

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1402

To provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. KENNEDY of Rhode Island (for himself and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Energy and Commerce, 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 provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical 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 “Paul Wellstone Mental  
5 Health Equitable Treatment Act of 2005”.

1 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Section 712 of the Employee Re-  
4 tirement Income Security Act of 1974 (29 U.S.C. 1185a)  
5 is amended to read as follows:

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

7 “(a) IN GENERAL.—In the case of a group health  
8 plan (or health insurance coverage offered in connection  
9 with such a plan) that provides both medical and surgical  
10 benefits and mental health benefits, such plan or coverage  
11 shall not impose any treatment limitations or financial re-  
12 quirements with respect to the coverage of benefits for  
13 mental illnesses unless comparable treatment limitations  
14 or financial requirements are imposed on medical and sur-  
15 gical benefits.

16 “(b) CONSTRUCTION.—

17 “(1) IN GENERAL.—Nothing in this section  
18 shall be construed as requiring a group health plan  
19 (or health insurance coverage offered in connection  
20 with such a plan) to provide any mental health bene-  
21 fits.

22 “(2) MEDICAL MANAGEMENT OF MENTAL  
23 HEALTH BENEFITS.—Consistent with subsection (a),  
24 nothing in this section shall be construed to prevent  
25 the medical management of mental health benefits,  
26 including through concurrent and retrospective utili-

1 zation review and utilization management practices,  
2 preauthorization, and the application of medical ne-  
3 cessity and appropriateness criteria applicable to be-  
4 havioral health and the contracting and use of a net-  
5 work of participating providers.

6 “(3) NO REQUIREMENT OF SPECIFIC SERV-  
7 ICES.—Nothing in this section shall be construed as  
8 requiring a group health plan (or health insurance  
9 coverage offered in connection with such a plan) to  
10 provide coverage for specific mental health services,  
11 except to the extent that the failure to cover such  
12 services would result in a disparity between the cov-  
13 erage of mental health and medical and surgical  
14 benefits.

15 “(c) SMALL EMPLOYER EXEMPTION.—

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

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

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

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

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

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

1       “(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—  
2 In the case of a plan or coverage option that provides in-  
3 network mental health benefits, out-of-network mental  
4 health benefits may be provided using treatment limita-  
5 tions or financial requirements that are not comparable  
6 to the limitations and requirements applied to medical and  
7 surgical benefits if the plan or coverage provides such in-  
8 network mental health benefits in accordance with sub-  
9 section (a) and provides reasonable access to in-network  
10 providers and facilities.

11       “(f) DEFINITIONS.—For purposes of this section—

12               “(1) FINANCIAL REQUIREMENTS.—The term  
13 ‘financial requirements’ includes deductibles, coin-  
14 surance, co-payments, other cost sharing, and limita-  
15 tions on the total amount that may be paid by a  
16 participant or beneficiary with respect to benefits  
17 under the plan or health insurance coverage and  
18 shall include the application of annual and lifetime  
19 limits.

20               “(2) MEDICAL OR SURGICAL BENEFITS.—The  
21 term ‘medical or surgical benefits’ means benefits  
22 with respect to medical or surgical services, as de-  
23 fined under the terms of the plan or coverage (as the  
24 case may be), but does not include mental health  
25 benefits.

1           “(3) MENTAL HEALTH BENEFITS.—The term  
2           ‘mental health benefits’ means benefits with respect  
3           to services, as defined under the terms and condi-  
4           tions of the plan or coverage (as the case may be),  
5           for all categories of mental health conditions listed  
6           in the Diagnostic and Statistical Manual of Mental  
7           Disorders, Fourth Edition (DSM IV–TR), or the  
8           most recent edition if different than the Fourth Edi-  
9           tion, if such services are included as part of an au-  
10          thorized treatment plan that is in accordance with  
11          standard protocols and such services meet the plan  
12          or issuer’s medical necessity criteria.

13           “(4) TREATMENT LIMITATIONS.—The term  
14          ‘treatment limitations’ means limitations on the fre-  
15          quency of treatment, number of visits or days of cov-  
16          erage, or other similar limits on the duration or  
17          scope of treatment under the plan or coverage.”.

18          (b) CLERICAL AMENDMENT.—The table of contents  
19          in section 1 of such Act is amended by striking the item  
20          relating to section 712 and inserting the following new  
21          item:

          “Sec. 712. Mental health parity.”.

22          (c) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply with respect to plan years begin-  
24          ning on or after January 1, 2006.

