

Calendar No. 93110TH CONGRESS
1ST SESSION**S. 558**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2007

Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. ENZI, Mr. BROWN, Mr. SMITH, Mr. FEINGOLD, Mr. COLEMAN, Mr. LAUTENBERG, Mr. WARNER, Mrs. BOXER, Ms. MURKOWSKI, Mr. AKAKA, Mr. ROBERTS, Mr. CARDIN, Mr. HATCH, Ms. CANTWELL, Ms. COLLINS, Ms. STABENOW, Ms. SNOWE, Mr. BIDEN, Mr. GRAHAM, Mr. NELSON of Nebraska, Mrs. CLINTON, Mr. DURBIN, Mr. CONRAD, Mr. INOUE, Ms. KLOBUCHAR, Mr. HARKIN, Mr. ALEXANDER, Mr. BENNETT, Mr. BINGAMAN, Mr. CARPER, Mr. COCHRAN, Mr. JOHNSON, Mr. KERRY, Mr. LEVIN, Mr. LIEBERMAN, Mr. LUGAR, Mrs. MCCASKILL, Mr. SALAZAR, Mr. SCHUMER, Mr. NELSON of Florida, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

MARCH 27, 2007

Reported by Mr. KENNEDY, with an amendment

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. MENTAL HEALTH PARITY.**

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

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

12 “(a) IN GENERAL.—In the case of a group health
13 plan (or health insurance coverage offered in connection
14 with such a plan) that provides both medical and surgical
15 benefits and mental health benefits, such plan or coverage
16 shall ensure that—

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

1 requirements that are applicable only with respect to
2 mental health benefits; and

3 “(2) the treatment limitations applicable to
4 such mental health benefits are no more restrictive
5 than the treatment limitations applied to substan-
6 tially all medical and surgical benefits covered by the
7 plan (or coverage); including limits on the frequency
8 of treatment, number of visits, days of coverage, or
9 other similar limits on the scope or duration of
10 treatment.

11 “(b) CLARIFICATIONS.—In the case of a group health
12 plan (or health insurance coverage offered in connection
13 with such a plan) that provides both medical and surgical
14 benefits and mental health benefits, such plan or coverage
15 shall not be prohibited from—

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

19 “(2) managing the provision of mental health
20 benefits in order to provide medically necessary serv-
21 ices for covered benefits, including through the use
22 of any utilization review, authorization or manage-
23 ment practices, the application of medical necessity
24 and appropriateness criteria applicable to behavioral

1 health, and the contracting with and use of a net-
2 work of providers; or

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

6 ~~“(c) IN- AND OUT-OF-NETWORK.—~~

7 ~~“(1) IN GENERAL.—In the case of a group~~
8 ~~health plan (or health insurance coverage offered in~~
9 ~~connection with such a plan) that provides both~~
10 ~~medical and surgical benefits and mental health ben-~~
11 ~~efits, and that provides such benefits on both an in-~~
12 ~~and out-of-network basis pursuant to the terms of~~
13 ~~the plan (or coverage), such plan (or coverage) shall~~
14 ~~ensure that the requirements of this section are ap-~~
15 ~~plied to both in- and out-of-network services by com-~~
16 ~~paring in-network medical and surgical benefits to~~
17 ~~in-network mental health benefits and out-of-net-~~
18 ~~work medical and surgical benefits to out-of-network~~
19 ~~mental health benefits, except that in no event shall~~
20 ~~this subsection require the provision of out-of-net-~~
21 ~~work coverage for mental health benefits even in the~~
22 ~~case where out-of-network coverage is provided for~~
23 ~~medical and surgical benefits.~~

24 ~~“(2) CLARIFICATION.—Nothing in paragraph~~
25 ~~(1) shall be construed as requiring that a group~~

1 health plan (or coverage in connection with such a
2 plan) eliminate an out-of-network provider option
3 from such plan (or coverage) pursuant to the terms
4 of the plan (or coverage).

5 “(d) SMALL EMPLOYER EXEMPTION.—

6 “(1) IN GENERAL.—This section shall not apply
7 to any group health plan (and group health insur-
8 ance coverage offered in connection with a group
9 health plan) for any plan year of any employer who
10 employed an average of at least 2 (or 1 in the case
11 of an employer residing in a State that permits
12 small groups to include a single individual) but not
13 more than 50 employees on business days during the
14 preceding calendar year.

