

116TH CONGRESS  
2D SESSION

# H. R. 7539

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

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## 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

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## 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

1 lifetime limit’), the plan or coverage shall ei-  
2 ther—

3 “(i) apply the applicable lifetime limit  
4 both to the medical and surgical benefits to  
5 which it otherwise would apply and to  
6 mental health and substance use disorder  
7 benefits and not distinguish in the applica-  
8 tion of such limit between such medical  
9 and surgical benefits and mental health  
10 and substance use disorder benefits; or

11 “(ii) not include any aggregate life-  
12 time limit on mental health or substance  
13 use disorder benefits that is less than the  
14 applicable lifetime limit.

15 “(C) RULE IN CASE OF DIFFERENT LIM-  
16 ITS.—In the case of a plan or coverage that is  
17 not described in subparagraph (A) or (B) and  
18 that includes no or different aggregate lifetime  
19 limits on different categories of medical and  
20 surgical benefits, the Secretary shall establish  
21 rules under which subparagraph (B) is applied  
22 to such plan or coverage with respect to mental  
23 health and substance use disorder benefits by  
24 substituting for the applicable lifetime limit an  
25 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-

1                   tion that is comparative in nature with re-  
2                   spect to—

3                   “(I) nonquantitative treatment  
4                   limitations for both medical and sur-  
5                   gical benefits and mental health and  
6                   substance use disorder benefits;

7                   “(II) the processes, strategies,  
8                   evidentiary standards, and other fac-  
9                   tors used to apply the limitations de-  
10                  scribed in subclause (I); and

11                  “(III) the application of the limi-  
12                  tations described in subclause (I) to  
13                  ensure that such limitations are ap-  
14                  plied in parity with respect to both  
15                  medical and surgical benefits and  
16                  mental health and substance use dis-  
17                  order benefits.

18                  “(C) NONQUANTITATIVE TREATMENT LIM-  
19                  ITATIONS.—The guidance issued under this  
20                  paragraph shall include clarifying information  
21                  and illustrative examples of methods, processes,  
22                  strategies, evidentiary standards, and other fac-  
23                  tors that group health plans and health insur-  
24                  ance issuers offering group or individual health  
25                  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 quired 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-

1           ument to help improve compliance with this sec-  
2           tion, section 2799A–1 of the Public Health  
3           Service Act, and section 9812 of the Internal  
4           Revenue Code of 1986, as applicable. In car-  
5           rying out this paragraph, the Secretaries may  
6           take into consideration the 2016 publication of  
7           the Department of Health and Human Services  
8           and the Department of Labor, entitled ‘Warn-  
9           ing Signs - Plan or Policy Non-Quantitative  
10          Treatment Limitations (NQTLs) that Require  
11          Additional Analysis to Determine Mental  
12          Health Parity Compliance’.

13                   “(B) EXAMPLES ILLUSTRATING COMPLI-  
14                   ANCE AND NONCOMPLIANCE.—

15                           “(i) IN GENERAL.—The compliance  
16                           program guidance document required  
17                           under this paragraph shall provide illus-  
18                           trative, de-identified examples (that do not  
19                           disclose any protected health information  
20                           or individually identifiable information) of  
21                           previous findings of compliance and non-  
22                           compliance with this section, section  
23                           2799A–1 of the Public Health Service Act,  
24                           or section 9812 of the Internal Revenue  
25                           Code of 1986, as applicable, based on in-

1 vestigations 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-

1           tion and illustrative examples of methods  
2           that group health plans and health insur-  
3           ance issuers offering group or individual  
4           health insurance coverage may use for dis-  
5           closing information to ensure compliance  
6           with the requirements under this section,  
7           section 2799A–1 of the Public Health  
8           Service Act, or section 9812 of the Inter-  
9           nal Revenue Code of 1986, as applicable,  
10          (and any regulations promulgated pursu-  
11          ant to such sections, as applicable).

12           “(ii) DOCUMENTS FOR PARTICIPANTS,  
13          BENEFICIARIES, CONTRACTING PROVIDERS,  
14          OR AUTHORIZED REPRESENTATIVES.—The  
15          guidance issued under this paragraph shall  
16          include clarifying information and illus-  
17          trative examples of methods that group  
18          health plans and health insurance issuers  
19          offering group or individual health insur-  
20          ance coverage may use to provide any par-  
21          ticipant, beneficiary, contracting provider,  
22          or authorized representative, as applicable,  
23          with documents containing information  
24          that the health plans or issuers are re-  
25          quired 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-

1 yses described in subparagraph (A), as re-  
2 quested under clause (i), the Secretary  
3 shall specify to the plan or coverage the in-  
4 formation the plan or coverage must sub-  
5 mit to be responsive to the request under  
6 clause (i) for the Secretary to review the  
7 comparative analyses described in subpara-  
8 graph (A) for compliance with this section.  
9 Nothing in this paragraph shall require the  
10 Secretary to conclude that a plan is in  
11 compliance with this section solely based  
12 upon the inspection of the comparative  
13 analyses described in subparagraph (A), as  
14 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 or coverage is not in compliance  
22 with this section, the plan or cov-  
23 erage—

24 “(aa) shall specify to the  
25 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-

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

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

24                  “(D) UPDATING THE COMPLIANCE PRO-  
25                  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



1           pursuant to such respective section), includ-  
2           ing—

3                   “(i) examples of methods of deter-  
4                   mining appropriate types of nonquantita-  
5                   tive treatment limitations with respect to  
6                   both medical and surgical benefits and  
7                   mental health and substance use disorder  
8                   benefits, including nonquantitative treat-  
9                   ment limitations pertaining to—

10                           “(I) medical management stand-  
11                           ards based on medical necessity or ap-  
12                           propriateness, or whether a treatment  
13                           is experimental or investigative;

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

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

19                   “(ii) examples of methods of deter-  
20                   mining—

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

23                           “(II) factors used in provider re-  
24                           imbursement methodologies (such as  
25                           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

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

5 “(8) COMPLIANCE REQUIREMENTS.—

6 “(A) NONQUANTITATIVE TREATMENT LIM-  
7 ITATION (NQTL) REQUIREMENTS.—Beginning  
8 45 days after the date of enactment of this  
9 paragraph, in the case of a group health plan  
10 that provides both medical and surgical benefits  
11 and mental health or substance use disorder  
12 benefits and that imposes nonquantitative treat-  
13 ment limitations (referred to in this section as  
14 ‘NQTL’) on mental health or substance use dis-  
15 order benefits, the plan shall perform compara-  
16 tive analyses of the design and application of  
17 NQTLs in accordance with subparagraph (B),  
18 and make available to the applicable State au-  
19 thority (or, as applicable, the Secretary), upon  
20 request, the following information:

21 “(i) The specific plan terms regarding  
22 the NQTL, that applies to such plan or  
23 coverage, and a description of all mental  
24 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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