E) NOTIFICATION.—A group health plan  
6 under this part shall comply with the notice re-  
7 quirement under section 712(c)(2)(E) of the  
8 Employee Retirement Income Security Act of  
9 1974 with respect to a modification of mental  
10 health and substance-related disorder benefits  
11 as permitted under this paragraph as if such  
12 section applied to such plan.

13 “(F) NOTIFICATION OF APPROPRIATE  
14 AGENCY.—

15 “(i) IN GENERAL.—A group health  
16 plan that, based on a certification de-  
17 scribed under subparagraph (C), qualifies  
18 for an exemption under this paragraph,  
19 and elects to implement the exemption,  
20 shall notify the Secretary of Health and  
21 Human Services of such election.

22 “(ii) REQUIREMENT.—A notification  
23 under clause (i) shall include—

24 “(I) a description of the number  
25 of covered lives under the plan (or

1 coverage) involved at the time of the  
2 notification, and as applicable, at the  
3 time of any prior election of the cost-  
4 exemption under this paragraph by  
5 such plan (or coverage);

6 “(II) for both the plan year upon  
7 which a cost exemption is sought and  
8 the year prior, a description of the ac-  
9 tual total costs of coverage with re-  
10 spect to medical and surgical benefits  
11 and mental health and substance-re-  
12 lated disorder benefits under the plan;  
13 and

14 “(III) for both the plan year  
15 upon which a cost exemption is sought  
16 and the year prior, the actual total  
17 costs of coverage with respect to men-  
18 tal health and substance-related dis-  
19 order benefits under the plan.

20 “(iii) CONFIDENTIALITY.—A notifica-  
21 tion under clause (i) shall be confidential.  
22 The Secretary of Health and Human Serv-  
23 ices shall make available, upon request to  
24 the appropriate committees of Congress  
25 and on not more than an annual basis, an

1 anonymous itemization of such notifica-  
2 tions, that includes—

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

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

8 “(G) CONSTRUCTION.—Nothing in this  
9 paragraph shall be construed as preventing a  
10 group health plan (or health insurance coverage  
11 offered in connection with such a plan) from  
12 complying with the provisions of this section  
13 notwithstanding that the plan or coverage is not  
14 required to comply with such provisions due to  
15 the application of subparagraph (A).”.

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

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

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

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

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

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

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

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

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

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

19 (j) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as otherwise pro-  
21 vided in this subsection, the amendments made by  
22 this section shall apply with respect to plan years be-  
23 ginning on or after January 1, 2009.

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

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

12                   (A) the date on which the last of the col-  
13                   lective bargaining agreements relating to the  
14                   plan terminates (determined without regard to  
15                   any extension thereof agreed to after the date  
16                   of the enactment of this Act), or

17                   (B) January 1, 2009.

18          For purposes of subparagraph (A), any plan amend-  
19          ment made pursuant to a collective bargaining  
20          agreement relating to the plan which amends the  
21          plan solely to conform to any requirement added by  
22          this section shall not be treated as a termination of  
23          such collective bargaining agreement.



1 **SEC. 104. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
2 **OF 1986.**

3 (a) EXTENSION OF PARITY TO TREATMENT LIMITS  
4 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section  
5 9812 of the Internal Revenue Code of 1986 is amended—

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

8 “(3) TREATMENT LIMITS.—In the case of a  
9 group health plan that provides both medical and  
10 surgical benefits and mental health or substance-re-  
11 lated disorder benefits—

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

21 “(B) TREATMENT LIMIT.—If the plan in-  
22 cludes a treatment limit on substantially all  
23 medical and surgical benefits in any category of  
24 items or services, the plan may not impose such  
25 a treatment limit on mental health or sub-  
26 stance-related disorder benefits for items and

1 services within such category that is more re-  
2 strictive than the predominant treatment limit  
3 that is applicable to medical and surgical bene-  
4 fits for items and services within such category.

5 “(C) CATEGORIES OF ITEMS AND SERV-  
6 ICES FOR APPLICATION OF TREATMENT LIMITS  
7 AND BENEFICIARY FINANCIAL REQUIRE-  
8 MENTS.—For purposes of this paragraph and  
9 paragraph (4), there shall be the following five  
10 categories of items and services for benefits,  
11 whether medical and surgical benefits or mental  
12 health and substance-related disorder benefits,  
13 and all medical and surgical benefits and all  
14 mental health and substance related benefits  
15 shall be classified into one of the following cat-  
16 egories:

17 “(i) INPATIENT, IN-NETWORK.—Items  
18 and services not described in clause (v)  
19 furnished on an inpatient basis and within  
20 a network of providers established or rec-  
21 ognized under such plan.

22 “(ii) INPATIENT, OUT-OF-NETWORK.—  
23 Items and services not described in clause  
24 (v) furnished on an inpatient basis and

1 outside any network of providers estab-  
2 lished or recognized under such plan.

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

8 “(iv) OUTPATIENT, OUT-OF-NET-  
9 WORK.—Items and services not described  
10 in clause (v) furnished on an outpatient  
11 basis and outside any network of providers  
12 established or recognized under such plan.

13 “(v) EMERGENCY CARE.—Items and  
14 services, whether furnished on an inpatient  
15 or outpatient basis or within or outside  
16 any network of providers, required for the  
17 treatment of an emergency medical condi-  
18 tion (as defined in section 1867(e) of the  
19 Social Security Act, including an emer-  
20 gency condition relating to mental health  
21 or substance-related disorders).

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

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

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

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

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

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

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

1                   “(ii) OTHER FINANCIAL REQUIRE-  
2                   MENTS.—If the plan includes a beneficiary  
3                   financial requirement not described in  
4                   clause (i) on substantially all medical and  
5                   surgical benefits within a category of items  
6                   and services, the plan may not impose such  
7                   financial requirement on mental health or  
8                   substance-related disorder benefits for  
9                   items and services within such category in  
10                  a way that results in greater out-of-pocket  
11                  expenses to the participant or beneficiary  
12                  than the predominant beneficiary financial  
13                  requirement applicable to medical and sur-  
14                  gical benefits for items and services within  
15                  such category.

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

1 (2) in subsection (b)—

2 (A) by striking “construed—” and all that  
3 follows through “(1) as requiring” and insert-  
4 ing “construed as requiring”,

5 (B) by striking “; or” and inserting a pe-  
6 riod, and

7 (C) by striking paragraph (2).

8 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER  
9 BENEFITS AND REVISION OF DEFINITION.—Section 9812  
10 of such Code is further amended—

11 (1) by striking “mental health benefits” each  
12 place it appears (other than in any provision amend-  
13 ed by paragraph (2)) and inserting “mental health  
14 or substance-related disorder benefits”,

15 (2) by striking “mental health benefits” each  
16 place it appears in subsections (a)(1)(B)(i),  
17 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting  
18 “mental health and substance-related disorder bene-  
19 fits”, and

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

22 “(4) MENTAL HEALTH BENEFITS.—The term  
23 ‘mental health benefits’ means benefits with respect  
24 to services for mental health conditions, as defined  
25 under the terms of the plan and in accordance with

1 applicable law, but does not include substance-re-  
2 lated disorder benefits.

3 “(5) SUBSTANCE-RELATED DISORDER BENE-  
4 FITS.—The term ‘substance-related disorder bene-  
5 fits’ means benefits with respect to services for sub-  
6 stance-related disorders, as defined under the terms  
7 of the plan and in accordance with applicable law.”.

8 (c) AVAILABILITY OF PLAN INFORMATION ABOUT  
9 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of  
10 section 9812 of such Code, as amended by subsection  
11 (a)(1), is further amended by adding at the end the fol-  
12 lowing new paragraph:

13 “(5) AVAILABILITY OF PLAN INFORMATION.—  
14 The criteria for medical necessity determinations  
15 made under the plan with respect to mental health  
16 and substance-related disorder benefits shall be  
17 made available by the plan administrator in accord-  
18 ance with regulations to any current or potential  
19 participant, beneficiary, or contracting provider upon  
20 request. The reason for any denial under the plan of  
21 reimbursement or payment for services with respect  
22 to mental health and substance-related disorder ben-  
23 efits in the case of any participant or beneficiary  
24 shall, on request or as otherwise required, be made



1 available by the plan administrator to the partici-  
2 pant or beneficiary in accordance with regulations.”.

3 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-  
4 section (a) of section 9812 of such Code is further amend-  
5 ed by adding 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 that provides any mental health or substance-  
12 related disorder benefits, the plan shall include  
13 benefits for any mental health condition or sub-  
14 stance-related disorder included in the most re-  
15 cent edition of the Diagnostic and Statistical  
16 Manual of Mental Disorders published by the  
17 American Psychiatric Association.

18 “(B) EQUITY IN COVERAGE OF OUT-OF-  
19 NETWORK BENEFITS.—

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

1 services in a category specified in clause  
2 (ii) furnished outside any network of pro-  
3 viders established or recognized under such  
4 plan, the mental health and substance-re-  
5 lated disorder benefits shall also be pro-  
6 vided for items and services in such cat-  
7 egory furnished outside any network of  
8 providers established or recognized under  
9 such plan in accordance with the require-  
10 ments of this section.

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

21 “(I) EMERGENCY.—Items and  
22 services, whether furnished on an in-  
23 patient or outpatient basis, required  
24 for the treatment of an emergency  
25 medical condition (as defined in sec-

1                   tion 1867(e) of the Social Security  
2                   Act, including an emergency condition  
3                   relating to mental health or sub-  
4                   stance-related disorders).

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

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

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

14               “(2) INCREASED COST EXEMPTION.—

15               “(A) IN GENERAL.—With respect to a  
16               group health plan, if the application of this sec-  
17               tion to such plan results in an increase for the  
18               plan year involved of the actual total costs of  
19               coverage with respect to medical and surgical  
20               benefits and mental health and substance-re-  
21               lated disorder benefits under the plan (as deter-  
22               mined and certified under subparagraph (C)) by  
23               an amount that exceeds the applicable percent-  
24               age described in subparagraph (B) of the actual  
25               total plan costs, the provisions of this section

1 shall not apply to such plan during the fol-  
2 lowing plan year, and such exemption shall  
3 apply to the plan for 1 plan year.

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

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

10 “(ii) 1 percent in the case of each  
11 subsequent plan year.

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

21 “(D) 6-MONTH DETERMINATIONS.—If a  
22 group health plan seeks an exemption under  
23 this paragraph, determinations under subpara-  
24 graph (A) shall be made after such plan has

1           complied with this section for the first 6  
2           months of the plan year involved.

3           “(E) NOTIFICATION OF APPROPRIATE  
4           AGENCY.—

5           “(i) IN GENERAL.—A group health  
6           plan that, based on a certification de-  
7           scribed under subparagraph (C), qualifies  
8           for an exemption under this paragraph,  
9           and elects to implement the exemption,  
10          shall notify the Secretary of the Treasury  
11          of such election.

12          “(ii) REQUIREMENT.—A notification  
13          under clause (i) shall include—

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

21                  “(II) for both the plan year upon  
22                  which a cost exemption is sought and  
23                  the year prior, a description of the ac-  
24                  tual total costs of coverage with re-  
25                  spect to medical and surgical benefits

1 and mental health and substance-re-  
2 lated disorder benefits under the plan;  
3 and

4 “(III) for both the plan year  
5 upon which a cost exemption is sought  
6 and the year prior, the actual total  
7 costs of coverage with respect to men-  
8 tal health and substance-related dis-  
9 order benefits under the plan.

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

18 “(I) a breakdown of States by  
19 the size and any type of employers  
20 submitting such notification; and

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

23 “(F) CONSTRUCTION.—Nothing in this  
24 paragraph shall be construed as preventing a  
25 group health plan from complying with the pro-

1           visions of this section notwithstanding that the  
2           plan is not required to comply with such provi-  
3           sions due to the application of subparagraph  
4           (A).”.

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

8           “(1) SMALL EMPLOYER EXEMPTION.—

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

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

1           graphs (B) and (C) of section 4980D(d)(2)  
2           shall apply.”.

3           (g) **ELIMINATION OF SUNSET PROVISION.**—Section  
4 9812 of such Code is amended by striking subsection (f).

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

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

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

10           (2) **CLERICAL AMENDMENT.**—The table of sec-  
11           tions for subchapter B of chapter 100 of such Code  
12           is amended by striking the item relating to section  
13           9812 and inserting the following new item:

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

14           (i) **EFFECTIVE DATE.**—

15           (1) **IN GENERAL.**—Except as otherwise pro-  
16           vided in this subsection, the amendments made by  
17           this section shall apply with respect to plan years be-  
18           ginning on or after January 1, 2009.

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

22           (3) **SPECIAL RULE FOR COLLECTIVE BAR-**  
23           **GAINING AGREEMENTS.**—In the case of a group  
24           health plan maintained pursuant to one or more col-  
25           lective bargaining agreements between employee rep-



1       representatives and one or more employers ratified be-  
2       fore the date of the enactment of this Act, the  
3       amendments made by this section (other than sub-  
4       section (g)) shall not apply to plan years beginning  
5       before the later of—

6               (A) the date on which the last of the col-  
7       lective bargaining agreements relating to the  
8       plan terminates (determined without regard to  
9       any extension thereof agreed to after the date  
10       of the enactment of this Act), or

11              (B) January 1, 2009.

12       For purposes of subparagraph (A), any plan amend-  
13       ment made pursuant to a collective bargaining  
14       agreement relating to the plan which amends the  
15       plan solely to conform to any requirement added by  
16       this section shall not be treated as a termination of  
17       such collective bargaining agreement.

18       **SEC. 105. MEDICAID DRUG REBATE.**

19       Paragraph (1)(B)(i) of section 1927(c) of the Social  
20       Security Act (42 U.S.C. 1396r-8(e)) is amended—

21              (1) by striking “and” at the end of subclause  
22       (IV);

23              (2) in subclause (V)—

1 (A) by inserting “and before January 1,  
2 2009, and after December 31, 2014,” after  
3 “December 31, 1995,”; and

4 (B) by striking the period at the end and  
5 inserting “; and”; and

6 (3) by adding at the end the following new sub-  
7 clause:

8 “(VI) after December 31, 2008,  
9 and before January 1, 2015, is 20.1  
10 percent.”.

11 **SEC. 106. LIMITATION ON MEDICARE EXCEPTION TO THE**  
12 **PROHIBITION ON CERTAIN PHYSICIAN RE-**  
13 **FERRALS FOR HOSPITALS.**

14 (a) IN GENERAL.—Section 1877 of the Social Secu-  
15 rity Act (42 U.S.C. 1395nn) is amended—

16 (1) in subsection (d)(2)—

17 (A) in subparagraph (A), by striking  
18 “and” at the end;

19 (B) in subparagraph (B), by striking the  
20 period at the end and inserting “; and”; and

21 (C) by adding at the end the following new  
22 subparagraph:

23 “(C) in the case where the entity is a hos-  
24 pital, the hospital meets the requirements of  
25 paragraph (3)(D).”;

1 (2) in subsection (d)(3)—

2 (A) in subparagraph (B), by striking  
3 “and” at the end;

4 (B) in subparagraph (C), by striking the  
5 period at the end and inserting “; and”; and

6 (C) by adding at the end the following new  
7 subparagraph:

8 “(D) the hospital meets the requirements  
9 described in subsection (i)(1) not later than 18  
10 months after the date of the enactment of this  
11 subparagraph.”; and

12 (3) by adding at the end the following new sub-  
13 section:

14 “(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY  
15 FOR HOSPITAL EXCEPTION TO OWNERSHIP OR INVEST-  
16 MENT PROHIBITION.—

17 “(1) REQUIREMENTS DESCRIBED.—For pur-  
18 poses of subsection (d)(3)(D), the requirements de-  
19 scribed in this paragraph for a hospital are as fol-  
20 lows:

21 “(A) PROVIDER AGREEMENT.—The hos-  
22 pital had—

23 “(i) physician ownership on the date  
24 of enactment of this subsection; and

1                   “(ii) a provider agreement under sec-  
2                   tion 1866 in effect on such date of enact-  
3                   ment.

4                   “(B) LIMITATION ON EXPANSION OF FA-  
5                   CILITY CAPACITY.—Except as provided in para-  
6                   graph (3), the number of operating rooms and  
7                   beds of the hospital at any time on or after the  
8                   date of the enactment of this subsection are no  
9                   greater than the number of operating rooms  
10                  and beds as of such date.

11                  “(C) PREVENTING CONFLICTS OF INTER-  
12                  EST.—

13                         “(i) The hospital submits to the Sec-  
14                         retary an annual report containing a de-  
15                         tailed description of—

16                                 “(I) the identity of each physi-  
17                                 cian owner and any other owners of  
18                                 the hospital; and

19                                 “(II) the nature and extent of all  
20                                 ownership interests in the hospital.

21                         “(ii) The hospital has procedures in  
22                         place to require that any referring physi-  
23                         cian owner discloses to the patient being  
24                         referred, by a time that permits the pa-  
25                         tient to make a meaningful decision re-

1           garding the receipt of care, as determined  
2           by the Secretary—

3                   “(I) the ownership interest of  
4                   such referring physician in the hos-  
5                   pital; and

6                   “(II) if applicable, any such own-  
7                   ership interest of the treating physi-  
8                   cian.

9                   “(iii) The hospital does not condition  
10                  any physician ownership interests either di-  
11                  rectly or indirectly on the physician owner  
12                  making or influencing referrals to the hos-  
13                  pital or otherwise generating business for  
14                  the hospital.

15                  “(iv) The hospital discloses the fact  
16                  that the hospital is partially owned by phy-  
17                  sicians—

18                   “(I) on any public website for the  
19                   hospital; and

20                   “(II) in any public advertising  
21                   for the hospital.

