

116TH CONGRESS
2D SESSION

H. R. 7539

To strengthen parity in mental health and substance use disorder benefits.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2020

Mr. KENNEDY (for himself, Ms. PORTER, Mr. BILIRAKIS, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen parity in mental health and substance use disorder benefits.

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 “Strengthening Behav-
5 ioral Health Parity Act”.

6 **SEC. 2. STRENGTHENING PARITY IN MENTAL HEALTH AND**
7 **SUBSTANCE USE DISORDER BENEFITS.**

8 (a) PHSA.—

1 (1) IN GENERAL.—Title XXVII of the Public
 2 Health Service Act (42 U.S.C. 300gg–11 et seq.) is
 3 amended by adding at the end the following new
 4 part:

5 **“PART D—ADDITIONAL COVERAGE PROVISIONS**

6 **“SEC. 2799A–1. PARITY IN MENTAL HEALTH AND SUB-**
 7 **STANCE USE DISORDER BENEFITS.**

8 “(a) IN GENERAL.—

9 “(1) AGGREGATE LIFETIME LIMITS.—In the
 10 case of a group health plan or a health insurance
 11 issuer offering group or individual health insurance
 12 coverage that provides both medical and surgical
 13 benefits and mental health or substance use disorder
 14 benefits—

15 “(A) NO LIFETIME LIMIT.—If the plan or
 16 coverage does not include an aggregate lifetime
 17 limit on substantially all medical and surgical
 18 benefits, the plan or coverage may not impose
 19 any aggregate lifetime limit on mental health or
 20 substance use disorder benefits.

21 “(B) LIFETIME LIMIT.—If the plan or cov-
 22 erage includes an aggregate lifetime limit on
 23 substantially all medical and surgical benefits
 24 (in this paragraph referred to as the ‘applicable

lifetime limit'), the plan or coverage shall either—

“(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health and substance use disorder benefits; or

“(ii) not include any aggregate lifetime limit on mental health or substance use disorder benefits that is less than the applicable lifetime limit.

“(C) RULE IN CASE OF DIFFERENT LIMITS.—In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health and substance use disorder benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is com-

1 puted taking into account the weighted average
2 of the aggregate lifetime limits applicable to
3 such categories.

4 “(2) ANNUAL LIMITS.—In the case of a group
5 health plan or a health insurance issuer offering
6 group or individual health insurance coverage that
7 provides both medical and surgical benefits and
8 mental health or substance use disorder benefits—

9 “(A) NO ANNUAL LIMIT.—If the plan or
10 coverage does not include an annual limit on
11 substantially all medical and surgical benefits,
12 the plan or coverage may not impose any an-
13 nual limit on mental health or substance use
14 disorder benefits.

15 “(B) ANNUAL LIMIT.—If the plan or cov-
16 erage includes an annual limit on substantially
17 all medical and surgical benefits (in this para-
18 graph referred to as the ‘applicable annual
19 limit’), the plan or coverage shall either—

20 “(i) apply the applicable annual limit
21 both to medical and surgical benefits to
22 which it otherwise would apply and to
23 mental health and substance use disorder
24 benefits and not distinguish in the applica-
25 tion of such limit between such medical

1 and surgical benefits and mental health
2 and substance use disorder benefits; or

3 “(ii) not include any annual limit on
4 mental health or substance use disorder
5 benefits that is less than the applicable an-
6 nual limit.

7 “(C) RULE IN CASE OF DIFFERENT LIM-
8 ITS.—In the case of a plan or coverage that is
9 not described in subparagraph (A) or (B) and
10 that includes no or different annual limits on
11 different categories of medical and surgical ben-
12 efits, the Secretary shall establish rules under
13 which subparagraph (B) is applied to such plan
14 or coverage with respect to mental health and
15 substance use disorder benefits by substituting
16 for the applicable annual limit an average an-
17 nual limit that is computed taking into account
18 the weighted average of the annual limits appli-
19 cable to such categories.

20 “(3) FINANCIAL REQUIREMENTS AND TREAT-
21 MENT LIMITATIONS.—

22 “(A) IN GENERAL.—In the case of a group
23 health plan or a health insurance issuer offering
24 group or individual health insurance coverage
25 that provides both medical and surgical benefits

1 and mental health or substance use disorder
2 benefits, such plan or coverage shall ensure
3 that—

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

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

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

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

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

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

18 “(4) AVAILABILITY OF PLAN INFORMATION.—
19 The criteria for medical necessity determinations
20 made under the plan with respect to mental health
21 or substance use disorder benefits (or the health in-
22 surance coverage offered in connection with the plan
23 with respect to such benefits) shall be made avail-
24 able by the plan administrator (or the health insur-
25 ance issuer offering such coverage) in accordance

1 with regulations to any current or potential partici-
2 pant, beneficiary, or contracting provider upon re-
3 quest. The reason for any denial under the plan (or
4 coverage) of reimbursement or payment for services
5 with respect to mental health or substance use dis-
6 order benefits in the case of any participant or bene-
7 ficiary shall, on request or as otherwise required, be
8 made available by the plan administrator (or the
9 health insurance issuer offering such coverage) to
10 the participant or beneficiary in accordance with
11 regulations.

12 “(5) OUT-OF-NETWORK PROVIDERS.—In the
13 case of a plan or coverage that provides both med-
14 ical and surgical benefits and mental health or sub-
15 stance use disorder benefits, if the plan or coverage
16 provides coverage for medical or surgical benefits
17 provided by out-of-network providers, the plan or
18 coverage shall provide coverage for mental health or
19 substance use disorder benefits provided by out-of-
20 network providers in a manner that is consistent
21 with the requirements of this section.

22 “(6) COMPLIANCE PROGRAM GUIDANCE DOCU-
23 MENT.—

24 “(A) IN GENERAL.—Not later than 12
25 months after the date of enactment of the

1 Helping Families in Mental Health Crisis Re-
2 form Act of 2016, the Secretary, the Secretary
3 of Labor, and the Secretary of the Treasury, in
4 consultation with the Inspector General of the
5 Department of Health and Human Services, the
6 Inspector General of the Department of Labor,
7 and the Inspector General of the Department of
8 the Treasury, shall issue a compliance program
9 guidance document to help improve compliance
10 with this section, section 712 of the Employee
11 Retirement Income Security Act of 1974, and
12 section 9812 of the Internal Revenue Code of
13 1986, as applicable. In carrying out this para-
14 graph, the Secretaries may take into consider-
15 ation the 2016 publication of the Department
16 of Health and Human Services and the Depart-
17 ment of Labor, entitled ‘Warning Signs - Plan
18 or Policy Non-Quantitative Treatment Limita-
19 tions (NQTLs) that Require Additional Anal-
20 ysis to Determine Mental Health Parity Com-
21 pliance’.

22 “(B) EXAMPLES ILLUSTRATING COMPLI-
23 ANCE AND NONCOMPLIANCE.—

24 “(i) IN GENERAL.—The compliance
25 program guidance document required

1 under this paragraph shall provide illus-
2 trative, de-identified examples (that do not
3 disclose any protected health information
4 or individually identifiable information) of
5 previous findings of compliance and non-
6 compliance with this section, section 712 of
7 the Employee Retirement Income Security
8 Act of 1974, or section 9812 of the Inter-
9 nal Revenue Code of 1986, as applicable,
10 based on investigations of violations of
11 such sections, including—

12 “(I) examples illustrating re-
13 quirements for information disclosures
14 and nonquantitative treatment limita-
15 tions; and

16 “(II) descriptions of the viola-
17 tions uncovered during the course of
18 such investigations.

19 “(ii) NONQUANTITATIVE TREATMENT
20 LIMITATIONS.—To the extent that any ex-
21 ample described in clause (i) involves a
22 finding of compliance or noncompliance
23 with regard to any requirement for non-
24 quantitative treatment limitations, the ex-
25 ample shall provide sufficient detail to fully

1 explain such finding, including a full de-
2 scription of the criteria involved for ap-
3 proving medical and surgical benefits and
4 the criteria involved for approving mental
5 health and substance use disorder benefits.