15 “(2) APPLICATION OF CERTAIN RULES IN DE-
16 TERMINATION OF EMPLOYER SIZE.—For purposes of
17 this subsection:

18 “(A) APPLICATION OF AGGREGATION RULE
19 FOR EMPLOYERS.—Rules similar to the rules
20 under subsections (b), (c), (m), and (o) of sec-
21 tion 414 of the Internal Revenue Code of 1986
22 shall apply for purposes of treating persons as
23 a single employer.

24 “(B) EMPLOYERS NOT IN EXISTENCE IN
25 PRECEDING YEAR.—In the case of an employer

1 which was not in existence throughout the pre-
2 ceding calendar year, the determination of
3 whether such employer is a small employer shall
4 be based on the average number of employees
5 that it is reasonably expected such employer
6 will employ on business days in the current cal-
7 endar year.

8 “(C) PREDECESSORS.—Any reference in
9 this paragraph to an employer shall include a
10 reference to any predecessor of such employer.

11 “(e) COST EXEMPTION.—

12 “(1) IN GENERAL.—With respect to a group
13 health plan (or health insurance coverage offered in
14 connections with such a plan), if the application of
15 this section to such plan (or coverage) results in an
16 increase for the plan year involved of the actual total
17 costs of coverage with respect to medical and sur-
18 gical benefits and mental health benefits under the
19 plan (as determined and certified under paragraph
20 (3)) by an amount that exceeds the applicable per-
21 centage described in paragraph (2) of the actual
22 total plan costs, the provisions of this section shall
23 not apply to such plan (or coverage) during the fol-
24 lowing plan year, and such exemption shall apply to
25 the plan (or coverage) for 1 plan year. An employer

1 may elect to continue to apply mental health parity
 2 pursuant to this section with respect to the group
 3 health plan (or coverage) involved regardless of any
 4 increase in total costs.

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

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

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

12 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
 13 minations as to increases in actual costs under a
 14 plan (or coverage) for purposes of this section shall
 15 be made by a qualified actuary who is a member in
 16 good standing of the American Academy of Actu-
 17 aries. Such determinations shall be certified by the
 18 actuary and be made available to the general public.

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

1 “(5) NOTIFICATION.—An election to modify
2 coverage of mental health benefits as permitted
3 under this subsection shall be treated as a material
4 modification in the terms of the plan as described in
5 section 102(a)(1) and shall be subject to the applica-
6 ble notice requirements under section 104(b)(1).

7 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to require a group health plan (or
9 health insurance coverage offered in connection with such
10 a plan) to provide any mental health benefits.

11 “(g) MENTAL HEALTH BENEFITS.—In this section,
12 the term ‘mental health benefits’ means benefits with re-
13 spect to mental health services (including substance abuse
14 treatment) as defined under the terms of the group health
15 plan or coverage.”.

16 (b) PUBLIC HEALTH SERVICE ACT.—Subpart 4 of
17 part A of title XXVII of the Public Health Service Act
18 is amended by inserting after section 2705 (42 U.S.C.
19 300gg-5) the following:

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

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

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

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

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

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

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

12 “(3) be prohibited from applying the provisions
13 of this section in a manner that takes into consider-
14 ation similar treatment settings or similar treat-
15 ments.

16 ~~“(c) IN- AND OUT-OF-NETWORK.—~~

17 ~~“(1) IN GENERAL.—In the case of a group~~
18 ~~health plan (or health insurance coverage offered in~~
19 ~~connection with such a plan) that provides both~~
20 ~~medical and surgical benefits and mental health ben-~~
21 ~~efits, and that provides such benefits on both an in-~~
22 ~~and out-of-network basis pursuant to the terms of~~
23 ~~the plan (or coverage), such plan (or coverage) shall~~
24 ~~ensure that the requirements of this section are ap-~~
25 ~~plied to both in- and out-of-network services by com-~~

1 paring in-network medical and surgical benefits to
2 in-network mental health benefits and out-of-net-
3 work medical and surgical benefits to out-of-network
4 mental health benefits, except that in no event shall
5 this subsection require the provision of out-of-net-
6 work coverage for mental health benefits even in the
7 case where out-of-network coverage is provided for
8 medical and surgical benefits.