1 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**  
2 **RELATING TO THE GROUP MARKET.**

3 (a) IN GENERAL.—Section 2705 of the Public Health  
4 Service Act (42 U.S.C. 300gg–5) is amended to read as  
5 follows:

6 **“SEC. 2705. MENTAL HEALTH PARITY.**

7 “(a) IN GENERAL.—In the case of a group health  
8 plan (or health insurance coverage offered in connection  
9 with such a plan) that provides both medical and surgical  
10 benefits and mental health benefits, such plan or coverage  
11 shall not impose any treatment limitations or financial re-  
12 quirements with respect to the coverage of benefits for  
13 mental illnesses unless comparable treatment limitations  
14 or financial requirements are imposed on medical and sur-  
15 gical benefits.

16 “(b) CONSTRUCTION.—

17 “(1) IN GENERAL.—Nothing in this section  
18 shall be construed as requiring a group health plan  
19 (or health insurance coverage offered in connection  
20 with such a plan) to provide any mental health bene-  
21 fits.

22 “(2) MEDICAL MANAGEMENT OF MENTAL  
23 HEALTH BENEFITS.—Consistent with subsection (a),  
24 nothing in this section shall be construed to prevent  
25 the medical management of mental health benefits,  
26 including through concurrent and retrospective utili-

1 zation review and utilization management practices,  
2 preauthorization, and the application of medical ne-  
3 cessity and appropriateness criteria applicable to be-  
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5 work of participating providers.

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7 ICES.—Nothing in this section shall be construed as  
8 requiring a group health plan (or health insurance  
9 coverage offered in connection with such a plan) to  
10 provide coverage for specific mental health services,  
11 except to the extent that the failure to cover such  
12 services would result in a disparity between the cov-  
13 erage of mental health and medical and surgical  
14 benefits.

15 “(c) SMALL EMPLOYER EXEMPTION.—

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

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

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

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

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

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

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3 network mental health benefits, out-of-network mental  
4 health benefits may be provided using treatment limita-  
5 tions or financial requirements that are not comparable  
6 to the limitations and requirements applied to medical and  
7 surgical benefits if the plan or coverage provides such in-  
8 network mental health benefits in accordance with sub-  
9 section (a) and provides reasonable access to in-network  
10 providers and facilities.

11       “(f) DEFINITIONS.—For purposes of this section—

12               “(1) FINANCIAL REQUIREMENTS.—The term  
13 ‘financial requirements’ includes deductibles, coin-  
14 surance, co-payments, other cost sharing, and limita-  
15 tions on the total amount that may be paid by a  
16 participant, beneficiary or enrollee with respect to  
17 benefits under the plan or health insurance coverage  
18 and shall include the application of annual and life-  
19 time limits.

20               “(2) MEDICAL OR SURGICAL BENEFITS.—The  
21 term ‘medical or surgical benefits’ means benefits  
22 with respect to medical or surgical services, as de-  
23 fined under the terms of the plan or coverage (as the  
24 case may be), but does not include mental health  
25 benefits.

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3           to services, as defined under the terms and condi-  
4           tions of the plan or coverage (as the case may be),  
5           for all categories of mental health conditions listed  
6           in the Diagnostic and Statistical Manual of Mental  
7           Disorders, Fourth Edition (DSM IV–TR), or the  
8           most recent edition if different than the Fourth Edi-  
9           tion, if such services are included as part of an au-  
10          thorized treatment plan that is in accordance with  
11          standard protocols and such services meet the plan  
12          or issuer’s medical necessity criteria.

13           “(4) TREATMENT LIMITATIONS.—The term  
14          ‘treatment limitations’ means limitations on the fre-  
15          quency of treatment, number of visits or days of cov-  
16          erage, or other similar limits on the duration or  
17          scope of treatment under the plan or coverage.”.

18          (b) EFFECTIVE DATE.—The amendment made by  
19          this section shall apply with respect to plan years begin-  
20          ning on or after January 1, 2006.

21          **SEC. 4. PREEMPTION.**

22          Nothing in the amendments made by this Act shall  
23          be construed to preempt any provision of State law, with  
24          respect to health insurance coverage offered by a health  
25          insurance issuer in connection with a group health plan,

1 that provides protections to enrollees that are greater than  
2 the protections provided under such amendments. Nothing  
3 in the amendments made by this Act shall be construed  
4 to affect or modify section 514 of the Employee Retirement  
5 Income Security Act of 1974 (29 U.S.C. 1144).

6 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDY.**

7 (a) **STUDY.**—The Comptroller General shall conduct  
8 a study that evaluates the effect of the implementation  
9 of the amendments made by this Act on the cost of health  
10 insurance coverage, access to health insurance coverage  
11 (including the availability of in-network providers), the  
12 quality of health care, and other issues as determined ap-  
13 propriate by the Comptroller General. Such study also  
14 shall include an estimation of the costs of extending the  
15 provisions of such amendments to treatment of substance  
16 abuse and chemical dependency.

17 (b) **REPORT.**—Not later than 2 years after the date  
18 of enactment of this Act, the Comptroller General shall  
19 prepare and submit to the appropriate committees of Con-  
20 gress a report containing the results of the study con-  
21 ducted under subsection (a).

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