6 “(iii) ACCESS TO ADDITIONAL INFOR-
7 MATION REGARDING COMPLIANCE.—In de-
8 veloping and issuing the compliance pro-
9 gram guidance document required under
10 this paragraph, the Secretaries specified in
11 subparagraph (A)—

12 “(I) shall enter into interagency
13 agreements with the Inspector Gen-
14 eral of the Department of Health and
15 Human Services, the Inspector Gen-
16 eral of the Department of Labor, and
17 the Inspector General of the Depart-
18 ment of the Treasury to share find-
19 ings of compliance and noncompliance
20 with this section, section 712 of the
21 Employee Retirement Income Security
22 Act of 1974, or section 9812 of the
23 Internal Revenue Code of 1986, as
24 applicable; and

1 “(II) shall seek to enter into an
2 agreement with a State to share infor-
3 mation on findings of compliance and
4 noncompliance with this section, sec-
5 tion 712 of the Employee Retirement
6 Income Security Act of 1974, or sec-
7 tion 9812 of the Internal Revenue
8 Code of 1986, as applicable.

9 “(C) RECOMMENDATIONS.—The compli-
10 ance program guidance document shall include
11 recommendations to advance compliance with
12 this section, section 712 of the Employee Re-
13 tirement Income Security Act of 1974, or sec-
14 tion 9812 of the Internal Revenue Code of
15 1986, as applicable, and encourage the develop-
16 ment and use of internal controls to monitor
17 adherence to applicable statutes, regulations,
18 and program requirements. Such internal con-
19 trols may include illustrative examples of non-
20 quantitative treatment limitations on mental
21 health and substance use disorder benefits,
22 which may fail to comply with this section, sec-
23 tion 712 of the Employee Retirement Income
24 Security Act of 1974, or section 9812 of the In-
25 ternal Revenue Code of 1986, as applicable, in

1 relation to nonquantitative treatment limita-
2 tions on medical and surgical benefits.

3 “(D) UPDATING THE COMPLIANCE PRO-
4 GRAM GUIDANCE DOCUMENT.—The Secretary,
5 the Secretary of Labor, and the Secretary of
6 the Treasury, in consultation with the Inspector
7 General of the Department of Health and
8 Human Services, the Inspector General of the
9 Department of Labor, and the Inspector Gen-
10 eral of the Department of the Treasury, shall
11 update the compliance program guidance docu-
12 ment every 2 years to include illustrative, de-
13 identified examples (that do not disclose any
14 protected health information or individually
15 identifiable information) of previous findings of
16 compliance and noncompliance with this sec-
17 tion, section 712 of the Employee Retirement
18 Income Security Act of 1974, or section 9812
19 of the Internal Revenue Code of 1986, as appli-
20 cable.

21 “(7) ADDITIONAL GUIDANCE.—

22 “(A) IN GENERAL.—Not later than 12
23 months after the date of enactment of the
24 Helping Families in Mental Health Crisis Re-
25 form Act of 2016, the Secretary, the Secretary

1 of Labor, and the Secretary of the Treasury
2 shall issue guidance to group health plans and
3 health insurance issuers offering group or indi-
4 vidual health insurance coverage to assist such
5 plans and issuers in satisfying the requirements
6 of this section, section 712 of the Employee Re-
7 tirement Income Security Act of 1974, or sec-
8 tion 9812 of the Internal Revenue Code of
9 1986, as applicable.

10 “(B) DISCLOSURE.—

11 “(i) GUIDANCE FOR PLANS AND
12 ISSUERS.—The guidance issued under this
13 paragraph shall include clarifying informa-
14 tion and illustrative examples of methods
15 that group health plans and health insur-
16 ance issuers offering group or individual
17 health insurance coverage may use for dis-
18 closing information to ensure compliance
19 with the requirements under this section,
20 section 712 of the Employee Retirement
21 Income Security Act of 1974, or section
22 9812 of the Internal Revenue Code of
23 1986, as applicable (and any regulations
24 promulgated pursuant to such sections, as
25 applicable).

1 “(ii) DOCUMENTS FOR PARTICIPANTS,
2 BENEFICIARIES, CONTRACTING PROVIDERS,
3 OR AUTHORIZED REPRESENTATIVES.—The
4 guidance issued under this paragraph shall
5 include clarifying information and illus-
6 trative examples of methods that group
7 health plans and health insurance issuers
8 offering group or individual health insur-
9 ance coverage may use to provide any par-
10 ticipant, beneficiary, contracting provider,
11 or authorized representative, as applicable,
12 with documents containing information
13 that the health plans or issuers are re-
14 quired to disclose to participants, bene-
15 ficiaries, contracting providers, or author-
16 ized representatives to ensure compliance
17 with this section, section 712 of the Em-
18 ployee Retirement Income Security Act of
19 1974, or section 9812 of the Internal Rev-
20 enue Code of 1986, as applicable, compli-
21 ance with any regulation issued pursuant
22 to such respective section, or compliance
23 with any other applicable law or regula-
24 tion. Such guidance shall include informa-

tion that is comparative in nature with respect to—

“(I) nonquantitative treatment limitations for both medical and surgical benefits and mental health and substance use disorder benefits;

“(II) the processes, strategies, evidentiary standards, and other factors used to apply the limitations described in subclause (I); and

“(III) the application of the limitations described in subclause (I) to ensure that such limitations are applied in parity with respect to both medical and surgical benefits and mental health and substance use disorder benefits.

“(C) NONQUANTITATIVE TREATMENT LIMITATIONS.—The guidance issued under this paragraph shall include clarifying information and illustrative examples of methods, processes, strategies, evidentiary standards, and other factors that group health plans and health insurance issuers offering group or individual health insurance coverage may use regarding the de-

1 velopment and application of nonquantitative
2 treatment limitations to ensure compliance with
3 this section, section 712 of the Employee Re-
4 tirement Income Security Act of 1974, or sec-
5 tion 9812 of the Internal Revenue Code of
6 1986, as applicable (and any regulations pro-
7 mulgated pursuant to such respective section),
8 including—

9 “(i) examples of methods of deter-
10 mining appropriate types of nonquantita-
11 tive treatment limitations with respect to
12 both medical and surgical benefits and
13 mental health and substance use disorder
14 benefits, including nonquantitative treat-
15 ment limitations pertaining to—

16 “(I) medical management stand-
17 ards based on medical necessity or ap-
18 propriateness, or whether a treatment
19 is experimental or investigative;

20 “(II) limitations with respect to
21 prescription drug formulary design;
22 and

23 “(III) use of fail-first or step
24 therapy protocols;

1 “(ii) examples of methods of deter-
2 mining—

3 “(I) network admission standards
4 (such as credentialing); and

5 “(II) factors used in provider re-
6 imbursement methodologies (such as
7 service type, geographic market, de-
8 mand for services, and provider sup-
9 ply, practice size, training, experience,
10 and licensure) as such factors apply to
11 network adequacy;

12 “(iii) examples of sources of informa-
13 tion that may serve as evidentiary stand-
14 ards for the purposes of making deter-
15 minations regarding the development and
16 application of nonquantitative treatment
17 limitations;

18 “(iv) examples of specific factors, and
19 the evidentiary standards used to evaluate
20 such factors, used by such plans or issuers
21 in performing a nonquantitative treatment
22 limitation analysis;

23 “(v) examples of how specific evi-
24 dentiary standards may be used to deter-

1 mine whether treatments are considered
2 experimental or investigative;

3 “(vi) examples of how specific evi-
4 dentiary standards may be applied to each
5 service category or classification of bene-
6 fits;

7 “(vii) examples of methods of reach-
8 ing appropriate coverage determinations
9 for new mental health or substance use
10 disorder treatments, such as evidence-
11 based early intervention programs for indi-
12 viduals with a serious mental illness and
13 types of medical management techniques;

14 “(viii) examples of methods of reach-
15 ing appropriate coverage determinations
16 for which there is an indirect relationship
17 between the covered mental health or sub-
18 stance use disorder benefit and a tradi-
19 tional covered medical and surgical benefit,
20 such as residential treatment or hos-
21 pitalizations involving voluntary or involun-
22 tary commitment; and

23 “(ix) additional illustrative examples
24 of methods, processes, strategies, evi-
25 dentiary standards, and other factors for

1 which the Secretary determines that addi-
2 tional guidance is necessary to improve
3 compliance with this section, section 712 of
4 the Employee Retirement Income Security
5 Act of 1974, or section 9812 of the Inter-
6 nal Revenue Code of 1986, as applicable.

7 “(D) PUBLIC COMMENT.—Prior to issuing
8 any final guidance under this paragraph, the
9 Secretary shall provide a public comment period
10 of not less than 60 days during which any
11 member of the public may provide comments on
12 a draft of the guidance.