9 “(2) CLARIFICATION.—Nothing in paragraph
10 (1) shall be construed as requiring that a group
11 health plan (or coverage in connection with such a
12 plan) eliminate an out-of-network provider option
13 from such plan (or coverage) pursuant to the terms
14 of the plan (or coverage).

15 “(d) SMALL EMPLOYER EXEMPTION.—

16 “(1) IN GENERAL.—This section shall not apply
17 to any group health plan (and group health insur-
18 ance coverage offered in connection with a group
19 health plan) for any plan year of any employer who
20 employed an average of at least 2 (or 1 in the case
21 of an employer residing in a State that permits
22 small groups to include a single individual) but not
23 more than 50 employees on business days during the
24 preceding calendar year.

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

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

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

19 “(C) PREDECESSORS.—Any reference in
20 this paragraph to an employer shall include a
21 reference to any predecessor of such employer.

22 “(e) COST EXEMPTION.—

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

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

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

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

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

23 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
24 minations as to increases in actual costs under a
25 plan (or coverage) for purposes of this section shall

1 be made by a qualified actuary who is a member in
2 good standing of the American Academy of Actu-
3 aries. Such determinations shall be certified by the
4 actuary and be made available to the general public.

5 “(4) 6-MONTH DETERMINATIONS.—If a group
6 health plan (or a health insurance issuer offering
7 coverage in connections with a group health plan)
8 seeks an exemption under this subsection, deter-
9 minations under paragraph (1) shall be made after
10 such plan (or coverage) has complied with this sec-
11 tion for the first 6 months of the plan year involved.

12 “(5) NOTIFICATION.—An election to modify
13 coverage of mental health benefits as permitted
14 under this subsection shall be treated as a material
15 modification in the terms of the plan as described in
16 section 102(a)(1) and shall be subject to the applica-
17 ble notice requirements under section 104(b)(1).

18 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to require a group health plan (or
20 health insurance coverage offered in connection with such
21 a plan) to provide any mental health benefits.

22 “(g) MENTAL HEALTH BENEFITS.—In this section,
23 the term ‘mental health benefits’ means benefits with re-
24 spect to mental health services (including substance abuse
25 treatment) as defined under the terms of the group health

1 plan or coverage, and when applicable as may be defined
 2 under State law when applicable to health insurance cov-
 3 erage offered in connection with a group health plan.”.

4 **SEC. 3. EFFECTIVE DATE.**

5 (a) IN GENERAL.—The provisions of this Act shall
 6 apply to group health plans (or health insurance coverage
 7 offered in connection with such plans) beginning in the
 8 first plan year that begins on or after January 1 of the
 9 first calendar year that begins more than 1 year after the
 10 date of the enactment of this Act.

11 (b) TERMINATION OF CERTAIN PROVISIONS.—

12 (1) ERISA.—Section 712 of the Employee Re-
 13 tirement Income Security Act of 1974 (29 U.S.C.
 14 1185a) is amended by striking subsection (f) and in-
 15 serting the following:

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

19 (2) PHSA.—Section 2705 of the Public Health
 20 Service Act (42 U.S.C. 300gg-5) is amended by
 21 striking subsection (f) and inserting the following:

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

1 **SEC. 4. SPECIAL PREEMPTION RULE.**

2 (a) ERISA PREEMPTION.—Section 731 of the Em-
 3 ployee Retirement Income Security Act of 1974 (29
 4 U.S.C. 1191) is amended—

5 (1) by redesignating subsections (e) and (d) as
 6 subsections (e) and (f), respectively; and

7 (2) by inserting after subsection (b), the fol-
 8 lowing:

9 “(c) SPECIAL RULE IN CASE OF MENTAL HEALTH
 10 PARITY REQUIREMENTS.—

11 “(1) IN GENERAL.—Notwithstanding any provi-
 12 sion of section 514 to the contrary, the provisions of
 13 this part relating to a group health plan or a health
 14 insurance issuer offering coverage in connection with
 15 a group health plan shall supercede any provision of
 16 State law that establishes, implements, or continues
 17 in effect any standard or requirement which differs
 18 from the specific standards or requirements con-
 19 tained in subsections (a), (b), (e), or (e) of section
 20 712A.

21 “(2) CLARIFICATIONS.—Nothing in this sub-
 22 section shall be construed to preempt State insur-
 23 ance laws relating to the individual insurance mar-
 24 ket or to small employers (as such term is defined
 25 for purposes of section 712A(d)).”.