22                  “(D) ENSURING BONA FIDE INVEST-  
23                  MENT.—

24                   “(i) Physician owners in the aggregate  
25                   do not own more than 40 percent of the

1 total value of the investment interests held  
2 in the hospital or in an entity whose assets  
3 include the hospital.

4 “(ii) The investment interest of any  
5 individual physician owner does not exceed  
6 2 percent of the total value of the invest-  
7 ment interests held in the hospital or in an  
8 entity whose assets include the hospital.

9 “(iii) Any ownership or investment in-  
10 terests that the hospital offers to a physi-  
11 cian owner are not offered on more favor-  
12 able terms than the terms offered to a per-  
13 son who is not a physician owner.

14 “(iv) The hospital (or any investors in  
15 the hospital) does not directly or indirectly  
16 provide loans or financing for any physi-  
17 cian owner investments in the hospital.

18 “(v) The hospital (or any investors in  
19 the hospital) does not directly or indirectly  
20 guarantee a loan, make a payment toward  
21 a loan, or otherwise subsidize a loan, for  
22 any individual physician owner or group of  
23 physician owners that is related to acquir-  
24 ing any ownership interest in the hospital.

1           “(vi) Investment returns are distrib-  
2           uted to each investor in the hospital in an  
3           amount that is directly proportional to the  
4           investment of capital by such investor in  
5           the hospital.

6           “(vii) Physician owners do not receive,  
7           directly or indirectly, any guaranteed re-  
8           ceipt of or right to purchase other business  
9           interests related to the hospital, including  
10          the purchase or lease of any property  
11          under the control of other investors in the  
12          hospital or located near the premises of the  
13          hospital.

14          “(viii) The hospital does not offer a  
15          physician owner the opportunity to pur-  
16          chase or lease any property under the con-  
17          trol of the hospital or any other investor in  
18          the hospital on more favorable terms than  
19          the terms offered to an individual who is  
20          not a physician owner.

21          “(E) PATIENT SAFETY.—

22          “(i) Insofar as the hospital admits a  
23          patient and does not have any physician  
24          available on the premises to provide serv-  
25          ices during all hours in which the hospital

1 is providing services to such patient, before  
2 admitting the patient—

3 “(I) the hospital discloses such  
4 fact to a patient; and

5 “(II) following such disclosure,  
6 the hospital receives from the patient  
7 a signed acknowledgment that the pa-  
8 tient understands such fact.

9 “(ii) The hospital has the capacity  
10 to—

11 “(I) provide assessment and ini-  
12 tial treatment for patients; and

13 “(II) refer and transfer patients  
14 to hospitals with the capability to  
15 treat the needs of the patient in-  
16 volved.

17 “(2) PUBLICATION OF INFORMATION RE-  
18 PORTED.—The Secretary shall publish, and update  
19 on an annual basis, the information submitted by  
20 hospitals under paragraph (1)(C)(i) on the public  
21 Internet website of the Centers for Medicare & Med-  
22 icaid Services.

23 “(3) EXCEPTION TO PROHIBITION ON EXPAN-  
24 SION OF FACILITY CAPACITY.—

25 “(A) PROCESS.—



1           “(i) ESTABLISHMENT.—The Secretary  
2           shall establish and implement a process  
3           under which an applicable hospital (as de-  
4           fined in subparagraph (E)) may apply for  
5           an exception from the requirement under  
6           paragraph (1)(B).

7           “(ii) OPPORTUNITY FOR COMMUNITY  
8           INPUT.—The process under clause (i) shall  
9           provide individuals and entities in the com-  
10          munity that the applicable hospital apply-  
11          ing for an exception is located with the op-  
12          portunity to provide input with respect to  
13          the application.

14          “(iii) TIMING FOR IMPLEMENTA-  
15          TION.—The Secretary shall implement the  
16          process under clause (i) on the date that is  
17          18 months after the date of enactment of  
18          this subsection.

19          “(iv) REGULATIONS.—Not later than  
20          the date that is 18 months after the date  
21          of enactment of this subsection, the Sec-  
22          retary shall promulgate regulations to  
23          carry out the process under clause (i).

24          “(B) FREQUENCY.—The process described  
25          in subparagraph (A) shall permit an applicable

1 hospital to apply for an exception up to once  
2 every 2 years.

3 “(C) PERMITTED INCREASE.—

4 “(i) IN GENERAL.—Subject to clause  
5 (ii) and subparagraph (D), an applicable  
6 hospital granted an exception under the  
7 process described in subparagraph (A) may  
8 increase the number of operating rooms  
9 and beds of the applicable hospital above  
10 the baseline number of operating rooms  
11 and beds of the applicable hospital (or, if  
12 the applicable hospital has been granted a  
13 previous exception under this paragraph,  
14 above the number of operating rooms and  
15 beds of the hospital after the application of  
16 the most recent increase under such an ex-  
17 ception) by an amount determined appro-  
18 priate by the Secretary.

19 “(ii) LIFETIME 50 PERCENT INCREASE  
20 LIMITATION.—The Secretary shall not per-  
21 mit an increase in the number of operating  
22 rooms and beds of an applicable hospital  
23 under clause (i) to the extent such increase  
24 would result in the number of operating  
25 rooms and beds of the applicable hospital

1 exceeding 150 percent of the baseline num-  
2 ber of operating rooms and beds of the ap-  
3 plicable hospital.

4 “(iii) BASELINE NUMBER OF OPER-  
5 ATING ROOMS AND BEDS.—In this para-  
6 graph, the term ‘baseline number of oper-  
7 ating rooms and beds’ means the number  
8 of operating rooms and beds of the appli-  
9 cable hospital as of the date of enactment  
10 of this subsection.

11 “(D) INCREASE LIMITED TO FACILITIES  
12 ON THE MAIN CAMPUS OF THE HOSPITAL.—  
13 Any increase in the number of operating rooms  
14 and beds of an applicable hospital pursuant to  
15 this paragraph may only occur in facilities on  
16 the main campus of the applicable hospital.

17 “(E) APPLICABLE HOSPITAL.—In this  
18 paragraph, the term ‘applicable hospital’ means  
19 a hospital—

20 “(i) that is located in a county in  
21 which the percentage increase in the popu-  
22 lation during the most recent 5-year period  
23 (as of the date of the application under  
24 subparagraph (A)) is at least 200 percent  
25 of the percentage increase in the popu-

1           lation growth of the United States during  
2           that period, as estimated by Bureau of the  
3           Census;

4           “(ii) whose annual percent of total in-  
5           patient admissions and outpatient visits  
6           that represent inpatient admissions and  
7           outpatient visits under the program under  
8           title XIX is equal to or greater than the  
9           average percent with respect to such ad-  
10          missions and visits for all hospitals located  
11          in the State;

12          “(iii) that does not discriminate  
13          against beneficiaries of Federal health care  
14          programs and does not permit physicians  
15          practicing at the hospital to discriminate  
16          against such beneficiaries;

17          “(iv) that is located in a State in  
18          which the average bed capacity in the  
19          State is less than the national average bed  
20          capacity; and

21          “(v) in the case of a hospital lo-  
22          cated—

23                  “(I) in a core-based statistical  
24                  area, that is located in such an area  
25                  in which the average bed occupancy

1 rate in such area is greater than 80  
2 percent; or

3 “(II) outside of a core-based sta-  
4 tistical area, that is located in a State  
5 in which the average bed occupancy  
6 rate is greater than 80 percent.

7 “(F) PUBLICATION OF FINAL DECI-  
8 SIONS.—The Secretary shall publish final deci-  
9 sions with respect to applications under this  
10 paragraph in the Federal Register.

11 “(G) LIMITATION ON REVIEW.—There  
12 shall be no administrative or judicial review  
13 under section 1869, section 1878, or otherwise  
14 of the process under this paragraph (including  
15 the establishment of such process).

16 “(4) COLLECTION OF OWNERSHIP AND INVEST-  
17 MENT INFORMATION.—For purposes of clauses (i)  
18 and (ii) of paragraph (1)(D), the Secretary shall col-  
19 lect physician ownership and investment information  
20 for each hospital as it existed on the date of the en-  
21 actment of this subsection.

22 “(5) PHYSICIAN OWNER DEFINED.—For pur-  
23 poses of this subsection, the term ‘physician owner’  
24 means a physician (or an immediate family member

1 of such physician) with a direct or an indirect own-  
2 ership interest in the hospital.”.

3 (b) ENFORCEMENT.—

4 (1) ENSURING COMPLIANCE.—The Secretary of  
5 Health and Human Services shall establish policies  
6 and procedures to ensure compliance with the re-  
7 quirements described in subsection (i)(1) of section  
8 1877 of the Social Security Act, as added by sub-  
9 section (a)(3), beginning on the date such require-  
10 ments first apply. Such policies and procedures may  
11 include unannounced site reviews of hospitals.

12 (2) AUDITS.—Beginning not later than 18  
13 months after the date of the enactment of this Act,  
14 the Secretary of Health and Human Services shall  
15 conduct audits to determine if hospitals violate the  
16 requirements referred to in paragraph (1).

17 (c) ADJUSTMENT TO PAQI FUND.—Section  
18 1848(l)(2)(A)(i)(III) of the Social Security Act (42 U.S.C.  
19 1395w-4(l)(2)(A)(i)(III)), as amended by section  
20 101(a)(2) of the Medicare, Medicaid, and SCHIP Exten-  
21 sion Act of 2007 (Public Law 110-173), is amended by  
22 striking “\$4,960,000,000” and inserting  
23 “\$5,120,000,000”.

24 **SEC. 107. STUDIES AND REPORTS.**

25 (a) IMPLEMENTATION OF ACT.—

1           (1) GAO STUDY.—The Comptroller General of  
2 the United States shall conduct a study that evalu-  
3 ates the effect of the implementation of the amend-  
4 ments made by this division on—

5           (A) the cost of health insurance coverage;

6           (B) access to health insurance coverage  
7 (including the availability of in-network pro-  
8 viders);

9           (C) the quality of health care;

10          (D) Medicare, Medicaid, and State and  
11 local mental health and substance abuse treat-  
12 ment spending;

13          (E) the number of individuals with private  
14 insurance who received publicly funded health  
15 care for mental health and substance-related  
16 disorders;

17          (F) spending on public services, such as  
18 the criminal justice system, special education,  
19 and income assistance programs;

20          (G) the use of medical management of  
21 mental health and substance-related disorder  
22 benefits and medical necessity determinations  
23 by group health plans (and health insurance  
24 issuers offering health insurance coverage in  
25 connection with such plans) and timely access

1 by participants and beneficiaries to clinically-in-  
2 dicated care for mental health and substance-  
3 use disorders; and

4 (H) other matters as determined appro-  
5 priate by the Comptroller General.

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

11 (b) GAO REPORT ON UNIFORM PATIENT PLACE-  
12 MENT CRITERIA.—Not later than 18 months after the  
13 date of the enactment of this Act, the Comptroller General  
14 shall submit to each House of the Congress a report on  
15 availability of uniform patient placement criteria for men-  
16 tal health and substance-related disorders that could be  
17 used by group health plans and health insurance issuers  
18 to guide determinations of medical necessity and the ex-  
19 tent to which health plans utilize such criteria. If such  
20 criteria do not exist, the report shall include recommenda-  
21 tions on a process for developing such criteria.

22 (c) DOL BIENNIAL REPORT ON ANY OBSTACLES IN  
23 OBTAINING COVERAGE.—Every 2 years, the Secretary of  
24 Labor, in consultation with the Secretaries of Health and  
25 Human Services and the Treasury, shall submit to the ap-



1 appropriate committees of each House of the Congress a re-  
2 port on obstacles, if any, that individuals face in obtaining  
3 mental health and substance-related disorder care under  
4 their health plans.

5 **DIVISION B—GENETIC INFORMA-**  
6 **TION NONDISCRIMINATION**  
7 **ACT OF 2008**

8 **SEC. 100. SHORT TITLE; FINDINGS.**

9 (a) **SHORT TITLE.**—This division may be cited as the  
10 “Genetic Information Nondiscrimination Act of 2008”.

11 (b) **FINDINGS.**—Congress makes the following find-  
12 ings:

13 (1) Deciphering the sequence of the human ge-  
14 nome and other advances in genetics open major  
15 new opportunities for medical progress. New knowl-  
16 edge about the genetic basis of illness will allow for  
17 earlier detection of illnesses, often before symptoms  
18 have begun. Genetic testing can allow individuals to  
19 take steps to reduce the likelihood that they will con-  
20 tract a particular disorder. New knowledge about ge-  
21 netics may allow for the development of better thera-  
22 pies that are more effective against disease or have  
23 fewer side effects than current treatments. These  
24 advances give rise to the potential misuse of genetic

1 information to discriminate in health insurance and  
2 employment.

3 (2) The early science of genetics became the  
4 basis of State laws that provided for the sterilization  
5 of persons having presumed genetic “defects” such  
6 as mental retardation, mental disease, epilepsy,  
7 blindness, and hearing loss, among other conditions.  
8 The first sterilization law was enacted in the State  
9 of Indiana in 1907. By 1981, a majority of States  
10 adopted sterilization laws to “correct” apparent ge-  
11 netic traits or tendencies. Many of these State laws  
12 have since been repealed, and many have been modi-  
13 fied to include essential constitutional requirements  
14 of due process and equal protection. However, the  
15 current explosion in the science of genetics, and the  
16 history of sterilization laws by the States based on  
17 early genetic science, compels Congressional action  
18 in this area.

19 (3) Although genes are facially neutral markers,  
20 many genetic conditions and disorders are associated  
21 with particular racial and ethnic groups and gender.  
22 Because some genetic traits are most prevalent in  
23 particular groups, members of a particular group  
24 may be stigmatized or discriminated against as a re-  
25 sult of that genetic information. This form of dis-

1       crimination was evident in the 1970s, which saw the  
2       advent of programs to screen and identify carriers of  
3       sickle cell anemia, a disease which afflicts African-  
4       Americans. Once again, State legislatures began to  
5       enact discriminatory laws in the area, and in the  
6       early 1970s began mandating genetic screening of  
7       all African Americans for sickle cell anemia, leading  
8       to discrimination and unnecessary fear. To alleviate  
9       some of this stigma, Congress in 1972 passed the  
10      National Sickle Cell Anemia Control Act, which  
11      withholds Federal funding from States unless sickle  
12      cell testing is voluntary.

13           (4) Congress has been informed of examples of  
14      genetic discrimination in the workplace. These in-  
15      clude the use of pre-employment genetic screening at  
16      Lawrence Berkeley Laboratory, which led to a court  
17      decision in favor of the employees in that case *Nor-*  
18      *man-Bloodsaw v. Lawrence Berkeley Laboratory*  
19      (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress  
20      clearly has a compelling public interest in relieving  
21      the fear of discrimination and in prohibiting its ac-  
22      tual practice in employment and health insurance.

23           (5) Federal law addressing genetic discrimina-  
24      tion in health insurance and employment is incom-  
25      plete in both the scope and depth of its protections.

1       Moreover, while many States have enacted some type  
2       of genetic non-discrimination law, these laws vary  
3       widely with respect to their approach, application,  
4       and level of protection. Congress has collected sub-  
5       stantial evidence that the American public and the  
6       medical community find the existing patchwork of  
7       State and Federal laws to be confusing and inad-  
8       equate to protect them from discrimination. There-  
9       fore Federal legislation establishing a national and  
10      uniform basic standard is necessary to fully protect  
11      the public from discrimination and allay their con-  
12      cerns about the potential for discrimination, thereby  
13      allowing individuals to take advantage of genetic  
14      testing, technologies, research, and new therapies.

15   **TITLE            I—GENETIC            NON-**  
16   **DISCRIMINATION IN HEALTH**  
17   **INSURANCE**

18   **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**  
19                    **COME SECURITY ACT OF 1974.**

20       (a) NO DISCRIMINATION IN GROUP PREMIUMS  
21    BASED ON GENETIC INFORMATION.—Section 702(b) of  
22    the Employee Retirement Income Security Act of 1974  
23    (29 U.S.C. 1182(b)) is amended—

1           (1) in paragraph (2)(A), by inserting before the  
2           semicolon the following: “except as provided in para-  
3           graph (3)”]; and

4           (2) by adding at the end the following:

5           “(3) NO GROUP-BASED DISCRIMINATION ON  
6           BASIS OF GENETIC INFORMATION.—For purposes of  
7           this section, a group health plan, and a health insur-  
8           ance issuer offering group health insurance coverage  
9           in connection with a group health plan, may not ad-  
10          just premium or contribution amounts for the group  
11          covered under such plan on the basis of genetic in-  
12          formation.”.

13          (b) LIMITATIONS ON GENETIC TESTING; PROHIBI-  
14          TION ON COLLECTION OF GENETIC INFORMATION; APPLI-  
15          CATION TO ALL PLANS.—Section 702 of the Employee  
16          Retirement Income Security Act of 1974 (29 U.S.C. 1182)  
17          is amended by adding at the end the following:

18          “(c) GENETIC TESTING.—

19                 “(1) LIMITATION ON REQUESTING OR REQUIR-  
20                 ING GENETIC TESTING.—A group health plan, and a  
21                 health insurance issuer offering health insurance  
22                 coverage in connection with a group health plan,  
23                 shall not request or require an individual or a family  
24                 member of such individual to undergo a genetic test.

1           “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
2 shall not be construed to limit the authority of a  
3 health care professional who is providing health care  
4 services to an individual to request that such indi-  
5 vidual undergo a genetic test.

6           “(3) RULE OF CONSTRUCTION REGARDING PAY-  
7 MENT.—

8           “(A) IN GENERAL.—Nothing in paragraph  
9 (1) shall be construed to preclude a group  
10 health plan, or a health insurance issuer offer-  
11 ing health insurance coverage in connection  
12 with a group health plan, from obtaining and  
13 using the results of a genetic test in making a  
14 determination regarding payment (as such term  
15 is defined for the purposes of applying the regu-  
16 lations promulgated by the Secretary of Health  
17 and Human Services under part C of title XI  
18 of the Social Security Act and section 264 of  
19 the Health Insurance Portability and Account-  
20 ability Act of 1996, as may be revised from  
21 time to time) consistent with subsection (a).