13 “(8) COMPLIANCE REQUIREMENTS.—

14 “(A) NONQUANTITATIVE TREATMENT LIM-
15 ITATION (NQTL) REQUIREMENTS.—Beginning
16 45 days after the date of enactment of this
17 paragraph, in the case of a group health plan
18 or a health insurance issuer offering group or
19 individual health insurance coverage that pro-
20 vides both medical and surgical benefits and
21 mental health or substance use disorder benefits
22 and that imposes nonquantitative treatment
23 limitations (referred to in this section as
24 ‘NQTL’) on mental health or substance use dis-
25 order benefits, the plan or issuer offering health

1 insurance coverage shall perform comparative
2 analyses of the design and application of
3 NQTLs in accordance with subparagraph (B),
4 and make available to the applicable State au-
5 thority (or, as applicable, the Secretary), upon
6 request, the following information:

7 “(i) The specific plan or coverage
8 terms regarding the NQTL, that applies to
9 such plan or coverage, and a description of
10 all mental health or substance use disorder
11 and medical or surgical benefits to which it
12 applies in each respective benefits classi-
13 fication.

14 “(ii) The factors used to determine
15 that the NQTL will apply to mental health
16 or substance use disorder benefits and
17 medical or surgical benefits.

18 “(iii) The evidentiary standards used
19 for the factors identified in clause (ii),
20 when applicable, provided that every factor
21 shall be defined and any other source or
22 evidence relied upon to design and apply
23 the NQTL to mental health or substance
24 use disorder benefits and medical or sur-
25 gical benefits.

1 “(iv) The comparative analyses dem-
2 onstrating that the processes, strategies,
3 evidentiary standards, and other factors
4 used to design the NQTL, as written, and
5 the operation processes and strategies as
6 written and in operation that are used to
7 apply the NQTL for mental health or sub-
8 stance use disorder benefits are com-
9 parable to, and are applied no more strin-
10 gently than, the processes, strategies, evi-
11 dentiary standards, and other factors used
12 to design the NQTL, as written, and the
13 operation processes and strategies as writ-
14 ten and in operation that are used to apply
15 the NQTL to medical or surgical benefits.

16 “(v) A disclosure of the specific find-
17 ings and conclusions reached by the plan
18 or coverage that the results of the analyses
19 described in this subparagraph indicate
20 that the plan or coverage is in compliance
21 with this section.

22 “(B) SECRETARY REQUEST PROCESS.—

23 “(i) SUBMISSION UPON REQUEST.—
24 The Secretary shall request that a group
25 health plan or a health insurance issuer of-

1 fering group or individual health insurance
2 coverage submit the comparative analyses
3 described in subparagraph (A) for plans
4 that involve potential violations of this sec-
5 tion or complaints regarding noncompli-
6 ance with this section that concern NQTLs
7 and any other instances in which the Sec-
8 retary determines appropriate. The Sec-
9 retary shall request not fewer than 20 such
10 analyses per year.

11 “(ii) ADDITIONAL INFORMATION.—In
12 instances in which the Secretary has con-
13 cluded that the plan or coverage has not
14 submitted sufficient information for the
15 Secretary to review the comparative anal-
16 yses described in subparagraph (A), as re-
17 quested under clause (i), the Secretary
18 shall specify to the plan or coverage the in-
19 formation the plan or coverage must sub-
20 mit to be responsive to the request under
21 clause (i) for the Secretary to review the
22 comparative analyses described in subpara-
23 graph (A) for compliance with this section.
24 Nothing in this paragraph shall require the
25 Secretary to conclude that a plan is in

1 compliance with this section solely based
2 upon the inspection of the comparative
3 analyses described in subparagraph (A), as
4 requested under clause (i).

5 “(iii) REQUIRED ACTION.—

6 “(I) IN GENERAL.—In instances
7 in which the Secretary has reviewed
8 the comparative analyses described in
9 subparagraph (A), as requested under
10 clause (i), and determined that the
11 plan or coverage is not in compliance
12 with this section, the plan or cov-
13 erage—

14 “(aa) shall specify to the
15 Secretary the actions the plan or
16 coverage will take to be in com-
17 pliance with this section and pro-
18 vide to the Secretary comparative
19 analyses described in subpara-
20 graph (A) that demonstrate com-
21 pliance with this section not later
22 than 45 days after the initial de-
23 termination by the Secretary that
24 the plan or coverage is not in
25 compliance; and

1 “(bb) following the 45-day
2 corrective action period under
3 item (aa), if the Secretary deter-
4 mines that the plan or coverage
5 still is not in compliance with
6 this section, not later than 7
7 days after such determination,
8 shall notify all individuals en-
9 rolled in the plan or coverage
10 that the plan or coverage has
11 been determined to be not in
12 compliance with this section.

13 “(II) EXEMPTION FROM DISCLO-
14 SURE.—Documents or communica-
15 tions produced in connection with the
16 Secretary’s recommendations to the
17 plan or coverage shall not be subject
18 to disclosure pursuant to section 552
19 of title 5, United States Code.

20 “(iv) REPORT.—Not later than 1 year
21 after the date of enactment of this para-
22 graph, and not later than October 1 of
23 each year thereafter, the Secretary shall
24 submit to Congress, and make publicly
25 available, a report that contains—

1 “(I) a summary of the compara-
2 tive analyses requested under clause
3 (i), including the identity of each plan
4 or coverage that is determined to be
5 not in compliance after the final de-
6 termination by the Secretary de-
7 scribed in clause (iii)(I)(bb);

8 “(II) the Secretary’s conclusions
9 as to whether each plan or coverage
10 submitted sufficient information for
11 the Secretary to review the compara-
12 tive analyses requested under clause
13 (i) for compliance with this section;

14 “(III) for each plan or coverage
15 that did submit sufficient information
16 for the Secretary to review the com-
17 parative analyses requested under
18 clause (i), the Secretary’s conclusions
19 as to whether and why the plan or
20 coverage is in compliance with the re-
21 quirements under this section;

22 “(IV) the Secretary’s specifica-
23 tions described in clause (ii) for each
24 plan or coverage that the Secretary
25 determined did not submit sufficient

1 information for the Secretary to re-
2 view the comparative analyses re-
3 quested under clause (i) for compli-
4 ance with this section; and

5 “(V) the Secretary’s specifica-
6 tions described in clause (iii) of the
7 actions each plan or coverage that the
8 Secretary determined is not in compli-
9 ance with this section must take to be
10 in compliance with this section, in-
11 cluding the reason why the Secretary
12 determined the plan or coverage is not
13 in compliance.

14 “(C) COMPLIANCE PROGRAM GUIDANCE
15 DOCUMENT UPDATE PROCESS.—

16 “(i) IN GENERAL.—The Secretary
17 shall include instances of noncompliance
18 that the Secretary discovers upon review-
19 ing the comparative analyses requested
20 under subparagraph (B)(i) in the compli-
21 ance program guidance document de-
22 scribed in paragraph (6), as it is updated
23 every 2 years, except that such instances
24 shall not disclose any protected health in-

1 formation or individually identifiable infor-
2 mation.

3 “(ii) GUIDANCE AND REGULATIONS.—
4 Not later than 18 months after the date of
5 enactment of this paragraph, the Secretary
6 shall finalize any draft or interim guidance
7 and regulations relating to mental health
8 parity under this section. Such draft guid-
9 ance shall include guidance to clarify the
10 process and timeline for current and poten-
11 tial participants and beneficiaries (and au-
12 thorized representatives and health care
13 providers of such participants and bene-
14 ficiaries) with respect to plans to file com-
15 plaints of such plans or issuers being in
16 violation of this section, including guid-
17 ance, by plan type, on the relevant State,
18 regional, or national office with which such
19 complaints should be filed.

20 “(iii) STATE.—The Secretary shall
21 share information on findings of compli-
22 ance and noncompliance discovered upon
23 reviewing the comparative analyses re-
24 quested under subparagraph (B)(i) with
25 the State where the group health plan is

1 located or the State where the health in-
2 surance issuer is licensed to do business
3 for coverage offered by a health insurance
4 issuer in the group market, in accordance
5 with paragraph (6)(B)(iii)(II).