1 (b) PHSA PREEMPTION.—Section 2723 of the Public
2 Health Service Act (42 U.S.C. 300gg-23) is amended—

3 (1) by redesignating subsections (c) and (d) as
4 subsections (e) and (f), respectively; and

5 (2) by inserting after subsection (b), the fol-
6 lowing:

7 “(c) SPECIAL RULE IN CASE OF MENTAL HEALTH
8 PARITY REQUIREMENTS.—

9 “(1) IN GENERAL.—Notwithstanding any provi-
10 sion of section 514 of the Employee Retirement In-
11 come Security Act of 1974 to the contrary, the pro-
12 visions of this part relating to a group health plan
13 or a health insurance issuer offering coverage in
14 connection with a group health plan shall supercede
15 any provisions of State law that establishes, imple-
16 ments, or continues in effect any standard or re-
17 quirement which differs from the specific standards
18 or requirements contained in subsections (a), (b),
19 (c), or (e) of section 2705A.

20 “(2) CLARIFICATIONS.—Nothing in this sub-
21 section shall be construed to preempt State insur-
22 ance laws relating to the individual insurance mar-
23 ket or to small employers (as such term is defined
24 for purposes of section 2705A(d)).”.

1 (c) **EFFECTIVE DATE.**—The provisions of this section
2 shall take effect with respect to a State, on the date on
3 which the provisions of section 2 apply with respect to
4 group health plans and health insurance coverage offered
5 in connection with group health plans.

6 **SEC. 5. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

7 (a) **GROUP HEALTH PLAN OMBUDSMAN.**—

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

17 (2) **DEPARTMENT OF HEALTH AND HUMAN**
18 **SERVICES.**—The Secretary of Health and Human
19 Services shall designate an individual within the De-
20 partment of Health and Human Services to serve as
21 the group health plan ombudsman for the Depart-
22 ment. Such ombudsman shall serve as an initial
23 point of contact to permit individuals to obtain in-
24 formation and provide assistance concerning cov-
25 erage of mental health services under health insur-

1 ance coverage issued in connection with group health
2 plans in accordance with this Act.

3 (b) AUDITS.—The Secretary of Labor and the Sec-
4 retary of Health and Human Services shall each provide
5 for the conduct of random audits of group health plans
6 (and health insurance coverage offered in connection with
7 such plans) to ensure that such plans are in compliance
8 with this Act (and the amendments made by this Act).

9 (c) GOVERNMENT ACCOUNTABILITY OFFICE
10 STUDY.—

11 (1) STUDY.—The Comptroller General shall
12 conduct a study that evaluates the effect of the im-
13 plementation of the amendments made by this Act
14 on the cost of health insurance coverage, access to
15 health insurance coverage (including the availability
16 of in-network providers), the quality of health care,
17 the impact on benefits and coverage for mental
18 health and substance abuse, the impact of any addi-
19 tional cost or savings to the plan, the impact on
20 State mental health benefit mandate laws, other im-
21 pact on the business community and the Federal
22 Government, and other issues as determined appro-
23 priate by the Comptroller General.

24 (2) REPORT.—Not later than 2 years after the
25 date of enactment of this Act, the Comptroller Gen-

1 eral shall prepare and submit to the appropriate
2 committees of Congress a report containing the re-
3 sults of the study conducted under paragraph (1).

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

8 **SECTION 1. SHORT TITLE.**

9 *This Act may be cited as the “Mental Health Parity*
10 *Act of 2007”.*

11 **SEC. 2. MENTAL HEALTH PARITY.**

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

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

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

22 “(1) *the financial requirements applicable to*
23 *such mental health benefits are no more restrictive*
24 *than the financial requirements applied to substan-*
25 *tially all medical and surgical benefits covered by the*

1 *plan (or coverage), including deductibles, copayments,*
2 *coinsurance, out-of-pocket expenses, and annual and*
3 *lifetime limits, except that the plan (or coverage) may*
4 *not establish separate cost sharing requirements that*
5 *are applicable only with respect to mental health ben-*
6 *efits; and*