22           “(B) LIMITATION.—For purposes of sub-  
23 paragraph (A), a group health plan, or a health  
24 insurance issuer offering health insurance cov-  
25 erage in connection with a group health plan,

1           may request only the minimum amount of in-  
2           formation necessary to accomplish the intended  
3           purpose.

4           “(4) RESEARCH EXCEPTION.—Notwithstanding  
5           paragraph (1), a group health plan, or a health in-  
6           surance issuer offering health insurance coverage in  
7           connection with a group health plan, may request,  
8           but not require, that a participant or beneficiary un-  
9           dergo a genetic test if each of the following condi-  
10          tions is met:

11                   “(A) The request is made, in writing, pur-  
12                   suant to research that complies with part 46 of  
13                   title 45, Code of Federal Regulations, or equiv-  
14                   alent Federal regulations, and any applicable  
15                   State or local law or regulations for the protec-  
16                   tion of human subjects in research.

17                   “(B) The plan or issuer clearly indicates to  
18                   each participant or beneficiary, or in the case of  
19                   a minor child, to the legal guardian of such  
20                   beneficiary, to whom the request is made that—

21                           “(i) compliance with the request is  
22                           voluntary; and

23                           “(ii) non-compliance will have no ef-  
24                           fect on enrollment status or premium or  
25                           contribution amounts.

1           “(C) No genetic information collected or  
2           acquired under this paragraph shall be used for  
3           underwriting purposes.

4           “(D) The plan or issuer notifies the Sec-  
5           retary in writing that the plan or issuer is con-  
6           ducting activities pursuant to the exception pro-  
7           vided for under this paragraph, including a de-  
8           scription of the activities conducted.

9           “(E) The plan or issuer complies with such  
10          other conditions as the Secretary may by regu-  
11          lation require for activities conducted under this  
12          paragraph.

13          “(d) PROHIBITION ON COLLECTION OF GENETIC IN-  
14          FORMATION.—

15                 “(1) IN GENERAL.—A group health plan, and a  
16                 health insurance issuer offering health insurance  
17                 coverage in connection with a group health plan,  
18                 shall not request, require, or purchase genetic infor-  
19                 mation for underwriting purposes (as defined in sec-  
20                 tion 733).

21                 “(2) PROHIBITION ON COLLECTION OF GE-  
22                 NETIC INFORMATION PRIOR TO ENROLLMENT.—A  
23                 group health plan, and a health insurance issuer of-  
24                 fering health insurance coverage in connection with  
25                 a group health plan, shall not request, require, or



1 purchase genetic information with respect to any in-  
2 dividual prior to such individual's enrollment under  
3 the plan or coverage in connection with such enroll-  
4 ment.

5 “(3) INCIDENTAL COLLECTION.—If a group  
6 health plan, or a health insurance issuer offering  
7 health insurance coverage in connection with a group  
8 health plan, obtains genetic information incidental to  
9 the requesting, requiring, or purchasing of other in-  
10 formation concerning any individual, such request,  
11 requirement, or purchase shall not be considered a  
12 violation of paragraph (2) if such request, require-  
13 ment, or purchase is not in violation of paragraph  
14 (1).

15 “(e) APPLICATION TO ALL PLANS.—The provisions  
16 of subsections (a)(1)(F), (b)(3), (c), and (d), and sub-  
17 section (b)(1) and section 701 with respect to genetic in-  
18 formation, shall apply to group health plans and health  
19 insurance issuers without regard to section 732(a).”.

20 (c) APPLICATION TO GENETIC INFORMATION OF A  
21 FETUS OR EMBRYO.—Such section is further amended by  
22 adding at the end the following:

23 “(f) GENETIC INFORMATION OF A FETUS OR EM-  
24 BRYO.—Any reference in this part to genetic information

1 concerning an individual or family member of an indi-  
2 vidual shall—

3 “(1) with respect to such an individual or fam-  
4 ily member of an individual who is a pregnant  
5 woman, include genetic information of any fetus car-  
6 ried by such pregnant woman; and

7 “(2) with respect to an individual or family  
8 member utilizing an assisted reproductive tech-  
9 nology, include genetic information of any embryo le-  
10 gally held by the individual or family member.”.

11 (d) DEFINITIONS.—Section 733(d) of the Employee  
12 Retirement Income Security Act of 1974 (29 U.S.C.  
13 1191b(d)) is amended by adding at the end the following:

14 “(5) FAMILY MEMBER.—The term ‘family  
15 member’ means, with respect to an individual—

16 “(A) a dependent (as such term is used for  
17 purposes of section 701(f)(2)) of such indi-  
18 vidual, and

19 “(B) any other individual who is a first-de-  
20 gree, second-degree, third-degree, or fourth-de-  
21 gree relative of such individual or of an indi-  
22 vidual described in subparagraph (A).

23 “(6) GENETIC INFORMATION.—

1           “(A) IN GENERAL.—The term ‘genetic in-  
2           formation’ means, with respect to any indi-  
3           vidual, information about—

4                   “(i) such individual’s genetic tests,

5                   “(ii) the genetic tests of family mem-  
6           bers of such individual, and

7                   “(iii) subject to subparagraph (D),  
8           the manifestation of a disease or disorder  
9           in family members of such individual.

10           “(B) INCLUSION OF GENETIC SERVICES.—

11           Such term includes, with respect to any indi-  
12           vidual, any request for, or receipt of, genetic  
13           services (including genetic services received pur-  
14           suant to participation in clinical research) by  
15           such individual or any family member of such  
16           individual.

17           “(C) EXCLUSIONS.—The term ‘genetic in-  
18           formation’ shall not include information about  
19           the sex or age of any individual.

20           “(D) APPLICATION TO FAMILY MEMBERS  
21           COVERED UNDER SAME PLAN.—Information de-  
22           scribed in clause (iii) of subparagraph (A) shall  
23           not be treated as genetic information to the ex-  
24           tent that such information is taken into account  
25           only with respect to the individual in which

1 such disease or disorder is manifested and not  
2 as genetic information with respect to any other  
3 individual.

4 “(7) GENETIC TEST.—

5 “(A) IN GENERAL.—The term ‘genetic  
6 test’ means an analysis of human DNA, RNA,  
7 chromosomes, proteins, or metabolites, that de-  
8 tects genotypes, mutations, or chromosomal  
9 changes.

10 “(B) EXCEPTIONS.—The term ‘genetic  
11 test’ does not mean—

12 “(i) an analysis of proteins or metabo-  
13 lites that does not detect genotypes,  
14 mutations, or chromosomal changes; or

15 “(ii) an analysis of proteins or me-  
16 tabolites that is directly related to a mani-  
17 fested disease, disorder, or pathological  
18 condition that could reasonably be detected  
19 by a health care professional with appro-  
20 priate training and expertise in the field of  
21 medicine involved.

22 “(8) GENETIC SERVICES.—The term ‘genetic  
23 services’ means—

24 “(A) a genetic test;

1           “(B) genetic counseling (including obtain-  
2           ing, interpreting, or assessing genetic informa-  
3           tion); or

4           “(C) genetic education.

5           “(9) UNDERWRITING PURPOSES.—The term  
6           ‘underwriting purposes’ means, with respect to any  
7           group health plan, or health insurance coverage of-  
8           fered in connection with a group health plan—

9           “(A) rules for, or determination of, eligi-  
10          bility (including enrollment and continued eligi-  
11          bility) for benefits under the plan or coverage;

12          “(B) the computation of premium or con-  
13          tribution amounts under the plan or coverage;

14          “(C) the application of any pre-existing  
15          condition exclusion under the plan or coverage;

16          and

17          “(D) other activities related to the cre-  
18          ation, renewal, or replacement of a contract of  
19          health insurance or health benefits.”.

20          (e) ERISA ENFORCEMENT.—Section 502 of the Em-  
21          ployee Retirement Income Security Act of 1974 (29  
22          U.S.C. 1132) is amended—

23                 (1) in subsection (a)(6), by striking “(7), or  
24                 (8)” and inserting “(7), (8), or (9)”; and

1           (2) in subsection (c), by redesignating para-  
2           graph (9) as paragraph (10), and by inserting after  
3           paragraph (8) the following new paragraph:

4           “(9) SECRETARIAL ENFORCEMENT AUTHORITY  
5           RELATING TO USE OF GENETIC INFORMATION.—

6           “(A) GENERAL RULE.—The Secretary may  
7           impose a penalty against any plan sponsor of a  
8           group health plan, or any health insurance  
9           issuer offering health insurance coverage in  
10          connection with the plan, for any failure by  
11          such sponsor or issuer to meet the requirements  
12          of subsection (a)(1)(F), (b)(3), (c), or (d) of  
13          section 702 or section 701 or 702(b)(1) with re-  
14          spect to genetic information, in connection with  
15          the plan.

16          “(B) AMOUNT.—

17          “(i) IN GENERAL.—The amount of  
18          the penalty imposed by subparagraph (A)  
19          shall be \$100 for each day in the non-  
20          compliance period with respect to each par-  
21          ticipant or beneficiary to whom such fail-  
22          ure relates.

23          “(ii) NONCOMPLIANCE PERIOD.—For  
24          purposes of this paragraph, the term ‘non-

1 compliance period' means, with respect to  
2 any failure, the period—

3 “(I) beginning on the date such  
4 failure first occurs; and

5 “(II) ending on the date the fail-  
6 ure is corrected.

7 “(C) MINIMUM PENALTIES WHERE FAIL-  
8 URE DISCOVERED.—Notwithstanding clauses (i)  
9 and (ii) of subparagraph (D):

10 “(i) IN GENERAL.—In the case of 1 or  
11 more failures with respect to a participant  
12 or beneficiary—

13 “(I) which are not corrected be-  
14 fore the date on which the plan re-  
15 ceives a notice from the Secretary of  
16 such violation; and

17 “(II) which occurred or continued  
18 during the period involved;

19 the amount of penalty imposed by subpara-  
20 graph (A) by reason of such failures with  
21 respect to such participant or beneficiary  
22 shall not be less than \$2,500.

23 “(ii) HIGHER MINIMUM PENALTY  
24 WHERE VIOLATIONS ARE MORE THAN DE  
25 MINIMIS.—To the extent violations for

1 which any person is liable under this para-  
2 graph for any year are more than de mini-  
3 mis, clause (i) shall be applied by sub-  
4 stituting ‘\$15,000’ for ‘\$2,500’ with re-  
5 spect to such person.

6 “(D) LIMITATIONS.—

7 “(i) PENALTY NOT TO APPLY WHERE  
8 FAILURE NOT DISCOVERED EXERCISING  
9 REASONABLE DILIGENCE.—No penalty  
10 shall be imposed by subparagraph (A) on  
11 any failure during any period for which it  
12 is established to the satisfaction of the  
13 Secretary that the person otherwise liable  
14 for such penalty did not know, and exer-  
15 cising reasonable diligence would not have  
16 known, that such failure existed.

17 “(ii) PENALTY NOT TO APPLY TO  
18 FAILURES CORRECTED WITHIN CERTAIN  
19 PERIODS.—No penalty shall be imposed by  
20 subparagraph (A) on any failure if—

21 “(I) such failure was due to rea-  
22 sonable cause and not to willful ne-  
23 glect; and

24 “(II) such failure is corrected  
25 during the 30-day period beginning on



1 the first date the person otherwise lia-  
2 ble for such penalty knew, or exer-  
3 cising reasonable diligence would have  
4 known, that such failure existed.

5 “(iii) OVERALL LIMITATION FOR UN-  
6 INTENTIONAL FAILURES.—In the case of  
7 failures which are due to reasonable cause  
8 and not to willful neglect, the penalty im-  
9 posed by subparagraph (A) for failures  
10 shall not exceed the amount equal to the  
11 lesser of—

12 “(I) 10 percent of the aggregate  
13 amount paid or incurred by the plan  
14 sponsor (or predecessor plan sponsor)  
15 during the preceding taxable year for  
16 group health plans; or

17 “(II) \$500,000.

18 “(E) WAIVER BY SECRETARY.—In the case  
19 of a failure which is due to reasonable cause  
20 and not to willful neglect, the Secretary may  
21 waive part or all of the penalty imposed by sub-  
22 paragraph (A) to the extent that the payment  
23 of such penalty would be excessive relative to  
24 the failure involved.

1           “(F) DEFINITIONS.—Terms used in this  
2           paragraph which are defined in section 733  
3           shall have the meanings provided such terms in  
4           such section.”.

5           (f) REGULATIONS AND EFFECTIVE DATE.—

6           (1) REGULATIONS.—The Secretary of Labor  
7           shall issue final regulations not later than 1 year  
8           after the date of enactment of this Act to carry out  
9           the amendments made by this section.

10          (2) EFFECTIVE DATE.—The amendments made  
11          by this section shall apply with respect to group  
12          health plans for plan years beginning after the date  
13          that is 18 months after the date of enactment of  
14          this Act.

15 **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

16 **ACT.**

17          (a) AMENDMENTS RELATING TO THE GROUP MAR-  
18          KET.—

19               (1) NO DISCRIMINATION IN GROUP PREMIUMS  
20          BASED ON GENETIC INFORMATION.—Section  
21          2702(b) of the Public Health Service Act (42 U.S.C.  
22          300gg-1(b)) is amended—

23                       (A) in paragraph (2)(A), by inserting be-  
24                       fore the semicolon the following: “except as pro-  
25                       vided in paragraph (3)”; and

1 (B) by adding at the end the following:

2 “(3) NO GROUP-BASED DISCRIMINATION ON  
3 BASIS OF GENETIC INFORMATION.—For purposes of  
4 this section, a group health plan, and health insur-  
5 ance issuer offering group health insurance coverage  
6 in connection with a group health plan, may not ad-  
7 just premium or contribution amounts for the group  
8 covered under such plan on the basis of genetic in-  
9 formation.”.

10 (2) LIMITATIONS ON GENETIC TESTING; PROHI-  
11 BITION ON COLLECTION OF GENETIC INFORMATION;  
12 APPLICATION TO ALL PLANS.—Section 2702 of the  
13 Public Health Service Act (42 U.S.C. 300gg–1) is  
14 amended by adding at the end the following:

15 “(c) GENETIC TESTING.—

16 “(1) LIMITATION ON REQUESTING OR REQUIR-  
17 ING GENETIC TESTING.—A group health plan, and a  
18 health insurance issuer offering health insurance  
19 coverage in connection with a group health plan,  
20 shall not request or require an individual or a family  
21 member of such individual to undergo a genetic test.

22 “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
23 shall not be construed to limit the authority of a  
24 health care professional who is providing health care

1 services to an individual to request that such indi-  
2 vidual undergo a genetic test.

3 “(3) RULE OF CONSTRUCTION REGARDING PAY-  
4 MENT.—

5 “(A) IN GENERAL.—Nothing in paragraph  
6 (1) shall be construed to preclude a group  
7 health plan, or a health insurance issuer offer-  
8 ing health insurance coverage in connection  
9 with a group health plan, from obtaining and  
10 using the results of a genetic test in making a  
11 determination regarding payment (as such term  
12 is defined for the purposes of applying the regu-  
13 lations promulgated by the Secretary under  
14 part C of title XI of the Social Security Act and  
15 section 264 of the Health Insurance Portability  
16 and Accountability Act of 1996, as may be re-  
17 vised from time to time) consistent with sub-  
18 section (a).

19 “(B) LIMITATION.—For purposes of sub-  
20 paragraph (A), a group health plan, or a health  
21 insurance issuer offering health insurance cov-  
22 erage in connection with a group health plan,  
23 may request only the minimum amount of in-  
24 formation necessary to accomplish the intended  
25 purpose.

1           “(4) RESEARCH EXCEPTION.—Notwithstanding  
2 paragraph (1), a group health plan, or a health in-  
3 surance issuer offering health insurance coverage in  
4 connection with a group health plan, may request,  
5 but not require, that a participant or beneficiary un-  
6 dergo a genetic test if each of the following condi-  
7 tions is met:

8           “(A) The request is made pursuant to re-  
9 search that complies with part 46 of title 45,  
10 Code of Federal Regulations, or equivalent Fed-  
11 eral regulations, and any applicable State or  
12 local law or regulations for the protection of  
13 human subjects in research.

14           “(B) The plan or issuer clearly indicates to  
15 each participant or beneficiary, or in the case of  
16 a minor child, to the legal guardian of such  
17 beneficiary, to whom the request is made that—

18           “(i) compliance with the request is  
19 voluntary; and

20           “(ii) non-compliance will have no ef-  
21 fect on enrollment status or premium or  
22 contribution amounts.

23           “(C) No genetic information collected or  
24 acquired under this paragraph shall be used for  
25 underwriting purposes.

1           “(D) The plan or issuer notifies the Sec-  
2           retary in writing that the plan or issuer is con-  
3           ducting activities pursuant to the exception pro-  
4           vided for under this paragraph, including a de-  
5           scription of the activities conducted.

6           “(E) The plan or issuer complies with such  
7           other conditions as the Secretary may by regu-  
8           lation require for activities conducted under this  
9           paragraph.

10          “(d) PROHIBITION ON COLLECTION OF GENETIC IN-  
11          FORMATION.—

12           “(1) IN GENERAL.—A group health plan, and a  
13           health insurance issuer offering health insurance  
14           coverage in connection with a group health plan,  
15           shall not request, require, or purchase genetic infor-  
16           mation for underwriting purposes (as defined in sec-  
17           tion 2791).