6 “(b) CONSTRUCTION.—Nothing in this section shall
7 be construed—

8 “(1) as requiring a group health plan or a
9 health insurance issuer offering group or individual
10 health insurance coverage to provide any mental
11 health or substance use disorder benefits; or

12 “(2) in the case of a group health plan or a
13 health insurance issuer offering group or individual
14 health insurance coverage that provides mental
15 health or substance use disorder benefits, as affect-
16 ing the terms and conditions of the plan or coverage
17 relating to such benefits under the plan or coverage,
18 except as provided in subsection (a).

19 “(c) EXEMPTIONS.—

20 “(1) SMALL EMPLOYER EXEMPTION.—This sec-
21 tion shall not apply to any group health plan and a
22 health insurance issuer offering group or individual
23 health insurance coverage for any plan year of a
24 small employer (as defined in section 2791(e)(4), ex-
25 cept that for purposes of this paragraph such term

1 shall include employers with 1 employee in the case
2 of an employer residing in a State that permits
3 small groups to include a single individual).

4 “(2) COST EXEMPTION.—

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

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

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

8 “(ii) 1 percent in the case of each
9 subsequent plan year.

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

23 “(D) 6-MONTH DETERMINATIONS.—If a
24 group health plan (or a health insurance issuer
25 offering coverage in connection with a group

1 health plan) seeks an exemption under this
2 paragraph, determinations under subparagraph
3 (A) shall be made after such plan (or coverage)
4 has complied with this section for the first 6
5 months of the plan year involved.

6 “(E) NOTIFICATION.—

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

18 “(ii) REQUIREMENT.—A notification
19 to the Secretary under clause (i) shall in-
20 clude—

21 “(I) a description of the number
22 of covered lives under the plan (or
23 coverage) involved at the time of the
24 notification, and as applicable, at the
25 time of any prior election of the cost-

1 exemption under this paragraph by
2 such plan (or coverage);

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

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

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

23 “(I) a breakdown of States by
24 the size and type of employers submit-
25 ting such notification; and

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

3 “(F) AUDITS BY APPROPRIATE AGEN-
4 CIES.—To determine compliance with this para-
5 graph, the Secretary may audit the books and
6 records of a group health plan or health insur-
7 ance issuer relating to an exemption, including
8 any actuarial reports prepared pursuant to sub-
9 paragraph (C), during the 6 year period fol-
10 lowing the notification of such exemption under
11 subparagraph (E). A State agency receiving a
12 notification under subparagraph (E) may also
13 conduct such an audit with respect to an ex-
14 emption covered by such notification.

15 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
16 FERED.—In the case of a group health plan that offers
17 a participant or beneficiary two or more benefit package
18 options under the plan, the requirements of this section
19 shall be applied separately with respect to each such op-
20 tion.

21 “(e) DEFINITIONS.—For purposes of this section—

22 “(1) AGGREGATE LIFETIME LIMIT.—The term
23 ‘aggregate lifetime limit’ means, with respect to ben-
24 efits under a group health plan or health insurance
25 coverage, a dollar limitation on the total amount

1 that may be paid with respect to such benefits under
2 the plan or health insurance coverage with respect to
3 an individual or other coverage unit.

4 “(2) ANNUAL LIMIT.—The term ‘annual limit’
5 means, with respect to benefits under a group health
6 plan or health insurance coverage, a dollar limitation
7 on the total amount of benefits that may be paid
8 with respect to such benefits in a 12-month period
9 under the plan or health insurance coverage with re-
10 spect to an individual or other coverage unit.

11 “(3) MEDICAL OR SURGICAL BENEFITS.—The
12 term ‘medical or surgical benefits’ means benefits
13 with respect to medical or surgical services, as de-
14 fined under the terms of the plan or coverage (as the
15 case may be), but does not include mental health or
16 substance use disorder benefits.

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

22 “(5) SUBSTANCE USE DISORDER BENEFITS.—
23 The term ‘substance use disorder benefits’ means
24 benefits with respect to services for substance use
25 disorders, as defined under the terms of the plan

1 and in accordance with applicable Federal and State
2 law.”.

3 (2) SUNSET.—Section 2726 of the Public
4 Health Service Act (42 U.S.C. 300gg–26) is amend-
5 ed by adding at the end the following new sub-
6 section:

7 “(f) SUNSET.—The provisions of this section shall
8 have no force or effect after the date of the enactment
9 of the Strengthening Behavioral Health Parity Act.”.

10 (b) ERISA.—Section 712(a) of the Employee Retire-
11 ment Income Security Act of 1974 (1185a(a)) is amended
12 by adding at the end the following new paragraphs:

13 “(6) COMPLIANCE PROGRAM GUIDANCE DOCU-
14 MENT.—

15 “(A) IN GENERAL.—Not later than 12
16 months after the date of enactment of the
17 Helping Families in Mental Health Crisis Re-
18 form Act of 2016, the Secretary, the Secretary
19 of Health and Human Services, and the Sec-
20 retary of the Treasury, in consultation with the
21 Inspector General of the Department of Health
22 and Human Services, the Inspector General of
23 the Department of Labor, and the Inspector
24 General of the Department of the Treasury,
25 shall issue a compliance program guidance doc-

ument to help improve compliance with this section, section 2799A–1 of the Public Health Service Act, and section 9812 of the Internal Revenue Code of 1986, as applicable. In carrying out this paragraph, the Secretaries may take into consideration the 2016 publication of the Department of Health and Human Services and the Department of Labor, entitled ‘Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance’.

“(B) EXAMPLES ILLUSTRATING COMPLIANCE AND NONCOMPLIANCE.—

“(i) IN GENERAL.—The compliance program guidance document required under this paragraph shall provide illustrative, de-identified examples (that do not disclose any protected health information or individually identifiable information) of previous findings of compliance and non-compliance with this section, section 2799A–1 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, based on in-

1 investigations of violations of such sections,
2 including—

3 “(I) examples illustrating re-
4 quirements for information disclosures
5 and nonquantitative treatment limita-
6 tions; and

7 “(II) descriptions of the viola-
8 tions uncovered during the course of
9 such investigations.

10 “(ii) NONQUANTITATIVE TREATMENT
11 LIMITATIONS.—To the extent that any ex-
12 ample described in clause (i) involves a
13 finding of compliance or noncompliance
14 with regard to any requirement for non-
15 quantitative treatment limitations, the ex-
16 ample shall provide sufficient detail to fully
17 explain such finding, including a full de-
18 scription of the criteria involved for ap-
19 proving medical and surgical benefits and
20 the criteria involved for approving mental
21 health and substance use disorder benefits.

22 “(iii) ACCESS TO ADDITIONAL INFOR-
23 MATION REGARDING COMPLIANCE.—In de-
24 veloping and issuing the compliance pro-
25 gram guidance document required under

1 this paragraph, the Secretaries specified in
2 subparagraph (A)—

3 “(I) shall enter into interagency
4 agreements with the Inspector Gen-
5 eral of the Department of Health and
6 Human Services, the Inspector Gen-
7 eral of the Department of Labor, and
8 the Inspector General of the Depart-
9 ment of the Treasury to share find-
10 ings of compliance and noncompliance
11 with this section, section 2799A–1 of
12 the Public Health Service Act, or sec-
13 tion 9812 of the Internal Revenue
14 Code of 1986, as applicable; and

15 “(II) shall seek to enter into an
16 agreement with a State to share infor-
17 mation on findings of compliance and
18 noncompliance with this section, sec-
19 tion 2799A–1 of the Public Health
20 Service Act, or section 9812 of the In-
21 ternal Revenue Code of 1986, as ap-
22 plicable.

23 “(C) RECOMMENDATIONS.—The compli-
24 ance program guidance document shall include
25 recommendations to advance compliance with

1 this section, section 2799A–1 of the Public
2 Health Service Act, or section 9812 of the In-
3 ternal Revenue Code of 1986, as applicable, and
4 encourage the development and use of internal
5 controls to monitor adherence to applicable
6 statutes, regulations, and program require-
7 ments. Such internal controls may include illus-
8 trative examples of nonquantitative treatment
9 limitations on mental health and substance use
10 disorder benefits, which may fail to comply with
11 this section, section 2799A–1 of the Public
12 Health Service Act, or section 9812 of the In-
13 ternal Revenue Code of 1986, as applicable, in
14 relation to nonquantitative treatment limita-
15 tions on medical and surgical benefits.