7 *“(2) the treatment limitations applicable to such*
8 *mental health benefits are no more restrictive than the*
9 *treatment limitations applied to substantially all*
10 *medical and surgical benefits covered by the plan (or*
11 *coverage), including limits on the frequency of treat-*
12 *ment, number of visits, days of coverage, or other*
13 *similar limits on the scope or duration of treatment.*

14 *“(b) CLARIFICATIONS.—In the case of a group health*
15 *plan (or health insurance coverage offered in connection*
16 *with such a plan) that provides both medical and surgical*
17 *benefits and mental health benefits, such plan or coverage*
18 *shall not be prohibited from—*

19 *“(1) negotiating separate reimbursement or pro-*
20 *vider payment rates and service delivery systems for*
21 *different benefits consistent with subsection (a);*

22 *“(2) managing the provision of mental health*
23 *benefits in order to provide medically necessary serv-*
24 *ices for covered benefits, including through the use of*
25 *any utilization review, authorization or management*

1 *practices, the application of medical necessity and*
2 *appropriateness criteria applicable to behavioral*
3 *health, and the contracting with and use of a network*
4 *of providers; or*

5 *“(3) applying the provisions of this section in a*
6 *manner that takes into consideration similar treat-*
7 *ment settings or similar treatments.*

8 *“(c) IN- AND OUT-OF-NETWORK.—*

9 *“(1) IN GENERAL.—In the case of a group health*
10 *plan (or health insurance coverage offered in connec-*
11 *tion with such a plan) that provides both medical and*
12 *surgical benefits and mental health benefits, and that*
13 *provides such benefits on both an in- and out-of-net-*
14 *work basis pursuant to the terms of the plan (or cov-*
15 *erage), such plan (or coverage) shall ensure that the*
16 *requirements of this section are applied to both in-*
17 *and out-of-network services by comparing in-network*
18 *medical and surgical benefits to in-network mental*
19 *health benefits and out-of-network medical and sur-*
20 *gical benefits to out-of-network mental health benefits.*

21 *“(2) CLARIFICATION.—Nothing in paragraph (1)*
22 *shall be construed as requiring that a group health*
23 *plan (or coverage in connection with such a plan)*
24 *eliminate, reduce, or provide out-of-network coverage*
25 *with respect to such plan (or coverage).*

1 “(d) *SMALL EMPLOYER EXEMPTION.*—

2 “(1) *IN GENERAL.*—*This section shall not apply*
3 *to any group health plan (and group health insurance*
4 *coverage offered in connection with a group health*
5 *plan) for any plan year of any employer who em-*
6 *ployed an average of at least 2 (or 1 in the case of*
7 *an employer residing in a State that permits small*
8 *groups to include a single individual) but not more*
9 *than 50 employees on business days during the pre-*
10 *ceding calendar year.*

11 “(2) *APPLICATION OF CERTAIN RULES IN DETER-*
12 *MINATION OF EMPLOYER SIZE.*—*For purposes of this*
13 *subsection:*

14 “(A) *APPLICATION OF AGGREGATION RULE*
15 *FOR EMPLOYERS.*—*Rules similar to the rules*
16 *under subsections (b), (c), (m), and (o) of section*
17 *414 of the Internal Revenue Code of 1986 shall*
18 *apply for purposes of treating persons as a single*
19 *employer.*

20 “(B) *EMPLOYERS NOT IN EXISTENCE IN*
21 *PRECEDING YEAR.*—*In the case of an employer*
22 *which was not in existence throughout the pre-*
23 *ceding calendar year, the determination of*
24 *whether such employer is a small employer shall*
25 *be based on the average number of employees*

1 *that it is reasonably expected such employer will*
2 *employ on business days in the current calendar*
3 *year.*

4 “(C) *PREDECESSORS.*—*Any reference in*
5 *this paragraph to an employer shall include a*
6 *reference to any predecessor of such employer.*

7 “(e) *COST EXEMPTION.*—

8 “(1) *IN GENERAL.*—*With respect to a group*
9 *health plan (or health insurance coverage offered in*
10 *connections with such a plan), if the application of*
11 *this section to such plan (or coverage) results in an*
12 *increase for the plan year involved of the actual total*
13 *costs of coverage with respect to medical and surgical*
14 *benefits and mental health benefits under the plan (as*
15 *determined and certified under paragraph (3)) by an*
16 *amount that exceeds the applicable percentage de-*
17 *scribed in paragraph (2) of the actual total plan*
18 *costs, the provisions of this section shall not apply to*
19 *such plan (or coverage) during the following plan*
20 *year, and such exemption shall apply to the plan (or*
21 *coverage) for 1 plan year. An employer may elect to*
22 *continue to apply mental health parity pursuant to*
23 *this section with respect to the group health plan (or*
24 *coverage) involved regardless of any increase in total*
25 *costs.*