18           “(2) PROHIBITION ON COLLECTION OF GE-  
19           NETIC INFORMATION PRIOR TO ENROLLMENT.—A  
20           group health plan, and a health insurance issuer of-  
21           fering health insurance coverage in connection with  
22           a group health plan, shall not request, require, or  
23           purchase genetic information with respect to any in-  
24           dividual prior to such individual’s enrollment under

1 the plan or coverage in connection with such enroll-  
2 ment.

3 “(3) INCIDENTAL COLLECTION.—If a group  
4 health plan, or a health insurance issuer offering  
5 health insurance coverage in connection with a group  
6 health plan, obtains genetic information incidental to  
7 the requesting, requiring, or purchasing of other in-  
8 formation concerning any individual, such request,  
9 requirement, or purchase shall not be considered a  
10 violation of paragraph (2) if such request, require-  
11 ment, or purchase is not in violation of paragraph  
12 (1).

13 “(e) APPLICATION TO ALL PLANS.—The provisions  
14 of subsections (a)(1)(F), (b)(3), (c) , and (d) and sub-  
15 section (b)(1) and section 2701 with respect to genetic in-  
16 formation, shall apply to group health plans and health  
17 insurance issuers without regard to section 2721(a).”.

18 (3) APPLICATION TO GENETIC INFORMATION OF  
19 A FETUS OR EMBRYO.—Such section is further  
20 amended by adding at the end the following:

21 “(f) GENETIC INFORMATION OF A FETUS OR EM-  
22 BRYO.—Any reference in this part to genetic information  
23 concerning an individual or family member of an indi-  
24 vidual shall—

1           “(1) with respect to such an individual or fam-  
2           ily member of an individual who is a pregnant  
3           woman, include genetic information of any fetus car-  
4           ried by such pregnant woman; and

5           “(2) with respect to an individual or family  
6           member utilizing an assisted reproductive tech-  
7           nology, include genetic information of any embryo le-  
8           gally held by the individual or family member.”.

9           (4) DEFINITIONS.—Section 2791(d) of the Pub-  
10          lic Health Service Act (42 U.S.C. 300gg–91(d)) is  
11          amended by adding at the end the following:

12          “(15) FAMILY MEMBER.—The term ‘family  
13          member’ means, with respect to any individual—

14               “(A) a dependent (as such term is used for  
15               purposes of section 2701(f)(2)) of such indi-  
16               vidual; and

17               “(B) any other individual who is a first-de-  
18               gree, second-degree, third-degree, or fourth-de-  
19               gree relative of such individual or of an indi-  
20               vidual described in subparagraph (A).

21          “(16) GENETIC INFORMATION.—

22               “(A) IN GENERAL.—The term ‘genetic in-  
23               formation’ means, with respect to any indi-  
24               vidual, information about—

25                       “(i) such individual’s genetic tests,



1                   “(ii) the genetic tests of family mem-  
2                   bers of such individual, and

3                   “(iii) subject to subparagraph (D),  
4                   the manifestation of a disease or disorder  
5                   in family members of such individual.

6                   “(B) INCLUSION OF GENETIC SERVICES.—  
7                   Such term includes, with respect to any indi-  
8                   vidual, any request for, or receipt of, genetic  
9                   services (including genetic services received pur-  
10                  suant to participation in clinical research) by  
11                  such individual or any family member of such  
12                  individual.

13                  “(C) EXCLUSIONS.—The term ‘genetic in-  
14                  formation’ shall not include information about  
15                  the sex or age of any individual.

16                  “(D) APPLICATION TO FAMILY MEMBERS  
17                  COVERED UNDER SAME PLAN.—Information de-  
18                  scribed in clause (iii) of subparagraph (A) shall  
19                  not be treated as genetic information to the ex-  
20                  tent that such information is taken into account  
21                  only with respect to the individual in which  
22                  such disease or disorder is manifested and not  
23                  as genetic information with respect to any other  
24                  individual.

25                  “(17) GENETIC TEST.—

1           “(A) IN GENERAL.—The term ‘genetic  
2 test’ means an analysis of human DNA, RNA,  
3 chromosomes, proteins, or metabolites, that de-  
4 tects genotypes, mutations, or chromosomal  
5 changes.

6           “(B) EXCEPTIONS.—The term ‘genetic  
7 test’ does not mean—

8                   “(i) an analysis of proteins or metabo-  
9 lites that does not detect genotypes,  
10 mutations, or chromosomal changes; or

11                   “(ii) an analysis of proteins or me-  
12 tabolites that is directly related to a mani-  
13 fested disease, disorder, or pathological  
14 condition that could reasonably be detected  
15 by a health care professional with appro-  
16 priate training and expertise in the field of  
17 medicine involved.

18           “(18) GENETIC SERVICES.—The term ‘genetic  
19 services’ means—

20                   “(A) a genetic test;

21                   “(B) genetic counseling (including obtain-  
22 ing, interpreting, or assessing genetic informa-  
23 tion); or

24                   “(C) genetic education.

1           “(19) UNDERWRITING PURPOSES.—The term  
2           ‘underwriting purposes’ means, with respect to any  
3           group health plan, or health insurance coverage of-  
4           fered in connection with a group health plan—

5                   “(A) rules for, or determination of, eligi-  
6                   bility (including enrollment and continued eligi-  
7                   bility) for benefits under the plan or coverage;

8                   “(B) the computation of premium or con-  
9                   tribution amounts under the plan or coverage;

10                   “(C) the application of any pre-existing  
11                   condition exclusion under the plan or coverage;

12                   and

13                   “(D) other activities related to the cre-  
14                   ation, renewal, or replacement of a contract of  
15                   health insurance or health benefits.”.

16           (5) REMEDIES AND ENFORCEMENT.—Section  
17           2722(b) of the Public Health Service Act (42 U.S.C.  
18           300gg-22(b)) is amended by adding at the end the  
19           following:

20                   “(3) ENFORCEMENT AUTHORITY RELATING TO  
21                   GENETIC DISCRIMINATION.—

22                   “(A) GENERAL RULE.—In the cases de-  
23                   scribed in paragraph (1), notwithstanding the  
24                   provisions of paragraph (2)(C), the succeeding  
25                   subparagraphs of this paragraph shall apply

1 with respect to an action under this subsection  
2 by the Secretary with respect to any failure of  
3 a health insurance issuer in connection with a  
4 group health plan, to meet the requirements of  
5 subsection (a)(1)(F), (b)(3), (c), or (d) of sec-  
6 tion 2702 or section 2701 or 2702(b)(1) with  
7 respect to genetic information in connection  
8 with the plan.

9 “(B) AMOUNT.—

10 “(i) IN GENERAL.—The amount of  
11 the penalty imposed under this paragraph  
12 shall be \$100 for each day in the non-  
13 compliance period with respect to each par-  
14 ticipant or beneficiary to whom such fail-  
15 ure relates.

16 “(ii) NONCOMPLIANCE PERIOD.—For  
17 purposes of this paragraph, the term ‘non-  
18 compliance period’ means, with respect to  
19 any failure, the period—

20 “(I) beginning on the date such  
21 failure first occurs; and

22 “(II) ending on the date the fail-  
23 ure is corrected.

1           “(C) MINIMUM PENALTIES WHERE FAIL-  
2           URE DISCOVERED.—Notwithstanding clauses (i)  
3           and (ii) of subparagraph (D):

4                   “(i) IN GENERAL.—In the case of 1 or  
5                   more failures with respect to an indi-  
6                   vidual—

7                           “(I) which are not corrected be-  
8                           fore the date on which the plan re-  
9                           ceives a notice from the Secretary of  
10                          such violation; and

11                          “(II) which occurred or continued  
12                          during the period involved;

13                   the amount of penalty imposed by subpara-  
14                   graph (A) by reason of such failures with  
15                   respect to such individual shall not be less  
16                   than \$2,500.

17                   “(ii) HIGHER MINIMUM PENALTY  
18                   WHERE VIOLATIONS ARE MORE THAN DE  
19                   MINIMIS.—To the extent violations for  
20                   which any person is liable under this para-  
21                   graph for any year are more than de mini-  
22                   mis, clause (i) shall be applied by sub-  
23                   stituting ‘\$15,000’ for ‘\$2,500’ with re-  
24                   spect to such person.

25                   “(D) LIMITATIONS.—

1           “(i) PENALTY NOT TO APPLY WHERE  
2 FAILURE NOT DISCOVERED EXERCISING  
3 REASONABLE DILIGENCE.—No penalty  
4 shall be imposed by subparagraph (A) on  
5 any failure during any period for which it  
6 is established to the satisfaction of the  
7 Secretary that the person otherwise liable  
8 for such penalty did not know, and exer-  
9 cising reasonable diligence would not have  
10 known, that such failure existed.

11           “(ii) PENALTY NOT TO APPLY TO  
12 FAILURES CORRECTED WITHIN CERTAIN  
13 PERIODS.—No penalty shall be imposed by  
14 subparagraph (A) on any failure if—

15                   “(I) such failure was due to rea-  
16 sonable cause and not to willful ne-  
17 glect; and

18                   “(II) such failure is corrected  
19 during the 30-day period beginning on  
20 the first date the person otherwise lia-  
21 ble for such penalty knew, or exer-  
22 cising reasonable diligence would have  
23 known, that such failure existed.

24           “(iii) OVERALL LIMITATION FOR UN-  
25 INTENTIONAL FAILURES.—In the case of

1 failures which are due to reasonable cause  
2 and not to willful neglect, the penalty im-  
3 posed by subparagraph (A) for failures  
4 shall not exceed the amount equal to the  
5 lesser of—

6 “(I) 10 percent of the aggregate  
7 amount paid or incurred by the em-  
8 ployer (or predecessor employer) dur-  
9 ing the preceding taxable year for  
10 group health plans; or

11 “(II) \$500,000.

12 “(E) WAIVER BY SECRETARY.—In the case  
13 of a failure which is due to reasonable cause  
14 and not to willful neglect, the Secretary may  
15 waive part or all of the penalty imposed by sub-  
16 paragraph (A) to the extent that the payment  
17 of such penalty would be excessive relative to  
18 the failure involved.”.

19 (b) AMENDMENT RELATING TO THE INDIVIDUAL  
20 MARKET.—

21 (1) IN GENERAL.—The first subpart 3 of part  
22 B of title XXVII of the Public Health Service Act  
23 (42 U.S.C. 300gg-51 et seq.) (relating to other re-  
24 quirements) is amended—

1 (A) by redesignating such subpart as sub-  
2 part 2; and

3 (B) by adding at the end the following:

4 **“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON**  
5 **THE BASIS OF GENETIC INFORMATION.**

6 “(a) PROHIBITION ON GENETIC INFORMATION AS A  
7 CONDITION OF ELIGIBILITY.—A health insurance issuer  
8 offering health insurance coverage in the individual mar-  
9 ket may not establish rules for the eligibility (including  
10 continued eligibility) of any individual to enroll in indi-  
11 vidual health insurance coverage based on genetic infor-  
12 mation.

13 “(b) PROHIBITION ON GENETIC INFORMATION IN  
14 SETTING PREMIUM RATES.—A health insurance issuer of-  
15 fering health insurance coverage in the individual market  
16 shall not adjust premium or contribution amounts for an  
17 individual on the basis of genetic information concerning  
18 the individual or a family member of the individual.

19 “(c) PROHIBITION ON GENETIC INFORMATION AS  
20 PREEXISTING CONDITION.—A health insurance issuer of-  
21 fering health insurance coverage in the individual market  
22 may not, on the basis of genetic information, impose any  
23 preexisting condition exclusion (as defined in section  
24 2701(b)(1)(A)) with respect to such coverage.

25 “(d) GENETIC TESTING.—



1           “(1) LIMITATION ON REQUESTING OR REQUIR-  
2           ING GENETIC TESTING.—A health insurance issuer  
3           offering health insurance coverage in the individual  
4           market shall not request or require an individual or  
5           a family member of such individual to undergo a ge-  
6           netic test.

7           “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
8           shall not be construed to limit the authority of a  
9           health care professional who is providing health care  
10          services to an individual to request that such indi-  
11          vidual undergo a genetic test.

12          “(3) RULE OF CONSTRUCTION REGARDING PAY-  
13          MENT.—

14                 “(A) IN GENERAL.—Nothing in paragraph  
15                 (1) shall be construed to preclude a health in-  
16                 surance issuer offering health insurance cov-  
17                 erage in the individual market from obtaining  
18                 and using the results of a genetic test in mak-  
19                 ing a determination regarding payment (as such  
20                 term is defined for the purposes of applying the  
21                 regulations promulgated by the Secretary under  
22                 part C of title XI of the Social Security Act and  
23                 section 264 of the Health Insurance Portability  
24                 and Accountability Act of 1996, as may be re-

1           vised from time to time) consistent with sub-  
2           sections (a) and (c).

3           “(B) LIMITATION.—For purposes of sub-  
4           paragraph (A), a health insurance issuer offer-  
5           ing health insurance coverage in the individual  
6           market may request only the minimum amount  
7           of information necessary to accomplish the in-  
8           tended purpose.

9           “(4) RESEARCH EXCEPTION.—Notwithstanding  
10          paragraph (1), a health insurance issuer offering  
11          health insurance coverage in the individual market  
12          may request, but not require, that an individual or  
13          a family member of such individual undergo a ge-  
14          netic test if each of the following conditions is met:

15               “(A) The request is made pursuant to re-  
16               search that complies with part 46 of title 45,  
17               Code of Federal Regulations, or equivalent Fed-  
18               eral regulations, and any applicable State or  
19               local law or regulations for the protection of  
20               human subjects in research.

21               “(B) The issuer clearly indicates to each  
22               individual, or in the case of a minor child, to  
23               the legal guardian of such child, to whom the  
24               request is made that—

1           “(i) compliance with the request is  
2           voluntary; and

3           “(ii) non-compliance will have no ef-  
4           fect on enrollment status or premium or  
5           contribution amounts.

6           “(C) No genetic information collected or  
7           acquired under this paragraph shall be used for  
8           underwriting purposes.

9           “(D) The issuer notifies the Secretary in  
10          writing that the issuer is conducting activities  
11          pursuant to the exception provided for under  
12          this paragraph, including a description of the  
13          activities conducted.

14          “(E) The issuer complies with such other  
15          conditions as the Secretary may by regulation  
16          require for activities conducted under this para-  
17          graph.

18          “(e) PROHIBITION ON COLLECTION OF GENETIC IN-  
19          FORMATION.—

20                 “(1) IN GENERAL.—A health insurance issuer  
21          offering health insurance coverage in the individual  
22          market shall not request, require, or purchase ge-  
23          netic information for underwriting purposes (as de-  
24          fined in section 2791).

1           “(2) PROHIBITION ON COLLECTION OF GE-  
2           NETIC INFORMATION PRIOR TO ENROLLMENT.—A  
3           health insurance issuer offering health insurance  
4           coverage in the individual market shall not request,  
5           require, or purchase genetic information with respect  
6           to any individual prior to such individual’s enroll-  
7           ment under the plan in connection with such enroll-  
8           ment.

9           “(3) INCIDENTAL COLLECTION.—If a health in-  
10          surance issuer offering health insurance coverage in  
11          the individual market obtains genetic information in-  
12          cidental to the requesting, requiring, or purchasing  
13          of other information concerning any individual, such  
14          request, requirement, or purchase shall not be con-  
15          sidered a violation of paragraph (2) if such request,  
16          requirement, or purchase is not in violation of para-  
17          graph (1).

18          “(f) GENETIC INFORMATION OF A FETUS OR EM-  
19          BRYO.—Any reference in this part to genetic information  
20          concerning an individual or family member of an indi-  
21          vidual shall—

22                 “(1) with respect to such an individual or fam-  
23                 ily member of an individual who is a pregnant  
24                 woman, include genetic information of any fetus car-  
25                 ried by such pregnant woman; and

1           “(2) with respect to an individual or family  
2           member utilizing an assisted reproductive tech-  
3           nology, include genetic information of any embryo le-  
4           gally held by the individual or family member.”.

5           (2) REMEDIES AND ENFORCEMENT.—Section  
6           2761(b) of the Public Health Service Act (42 U.S.C.  
7           300gg–61(b)) is amended to read as follows:

8           “(b) SECRETARIAL ENFORCEMENT AUTHORITY.—  
9           The Secretary shall have the same authority in relation  
10          to enforcement of the provisions of this part with respect  
11          to issuers of health insurance coverage in the individual  
12          market in a State as the Secretary has under section  
13          2722(b)(2), and section 2722(b)(3) with respect to viola-  
14          tions of genetic nondiscrimination provisions, in relation  
15          to the enforcement of the provisions of part A with respect  
16          to issuers of health insurance coverage in the small group  
17          market in the State.”.

18          (c) ELIMINATION OF OPTION OF NON-FEDERAL  
19          GOVERNMENTAL PLANS TO BE EXCEPTED FROM RE-  
20          QUIREMENTS CONCERNING GENETIC INFORMATION.—  
21          Section 2721(b)(2) of the Public Health Service Act (42  
22          U.S.C. 300gg–21(b)(2)) is amended—

23                 (1) in subparagraph (A), by striking “If the  
24                 plan sponsor” and inserting “Except as provided in  
25                 subparagraph (D), if the plan sponsor”; and

1 (2) by adding at the end the following:

2 “(D) ELECTION NOT APPLICABLE TO RE-  
3 QUIREMENTS CONCERNING GENETIC INFORMA-  
4 TION.—The election described in subparagraph  
5 (A) shall not be available with respect to the  
6 provisions of subsections (a)(1)(F), (b)(3), (c),  
7 and (d) of section 2702 and the provisions of  
8 sections 2701 and 2702(b) to the extent that  
9 such provisions apply to genetic information.”.

10 (d) REGULATIONS AND EFFECTIVE DATE.—

11 (1) REGULATIONS.—Not later than 1 year after  
12 the date of enactment of this Act, the Secretary of  
13 Health and Human Services shall issue final regula-  
14 tions to carry out the amendments made by this sec-  
15 tion.