16 “(D) UPDATING THE COMPLIANCE PRO-
17 GRAM GUIDANCE DOCUMENT.—The Secretary,
18 the Secretary of Health and Human Services,
19 and the Secretary of the Treasury, in consulta-
20 tion with the Inspector General of the Depart-
21 ment of Health and Human Services, the In-
22 spector General of the Department of Labor,
23 and the Inspector General of the Department of
24 the Treasury, shall update the compliance pro-
25 gram guidance document every 2 years to in-

1 clude illustrative, de-identified examples (that
2 do not disclose any protected health information
3 or individually identifiable information) of pre-
4 vious findings of compliance and noncompliance
5 with this section, section 2799A–1 of the Public
6 Health Service Act, or section 9812 of the In-
7 ternal Revenue Code of 1986, as applicable.

8 “(7) ADDITIONAL GUIDANCE.—

9 “(A) IN GENERAL.—Not later than 12
10 months after the date of enactment of the
11 Helping Families in Mental Health Crisis Re-
12 form Act of 2016, the Secretary, the Secretary
13 of Health and Human Services, and the Sec-
14 retary of the Treasury shall issue guidance to
15 group health plans and health insurance issuers
16 offering group or individual health insurance
17 coverage to assist such plans and issuers in sat-
18 isfying the requirements of this section, section
19 2799A–1 of the Public Health Service Act, or
20 section 9812 of the Internal Revenue Code of
21 1986, as applicable.

22 “(B) DISCLOSURE.—

23 “(i) GUIDANCE FOR PLANS AND
24 ISSUERS.—The guidance issued under this
25 paragraph shall include clarifying informa-

tion and illustrative examples of methods that group health plans and health insurance issuers offering group or individual health insurance coverage may use for disclosing information to ensure compliance with the requirements under this section, section 2799A–1 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, (and any regulations promulgated pursuant to such sections, as applicable).

“(ii) DOCUMENTS FOR PARTICIPANTS, BENEFICIARIES, CONTRACTING PROVIDERS, OR AUTHORIZED REPRESENTATIVES.—The guidance issued under this paragraph shall include clarifying information and illustrative examples of methods that group health plans and health insurance issuers offering group or individual health insurance coverage may use to provide any participant, beneficiary, contracting provider, or authorized representative, as applicable, with documents containing information that the health plans or issuers are required to disclose to participants, bene-

1 ficiaries, contracting providers, or author-
2 ized representatives to ensure compliance
3 with this section, section 2799A–1 of the
4 Public Health Service Act, or section 9812
5 of the Internal Revenue Code of 1986, as
6 applicable, compliance with any regulation
7 issued pursuant to such respective section,
8 or compliance with any other applicable
9 law or regulation. Such guidance shall in-
10 clude information that is comparative in
11 nature with respect to—

12 “(I) nonquantitative treatment
13 limitations for both medical and sur-
14 gical benefits and mental health and
15 substance use disorder benefits;

16 “(II) the processes, strategies,
17 evidentiary standards, and other fac-
18 tors used to apply the limitations de-
19 scribed in subclause (I); and

20 “(III) the application of the limi-
21 tations described in subclause (I) to
22 ensure that such limitations are ap-
23 plied in parity with respect to both
24 medical and surgical benefits and

1 mental health and substance use dis-
2 order benefits.

3 “(C) NONQUANTITATIVE TREATMENT LIM-
4 ITATIONS.—The guidance issued under this
5 paragraph shall include clarifying information
6 and illustrative examples of methods, processes,
7 strategies, evidentiary standards, and other fac-
8 tors that group health plans and health insur-
9 ance issuers offering group or individual health
10 insurance coverage may use regarding the de-
11 velopment and application of nonquantitative
12 treatment limitations to ensure compliance with
13 this section, section 2799A–1 of the Public
14 Health Service Act, or section 9812 of the In-
15 ternal Revenue Code of 1986, as applicable
16 (and any regulations promulgated pursuant to
17 such respective section), including—

18 “(i) examples of methods of deter-
19 mining appropriate types of nonquantita-
20 tive treatment limitations with respect to
21 both medical and surgical benefits and
22 mental health and substance use disorder
23 benefits, including nonquantitative treat-
24 ment limitations pertaining to—

1 “(I) medical management stand-
2 ards based on medical necessity or ap-
3 propriateness, or whether a treatment
4 is experimental or investigative;

5 “(II) limitations with respect to
6 prescription drug formulary design;
7 and

8 “(III) use of fail-first or step
9 therapy protocols;

10 “(ii) examples of methods of deter-
11 mining—

12 “(I) network admission standards
13 (such as credentialing); and

14 “(II) factors used in provider re-
15 imbursement methodologies (such as
16 service type, geographic market, de-
17 mand for services, and provider sup-
18 ply, practice size, training, experience,
19 and licensure) as such factors apply to
20 network adequacy;

21 “(iii) examples of sources of informa-
22 tion that may serve as evidentiary stand-
23 ards for the purposes of making deter-
24 minations regarding the development and

1 application of nonquantitative treatment
2 limitations;

3 “(iv) examples of specific factors, and
4 the evidentiary standards used to evaluate
5 such factors, used by such plans or issuers
6 in performing a nonquantitative treatment
7 limitation analysis;

8 “(v) examples of how specific evi-
9 dentiary standards may be used to deter-
10 mine whether treatments are considered
11 experimental or investigative;

12 “(vi) examples of how specific evi-
13 dentiary standards may be applied to each
14 service category or classification of bene-
15 fits;

16 “(vii) examples of methods of reach-
17 ing appropriate coverage determinations
18 for new mental health or substance use
19 disorder treatments, such as evidence-
20 based early intervention programs for indi-
21 viduals with a serious mental illness and
22 types of medical management techniques;

23 “(viii) examples of methods of reach-
24 ing appropriate coverage determinations
25 for which there is an indirect relationship

1 between the covered mental health or sub-
2 stance use disorder benefit and a tradi-
3 tional covered medical and surgical benefit,
4 such as residential treatment or hos-
5 pitalizations involving voluntary or involun-
6 tary commitment; and

7 “(ix) additional illustrative examples
8 of methods, processes, strategies, evi-
9 dentiary standards, and other factors for
10 which the Secretary determines that addi-
11 tional guidance is necessary to improve
12 compliance with this section, section
13 2799A–1 of the Public Health Service Act,
14 or section 9812 of the Internal Revenue
15 Code of 1986, as applicable.

16 “(D) PUBLIC COMMENT.—Prior to issuing
17 any final guidance under this paragraph, the
18 Secretary shall provide a public comment period
19 of not less than 60 days during which any
20 member of the public may provide comments on
21 a draft of the guidance.

22 “(8) COMPLIANCE REQUIREMENTS.—

23 “(A) NONQUANTITATIVE TREATMENT LIM-
24 ITATION (NQTL) REQUIREMENTS.—Beginning
25 45 days after the date of enactment of this

1 paragraph, in the case of a group health plan
2 or a health insurance issuer offering group
3 health insurance coverage that provides both
4 medical and surgical benefits and mental health
5 or substance use disorder benefits and that im-
6 poses nonquantitative treatment limitations (re-
7 ferred to in this section as ‘NQTL’) on mental
8 health or substance use disorder benefits, the
9 plan or issuer offering health insurance cov-
10 erage shall perform comparative analyses of the
11 design and application of NQTLs in accordance
12 with subparagraph (B), and make available to
13 the applicable State authority (or, as applicable,
14 the Secretary), upon request, the following in-
15 formation:

16 “(i) The specific plan or coverage
17 terms regarding the NQTL, that applies to
18 such plan or coverage, and a description of
19 all mental health or substance use disorder
20 and medical or surgical benefits to which it
21 applies in each respective benefits classi-
22 fication.

23 “(ii) The factors used to determine
24 that the NQTL will apply to mental health

1 or substance use disorder benefits and
2 medical or surgical benefits.

3 “(iii) The evidentiary standards used
4 for the factors identified in clause (ii),
5 when applicable, provided that every factor
6 shall be defined and any other source or
7 evidence relied upon to design and apply
8 the NQTL to mental health or substance
9 use disorder benefits and medical or sur-
10 gical benefits.

11 “(iv) The comparative analyses dem-
12 onstrating that the processes, strategies,
13 evidentiary standards, and other factors
14 used to design the NQTL, as written, and
15 the operation processes and strategies as
16 written and in operation that are used to
17 apply the NQTL for mental health or sub-
18 stance use disorder benefits are com-
19 parable to, and are applied no more strin-
20 gently than, the processes, strategies, evi-
21 dentiary standards, and other factors used
22 to design the NQTL, as written, and the
23 operation processes and strategies as writ-
24 ten and in operation that are used to apply
25 the NQTL to medical or surgical benefits.