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

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

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

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

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

22 “(5) *NOTIFICATION.*—*An election to modify cov-*
23 *erage of mental health benefits as permitted under*
24 *this subsection shall be treated as a material modi-*
25 *fication in the terms of the plan as described in sec-*

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

3 “(f) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
 4 *tion shall be construed to require a group health plan (or*
 5 *health insurance coverage offered in connection with such*
 6 *a plan) to provide any mental health benefits.*

7 “(g) *MENTAL HEALTH BENEFITS.*—*In this section, the*
 8 *term ‘mental health benefits’ means benefits with respect to*
 9 *mental health services (including substance abuse treat-*
 10 *ment) as defined under the terms of the group health plan*
 11 *or coverage.”.*

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

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

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

22 “(1) *the financial requirements applicable to*
 23 *such mental health benefits are no more restrictive*
 24 *than the financial requirements applied to substan-*
 25 *tially all medical and surgical benefits covered by the*

1 *plan (or coverage), including deductibles, copayments,*
2 *coinsurance, out-of-pocket expenses, and annual and*
3 *lifetime limits, except that the plan (or coverage) may*
4 *not establish separate cost sharing requirements that*
5 *are applicable only with respect to mental health ben-*
6 *efits; and*

7 *“(2) the treatment limitations applicable to such*
8 *mental health benefits are no more restrictive than the*
9 *treatment limitations applied to substantially all*
10 *medical and surgical benefits covered by the plan (or*
11 *coverage), including limits on the frequency of treat-*
12 *ment, number of visits, days of coverage, or other*
13 *similar limits on the scope or duration of treatment.*

14 *“(b) CLARIFICATIONS.—In the case of a group health*
15 *plan (or health insurance coverage offered in connection*
16 *with such a plan) that provides both medical and surgical*
17 *benefits and mental health benefits, such plan or coverage*
18 *shall not be prohibited from—*

19 *“(1) negotiating separate reimbursement or pro-*
20 *vider payment rates and service delivery systems for*
21 *different benefits consistent with subsection (a);*

22 *“(2) managing the provision of mental health*
23 *benefits in order to provide medically necessary serv-*
24 *ices for covered benefits, including through the use of*
25 *any utilization review, authorization or management*

1 *practices, the application of medical necessity and*
2 *appropriateness criteria applicable to behavioral*
3 *health, and the contracting with and use of a network*
4 *of providers; or*

5 *“(3) be prohibited from applying the provisions*
6 *of this section in a manner that takes into consider-*
7 *ation similar treatment settings or similar treat-*
8 *ments.*

9 *“(c) IN- AND OUT-OF-NETWORK.—*

10 *“(1) IN GENERAL.—In the case of a group health*
11 *plan (or health insurance coverage offered in connec-*
12 *tion with such a plan) that provides both medical and*
13 *surgical benefits and mental health benefits, and that*
14 *provides such benefits on both an in- and out-of-net-*
15 *work basis pursuant to the terms of the plan (or cov-*
16 *erage), such plan (or coverage) shall ensure that the*
17 *requirements of this section are applied to both in-*
18 *and out-of-network services by comparing in-network*
19 *medical and surgical benefits to in-network mental*
20 *health benefits and out-of-network medical and sur-*
21 *gical benefits to out-of-network mental health benefits.*

22 *“(2) CLARIFICATION.—Nothing in paragraph (1)*
23 *shall be construed as requiring that a group health*
24 *plan (or coverage in connection with such a plan)*

1 *eliminate, reduce, or provide out-of-network coverage*
2 *with respect to such plan (or coverage).*

3 “(d) *SMALL EMPLOYER EXEMPTION.*—

4 “(1) *IN GENERAL.*—*This section shall not apply*
5 *to any group health plan (and group health insurance*
6 *coverage offered in connection with a group health*
7 *plan) for any plan year of any employer who em-*
8 *ployed an average of at least 2 (or 1 in the case of*
9 *an employer residing in a State that permits small*
10 *groups to include a single individual) but not more*
11 *than 50 employees on business days during the pre-*
12 *ceding calendar year.*