16 (2) EFFECTIVE DATE.—The amendments made  
17 by this section shall apply—

18 (A) with respect to group health plans, and  
19 health insurance coverage offered in connection  
20 with group health plans, for plan years begin-  
21 ning after the date that is 18 months after the  
22 date of enactment of this Act; and

23 (B) with respect to health insurance cov-  
24 erage offered, sold, issued, renewed, in effect, or  
25 operated in the individual market after the date

1           that is 18 months after the date of enactment  
2           of this Act.

3 **SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
4           **OF 1986.**

5           (a) **NO DISCRIMINATION IN GROUP PREMIUMS**  
6 **BASED ON GENETIC INFORMATION.**—Subsection (b) of  
7 section 9802 of the Internal Revenue Code of 1986 is  
8 amended—

9           (1) in paragraph (2)(A), by inserting before the  
10          semicolon the following: “except as provided in para-  
11          graph (3)”;

12          (2) by adding at the end the following:

13          “(3) **NO GROUP-BASED DISCRIMINATION ON**  
14 **BASIS OF GENETIC INFORMATION.**—For purposes of  
15 this section, a group health plan may not adjust pre-  
16 mium or contribution amounts for the group covered  
17 under such plan on the basis of genetic informa-  
18 tion.”.

19          (b) **LIMITATIONS ON GENETIC TESTING; PROHIBI-**  
20 **TION ON COLLECTION OF GENETIC INFORMATION; APPLI-**  
21 **CATION TO ALL PLANS.**—Section 9802 of such Code is  
22 amended by redesignating subsection (c) as subsection (f)  
23 and by inserting after subsection (b) the following new  
24 subsections:

25          “(c) **GENETIC TESTING.**—

1           “(1) LIMITATION ON REQUESTING OR REQUIR-  
2           ING GENETIC TESTING.—A group health plan may  
3           not request or require an individual or a family  
4           member of such individual to undergo a genetic test.

5           “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
6           shall not be construed to limit the authority of a  
7           health care professional who is providing health care  
8           services to an individual to request that such indi-  
9           vidual undergo a genetic test.

10          “(3) RULE OF CONSTRUCTION REGARDING PAY-  
11          MENT.—

12                 “(A) IN GENERAL.—Nothing in paragraph  
13                 (1) shall be construed to preclude a group  
14                 health plan from obtaining and using the re-  
15                 sults of a genetic test in making a determina-  
16                 tion regarding payment (as such term is defined  
17                 for the purposes of applying the regulations  
18                 promulgated by the Secretary of Health and  
19                 Human Services under part C of title XI of the  
20                 Social Security Act and section 264 of the  
21                 Health Insurance Portability and Accountability  
22                 Act of 1996, as may be revised from time to  
23                 time) consistent with subsection (a).

24                 “(B) LIMITATION.—For purposes of sub-  
25                 paragraph (A), a group health plan may re-



1           quest only the minimum amount of information  
2           necessary to accomplish the intended purpose.

3           “(4) RESEARCH EXCEPTION.—Notwithstanding  
4           paragraph (1), a group health plan may request, but  
5           not require, that a participant or beneficiary under-  
6           go a genetic test if each of the following conditions  
7           is met:

8                   “(A) The request is made pursuant to re-  
9                   search that complies with part 46 of title 45,  
10                  Code of Federal Regulations, or equivalent Fed-  
11                  eral regulations, and any applicable State or  
12                  local law or regulations for the protection of  
13                  human subjects in research.

14                  “(B) The plan clearly indicates to each  
15                  participant or beneficiary, or in the case of a  
16                  minor child, to the legal guardian of such bene-  
17                  ficiary, to whom the request is made that—

18                          “(i) compliance with the request is  
19                          voluntary; and

20                          “(ii) non-compliance will have no ef-  
21                          fect on enrollment status or premium or  
22                          contribution amounts.

23                  “(C) No genetic information collected or  
24                  acquired under this paragraph shall be used for  
25                  underwriting purposes.

1           “(D) The plan notifies the Secretary in  
2           writing that the plan is conducting activities  
3           pursuant to the exception provided for under  
4           this paragraph, including a description of the  
5           activities conducted.

6           “(E) The plan complies with such other  
7           conditions as the Secretary may by regulation  
8           require for activities conducted under this para-  
9           graph.

10          “(d) PROHIBITION ON COLLECTION OF GENETIC IN-  
11          FORMATION.—

12           “(1) IN GENERAL.—A group health plan shall  
13           not request, require, or purchase genetic information  
14           for underwriting purposes (as defined in section  
15           9832).

16           “(2) PROHIBITION ON COLLECTION OF GE-  
17           NETIC INFORMATION PRIOR TO ENROLLMENT.—A  
18           group health plan shall not request, require, or pur-  
19           chase genetic information with respect to any indi-  
20           vidual prior to such individual’s enrollment under  
21           the plan or in connection with such enrollment.

22           “(3) INCIDENTAL COLLECTION.—If a group  
23           health plan obtains genetic information incidental to  
24           the requesting, requiring, or purchasing of other in-  
25           formation concerning any individual, such request,

1 requirement, or purchase shall not be considered a  
2 violation of paragraph (2) if such request, require-  
3 ment, or purchase is not in violation of paragraph  
4 (1).

5 “(e) APPLICATION TO ALL PLANS.—The provisions  
6 of subsections (a)(1)(F), (b)(3), (c), and (d) and sub-  
7 section (b)(1) and section 9801 with respect to genetic in-  
8 formation, shall apply to group health plans without re-  
9 gard to section 9831(a)(2).”.

10 (c) APPLICATION TO GENETIC INFORMATION OF A  
11 FETUS OR EMBRYO.—Such section is further amended by  
12 adding at the end the following:

13 “(f) GENETIC INFORMATION OF A FETUS OR EM-  
14 BRYO.—Any reference in this chapter to genetic informa-  
15 tion concerning an individual or family member of an indi-  
16 vidual shall—

17 “(1) with respect to such an individual or fam-  
18 ily member of an individual who is a pregnant  
19 woman, include genetic information of any fetus car-  
20 ried by such pregnant woman; and

21 “(2) with respect to an individual or family  
22 member utilizing an assisted reproductive tech-  
23 nology, include genetic information of any embryo le-  
24 gally held by the individual or family member.”.

1 (d) DEFINITIONS.—Subsection (d) of section 9832 of  
2 such Code is amended by adding at the end the following:

3 “(6) FAMILY MEMBER.—The term ‘family  
4 member’ means, with respect to any individual—

5 “(A) a dependent (as such term is used for  
6 purposes of section 9801(f)(2)) of such indi-  
7 vidual, and

8 “(B) any other individual who is a first-de-  
9 gree, second-degree, third-degree, or fourth-de-  
10 gree relative of such individual or of an indi-  
11 vidual described in subparagraph (A).

12 “(7) GENETIC INFORMATION.—

13 “(A) IN GENERAL.—The term ‘genetic in-  
14 formation’ means, with respect to any indi-  
15 vidual, information about—

16 “(i) such individual’s genetic tests,

17 “(ii) the genetic tests of family mem-  
18 bers of such individual, and

19 “(iii) subject to subparagraph (D),  
20 the manifestation of a disease or disorder  
21 in family members of such individual.

22 “(B) INCLUSION OF GENETIC SERVICES.—  
23 Such term includes, with respect to any indi-  
24 vidual, any request for, or receipt of, genetic  
25 services (including genetic services received pur-

1 suant to participation in clinical research) by  
2 such individual or any family member of such  
3 individual.

4 “(C) EXCLUSIONS.—The term ‘genetic in-  
5 formation’ shall not include information about  
6 the sex or age of any individual.

7 “(D) APPLICATION TO FAMILY MEMBERS  
8 COVERED UNDER SAME PLAN.—Information de-  
9 scribed in clause (iii) of subparagraph (A) shall  
10 not be treated as genetic information to the ex-  
11 tent that such information is taken into account  
12 only with respect to the individual in which  
13 such disease or disorder is manifested and not  
14 as genetic information with respect to any other  
15 individual.

16 “(8) GENETIC TEST.—

17 “(A) IN GENERAL.—The term ‘genetic  
18 test’ means an analysis of human DNA, RNA,  
19 chromosomes, proteins, or metabolites, that de-  
20 tects genotypes, mutations, or chromosomal  
21 changes.

22 “(B) EXCEPTIONS.—The term ‘genetic  
23 test’ does not mean—

1           “(i) an analysis of proteins or metabo-  
2           lites that does not detect genotypes,  
3           mutations, or chromosomal changes, or

4           “(ii) an analysis of proteins or me-  
5           tabolites that is directly related to a mani-  
6           fested disease, disorder, or pathological  
7           condition that could reasonably be detected  
8           by a health care professional with appro-  
9           priate training and expertise in the field of  
10          medicine involved.

11          “(9) GENETIC SERVICES.—The term ‘genetic  
12          services’ means—

13               “(A) a genetic test;

14               “(B) genetic counseling (including obtain-  
15               ing, interpreting, or assessing genetic informa-  
16               tion); or

17               “(C) genetic education.

18          “(10) UNDERWRITING PURPOSES.—The term  
19          ‘underwriting purposes’ means, with respect to any  
20          group health plan ,or health insurance coverage of-  
21          fered in connection with a group health plan—

22               “(A) rules for, or determination of, eligi-  
23               bility (including enrollment and continued eligi-  
24               bility) for benefits under the plan or coverage;

1           “(B) the computation of premium or con-  
2           tribution amounts under the plan or coverage;

3           “(C) the application of any pre-existing  
4           condition exclusion under the plan or coverage;  
5           and

6           “(D) other activities related to the cre-  
7           ation, renewal, or replacement of a contract of  
8           health insurance or health benefits.”.

9           (e) ENFORCEMENT.—

10           (1) IN GENERAL.—Subchapter C of chapter  
11           100 of the Internal Revenue Code of 1986 (relating  
12           to general provisions) is amended by adding at the  
13           end the following new section:

14           **“SEC. 9834. ENFORCEMENT.**

15           “For the imposition of tax on any failure of a group  
16           health plan to meet the requirements of this chapter, see  
17           section 4980D.”.

18           (2) CONFORMING AMENDMENT.—The table of  
19           sections for subchapter C of chapter 100 of such  
20           Code is amended by adding at the end the following  
21           new item:

“Sec. 9834. Enforcement.”.

22           (f) REGULATIONS AND EFFECTIVE DATE.—

23           (1) REGULATIONS.—The Secretary of the  
24           Treasury shall issue final regulations or other guid-  
25           ance not later than 1 year after the date of the en-

1 actment of this Act to carry out the amendments  
2 made by this section.

3 (2) EFFECTIVE DATE.—The amendments made  
4 by this section shall apply with respect to group  
5 health plans for plan years beginning after the date  
6 that is 18 months after the date of the enactment  
7 of this Act.

8 **SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-**  
9 **CURITY ACT RELATING TO MEDIGAP.**

10 (a) NONDISCRIMINATION.—Section 1882(s)(2) of the  
11 Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended  
12 by adding at the end the following:

13 “(E) An issuer of a medicare supplemental  
14 policy shall not deny or condition the issuance  
15 or effectiveness of the policy (including the im-  
16 position of any exclusion of benefits under the  
17 policy based on a pre-existing condition) and  
18 shall not discriminate in the pricing of the pol-  
19 icy (including the adjustment of premium rates)  
20 of an individual on the basis of the genetic in-  
21 formation with respect to such individual.”.

22 (b) LIMITATIONS ON GENETIC TESTING AND GE-  
23 NETIC INFORMATION.—



1           (1) IN GENERAL.—Section 1882 of the Social  
2           Security Act (42 U.S.C. 1395ss) is amended by add-  
3           ing at the end the following:

4           “(x) LIMITATIONS ON GENETIC TESTING AND IN-  
5           FORMATION.—

6           “(1) GENETIC TESTING.—

7           “(A) LIMITATION ON REQUESTING OR RE-  
8           QUIRING GENETIC TESTING.—An issuer of a  
9           medicare supplemental policy shall not request  
10          or require an individual or a family member of  
11          such individual to undergo a genetic test.

12          “(B) RULE OF CONSTRUCTION.—Subpara-  
13          graph (A) shall not be construed to limit the  
14          authority of a health care professional who is  
15          providing health care services to an individual  
16          to request that such individual undergo a ge-  
17          netic test.

18          “(C) RULE OF CONSTRUCTION REGARDING  
19          PAYMENT.—

20          “(i) IN GENERAL.—Nothing in sub-  
21          paragraph (A) shall be construed to pre-  
22          clude an issuer of a medicare supplemental  
23          policy from obtaining and using the results  
24          of a genetic test in making a determination  
25          regarding payment (as such term is de-

1            fined for the purposes of applying the reg-  
2            ulations promulgated by the Secretary  
3            under part C of title XI and section 264  
4            of the Health Insurance Portability and  
5            Accountability Act of 1996, as may be re-  
6            vised from time to time) consistent with  
7            subsection (s)(2)(E).

8            “(ii) LIMITATION.—For purposes of  
9            clause (i), an issuer of a medicare supple-  
10            mental policy may request only the min-  
11            imum amount of information necessary to  
12            accomplish the intended purpose.

13            “(D) RESEARCH EXCEPTION.—Notwith-  
14            standing subparagraph (A), an issuer of a  
15            medicare supplemental policy may request, but  
16            not require, that an individual or a family mem-  
17            ber of such individual undergo a genetic test if  
18            each of the following conditions is met:

19            “(i) The request is made pursuant to  
20            research that complies with part 46 of title  
21            45, Code of Federal Regulations, or equiv-  
22            alent Federal regulations, and any applica-  
23            ble State or local law or regulations for the  
24            protection of human subjects in research.

1           “(ii) The issuer clearly indicates to  
2 each individual, or in the case of a minor  
3 child, to the legal guardian of such child,  
4 to whom the request is made that—

5                   “(I) compliance with the request  
6 is voluntary; and

7                   “(II) non-compliance will have no  
8 effect on enrollment status or pre-  
9 mium or contribution amounts.

10           “(iii) No genetic information collected  
11 or acquired under this subparagraph shall  
12 be used for underwriting, determination of  
13 eligibility to enroll or maintain enrollment  
14 status, premium rating, or the creation, re-  
15 newal, or replacement of a plan, contract,  
16 or coverage for health insurance or health  
17 benefits.

18           “(iv) The issuer notifies the Secretary  
19 in writing that the issuer is conducting ac-  
20 tivities pursuant to the exception provided  
21 for under this subparagraph, including a  
22 description of the activities conducted.

23           “(v) The issuer complies with such  
24 other conditions as the Secretary may by

1 regulation require for activities conducted  
2 under this subparagraph.

3 “(2) PROHIBITION ON COLLECTION OF GE-  
4 NETIC INFORMATION.—

5 “(A) IN GENERAL.—An issuer of a medi-  
6 care supplemental policy shall not request, re-  
7 quire, or purchase genetic information for un-  
8 derwriting purposes (as defined in paragraph  
9 (3)).

10 “(B) PROHIBITION ON COLLECTION OF  
11 GENETIC INFORMATION PRIOR TO ENROLL-  
12 MENT.—An issuer of a medicare supplemental  
13 policy shall not request, require, or purchase ge-  
14 netic information with respect to any individual  
15 prior to such individual’s enrollment under the  
16 policy in connection with such enrollment.

17 “(C) INCIDENTAL COLLECTION.—If an  
18 issuer of a medicare supplemental policy obtains  
19 genetic information incidental to the requesting,  
20 requiring, or purchasing of other information  
21 concerning any individual, such request, re-  
22 quirement, or purchase shall not be considered  
23 a violation of subparagraph (B) if such request,  
24 requirement, or purchase is not in violation of  
25 subparagraph (A).

1           “(3) DEFINITIONS.—In this subsection:

2           “(A) FAMILY MEMBER.—The term ‘family  
3 member’ means with respect to an individual,  
4 any other individual who is a first-degree, sec-  
5 ond-degree, third-degree, or fourth-degree rel-  
6 ative of such individual.

7           “(B) GENETIC INFORMATION.—

8           “(i) IN GENERAL.—The term ‘genetic  
9 information’ means, with respect to any in-  
10 dividual, information about—

11                   “(I) such individual’s genetic  
12 tests,

13                   “(II) the genetic tests of family  
14 members of such individual, and

15                   “(III) subject to clause (iv), the  
16 manifestation of a disease or disorder  
17 in family members of such individual.

18           “(ii) INCLUSION OF GENETIC SERV-  
19 ICES.—Such term includes, with respect to  
20 any individual, any request for, or receipt  
21 of, genetic services (including genetic serv-  
22 ices received pursuant to participation in  
23 clinical research) by such individual or any  
24 family member of such individual.

1           “(iii) EXCLUSIONS.—The term ‘ge-  
2           netic information’ shall not include infor-  
3           mation about the sex or age of any indi-  
4           vidual.

5           “(C) GENETIC TEST.—

6           “(i) IN GENERAL.—The term ‘genetic  
7           test’ means an analysis of human DNA,  
8           RNA, chromosomes, proteins, or metabo-  
9           lites, that detects genotypes, mutations, or  
10          chromosomal changes.

11          “(ii) EXCEPTIONS.—The term ‘genetic  
12          test’ does not mean—

13                 “(I) an analysis of proteins or  
14                 metabolites that does not detect  
15                 genotypes, mutations, or chromosomal  
16                 changes; or

17                 “(II) an analysis of proteins or  
18                 metabolites that is directly related to  
19                 a manifested disease, disorder, or  
20                 pathological condition that could rea-  
21                 sonably be detected by a health care  
22                 professional with appropriate training  
23                 and expertise in the field of medicine  
24                 involved.