1 “(v) A disclosure of the specific find-
2 ings and conclusions reached by the plan
3 or coverage that the results of the analyses
4 described in this subparagraph indicate
5 that the plan or coverage is in compliance
6 with this section.

7 “(B) SECRETARY REQUEST PROCESS.—

8 “(i) SUBMISSION UPON REQUEST.—
9 The Secretary shall request that a group
10 health plan or a health insurance issuer of-
11 fering group health insurance coverage
12 submit the comparative analyses described
13 in subparagraph (A) for plans that involve
14 potential violations of this section or com-
15 plaints regarding noncompliance with this
16 section that concern NQTLs and any other
17 instances in which the Secretary deter-
18 mines appropriate. The Secretary shall re-
19 quest not fewer than 20 such analyses per
20 year.

21 “(ii) ADDITIONAL INFORMATION.—In
22 instances in which the Secretary has con-
23 cluded that the plan or coverage has not
24 submitted sufficient information for the
25 Secretary to review the comparative anal-

yses described in subparagraph (A), as requested under clause (i), the Secretary shall specify to the plan or coverage the information the plan or coverage must submit to be responsive to the request under clause (i) for the Secretary to review the comparative analyses described in subparagraph (A) for compliance with this section. Nothing in this paragraph shall require the Secretary to conclude that a plan is in compliance with this section solely based upon the inspection of the comparative analyses described in subparagraph (A), as requested under clause (i).

“(iii) REQUIRED ACTION.—

“(I) IN GENERAL.—In instances in which the Secretary has reviewed the comparative analyses described in subparagraph (A), as requested under clause (i), and determined that the plan or coverage is not in compliance with this section, the plan or coverage—

“(aa) shall specify to the Secretary the actions the plan or

1 coverage will take to be in com-
2 pliance with this section and pro-
3 vide to the Secretary comparative
4 analyses described in subpara-
5 graph (A) that demonstrate com-
6 pliance with this section not later
7 than 45 days after the initial de-
8 termination by the Secretary that
9 the plan or coverage is not in
10 compliance; and

11 “(bb) following the 45-day
12 corrective action period under
13 item (aa), if the Secretary deter-
14 mines that the plan or coverage
15 still is not in compliance with
16 this section, not later than 7
17 days after such determination,
18 shall notify all individuals en-
19 rolled in the plan or coverage
20 that the plan or coverage has
21 been determined to be not in
22 compliance with this section.

23 “(II) EXEMPTION FROM DISCLO-
24 SURE.—Documents or communica-
25 tions produced in connection with the

1 Secretary's recommendations to the
2 plan or coverage shall not be subject
3 to disclosure pursuant to section 552
4 of title 5, United States Code.

5 “(iv) REPORT.—Not later than 1 year
6 after the date of enactment of this para-
7 graph, and not later than October 1 of
8 each year thereafter, the Secretary shall
9 submit to Congress, and make publicly
10 available, a report that contains—

11 “(I) a summary of the compara-
12 tive analyses requested under clause
13 (i), including the identity of each plan
14 or coverage that is determined to be
15 not in compliance after the final de-
16 termination by the Secretary de-
17 scribed in clause (iii)(I)(bb);

18 “(II) the Secretary's conclusions
19 as to whether each plan or coverage
20 submitted sufficient information for
21 the Secretary to review the compara-
22 tive analyses requested under clause
23 (i) for compliance with this section;

24 “(III) for each plan or coverage
25 that did submit sufficient information

1 for the Secretary to review the com-
2 parative analyses requested under
3 clause (i), the Secretary's conclusions
4 as to whether and why the plan or
5 coverage is in compliance with the re-
6 quirements under this section;

7 “(IV) the Secretary's specifica-
8 tions described in clause (ii) for each
9 plan or coverage that the Secretary
10 determined did not submit sufficient
11 information for the Secretary to re-
12 view the comparative analyses re-
13 quested under clause (i) for compli-
14 ance with this section; and

15 “(V) the Secretary's specifica-
16 tions described in clause (iii) of the
17 actions each plan or coverage that the
18 Secretary determined is not in compli-
19 ance with this section must take to be
20 in compliance with this section, in-
21 cluding the reason why the Secretary
22 determined the plan or coverage is not
23 in compliance.

24 “(C) COMPLIANCE PROGRAM GUIDANCE

25 DOCUMENT UPDATE PROCESS.—

1 “(i) IN GENERAL.—The Secretary
2 shall include instances of noncompliance
3 that the Secretary discovers upon review-
4 ing the comparative analyses requested
5 under subparagraph (B)(i) in the compli-
6 ance program guidance document de-
7 scribed in paragraph (6), as it is updated
8 every 2 years, except that such instances
9 shall not disclose any protected health in-
10 formation or individually identifiable infor-
11 mation.

12 “(ii) GUIDANCE AND REGULATIONS.—
13 Not later than 18 months after the date of
14 enactment of this paragraph, the Secretary
15 shall finalize any draft or interim guidance
16 and regulations relating to mental health
17 parity under this section. Such draft guid-
18 ance shall include guidance to clarify the
19 process and timeline for current and poten-
20 tial participants and beneficiaries (and au-
21 thorized representatives and health care
22 providers of such participants and bene-
23 ficiaries) with respect to plans to file com-
24 plaints of such plans or issuers being in
25 violation of this section, including guid-

1 ance, by plan type, on the relevant State,
 2 regional, or national office with which such
 3 complaints should be filed.

4 “(iii) STATE.—The Secretary shall
 5 share information on findings of compli-
 6 ance and noncompliance discovered upon
 7 reviewing the comparative analyses re-
 8 quested under subparagraph (B)(i) with
 9 the State where the group health plan is
 10 located or the State where the health in-
 11 surance issuer is licensed to do business
 12 for coverage offered by a health insurance
 13 issuer in the group market, in accordance
 14 with paragraph (6)(B)(iii)(II).”.

15 (c) IRC.—Section 9812 of the Internal Revenue Code
 16 of 1986 is amended by adding at the end the following
 17 new paragraphs:

18 “(6) COMPLIANCE PROGRAM GUIDANCE DOCU-
 19 MENT.—

20 “(A) IN GENERAL.—Not later than 12
 21 months after the date of enactment of the
 22 Helping Families in Mental Health Crisis Re-
 23 form Act of 2016, the Secretary, the Secretary
 24 of Labor, and the Secretary of Health and
 25 Human Services, in consultation with the In-

1 spector General of the Department of Health
2 and Human Services, the Inspector General of
3 the Department of Labor, and the Inspector
4 General of the Department of the Treasury,
5 shall issue a compliance program guidance doc-
6 ument to help improve compliance with this sec-
7 tion, section 712 of the Employee Retirement
8 Income Security Act of 1974, and section
9 2799A–1 of the Public Health Service Act, as
10 applicable. In carrying out this paragraph, the
11 Secretaries may take into consideration the
12 2016 publication of the Department of Health
13 and Human Services and the Department of
14 Labor, entitled ‘Warning Signs - Plan or Policy
15 Non-Quantitative Treatment Limitations
16 (NQTLs) that Require Additional Analysis to
17 Determine Mental Health Parity Compliance’.

18 “(B) EXAMPLES ILLUSTRATING COMPLI-
19 ANCE AND NONCOMPLIANCE.—

20 “(i) IN GENERAL.—The compliance
21 program guidance document required
22 under this paragraph shall provide illus-
23 trative, de-identified examples (that do not
24 disclose any protected health information
25 or individually identifiable information) of

1 previous findings of compliance and non-
2 compliance with this section, section 712 of
3 the Employee Retirement Income Security
4 Act of 1974, or section 2799A–1 of the
5 Public Health Service Act, as applicable,
6 based on investigations of violations of
7 such sections, including—

8 “(I) examples illustrating re-
9 quirements for information disclosures
10 and nonquantitative treatment limita-
11 tions; and

12 “(II) descriptions of the viola-
13 tions uncovered during the course of
14 such investigations.

15 “(ii) NONQUANTITATIVE TREATMENT
16 LIMITATIONS.—To the extent that any ex-
17 ample described in clause (i) involves a
18 finding of compliance or noncompliance
19 with regard to any requirement for non-
20 quantitative treatment limitations, the ex-
21 ample shall provide sufficient detail to fully
22 explain such finding, including a full de-
23 scription of the criteria involved for ap-
24 proving medical and surgical benefits and

1 the criteria involved for approving mental
2 health and substance use disorder benefits.