13 “(2) *APPLICATION OF CERTAIN RULES IN DETER-*
14 *MINATION OF EMPLOYER SIZE.*—*For purposes of this*
15 *subsection:*

16 “(A) *APPLICATION OF AGGREGATION RULE*
17 *FOR EMPLOYERS.*—*Rules similar to the rules*
18 *under subsections (b), (c), (m), and (o) of section*
19 *414 of the Internal Revenue Code of 1986 shall*
20 *apply for purposes of treating persons as a single*
21 *employer.*

22 “(B) *EMPLOYERS NOT IN EXISTENCE IN*
23 *PRECEDING YEAR.*—*In the case of an employer*
24 *which was not in existence throughout the pre-*
25 *ceding calendar year, the determination of*

1 *whether such employer is a small employer shall*
2 *be based on the average number of employees*
3 *that it is reasonably expected such employer will*
4 *employ on business days in the current calendar*
5 *year.*

6 “(C) *PREDECESSORS.*—*Any reference in*
7 *this paragraph to an employer shall include a*
8 *reference to any predecessor of such employer.*

9 “(e) *COST EXEMPTION.*—

10 “(1) *IN GENERAL.*—*With respect to a group*
11 *health plan (or health insurance coverage offered in*
12 *connections with such a plan), if the application of*
13 *this section to such plan (or coverage) results in an*
14 *increase for the plan year involved of the actual total*
15 *costs of coverage with respect to medical and surgical*
16 *benefits and mental health benefits under the plan (as*
17 *determined and certified under paragraph (3)) by an*
18 *amount that exceeds the applicable percentage de-*
19 *scribed in paragraph (2) of the actual total plan*
20 *costs, the provisions of this section shall not apply to*
21 *such plan (or coverage) during the following plan*
22 *year, and such exemption shall apply to the plan (or*
23 *coverage) for 1 plan year. An employer may elect to*
24 *continue to apply mental health parity pursuant to*
25 *this section with respect to the group health plan (or*

1 coverage) involved regardless of any increase in total
2 costs.

3 “(2) *APPLICABLE PERCENTAGE.*—With respect to
4 a plan (or coverage), the applicable percentage de-
5 scribed in this paragraph shall be—

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

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

10 “(3) *DETERMINATIONS BY ACTUARIES.*—Deter-
11 minations as to increases in actual costs under a
12 plan (or coverage) for purposes of this section shall be
13 made by a qualified actuary who is a member in good
14 standing of the American Academy of Actuaries. Such
15 determinations shall be certified by the actuary and
16 be made available to the general public.

17 “(4) *6-MONTH DETERMINATIONS.*—If a group
18 health plan (or a health insurance issuer offering cov-
19 erage in connections with a group health plan) seeks
20 an exemption under this subsection, determinations
21 under paragraph (1) shall be made after such plan
22 (or coverage) has complied with this section for the
23 first 6 months of the plan year involved.

24 “(5) *NOTIFICATION.*—An election to modify cov-
25 erage of mental health benefits as permitted under

1 *this subsection shall be treated as a material modi-*
2 *fication in the terms of the plan as described in sec-*
3 *tion 102(a)(1) and shall be subject to the applicable*
4 *notice requirements under section 104(b)(1).*

5 *“(f) RULE OF CONSTRUCTION.—Nothing in this sec-*
6 *tion shall be construed to require a group health plan (or*
7 *health insurance coverage offered in connection with such*
8 *a plan) to provide any mental health benefits.*

9 *“(g) MENTAL HEALTH BENEFITS.—In this section, the*
10 *term ‘mental health benefits’ means benefits with respect to*
11 *mental health services (including substance abuse treat-*
12 *ment) as defined under the terms of the group health plan*
13 *or coverage, and when applicable as may be defined under*
14 *State law when applicable to health insurance coverage of-*
15 *fered in connection with a group health plan.”.*

16 **SEC. 3. EFFECTIVE DATE.**

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

23 *(b) TERMINATION OF CERTAIN PROVISIONS.—*

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

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

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

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

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

12 **SEC. 4. SPECIAL PREEMPTION RULE.**

13 (a) *ERISA PREEMPTION.*—Section 731 of the Em-
 14 ployee Retirement Income Security Act of 1974 (29 U.S.C.
 15 1191) is amended—