1           “(D) GENETIC SERVICES.—The term ‘ge-  
2           netic services’ means—

3                   “(i) a genetic test;

4                   “(ii) genetic counseling (including ob-  
5                   taining, interpreting, or assessing genetic  
6                   information); or

7                   “(iii) genetic education.

8           “(E) UNDERWRITING PURPOSES.—The  
9           term ‘underwriting purposes’ means, with re-  
10          spect to a medicare supplemental policy—

11                   “(i) rules for, or determination of, eli-  
12                   gibility (including enrollment and contin-  
13                   ued eligibility) for benefits under the pol-  
14                   icy;

15                   “(ii) the computation of premium or  
16                   contribution amounts under the policy;

17                   “(iii) the application of any pre-exist-  
18                   ing condition exclusion under the policy;  
19                   and

20                   “(iv) other activities related to the  
21                   creation, renewal, or replacement of a con-  
22                   tract of health insurance or health bene-  
23                   fits.

24           “(F) ISSUER OF A MEDICARE SUPPLE-  
25          MENTAL POLICY.—The term ‘issuer of a medi-

1 care supplemental policy' includes a third-party  
2 administrator or other person acting for or on  
3 behalf of such issuer.”.

4 (2) APPLICATION TO GENETIC INFORMATION OF  
5 A FETUS OR EMBRYO.—Section 1882(x) of such Act,  
6 as added by paragraph (1), is further amended by  
7 adding at the end the following:

8 “(4) GENETIC INFORMATION OF A FETUS OR  
9 EMBRYO.—Any reference in this section to genetic  
10 information concerning an individual or family mem-  
11 ber of an individual shall—

12 “(A) with respect to such an individual or  
13 family member of an individual who is a preg-  
14 nant woman, include genetic information of any  
15 fetus carried by such pregnant woman; and

16 “(B) with respect to an individual or fam-  
17 ily member utilizing an assisted reproductive  
18 technology, include genetic information of any  
19 embryo legally held by the individual or family  
20 member.”.

21 (3) CONFORMING AMENDMENT.—Section  
22 1882(o) of the Social Security Act (42 U.S.C.  
23 1395ss(o)) is amended by adding at the end the fol-  
24 lowing:



1           “(4) The issuer of the medicare supplemental  
2           policy complies with subsection (s)(2)(E) and sub-  
3           section (x).”.

4           (c) EFFECTIVE DATE.—The amendments made by  
5           this section shall apply with respect to an issuer of a medi-  
6           care supplemental policy for policy years beginning on or  
7           after the date that is 18 months after the date of enact-  
8           ment of this Act.

9           (d) TRANSITION PROVISIONS.—

10           (1) IN GENERAL.—If the Secretary of Health  
11           and Human Services identifies a State as requiring  
12           a change to its statutes or regulations to conform its  
13           regulatory program to the changes made by this sec-  
14           tion, the State regulatory program shall not be con-  
15           sidered to be out of compliance with the require-  
16           ments of section 1882 of the Social Security Act due  
17           solely to failure to make such change until the date  
18           specified in paragraph (4).

19           (2) NAIC STANDARDS.—If, not later than June  
20           30, 2008, the National Association of Insurance  
21           Commissioners (in this subsection referred to as the  
22           “NAIC”) modifies its NAIC Model Regulation relat-  
23           ing to section 1882 of the Social Security Act (re-  
24           ferred to in such section as the 1991 NAIC Model  
25           Regulation, as subsequently modified) to conform to

1 the amendments made by this section, such revised  
2 regulation incorporating the modifications shall be  
3 considered to be the applicable NAIC model regula-  
4 tion (including the revised NAIC model regulation  
5 and the 1991 NAIC Model Regulation) for the pur-  
6 poses of such section.

7 (3) SECRETARY STANDARDS.—If the NAIC  
8 does not make the modifications described in para-  
9 graph (2) within the period specified in such para-  
10 graph, the Secretary of Health and Human Services  
11 shall, not later than October 1, 2008, make the  
12 modifications described in such paragraph and such  
13 revised regulation incorporating the modifications  
14 shall be considered to be the appropriate regulation  
15 for the purposes of such section.

16 (4) DATE SPECIFIED.—

17 (A) IN GENERAL.—Subject to subpara-  
18 graph (B), the date specified in this paragraph  
19 for a State is the earlier of—

20 (i) the date the State changes its stat-  
21 utes or regulations to conform its regu-  
22 latory program to the changes made by  
23 this section, or

24 (ii) October 1, 2008.

1 (B) ADDITIONAL LEGISLATIVE ACTION RE-  
2 QUIRED.—In the case of a State which the Sec-  
3 retary identifies as—

4 (i) requiring State legislation (other  
5 than legislation appropriating funds) to  
6 conform its regulatory program to the  
7 changes made in this section, but

8 (ii) having a legislature which is not  
9 scheduled to meet in 2008 in a legislative  
10 session in which such legislation may be  
11 considered, the date specified in this para-  
12 graph is the first day of the first calendar  
13 quarter beginning after the close of the  
14 first legislative session of the State legisla-  
15 ture that begins on or after July 1, 2008.  
16 For purposes of the previous sentence, in  
17 the case of a State that has a 2-year legis-  
18 lative session, each year of such session  
19 shall be deemed to be a separate regular  
20 session of the State legislature.

21 **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

22 (a) IN GENERAL.—Part C of title XI of the Social  
23 Security Act is amended by adding at the end the fol-  
24 lowing new section:

1 “APPLICATION OF HIPAA REGULATIONS TO GENETIC  
2 INFORMATION

3 “SEC. 1180. (a) IN GENERAL.—The Secretary shall  
4 revise the HIPAA privacy regulation (as defined in sub-  
5 section (b)) so it is consistent with the following:

6 “(1) Genetic information shall be treated as  
7 health information described in section 1171(4)(B).

8 “(2) The use or disclosure by a covered entity  
9 that is a group health plan, health insurance issuer  
10 that issues health insurance coverage, or issuer of a  
11 medicare supplemental policy of protected health in-  
12 formation that is genetic information about an indi-  
13 vidual for underwriting purposes under the group  
14 health plan, health insurance coverage, or medicare  
15 supplemental policy shall not be a permitted use or  
16 disclosure.

17 “(b) DEFINITIONS.—For purposes of this section:

18 “(1) GENETIC INFORMATION; GENETIC TEST;  
19 FAMILY MEMBER.—The terms ‘genetic information’,  
20 ‘genetic test’, and ‘family member’ have the mean-  
21 ings given such terms in section 2791 of the Public  
22 Health Service Act (42 U.S.C. 300gg–91), as  
23 amended by the Genetic Information Nondiscrimina-  
24 tion Act of 2008.

1           “(2) GROUP HEALTH PLAN; HEALTH INSUR-  
2           ANCE COVERAGE; MEDICARE SUPPLEMENTAL POL-  
3           ICY.—The terms ‘group health plan’ and ‘health in-  
4           surance coverage’ have the meanings given such  
5           terms under section 2791 of the Public Health Serv-  
6           ice Act (42 U.S.C. 300gg–91), and the term ‘medi-  
7           care supplemental policy’ has the meaning given  
8           such term in section 1882(g).

9           “(3) HIPAA PRIVACY REGULATION.—The term  
10          ‘HIPAA privacy regulation’ means the regulations  
11          promulgated by the Secretary under this part and  
12          section 264 of the Health Insurance Portability and  
13          Accountability Act of 1996 (42 U.S.C. 1320d–2  
14          note).

15          “(4) UNDERWRITING PURPOSES.—The term  
16          ‘underwriting purposes’ means, with respect to a  
17          group health plan, health insurance coverage, or a  
18          medicare supplemental policy—

19                 “(A) rules for eligibility (including enroll-  
20                 ment and continued eligibility) for, or deter-  
21                 mination of, benefits under the plan, coverage,  
22                 or policy;

23                 “(B) the computation of premium or con-  
24                 tribution amounts under the plan, coverage, or  
25                 policy;

1           “(C) the application of any pre-existing  
2           condition exclusion under the plan, coverage, or  
3           policy; and

4           “(D) other activities related to the cre-  
5           ation, renewal, or replacement of a contract of  
6           health insurance or health benefits.

7           “(c) PROCEDURE.—The revisions under subsection  
8 (a) shall be made by notice in the Federal Register pub-  
9 lished not later than 60 days after the date of the enact-  
10 ment of this section and shall be effective upon publica-  
11 tion, without opportunity for any prior public comment,  
12 but may be revised, consistent with this section, after op-  
13 portunity for public comment.

14           “(d) ENFORCEMENT.—In addition to any other sanc-  
15 tions or remedies that may be available under law, a cov-  
16 ered entity that is a group health plan, health insurance  
17 issuer, or issuer of a medicare supplemental policy and  
18 that violates the HIPAA privacy regulation (as revised  
19 under subsection (a) or otherwise) with respect to the use  
20 or disclosure of genetic information shall be subject to the  
21 penalties described in sections 1176 and 1177 in the same  
22 manner and to the same extent that such penalties apply  
23 to violations of this part.”.

24           (b) REGULATIONS; EFFECTIVE DATE.—

1           (1) REGULATIONS.—Not later than 1 year after  
2 the date of the enactment of this Act, the Secretary  
3 of Health and Human Services shall issue final reg-  
4 ulations to carry out the revision required by section  
5 1180(a) of the Social Security Act, as added by sub-  
6 section (a). The Secretary has the sole authority to  
7 promulgate such regulations, but shall promulgate  
8 such regulations in consultation with the Secretaries  
9 of Labor and the Treasury.

10           (2) EFFECTIVE DATE.—The amendment made  
11 by subsection (a) shall take effect on the date that  
12 is 18 months after the date of the enactment of this  
13 Act.

14 **SEC. 106. ASSURING COORDINATION.**

15       Except as provided in section 105(b)(1), the Sec-  
16 retary of Health and Human Services, the Secretary of  
17 Labor, and the Secretary of the Treasury shall ensure,  
18 through the execution of an interagency memorandum of  
19 understanding among such Secretaries, that—

20           (1) regulations, rulings, and interpretations  
21 issued by such Secretaries relating to the same mat-  
22 ter over which two or more such Secretaries have re-  
23 sponsibility under this title (and the amendments  
24 made by this title) are administered so as to have  
25 the same effect at all times; and

1           (2) coordination of policies relating to enforcing  
2           the same requirements through such Secretaries in  
3           order to have a coordinated enforcement strategy  
4           that avoids duplication of enforcement efforts and  
5           assigns priorities in enforcement.

6       **TITLE    II—PROHIBITING    EM-**  
7       **PLOYMENT   DISCRIMINATION**  
8       **ON   THE   BASIS   OF   GENETIC**  
9       **INFORMATION**

10   **SEC. 201. DEFINITIONS.**

11       In this title:

12           (1) COMMISSION.—The term “Commission”  
13           means the Equal Employment Opportunity Commis-  
14           sion as created by section 705 of the Civil Rights  
15           Act of 1964 (42 U.S.C. 2000e–4).

16           (2) EMPLOYEE; EMPLOYER; EMPLOYMENT  
17           AGENCY; LABOR ORGANIZATION; MEMBER.—

18           (A) IN GENERAL.—The term “employee”  
19           means—

20                   (i) an employee (including an appli-  
21                   cant), as defined in section 701(f) of the  
22                   Civil Rights Act of 1964 (42 U.S.C.  
23                   2000e(f));

24                   (ii) a State employee (including an ap-  
25                   plicant) described in section 304(a) of the



1 Government Employee Rights Act of 1991  
2 (42 U.S.C. 2000e–16c(a));

3 (iii) a covered employee (including an  
4 applicant), as defined in section 101 of the  
5 Congressional Accountability Act of 1995  
6 (2 U.S.C. 1301);

7 (iv) a covered employee (including an  
8 applicant), as defined in section 411(e) of  
9 title 3, United States Code; or

10 (v) an employee or applicant to which  
11 section 717(a) of the Civil Rights Act of  
12 1964 (42 U.S.C. 2000e–16(a)) applies.

13 (B) EMPLOYER.—The term “employer”  
14 means—

15 (i) an employer (as defined in section  
16 701(b) of the Civil Rights Act of 1964 (42  
17 U.S.C. 2000e(b)));

18 (ii) an entity employing a State em-  
19 ployee described in section 304(a) of the  
20 Government Employee Rights Act of 1991;

21 (iii) an employing office, as defined in  
22 section 101 of the Congressional Account-  
23 ability Act of 1995;

1 (iv) an employing office, as defined in  
2 section 411(c) of title 3, United States  
3 Code; or

4 (v) an entity to which section 717(a)  
5 of the Civil Rights Act of 1964 applies.

6 (C) EMPLOYMENT AGENCY; LABOR ORGA-  
7 NIZATION.—The terms “employment agency”  
8 and “labor organization” have the meanings  
9 given the terms in section 701 of the Civil  
10 Rights Act of 1964 (42 U.S.C. 2000e).

11 (D) MEMBER.—The term “member”, with  
12 respect to a labor organization, includes an ap-  
13 plicant for membership in a labor organization.

14 (3) FAMILY MEMBER.—The term “family mem-  
15 ber” means, with respect to an individual—

16 (A) a dependent (as such term is used for  
17 purposes of section 701(f)(2) of the Employee  
18 Retirement Income Security Act of 1974) of  
19 such individual, and

20 (B) any other individual who is a first-de-  
21 gree, second-degree, third-degree, or fourth-de-  
22 gree relative of such individual or of an indi-  
23 vidual described in subparagraph (A).

24 (4) GENETIC INFORMATION.—

1 (A) IN GENERAL.—The term “genetic in-  
2 formation” means, with respect to any indi-  
3 vidual, information about—

4 (i) such individual’s genetic tests,

5 (ii) the genetic tests of family mem-  
6 bers of such individual, and

7 (iii) subject to subparagraph (D), the  
8 manifestation of a disease or disorder in  
9 family members of such individual.

10 (B) INCLUSION OF GENETIC SERVICES.—

11 Such term includes, with respect to any indi-  
12 vidual, any request for, or receipt of, genetic  
13 services (including genetic services received pur-  
14 suant to participation in clinical research) by  
15 such individual or any family member of such  
16 individual.

17 (C) EXCLUSIONS.—The term “genetic in-  
18 formation” shall not include information about  
19 the sex or age of any individual.

20 (5) GENETIC MONITORING.—The term “genetic  
21 monitoring” means the periodic examination of em-  
22 ployees to evaluate acquired modifications to their  
23 genetic material, such as chromosomal damage or  
24 evidence of increased occurrence of mutations, that  
25 may have developed in the course of employment due

1 to exposure to toxic substances in the workplace, in  
2 order to identify, evaluate, and respond to the ef-  
3 fects of or control adverse environmental exposures  
4 in the workplace.

5 (6) GENETIC SERVICES.—The term “genetic  
6 services” means—

7 (A) a genetic test;

8 (B) genetic counseling (including obtain-  
9 ing, interpreting, or assessing genetic informa-  
10 tion); or

11 (C) genetic education.

12 (7) GENETIC TEST.—

13 (A) IN GENERAL.—The term “genetic  
14 test” means an analysis of human DNA, RNA,  
15 chromosomes, proteins, or metabolites, that de-  
16 tects genotypes, mutations, or chromosomal  
17 changes.

18 (B) EXCEPTIONS.—The term “genetic  
19 test” does not mean an analysis of proteins or  
20 metabolites that does not detect genotypes,  
21 mutations, or chromosomal changes.

22 **SEC. 202. EMPLOYER PRACTICES.**

23 (a) DISCRIMINATION BASED ON GENETIC INFORMA-  
24 TION.—It shall be an unlawful employment practice for  
25 an employer—

1           (1) to fail or refuse to hire, or to discharge, any  
2           employee, or otherwise to discriminate against any  
3           employee with respect to the compensation, terms,  
4           conditions, or privileges of employment of the em-  
5           ployee, because of genetic information with respect  
6           to the employee; or

7           (2) to limit, segregate, or classify the employees  
8           of the employer in any way that would deprive or  
9           tend to deprive any employee of employment oppor-  
10          tunities or otherwise adversely affect the status of  
11          the employee as an employee, because of genetic in-  
12          formation with respect to the employee.