3 “(iii) ACCESS TO ADDITIONAL INFOR-
4 MATION REGARDING COMPLIANCE.—In de-
5 veloping and issuing the compliance pro-
6 gram guidance document required under
7 this paragraph, the Secretaries specified in
8 subparagraph (A)—

9 “(I) shall enter into interagency
10 agreements with the Inspector Gen-
11 eral of the Department of Health and
12 Human Services, the Inspector Gen-
13 eral of the Department of Labor, and
14 the Inspector General of the Depart-
15 ment of the Treasury to share find-
16 ings of compliance and noncompliance
17 with this section, section 712 of the
18 Employee Retirement Income Security
19 Act of 1974, or section 2799A–1 of
20 the Public Health Service Act, as ap-
21 plicable; and

22 “(II) shall seek to enter into an
23 agreement with a State to share infor-
24 mation on findings of compliance and
25 noncompliance with this section, sec-

tion 712 of the Employee Retirement
Income Security Act of 1974, or sec-
tion 2799A–1 of the Public Health
Service Act, as applicable.

“(C) RECOMMENDATIONS.—The compli-
ance program guidance document shall include
recommendations to advance compliance with
this section, section 712 of the Employee Re-
tirement Income Security Act of 1974, or sec-
tion 2799A–1 of the Public Health Service Act,
as applicable, and encourage the development
and use of internal controls to monitor adher-
ence to applicable statutes, regulations, and
program requirements. Such internal controls
may include illustrative examples of non-
quantitative treatment limitations on mental
health and substance use disorder benefits,
which may fail to comply with this section, sec-
tion 712 of the Employee Retirement Income
Security Act of 1974, or section 2799A–1 of
the Public Health Service Act, as applicable, in
relation to nonquantitative treatment limita-
tions on medical and surgical benefits.

“(D) UPDATING THE COMPLIANCE PRO-
GRAM GUIDANCE DOCUMENT.—The Secretary,

1 the Secretary of Labor, and the Secretary of
2 Health and Human Services, in consultation
3 with the Inspector General of the Department
4 of Health and Human Services, the Inspector
5 General of the Department of Labor, and the
6 Inspector General of the Department of the
7 Treasury, shall update the compliance program
8 guidance document every 2 years to include il-
9 lustrative, de-identified examples (that do not
10 disclose any protected health information or in-
11 dividually identifiable information) of previous
12 findings of compliance and noncompliance with
13 this section, section 712 of the Employee Re-
14 tirement Income Security Act of 1974, or sec-
15 tion 2799A–1 of the Public Health Service Act,
16 as applicable.

17 “(7) ADDITIONAL GUIDANCE.—

18 “(A) IN GENERAL.—Not later than 12
19 months after the date of enactment of the
20 Helping Families in Mental Health Crisis Re-
21 form Act of 2016, the Secretary, the Secretary
22 of Labor, and the Secretary of Health and
23 Human Services shall issue guidance to group
24 health plans and health insurance issuers offer-
25 ing group or individual health insurance cov-

1 erage to assist such plans and issuers in satis-
2 fying the requirements of this section, section
3 712 of the Employee Retirement Income Secu-
4 rity Act of 1974, or section 2799A–1 of the
5 Public Health Service Act, as applicable.

6 “(B) DISCLOSURE.—

7 “(i) GUIDANCE FOR PLANS AND
8 ISSUERS.—The guidance issued under this
9 paragraph shall include clarifying informa-
10 tion and illustrative examples of methods
11 that group health plans and health insur-
12 ance issuers offering group or individual
13 health insurance coverage may use for dis-
14 closing information to ensure compliance
15 with the requirements under this section,
16 section 712 of the Employee Retirement
17 Income Security Act of 1974, or section
18 2799A–1 of the Public Health Service Act
19 (and any regulations promulgated pursu-
20 ant to such sections, as applicable).

21 “(ii) DOCUMENTS FOR PARTICIPANTS,
22 BENEFICIARIES, CONTRACTING PROVIDERS,
23 OR AUTHORIZED REPRESENTATIVES.—The
24 guidance issued under this paragraph shall
25 include clarifying information and illus-

1 trative examples of methods that group
2 health plans and health insurance issuers
3 offering group or individual health insur-
4 ance coverage may use to provide any par-
5 ticipant, beneficiary, contracting provider,
6 or authorized representative, as applicable,
7 with documents containing information
8 that the health plans or issuers are re-
9 quired to disclose to participants, bene-
10 ficiaries, contracting providers, or author-
11 ized representatives to ensure compliance
12 with this section, section 712 of the Em-
13 ployee Retirement Income Security Act of
14 1974, or section 2799A–1 of the Public
15 Health Service Act, as applicable, compli-
16 ance with any regulation issued pursuant
17 to such respective section, or compliance
18 with any other applicable law or regula-
19 tion. Such guidance shall include informa-
20 tion that is comparative in nature with re-
21 spect to—

22 “(I) nonquantitative treatment
23 limitations for both medical and sur-
24 gical benefits and mental health and
25 substance use disorder benefits;

1 “(II) the processes, strategies,
2 evidentiary standards, and other fac-
3 tors used to apply the limitations de-
4 scribed in subclause (I); and

5 “(III) the application of the limi-
6 tations described in subclause (I) to
7 ensure that such limitations are ap-
8 plied in parity with respect to both
9 medical and surgical benefits and
10 mental health and substance use dis-
11 order benefits.

12 “(C) NONQUANTITATIVE TREATMENT LIM-
13 ITATIONS.—The guidance issued under this
14 paragraph shall include clarifying information
15 and illustrative examples of methods, processes,
16 strategies, evidentiary standards, and other fac-
17 tors that group health plans and health insur-
18 ance issuers offering group or individual health
19 insurance coverage may use regarding the de-
20 velopment and application of nonquantitative
21 treatment limitations to ensure compliance with
22 this section, section 712 of the Employee Re-
23 tirement Income Security Act of 1974, or sec-
24 tion 2799A–1 of the Public Health Service Act,
25 as applicable (and any regulations promulgated

pursuant to such respective section), including—

“(i) examples of methods of determining appropriate types of nonquantitative treatment limitations with respect to both medical and surgical benefits and mental health and substance use disorder benefits, including nonquantitative treatment limitations pertaining to—

“(I) medical management standards based on medical necessity or appropriateness, or whether a treatment is experimental or investigative;

“(II) limitations with respect to prescription drug formulary design; and

“(III) use of fail-first or step therapy protocols;

“(ii) examples of methods of determining—

“(I) network admission standards (such as credentialing); and

“(II) factors used in provider reimbursement methodologies (such as service type, geographic market, de-

1 mand for services, and provider sup-
2 ply, practice size, training, experience,
3 and licensure) as such factors apply to
4 network adequacy;

5 “(iii) examples of sources of informa-
6 tion that may serve as evidentiary stand-
7 ards for the purposes of making deter-
8 minations regarding the development and
9 application of nonquantitative treatment
10 limitations;

11 “(iv) examples of specific factors, and
12 the evidentiary standards used to evaluate
13 such factors, used by such plans or issuers
14 in performing a nonquantitative treatment
15 limitation analysis;

16 “(v) examples of how specific evi-
17 dentiary standards may be used to deter-
18 mine whether treatments are considered
19 experimental or investigative;

20 “(vi) examples of how specific evi-
21 dentiary standards may be applied to each
22 service category or classification of bene-
23 fits;

24 “(vii) examples of methods of reach-
25 ing appropriate coverage determinations

1 for new mental health or substance use
2 disorder treatments, such as evidence-
3 based early intervention programs for indi-
4 viduals with a serious mental illness and
5 types of medical management techniques;

6 “(viii) examples of methods of reach-
7 ing appropriate coverage determinations
8 for which there is an indirect relationship
9 between the covered mental health or sub-
10 stance use disorder benefit and a tradi-
11 tional covered medical and surgical benefit,
12 such as residential treatment or hos-
13 pitalizations involving voluntary or involun-
14 tary commitment; and

15 “(ix) additional illustrative examples
16 of methods, processes, strategies, evi-
17 dentiary standards, and other factors for
18 which the Secretary determines that addi-
19 tional guidance is necessary to improve
20 compliance with this section, section 712 of
21 the Employee Retirement Income Security
22 Act of 1974, or section 2799A–1 of the
23 Public Health Service Act, as applicable.