16 (1) by redesignating subsections (c) and (d) as
 17 subsections (e) and (f), respectively; and

18 (2) by inserting after subsection (b), the fol-
 19 lowing:

20 “(c) *SPECIAL RULE IN CASE OF MENTAL HEALTH*
 21 *PARITY REQUIREMENTS.*—

22 “(1) *IN GENERAL.*—Notwithstanding any provi-
 23 sion of section 514 to the contrary, the provisions of
 24 this part relating to a group health plan or a health
 25 insurance issuer offering coverage in connection with

1 *a group health plan shall supercede any provision of*
 2 *State law that establishes, implements, or continues*
 3 *in effect any standard or requirement which differs*
 4 *from the specific standards or requirements contained*
 5 *in subsections (a), (b), (c), or (e) of section 712A.*

6 “(2) *CLARIFICATIONS.—Nothing in this sub-*
 7 *section shall be construed to preempt State insurance*
 8 *laws relating to the individual insurance market or*
 9 *to small employers (as such term is defined for pur-*
 10 *poses of section 712A(d)).”.*

11 *(b) PHSA PREEMPTION.—Section 2723 of the Public*
 12 *Health Service Act (42 U.S.C. 300gg-23) is amended—*

13 *(1) by redesignating subsections (c) and (d) as*
 14 *subsections (e) and (f), respectively; and*

15 *(2) by inserting after subsection (b), the fol-*
 16 *lowing:*

17 “(c) *SPECIAL RULE IN CASE OF MENTAL HEALTH*
 18 *PARITY REQUIREMENTS.—*

19 “(1) *IN GENERAL.—Notwithstanding any provi-*
 20 *sion of section 514 of the Employee Retirement In-*
 21 *come Security Act of 1974 to the contrary, the provi-*
 22 *sions of this part relating to a group health plan or*
 23 *a health insurance issuer offering coverage in connec-*
 24 *tion with a group health plan shall supercede any*
 25 *provisions of State law that establishes, implements,*

1 or continues in effect any standard or requirement
2 which differs from the specific standards or require-
3 ments contained in subsections (a), (b), (c), or (e) of
4 section 2705A.

5 “(2) *CLARIFICATIONS.*—Nothing in this sub-
6 section shall be construed to preempt State insurance
7 laws relating to the individual insurance market or
8 to small employers (as such term is defined for pur-
9 poses of section 2705A(d)).”.

10 (c) *EFFECTIVE DATE.*—The provisions of this section
11 shall take effect with respect to a State, on the date on which
12 the provisions of section 2 apply with respect to group
13 health plans and health insurance coverage offered in con-
14 nection with group health plans.

15 **SEC. 5. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

16 (a) *GROUP HEALTH PLAN OMBUDSMAN.*—

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

1 (2) *DEPARTMENT OF HEALTH AND HUMAN SERV-*
2 *ICES.—The Secretary of Health and Human Services*
3 *shall designate an individual within the Department*
4 *of Health and Human Services to serve as the group*
5 *health plan ombudsman for the Department. Such*
6 *ombudsman shall serve as an initial point of contact*
7 *to permit individuals to obtain information and pro-*
8 *vide assistance concerning coverage of mental health*
9 *services under health insurance coverage issued in*
10 *connection with group health plans in accordance*
11 *with this Act.*

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

18 (c) *GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—*

19 (1) *STUDY.—The Comptroller General shall con-*
20 *duct a study that evaluates the effect of the implemen-*
21 *tation of the amendments made by this Act on the*
22 *cost of health insurance coverage, access to health in-*
23 *surance coverage (including the availability of in-net-*
24 *work providers), the quality of health care, the impact*
25 *on benefits and coverage for mental health and sub-*

1 *stance abuse, the impact of any additional cost or*
2 *savings to the plan, the impact on out-of-network cov-*
3 *erage for mental health benefits (including substance*
4 *abuse treatment), the impact on State mental health*
5 *benefit mandate laws, other impact on the business*
6 *community and the Federal Government, and other*
7 *issues as determined appropriate by the Comptroller*
8 *General.*

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

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

Calendar No. 93

110TH CONGRESS
1ST Session

S. 558

A BILL

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

MARCH 27, 2007

Reported with an amendment