13          (b) ACQUISITION OF GENETIC INFORMATION.—It  
14          shall be an unlawful employment practice for an employer  
15          to request, require, or purchase genetic information with  
16          respect to an employee or a family member of the em-  
17          ployee except—

18                (1) where an employer inadvertently requests or  
19                requires family medical history of the employee or  
20                family member of the employee;

21                (2) where—

22                        (A) health or genetic services are offered  
23                        by the employer, including such services offered  
24                        as part of a bona fide wellness program;

1 (B) the employee provides prior, knowing,  
2 voluntary, and written authorization;

3 (C) only the employee (or family member  
4 if the family member is receiving genetic serv-  
5 ices) and the licensed health care professional  
6 or board certified genetic counselor involved in  
7 providing such services receive individually iden-  
8 tifiable information concerning the results of  
9 such services; and

10 (D) any individually identifiable genetic in-  
11 formation provided under subparagraph (C) in  
12 connection with the services provided under  
13 subparagraph (A) is only available for purposes  
14 of such services and shall not be disclosed to  
15 the employer except in aggregate terms that do  
16 not disclose the identity of specific employees;

17 (3) where an employer requests or requires  
18 family medical history from the employee to comply  
19 with the certification provisions of section 103 of the  
20 Family and Medical Leave Act of 1993 (29 U.S.C.  
21 2613) or such requirements under State family and  
22 medical leave laws;

23 (4) where an employer purchases documents  
24 that are commercially and publicly available (includ-  
25 ing newspapers, magazines, periodicals, and books,

1 but not including medical databases or court  
2 records) that include family medical history;

3 (5) where the information involved is to be used  
4 for genetic monitoring of the biological effects of  
5 toxic substances in the workplace, but only if—

6 (A) the employer provides written notice of  
7 the genetic monitoring to the employee;

8 (B)(i) the employee provides prior, know-  
9 ing, voluntary, and written authorization; or

10 (ii) the genetic monitoring is required by  
11 Federal or State law;

12 (C) the employee is informed of individual  
13 monitoring results;

14 (D) the monitoring is in compliance with—

15 (i) any Federal genetic monitoring  
16 regulations, including any such regulations  
17 that may be promulgated by the Secretary  
18 of Labor pursuant to the Occupational  
19 Safety and Health Act of 1970 (29 U.S.C.  
20 651 et seq.), the Federal Mine Safety and  
21 Health Act of 1977 (30 U.S.C. 801 et  
22 seq.), or the Atomic Energy Act of 1954  
23 (42 U.S.C. 2011 et seq.); or

24 (ii) State genetic monitoring regula-  
25 tions, in the case of a State that is imple-

1           menting genetic monitoring regulations  
2           under the authority of the Occupational  
3           Safety and Health Act of 1970 (29 U.S.C.  
4           651 et seq.); and

5           (E) the employer, excluding any licensed  
6           health care professional or board certified ge-  
7           netic counselor that is involved in the genetic  
8           monitoring program, receives the results of the  
9           monitoring only in aggregate terms that do not  
10          disclose the identity of specific employees; or

11          (6) where the employer conducts DNA analysis  
12          for law enforcement purposes as a forensic labora-  
13          tory, includes such analysis in the Combined DNA  
14          Index System pursuant to section 210304 of the  
15          Violent Crime Control and Law Enforcement Act of  
16          1994 (42 U.S.C. 14132), and requests or requires  
17          genetic information of such employer's employees,  
18          but only to the extent that such genetic information  
19          is used for analysis of DNA identification markers  
20          for quality control to detect sample contamination.

21          (c) PRESERVATION OF PROTECTIONS.—In the case  
22          of information to which any of paragraphs (1) through  
23          (6) of subsection (b) applies, such information may not  
24          be used in violation of paragraph (1) or (2) of subsection



1 (a) or treated or disclosed in a manner that violates sec-  
2 tion 206.

3 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

4 (a) **DISCRIMINATION BASED ON GENETIC INFORMA-**  
5 **TION.**—It shall be an unlawful employment practice for  
6 an employment agency—

7 (1) to fail or refuse to refer for employment, or  
8 otherwise to discriminate against, any individual be-  
9 cause of genetic information with respect to the indi-  
10 vidual;

11 (2) to limit, segregate, or classify individuals or  
12 fail or refuse to refer for employment any individual  
13 in any way that would deprive or tend to deprive any  
14 individual of employment opportunities, or otherwise  
15 adversely affect the status of the individual as an  
16 employee, because of genetic information with re-  
17 spect to the individual; or

18 (3) to cause or attempt to cause an employer to  
19 discriminate against an individual in violation of this  
20 title.

21 (b) **ACQUISITION OF GENETIC INFORMATION.**—It  
22 shall be an unlawful employment practice for an employ-  
23 ment agency to request, require, or purchase genetic infor-  
24 mation with respect to an individual or a family member  
25 of the individual except—

1           (1) where an employment agency inadvertently  
2 requests or requires family medical history of the in-  
3 dividual or family member of the individual;

4           (2) where—

5                 (A) health or genetic services are offered  
6 by the employment agency, including such serv-  
7 ices offered as part of a bona fide wellness pro-  
8 gram;

9                 (B) the individual provides prior, knowing,  
10 voluntary, and written authorization;

11                (C) only the individual (or family member  
12 if the family member is receiving genetic serv-  
13 ices) and the licensed health care professional  
14 or board certified genetic counselor involved in  
15 providing such services receive individually iden-  
16 tifiable information concerning the results of  
17 such services; and

18                (D) any individually identifiable genetic in-  
19 formation provided under subparagraph (C) in  
20 connection with the services provided under  
21 subparagraph (A) is only available for purposes  
22 of such services and shall not be disclosed to  
23 the employment agency except in aggregate  
24 terms that do not disclose the identity of spe-  
25 cific individuals;

1           (3) where an employment agency requests or re-  
2           quires family medical history from the individual to  
3           comply with the certification provisions of section  
4           103 of the Family and Medical Leave Act of 1993  
5           (29 U.S.C. 2613) or such requirements under State  
6           family and medical leave laws;

7           (4) where an employment agency purchases  
8           documents that are commercially and publicly avail-  
9           able (including newspapers, magazines, periodicals,  
10          and books, but not including medical databases or  
11          court records) that include family medical history; or

12          (5) where the information involved is to be used  
13          for genetic monitoring of the biological effects of  
14          toxic substances in the workplace, but only if—

15                (A) the employment agency provides writ-  
16                ten notice of the genetic monitoring to the indi-  
17                vidual;

18                (B)(i) the individual provides prior, know-  
19                ing, voluntary, and written authorization; or

20                (ii) the genetic monitoring is required by  
21                Federal or State law;

22                (C) the individual is informed of individual  
23                monitoring results;

24                (D) the monitoring is in compliance with—

1 (i) any Federal genetic monitoring  
2 regulations, including any such regulations  
3 that may be promulgated by the Secretary  
4 of Labor pursuant to the Occupational  
5 Safety and Health Act of 1970 (29 U.S.C.  
6 651 et seq.), the Federal Mine Safety and  
7 Health Act of 1977 (30 U.S.C. 801 et  
8 seq.), or the Atomic Energy Act of 1954  
9 (42 U.S.C. 2011 et seq.); or

10 (ii) State genetic monitoring regula-  
11 tions, in the case of a State that is imple-  
12 menting genetic monitoring regulations  
13 under the authority of the Occupational  
14 Safety and Health Act of 1970 (29 U.S.C.  
15 651 et seq.); and

16 (E) the employment agency, excluding any  
17 licensed health care professional or board cer-  
18 tified genetic counselor that is involved in the  
19 genetic monitoring program, receives the results  
20 of the monitoring only in aggregate terms that  
21 do not disclose the identity of specific individ-  
22 uals.

23 (c) PRESERVATION OF PROTECTIONS.—In the case  
24 of information to which any of paragraphs (1) through  
25 (5) of subsection (b) applies, such information may not

1 be used in violation of paragraph (1), (2), or (3) of sub-  
2 section (a) or treated or disclosed in a manner that vio-  
3 lates section 206.

4 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

5 (a) **DISCRIMINATION BASED ON GENETIC INFORMA-**  
6 **TION.**—It shall be an unlawful employment practice for  
7 a labor organization—

8 (1) to exclude or to expel from the membership  
9 of the organization, or otherwise to discriminate  
10 against, any member because of genetic information  
11 with respect to the member;

12 (2) to limit, segregate, or classify the members  
13 of the organization, or fail or refuse to refer for em-  
14 ployment any member, in any way that would de-  
15 prive or tend to deprive any member of employment  
16 opportunities, or otherwise adversely affect the sta-  
17 tus of the member as an employee, because of ge-  
18 netic information with respect to the member; or

19 (3) to cause or attempt to cause an employer to  
20 discriminate against a member in violation of this  
21 title.

22 (b) **ACQUISITION OF GENETIC INFORMATION.**—It  
23 shall be an unlawful employment practice for a labor orga-  
24 nization to request, require, or purchase genetic informa-

1 tion with respect to a member or a family member of the  
2 member except—

3 (1) where a labor organization inadvertently re-  
4 quests or requires family medical history of the  
5 member or family member of the member;

6 (2) where—

7 (A) health or genetic services are offered  
8 by the labor organization, including such serv-  
9 ices offered as part of a bona fide wellness pro-  
10 gram;

11 (B) the member provides prior, knowing,  
12 voluntary, and written authorization;

13 (C) only the member (or family member if  
14 the family member is receiving genetic services)  
15 and the licensed health care professional or  
16 board certified genetic counselor involved in  
17 providing such services receive individually iden-  
18 tifiable information concerning the results of  
19 such services; and

20 (D) any individually identifiable genetic in-  
21 formation provided under subparagraph (C) in  
22 connection with the services provided under  
23 subparagraph (A) is only available for purposes  
24 of such services and shall not be disclosed to  
25 the labor organization except in aggregate

1 terms that do not disclose the identity of spe-  
2 cific members;

3 (3) where a labor organization requests or re-  
4 quires family medical history from the members to  
5 comply with the certification provisions of section  
6 103 of the Family and Medical Leave Act of 1993  
7 (29 U.S.C. 2613) or such requirements under State  
8 family and medical leave laws;

9 (4) where a labor organization purchases docu-  
10 ments that are commercially and publicly available  
11 (including newspapers, magazines, periodicals, and  
12 books, but not including medical databases or court  
13 records) that include family medical history; or

14 (5) where the information involved is to be used  
15 for genetic monitoring of the biological effects of  
16 toxic substances in the workplace, but only if—

17 (A) the labor organization provides written  
18 notice of the genetic monitoring to the member;

19 (B)(i) the member provides prior, knowing,  
20 voluntary, and written authorization; or

21 (ii) the genetic monitoring is required by  
22 Federal or State law;

23 (C) the member is informed of individual  
24 monitoring results;

25 (D) the monitoring is in compliance with—

1 (i) any Federal genetic monitoring  
2 regulations, including any such regulations  
3 that may be promulgated by the Secretary  
4 of Labor pursuant to the Occupational  
5 Safety and Health Act of 1970 (29 U.S.C.  
6 651 et seq.), the Federal Mine Safety and  
7 Health Act of 1977 (30 U.S.C. 801 et  
8 seq.), or the Atomic Energy Act of 1954  
9 (42 U.S.C. 2011 et seq.); or

10 (ii) State genetic monitoring regula-  
11 tions, in the case of a State that is imple-  
12 menting genetic monitoring regulations  
13 under the authority of the Occupational  
14 Safety and Health Act of 1970 (29 U.S.C.  
15 651 et seq.); and

16 (E) the labor organization, excluding any  
17 licensed health care professional or board cer-  
18 tified genetic counselor that is involved in the  
19 genetic monitoring program, receives the results  
20 of the monitoring only in aggregate terms that  
21 do not disclose the identity of specific members.

22 (c) PRESERVATION OF PROTECTIONS.—In the case  
23 of information to which any of paragraphs (1) through  
24 (5) of subsection (b) applies, such information may not  
25 be used in violation of paragraph (1), (2), or (3) of sub-



1 section (a) or treated or disclosed in a manner that vio-  
2 lates section 206.

3 **SEC. 205. TRAINING PROGRAMS.**

4 (a) **DISCRIMINATION BASED ON GENETIC INFORMA-**  
5 **TION.**—It shall be an unlawful employment practice for  
6 any employer, labor organization, or joint labor-manage-  
7 ment committee controlling apprenticeship or other train-  
8 ing or retraining, including on-the-job training pro-  
9 grams—

10 (1) to discriminate against any individual be-  
11 cause of genetic information with respect to the indi-  
12 vidual in admission to, or employment in, any pro-  
13 gram established to provide apprenticeship or other  
14 training or retraining;

15 (2) to limit, segregate, or classify the applicants  
16 for or participants in such apprenticeship or other  
17 training or retraining, or fail or refuse to refer for  
18 employment any individual, in any way that would  
19 deprive or tend to deprive any individual of employ-  
20 ment opportunities, or otherwise adversely affect the  
21 status of the individual as an employee, because of  
22 genetic information with respect to the individual; or

23 (3) to cause or attempt to cause an employer to  
24 discriminate against an applicant for or a partici-

1       pant in such apprenticeship or other training or re-  
2       training in violation of this title.

3       (b) ACQUISITION OF GENETIC INFORMATION.—It  
4       shall be an unlawful employment practice for an employer,  
5       labor organization, or joint labor-management committee  
6       described in subsection (a) to request, require, or purchase  
7       genetic information with respect to an individual or a fam-  
8       ily member of the individual except—

9               (1) where the employer, labor organization, or  
10       joint labor-management committee inadvertently re-  
11       quests or requires family medical history of the indi-  
12       vidual or family member of the individual;

13              (2) where—

14                   (A) health or genetic services are offered  
15                   by the employer, labor organization, or joint  
16                   labor-management committee, including such  
17                   services offered as part of a bona fide wellness  
18                   program;

19                   (B) the individual provides prior, knowing,  
20                   voluntary, and written authorization;

21                   (C) only the individual (or family member  
22                   if the family member is receiving genetic serv-  
23                   ices) and the licensed health care professional  
24                   or board certified genetic counselor involved in  
25                   providing such services receive individually iden-

1           tifiable information concerning the results of  
2           such services; and

3                   (D) any individually identifiable genetic in-  
4           formation provided under subparagraph (C) in  
5           connection with the services provided under  
6           subparagraph (A) is only available for purposes  
7           of such services and shall not be disclosed to  
8           the employer, labor organization, or joint labor-  
9           management committee except in aggregate  
10          terms that do not disclose the identity of spe-  
11          cific individuals;

12                   (3) where the employer, labor organization, or  
13          joint labor-management committee requests or re-  
14          quires family medical history from the individual to  
15          comply with the certification provisions of section  
16          103 of the Family and Medical Leave Act of 1993  
17          (29 U.S.C. 2613) or such requirements under State  
18          family and medical leave laws;

19                   (4) where the employer, labor organization, or  
20          joint labor-management committee purchases docu-  
21          ments that are commercially and publicly available  
22          (including newspapers, magazines, periodicals, and  
23          books, but not including medical databases or court  
24          records) that include family medical history;

1           (5) where the information involved is to be used  
2 for genetic monitoring of the biological effects of  
3 toxic substances in the workplace, but only if—

4           (A) the employer, labor organization, or  
5 joint labor-management committee provides  
6 written notice of the genetic monitoring to the  
7 individual;

8           (B)(i) the individual provides prior, know-  
9 ing, voluntary, and written authorization; or

10          (ii) the genetic monitoring is required by  
11 Federal or State law;

12          (C) the individual is informed of individual  
13 monitoring results;

14          (D) the monitoring is in compliance with—

15           (i) any Federal genetic monitoring  
16 regulations, including any such regulations  
17 that may be promulgated by the Secretary  
18 of Labor pursuant to the Occupational  
19 Safety and Health Act of 1970 (29 U.S.C.  
20 651 et seq.), the Federal Mine Safety and  
21 Health Act of 1977 (30 U.S.C. 801 et  
22 seq.), or the Atomic Energy Act of 1954  
23 (42 U.S.C. 2011 et seq.); or

24           (ii) State genetic monitoring regula-  
25 tions, in the case of a State that is imple-

1           menting genetic monitoring regulations  
2           under the authority of the Occupational  
3           Safety and Health Act of 1970 (29 U.S.C.  
4           651 et seq.); and

5           (E) the employer, labor organization, or  
6           joint labor-management committee, excluding  
7           any licensed health care professional or board  
8           certified genetic counselor that is involved in  
9           the genetic monitoring program, receives the re-  
10          sults of the monitoring only in aggregate terms  
11          that do not disclose the identity of specific indi-  
12          viduals; or

13          (6) where the employer conducts DNA analysis  
14          for law enforcement purposes as a forensic labora-  
15          tory, includes such analysis in the Combined DNA  
16          Index System pursuant to section 210304 of the  
17          Violent Crime Control and Law Enforcement Act of  
18          1994 (42 U.S.C. 14132), and requests or requires  
19          genetic information of such employer's apprentices  
20          or trainees, but only to the extent that such genetic  
21          information is used for analysis of DNA identifica-  
22          tion markers for quality control to detect sample  
23          contamination.

24          (c) PRESERVATION OF PROTECTIONS.—In the case  
25 of information to which any of paragraphs (1) through

1 (6) of subsection (b) applies, such information may not  
2 be used in violation of paragraph (1), (2), or (3) of sub-  
3 section (a) or treated or disclosed in a manner that vio-  
4 lates section 206.

5 **SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.**

6 (a) TREATMENT OF INFORMATION AS PART OF CON-  
7 FIDENTIAL MEDICAL RECORD.—If an employer, employ-  
8 ment agency, labor organization, or joint labor-manage-  
9 ment committee possesses genetic information about an  
10 employee or member, such information shall be main-  
11 tained on separate forms and in separate medical files and  
12 be treated as a confidential medical record of the employee  
13 or member. An employer, employment agency, labor orga-  
14 nization, or joint labor-management committee shall be  
15 considered to be in compliance with the maintenance of  
16 information requirements of this subsection with respect  
17 to genetic information subject to this subsection that is  
18 maintained with and treated as a confidential medical  
19 record under section 102(d)(3)(B) of the Americans With  
20 Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

21 (b) LIMITATION ON DISCLOSURE.—An employer, em-  
22 ployment agency, labor organization, or joint labor-man-  
23 agement committee shall not disclose genetic information  
24 concerning an employee or member except—

1           (1) to the employee or member of a labor orga-  
2           nization (or family member if the family member is  
3           receiving the genetic services) at the written request  
4           of the employee or member of such organization;

5           (2) to an occupational or other health re-  
6           searcher if the research is conducted in compliance  
7           with the regulations and protections provided for  
8           under part 46 of title 45, Code of Federal Regula-  
9           tions;

10          (3) in response to an order of a court, except  
11          that—

12                 (A) the employer, employment agency,  
13                 labor organization, or joint labor-management  
14                 committee may disclose only the genetic infor-  
15                 mation expressly authorized by such order; and

16                 (B) if the court order was secured without  
17                 the knowledge of the employee or member to  
18                 whom the information refers, the employer, em-  
19                 ployment agency, labor organization, or joint  
20                 labor-management committee shall inform the  
21                 employee or member of the court order and any  
22                 genetic information that was disclosed pursuant  
23                 to such order;

1           (4) to government officials who are inves-  
2           tigating compliance with this title if the information  
3           is relevant to the investigation; or

4           (5) to the extent that such disclosure is made  
5           in connection with the employee's compliance with  
6           the certification provisions of section 103 of the  
7           Family and Medical Leave Act of 1993 (29 U.S.C.  
8           2613) or such requirements under State family and  
9           medical leave laws.