24 “(D) PUBLIC COMMENT.—Prior to issuing
25 any final guidance under this paragraph, the

Secretary shall provide a public comment period of not less than 60 days during which any member of the public may provide comments on a draft of the guidance.

“(8) COMPLIANCE REQUIREMENTS.—

“(A) NONQUANTITATIVE TREATMENT LIMITATION (NQTL) REQUIREMENTS.—Beginning 45 days after the date of enactment of this paragraph, in the case of a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits and that imposes nonquantitative treatment limitations (referred to in this section as ‘NQTL’) on mental health or substance use disorder benefits, the plan shall perform comparative analyses of the design and application of NQTLs in accordance with subparagraph (B), and make available to the applicable State authority (or, as applicable, the Secretary), upon request, the following information:

“(i) The specific plan terms regarding the NQTL, that applies to such plan or coverage, and a description of all mental health or substance use disorder and med-

1 ical or surgical benefits to which it applies
2 in each respective benefits classification.

3 “(ii) The factors used to determine
4 that the NQTL will apply to mental health
5 or substance use disorder benefits and
6 medical or surgical benefits.

7 “(iii) The evidentiary standards used
8 for the factors identified in clause (ii),
9 when applicable, provided that every factor
10 shall be defined and any other source or
11 evidence relied upon to design and apply
12 the NQTL to mental health or substance
13 use disorder benefits and medical or sur-
14 gical benefits.

15 “(iv) The comparative analyses dem-
16 onstrating that the processes, strategies,
17 evidentiary standards, and other factors
18 used to design the NQTL, as written, and
19 the operation processes and strategies as
20 written and in operation that are used to
21 apply the NQTL for mental health or sub-
22 stance use disorder benefits are com-
23 parable to, and are applied no more strin-
24 gently than, the processes, strategies, evi-
25 dentiary standards, and other factors used

1 to design the NQTL, as written, and the
2 operation processes and strategies as writ-
3 ten and in operation that are used to apply
4 the NQTL to medical or surgical benefits.

5 “(v) A disclosure of the specific find-
6 ings and conclusions reached by the plan
7 that the results of the analyses described
8 in this subparagraph indicate that the plan
9 is in compliance with this section.

10 “(B) SECRETARY REQUEST PROCESS.—

11 “(i) SUBMISSION UPON REQUEST.—
12 The Secretary shall request that a group
13 health plan submit the comparative anal-
14 yses described in subparagraph (A) for
15 plans that involve potential violations of
16 this section or complaints regarding non-
17 compliance with this section that concern
18 NQTLs and any other instances in which
19 the Secretary determines appropriate. The
20 Secretary shall request not fewer than 20
21 such analyses per year.

22 “(ii) ADDITIONAL INFORMATION.—In
23 instances in which the Secretary has con-
24 cluded that the plan has not submitted suf-
25 ficient information for the Secretary to re-

1 view the comparative analyses described in
2 subparagraph (A), as requested under
3 clause (i), the Secretary shall specify to the
4 plan the information the plan or coverage
5 must submit to be responsive to the re-
6 quest under clause (i) for the Secretary to
7 review the comparative analyses described
8 in subparagraph (A) for compliance with
9 this section. Nothing in this paragraph
10 shall require the Secretary to conclude that
11 a plan is in compliance with this section
12 solely based upon the inspection of the
13 comparative analyses described in subpara-
14 graph (A), as requested under clause (i).

15 “(iii) REQUIRED ACTION.—

16 “(I) IN GENERAL.—In instances
17 in which the Secretary has reviewed
18 the comparative analyses described in
19 subparagraph (A), as requested under
20 clause (i), and determined that the
21 plan is not in compliance with this
22 section, the plan—

23 “(aa) shall specify to the
24 Secretary the actions the plan
25 will take to be in compliance with

1 this section and provide to the
2 Secretary comparative analyses
3 described in subparagraph (A)
4 that demonstrate compliance with
5 this section not later than 45
6 days after the initial determina-
7 tion by the Secretary that the
8 plan is not in compliance; and

9 “(bb) following the 45-day
10 corrective action period under
11 item (aa), if the Secretary deter-
12 mines that the plan still is not in
13 compliance with this section, not
14 later than 7 days after such de-
15 termination, shall notify all indi-
16 viduals enrolled in the plan or
17 coverage that the plan has been
18 determined to be not in compli-
19 ance with this section.

20 “(II) EXEMPTION FROM DISCLO-
21 SURE.—Documents or communica-
22 tions produced in connection with the
23 Secretary’s recommendations to the
24 plan or coverage shall not be subject

1 to disclosure pursuant to section 552
2 of title 5, United States Code.

3 “(iv) REPORT.—Not later than 1 year
4 after the date of enactment of this para-
5 graph, and not later than October 1 of
6 each year thereafter, the Secretary shall
7 submit to Congress, and make publicly
8 available, a report that contains—

9 “(I) a summary of the compara-
10 tive analyses requested under clause
11 (i), including the identity of each plan
12 that is determined to be not in com-
13 pliance after the final determination
14 by the Secretary described in clause
15 (iii)(I)(bb);

16 “(II) the Secretary’s conclusions
17 as to whether each plan submitted
18 sufficient information for the Sec-
19 retary to review the comparative anal-
20 yses requested under clause (i) for
21 compliance with this section;

22 “(III) for each plan that did sub-
23 mit sufficient information for the Sec-
24 retary to review the comparative anal-
25 yses requested under clause (i), the

1 Secretary's conclusions as to whether
2 and why the plan or coverage is in
3 compliance with the requirements
4 under this section;

5 “(IV) the Secretary's specifica-
6 tions described in clause (ii) for each
7 plan that the Secretary determined
8 did not submit sufficient information
9 for the Secretary to review the com-
10 parative analyses requested under
11 clause (i) for compliance with this sec-
12 tion; and

13 “(V) the Secretary's specifica-
14 tions described in clause (iii) of the
15 actions each plan that the Secretary
16 determined is not in compliance with
17 this section must take to be in compli-
18 ance with this section, including the
19 reason why the Secretary determined
20 the plan or coverage is not in compli-
21 ance.

22 “(C) COMPLIANCE PROGRAM GUIDANCE
23 DOCUMENT UPDATE PROCESS.—

24 “(i) IN GENERAL.—The Secretary
25 shall include instances of noncompliance

1 that the Secretary discovers upon review-
2 ing the comparative analyses requested
3 under subparagraph (B)(i) in the compli-
4 ance program guidance document de-
5 scribed in paragraph (6), as it is updated
6 every 2 years, except that such instances
7 shall not disclose any protected health in-
8 formation or individually identifiable infor-
9 mation.

10 “(ii) GUIDANCE AND REGULATIONS.—
11 Not later than 18 months after the date of
12 enactment of this paragraph, the Secretary
13 shall finalize any draft or interim guidance
14 and regulations relating to mental health
15 parity under this section. Such draft guid-
16 ance shall include guidance to clarify the
17 process and timeline for current and poten-
18 tial participants and beneficiaries (and au-
19 thorized representatives and health care
20 providers of such participants and bene-
21 ficiaries) with respect to plans to file com-
22 plaints of such plans or issuers being in
23 violation of this section, including guid-
24 ance, by plan type, on the relevant State,

1 regional, or national office with which such
2 complaints should be filed.

3 “(iii) STATE.—The Secretary shall
4 share information on findings of compli-
5 ance and noncompliance discovered upon
6 reviewing the comparative analyses re-
7 quested under subparagraph (B)(i) with
8 the State where the group health plan is
9 located or the State where the health in-
10 surance issuer is licensed to do business
11 for coverage offered by a health insurance
12 issuer in the group market, in accordance
13 with paragraph (6)(B)(iii)(II).”.

14 (d) IMPLEMENTATION.—The Secretary of Health and
15 Human Services, the Secretary of Labor, and the Sec-
16 retary of the Treasury may implement the paragraph (8)
17 of section 2799A–1(a) of the Public Health Service Act,
18 added by subsection (a), the paragraph (8) of section
19 712(a) of the Employee Retirement Income Security Act
20 of 1974, as added by subsection (b), and the paragraph
21 (8) of section 9812(a) of the Internal Revenue Code of
22 1986, as added by subsection (c), by program instruction,
23 guidance, or otherwise.

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