10          (c) RELATIONSHIP TO HIPAA REGULATIONS.—With  
11          respect to the regulations promulgated by the Secretary  
12          of Health and Human Services under part C of title XI  
13          of the Social Security Act (42 U.S.C. 1320d et seq.) and  
14          section 264 of the Health Insurance Portability and Ac-  
15          countability Act of 1996 (42 U.S.C. 1320d–2 note), this  
16          title does not prohibit a covered entity under such regula-  
17          tions from any use or disclosure of health information that  
18          is authorized for the covered entity under such regula-  
19          tions. The previous sentence does not affect the authority  
20          of such Secretary to modify such regulations.

21          **SEC. 207. REMEDIES AND ENFORCEMENT.**

22          (a) EMPLOYEES COVERED BY TITLE VII OF THE  
23          CIVIL RIGHTS ACT OF 1964.—

24                 (1) IN GENERAL.—The powers, remedies, and  
25                 procedures provided in sections 705, 706, 707, 709,



1 710, and 711 of the Civil Rights Act of 1964 (42  
2 U.S.C. 2000e–4 et seq.) to the Commission, the At-  
3 torney General, or any person, alleging a violation of  
4 title VII of that Act (42 U.S.C. 2000e et seq.) shall  
5 be the powers, remedies, and procedures this title  
6 provides to the Commission, the Attorney General,  
7 or any person, respectively, alleging an unlawful em-  
8 ployment practice in violation of this title against an  
9 employee described in section 201(2)(A)(i), except as  
10 provided in paragraphs (2) and (3).

11 (2) COSTS AND FEES.—The powers, remedies,  
12 and procedures provided in subsections (b) and (c)  
13 of section 722 of the Revised Statutes of the United  
14 States (42 U.S.C. 1988), shall be powers, remedies,  
15 and procedures this title provides to the Commis-  
16 sion, the Attorney General, or any person, alleging  
17 such a practice.

18 (3) DAMAGES.—The powers, remedies, and pro-  
19 cedures provided in section 1977A of the Revised  
20 Statutes of the United States (42 U.S.C. 1981a), in-  
21 cluding the limitations contained in subsection (b)(3)  
22 of such section 1977A, shall be powers, remedies,  
23 and procedures this title provides to the Commis-  
24 sion, the Attorney General, or any person, alleging  
25 such a practice (not an employment practice specifi-

1 cally excluded from coverage under section  
2 1977A(a)(1) of the Revised Statutes of the United  
3 States).

4 (b) EMPLOYEES COVERED BY GOVERNMENT EM-  
5 PLOYEE RIGHTS ACT OF 1991.—

6 (1) IN GENERAL.—The powers, remedies, and  
7 procedures provided in sections 302 and 304 of the  
8 Government Employee Rights Act of 1991 (42  
9 U.S.C. 2000e–16b, 2000e–16c) to the Commission,  
10 or any person, alleging a violation of section  
11 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1))  
12 shall be the powers, remedies, and procedures this  
13 title provides to the Commission, or any person, re-  
14 spectively, alleging an unlawful employment practice  
15 in violation of this title against an employee de-  
16 scribed in section 201(2)(A)(ii), except as provided  
17 in paragraphs (2) and (3).

18 (2) COSTS AND FEES.—The powers, remedies,  
19 and procedures provided in subsections (b) and (c)  
20 of section 722 of the Revised Statutes of the United  
21 States (42 U.S.C. 1988), shall be powers, remedies,  
22 and procedures this title provides to the Commis-  
23 sion, or any person, alleging such a practice.

24 (3) DAMAGES.—The powers, remedies, and pro-  
25 cedures provided in section 1977A of the Revised

1 Statutes of the United States (42 U.S.C. 1981a), in-  
2 cluding the limitations contained in subsection (b)(3)  
3 of such section 1977A, shall be powers, remedies,  
4 and procedures this title provides to the Commis-  
5 sion, or any person, alleging such a practice (not an  
6 employment practice specifically excluded from cov-  
7 erage under section 1977A(a)(1) of the Revised  
8 Statutes of the United States).

9 (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
10 COUNTABILITY ACT OF 1995.—

11 (1) IN GENERAL.—The powers, remedies, and  
12 procedures provided in the Congressional Account-  
13 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the  
14 Board (as defined in section 101 of that Act (2  
15 U.S.C. 1301)), or any person, alleging a violation of  
16 section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1))  
17 shall be the powers, remedies, and procedures this  
18 title provides to that Board, or any person, alleging  
19 an unlawful employment practice in violation of this  
20 title against an employee described in section  
21 201(2)(A)(iii), except as provided in paragraphs (2)  
22 and (3).

23 (2) COSTS AND FEES.—The powers, remedies,  
24 and procedures provided in subsections (b) and (c)  
25 of section 722 of the Revised Statutes of the United

1 States (42 U.S.C. 1988), shall be powers, remedies,  
2 and procedures this title provides to that Board, or  
3 any person, alleging such a practice.

4 (3) DAMAGES.—The powers, remedies, and pro-  
5 cedures provided in section 1977A of the Revised  
6 Statutes of the United States (42 U.S.C. 1981a), in-  
7 cluding the limitations contained in subsection (b)(3)  
8 of such section 1977A, shall be powers, remedies,  
9 and procedures this title provides to that Board, or  
10 any person, alleging such a practice (not an employ-  
11 ment practice specifically excluded from coverage  
12 under section 1977A(a)(1) of the Revised Statutes  
13 of the United States).

14 (4) OTHER APPLICABLE PROVISIONS.—With re-  
15 spect to a claim alleging a practice described in  
16 paragraph (1), title III of the Congressional Ac-  
17 countability Act of 1995 (2 U.S.C. 1381 et seq.)  
18 shall apply in the same manner as such title applies  
19 with respect to a claim alleging a violation of section  
20 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

21 (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
22 3, UNITED STATES CODE.—

23 (1) IN GENERAL.—The powers, remedies, and  
24 procedures provided in chapter 5 of title 3, United  
25 States Code, to the President, the Commission, the

1 Merit Systems Protection Board, or any person, al-  
2 leging a violation of section 411(a)(1) of that title,  
3 shall be the powers, remedies, and procedures this  
4 title provides to the President, the Commission, such  
5 Board, or any person, respectively, alleging an un-  
6 lawful employment practice in violation of this title  
7 against an employee described in section  
8 201(2)(A)(iv), except as provided in paragraphs (2)  
9 and (3).

10 (2) COSTS AND FEES.—The powers, remedies,  
11 and procedures provided in subsections (b) and (c)  
12 of section 722 of the Revised Statutes of the United  
13 States (42 U.S.C. 1988), shall be powers, remedies,  
14 and procedures this title provides to the President,  
15 the Commission, such Board, or any person, alleging  
16 such a practice.

17 (3) DAMAGES.—The powers, remedies, and pro-  
18 cedures provided in section 1977A of the Revised  
19 Statutes of the United States (42 U.S.C. 1981a), in-  
20 cluding the limitations contained in subsection (b)(3)  
21 of such section 1977A, shall be powers, remedies,  
22 and procedures this title provides to the President,  
23 the Commission, such Board, or any person, alleging  
24 such a practice (not an employment practice specifi-  
25 cally excluded from coverage under section

1 1977A(a)(1) of the Revised Statutes of the United  
2 States).

3 (e) EMPLOYEES COVERED BY SECTION 717 OF THE  
4 CIVIL RIGHTS ACT OF 1964.—

5 (1) IN GENERAL.—The powers, remedies, and  
6 procedures provided in section 717 of the Civil  
7 Rights Act of 1964 (42 U.S.C. 2000e–16) to the  
8 Commission, the Attorney General, the Librarian of  
9 Congress, or any person, alleging a violation of that  
10 section shall be the powers, remedies, and proce-  
11 dures this title provides to the Commission, the At-  
12 torney General, the Librarian of Congress, or any  
13 person, respectively, alleging an unlawful employ-  
14 ment practice in violation of this title against an em-  
15 ployee or applicant described in section  
16 201(2)(A)(v), except as provided in paragraphs (2)  
17 and (3).

18 (2) COSTS AND FEES.—The powers, remedies,  
19 and procedures provided in subsections (b) and (c)  
20 of section 722 of the Revised Statutes of the United  
21 States (42 U.S.C. 1988), shall be powers, remedies,  
22 and procedures this title provides to the Commis-  
23 sion, the Attorney General, the Librarian of Con-  
24 gress, or any person, alleging such a practice.

1           (3) DAMAGES.—The powers, remedies, and pro-  
2           cedures provided in section 1977A of the Revised  
3           Statutes of the United States (42 U.S.C. 1981a), in-  
4           cluding the limitations contained in subsection (b)(3)  
5           of such section 1977A, shall be powers, remedies,  
6           and procedures this title provides to the Commis-  
7           sion, the Attorney General, the Librarian of Con-  
8           gress, or any person, alleging such a practice (not an  
9           employment practice specifically excluded from cov-  
10          erage under section 1977A(a)(1) of the Revised  
11          Statutes of the United States).

12          (f) DEFINITION.—In this section, the term “Commis-  
13          sion” means the Equal Employment Opportunity Commis-  
14          sion.

15          **SEC. 208. DISPARATE IMPACT.**

16          (a) GENERAL RULE.—Notwithstanding any other  
17          provision of this division, “disparate impact”, as that term  
18          is used in section 703(k) of the Civil Rights Act of 1964  
19          (42 U.S.C. 2000e–2(k)), on the basis of genetic informa-  
20          tion does not establish a cause of action under this divi-  
21          sion.

22          (b) COMMISSION.—On the date that is 6 years after  
23          the date of enactment of this Act, there shall be estab-  
24          lished a commission, to be known as the Genetic Non-  
25          discrimination Study Commission (referred to in this sec-

1 tion as the “Commission”) to review the developing  
2 science of genetics and to make recommendations to Con-  
3 gress regarding whether to provide a disparate impact  
4 cause of action under this division.

5 (c) MEMBERSHIP.—

6 (1) IN GENERAL.—The Commission shall be  
7 composed of eight members, of which—

8 (A) one member shall be appointed by the  
9 Majority Leader of the Senate;

10 (B) one member shall be appointed by the  
11 Minority Leader of the Senate;

12 (C) one member shall be appointed by the  
13 Chairman of the Committee on Health, Edu-  
14 cation, Labor, and Pensions of the Senate;

15 (D) one member shall be appointed by the  
16 ranking minority member of the Committee on  
17 Health, Education, Labor, and Pensions of the  
18 Senate;

19 (E) one member shall be appointed by the  
20 Speaker of the House of Representatives;

21 (F) one member shall be appointed by the  
22 Minority Leader of the House of Representa-  
23 tives;



1           (G) one member shall be appointed by the  
2           Chairman of the Committee on Education and  
3           Labor of the House of Representatives; and

4           (H) one member shall be appointed by the  
5           ranking minority member of the Committee on  
6           Education and Labor of the House of Rep-  
7           resentatives.

8           (2) COMPENSATION AND EXPENSES.—The  
9           members of the Commission shall not receive com-  
10          pensation for the performance of services for the  
11          Commission, but shall be allowed travel expenses, in-  
12          cluding per diem in lieu of subsistence, at rates au-  
13          thorized for employees of agencies under subchapter  
14          I of chapter 57 of title 5, United States Code, while  
15          away from their homes or regular places of business  
16          in the performance of services for the Commission.

17          (d) ADMINISTRATIVE PROVISIONS.—

18               (1) LOCATION.—The Commission shall be lo-  
19               cated in a facility maintained by the Equal Employ-  
20               ment Opportunity Commission.

21               (2) DETAIL OF GOVERNMENT EMPLOYEES.—  
22               Any Federal Government employee may be detailed  
23               to the Commission without reimbursement, and such  
24               detail shall be without interruption or loss of civil  
25               service status or privilege.

1           (3) INFORMATION FROM FEDERAL AGENCIES.—

2           The Commission may secure directly from any Fed-  
3           eral department or agency such information as the  
4           Commission considers necessary to carry out the  
5           provisions of this section. Upon request of the Com-  
6           mission, the head of such department or agency  
7           shall furnish such information to the Commission.

8           (4) HEARINGS.—The Commission may hold  
9           such hearings, sit and act at such times and places,  
10          take such testimony, and receive such evidence as  
11          the Commission considers advisable to carry out the  
12          objectives of this section, except that, to the extent  
13          possible, the Commission shall use existing data and  
14          research.

15          (5) POSTAL SERVICES.—The Commission may  
16          use the United States mails in the same manner and  
17          under the same conditions as other departments and  
18          agencies of the Federal Government.

19          (e) REPORT.—Not later than 1 year after all of the  
20          members are appointed to the Commission under sub-  
21          section (c)(1), the Commission shall submit to Congress  
22          a report that summarizes the findings of the Commission  
23          and makes such recommendations for legislation as are  
24          consistent with this division.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Equal Employ-  
3 ment Opportunity Commission such sums as may be nec-  
4 essary to carry out this section.

5 **SEC. 209. CONSTRUCTION.**

6 (a) IN GENERAL.—Nothing in this title shall be con-  
7 strued to—

8 (1) limit the rights or protections of an indi-  
9 vidual under any other Federal or State statute that  
10 provides equal or greater protection to an individual  
11 than the rights or protections provided for under  
12 this title, including the protections of an individual  
13 under the Americans with Disabilities Act of 1990  
14 (42 U.S.C. 12101 et seq.) (including coverage af-  
15 farded to individuals under section 102 of such Act  
16 (42 U.S.C. 12112)), or under the Rehabilitation Act  
17 of 1973 (29 U.S.C. 701 et seq.);

18 (2)(A) limit the rights or protections of an indi-  
19 vidual to bring an action under this title against an  
20 employer, employment agency, labor organization, or  
21 joint labor-management committee for a violation of  
22 this title; or

23 (B) provide for enforcement of, or penalties for  
24 violation of, any requirement or prohibition applica-  
25 ble to any employer, employment agency, labor orga-

1 nization, or joint labor-management committee the  
2 enforcement of which, or penalties for which, are  
3 provided under the amendments made by title I;

4 (3) apply to the Armed Forces Repository of  
5 Specimen Samples for the Identification of Remains;

6 (4) limit or expand the protections, rights, or  
7 obligations of employees or employers under applica-  
8 ble workers' compensation laws;

9 (5) limit the authority of a Federal department  
10 or agency to conduct or sponsor occupational or  
11 other health research that is conducted in compli-  
12 ance with the regulations contained in part 46 of  
13 title 45, Code of Federal Regulations (or any cor-  
14 responding or similar regulation or rule);

15 (6) limit the statutory or regulatory authority  
16 of the Occupational Safety and Health Administra-  
17 tion or the Mine Safety and Health Administration  
18 to promulgate or enforce workplace safety and  
19 health laws and regulations; or

20 (7) require any specific benefit for an employee  
21 or member or a family member of an employee or  
22 member under any group health plan or health in-  
23 surance issuer offering group health insurance cov-  
24 erage in connection with a group health plan.

1 (b) GENETIC INFORMATION OF A FETUS OR EM-  
2 BRYO.—Any reference in this title to genetic information  
3 concerning an individual or family member of an indi-  
4 vidual shall—

5 (1) with respect to such an individual or family  
6 member of an individual who is a pregnant woman,  
7 include genetic information of any fetus carried by  
8 such pregnant woman; and

9 (2) with respect to an individual or family  
10 member utilizing an assisted reproductive tech-  
11 nology, include genetic information of any embryo le-  
12 gally held by the individual or family member.

13 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
14 **INFORMATION.**

15 An employer, employment agency, labor organization,  
16 or joint labor-management committee shall not be consid-  
17 ered to be in violation of this title based on the use, acqui-  
18 sition, or disclosure of medical information that is not ge-  
19 netic information about a manifested disease, disorder, or  
20 pathological condition of an employee or member, includ-  
21 ing a manifested disease, disorder, or pathological condi-  
22 tion that has or may have a genetic basis.

1 **SEC. 211. REGULATIONS.**

2 Not later than 1 year after the date of enactment  
3 of this title, the Commission shall issue final regulations  
4 to carry out this title.

5 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such sums  
7 as may be necessary to carry out this title (except for sec-  
8 tion 208).

9 **SEC. 213. EFFECTIVE DATE.**

10 This title takes effect on the date that is 18 months  
11 after the date of enactment of this Act.

12 **TITLE III—MISCELLANEOUS**  
13 **PROVISIONS**

14 **SEC. 301. GUARANTEE AGENCY COLLECTION RETENTION.**

15 Clause (ii) of section 428(e)(6)(A) of the Higher  
16 Education Act of 1965 (20 U.S.C. 1078(e)(6)(A)) is  
17 amended to read as follows:

18 “(ii) an amount equal to 23 percent of  
19 such payments for use in accordance with sec-  
20 tion 422B, except that beginning October 1,  
21 2007, and ending September 30, 2008, this  
22 subparagraph shall be applied by substituting  
23 ‘22 percent’ for ‘23 percent’.”.

24 **SEC. 302. SEVERABILITY.**

25 If any provision of this division, an amendment made  
26 by this division, or the application of such provision or

1 amendment to any person or circumstance is held to be  
2 unconstitutional, the remainder of this division, the  
3 amendments made by this division, and the application of  
4 such provisions to any person or circumstance shall not  
5 be affected thereby.

Passed the House of Representatives March 5,  
2008.

Attest:                      LORRAINE C. MILLER,  
*Clerk.*

Calendar No. 610

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 1424**

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**AN ACT**

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, 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, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, and for other purposes.

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MARCH 7, 2008

Read the second time and placed on the calendar