

AMENDMENT TO PALLONE AMENDMENT TO H.R.**1424****OFFERED BY MRS. WILSON OF NEW MEXICO**

In lieu of the matter proposed for section 3 by the amendment, insert the following:

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

3 (a) IN GENERAL.—Subpart 2 of part A of title
4 XXVII of the Public Health Service Act is amended by
5 inserting after section 2705 (42 U.S.C. 300gg-5) the fol-
6 lowing:

7 “SEC. 2705A. MENTAL HEALTH PARITY.

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

13 “(1) the financial requirements applicable to
14 such mental health benefits are no more restrictive
15 than the financial requirements applied to substan-
16 tially all medical and surgical benefits covered by the
17 plan (or coverage), including deductibles, copay-
18 ments, coinsurance, out-of-pocket expenses, and an-

1 nual and lifetime limits, except that the plan (or cov-
2 erage) may not establish separate cost sharing re-
3 quirements that are applicable only with respect to
4 mental health benefits; and

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

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

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

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

1 ment practices, the application of medical necessity
2 and appropriateness criteria applicable to behavioral
3 health, and the contracting with and use of a net-
4 work of providers; and

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

8 “(c) IN- AND OUT-OF-NETWORK.—In the case of a
9 group health plan (or health insurance coverage offered
10 in connection with such a plan) that provides both medical
11 and surgical benefits and mental health benefits, and that
12 provides such benefits on both an in- and out-of-network
13 basis pursuant to the terms of the plan (or coverage), such
14 plan (or coverage) shall ensure that the requirements of
15 this section are applied to both in- and out-of-network
16 services by comparing in-network medical and surgical
17 benefits to in-network mental health benefits and out-of-
18 network medical and surgical benefits to out-of-network
19 mental health benefits.

20 “(d) SMALL EMPLOYER EXEMPTION.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), this section shall not apply to any group
23 health plan (or group health insurance coverage of-
24 fered in connection with a group health plan) for
25 any plan year of any employer who employed an av-

1 erage of at least 2 (or 1 in the case of an employer
2 residing in a State that permits small groups to in-
3 clude a single individual) but not more than 50 em-
4 ployees on business days during the preceding cal-
5 endar year.

6 “(2) NO PREEMPTION OF CERTAIN STATE
7 LAWS.—Nothing in paragraph (1) shall be construed
8 to preempt any State insurance law relating to em-
9 ployers in the State who employed an average of at
10 least 2 (or 1 in the case of an employer residing in
11 a State that permits small groups to include a single
12 individual) but not more than 50 employees on busi-
13 ness days during the preceding calendar year.

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

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

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

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

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

10 “(e) COST EXEMPTION.—

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

1 pursuant to this section with respect to the group
2 health plan (or coverage) involved regardless of any
3 increase in total costs.

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

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

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

11 “(3) DETERMINATIONS BY ACTUARIES.—Deter-
12 minations as to increases in actual costs under a
13 plan (or coverage) for purposes of this section shall
14 be made and certified by a qualified and licensed ac-
15 tuary who is a member in good standing of the
16 American Academy of Actuaries. All such determina-
17 tions shall be in a written report prepared by the ac-
18 tuary. The report, and all underlying documentation
19 relied upon by the actuary, shall be maintained by
20 the group health plan or health insurance issuer for
21 a period of 6 years following the notification made
22 under paragraph (6).

23 “(4) 6-MONTH DETERMINATIONS.—If a group
24 health plan (or a health insurance issuer offering
25 coverage in connection with a group health plan)

1 seeks an exemption under this subsection, deter-
2 minations under paragraph (1) shall be made after
3 such plan (or coverage) has complied with this sec-
4 tion for the first 6 months of the plan year involved.

5 “(5) NOTIFICATION.—An election to modify
6 coverage of mental health benefits as permitted
7 under this subsection shall be treated as a material
8 modification in the terms of the plan as described in
9 section 102(a) of the Employee Retirement Income
10 Security Act of 1974 and shall be subject to the ap-
11 plicable notice requirements under section 104(b)(1)
12 of such Act.

13 “(6) NOTIFICATION TO APPROPRIATE AGEN-
14 CY.—

15 “(A) IN GENERAL.—A group health plan
16 (or a health insurance issuer offering coverage
17 in connection with a group health plan) that,
18 based upon a certification described under para-
19 graph (3), qualifies for an exemption under this
20 subsection, and elects to implement the exemp-
21 tion, shall notify the Department of Labor or
22 the Department of Health and Human Services,
23 as appropriate, of such election. A health insur-
24 ance issuer providing health insurance coverage
25 in connection with a group health plan shall

1 provide a copy of such notice to the State insur-
2 ance department or other State agency respon-
3 sible for regulating the terms of such coverage.

4 “(B) REQUIREMENT.—A notification
5 under subparagraph (A) shall include—

6 “(i) a description of the number of
7 covered lives under the plan (or coverage)
8 involved at the time of the notification, and
9 as applicable, at the time of any prior elec-
10 tion of the cost-exemption under this sub-
11 section by such plan (or coverage);

12 “(ii) for both the plan year upon
13 which a cost exemption is sought and the
14 year prior, a description of the actual total
15 costs of coverage with respect to medical
16 and surgical benefits and mental health
17 benefits under the plan; and

18 “(iii) for both the plan year upon
19 which a cost exemption is sought and the
20 year prior, the actual total costs of cov-
21 erage with respect to mental health bene-
22 fits under the plan.

23 “(C) CONFIDENTIALITY.—A notification
24 under subparagraph (A) shall be confidential.

25 The Department of Labor and the Department

1 of Health and Human Services shall make
2 available, upon request and on not more than
3 an annual basis, an anonymous itemization of
4 such notifications, that includes—

5 “(i) a breakdown of States by the size
6 and type of employers submitting such no-
7 tification; and

8 “(ii) a summary of the data received
9 under subparagraph (B).

10 “(7) AUDITS BY APPROPRIATE AGENCIES.—To
11 determine compliance with this subsection, the De-
12 partment of Labor and the Department of Health
13 and Human Services, as appropriate, may audit the
14 books and records of a group health plan or health
15 insurance issuer relating to an exemption, including
16 any actuarial reports prepared pursuant to para-
17 graph (3), during the 6 year period following the no-
18 tification of such exemption under paragraph (6). A
19 State agency receiving a notification under para-
20 graph (6) may also conduct such an audit with re-
21 spect to an exemption covered by such notification.

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

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

5 (b) EFFECTIVE DATE; TERMINATION OF CERTAIN
6 PROVISIONS.—

7 (1) IN GENERAL.—The provisions of this sec-
8 tion shall apply to group health plans (or health in-
9 surance coverage offered in connection with such
10 plans) beginning in the first plan year that begins
11 on or after January 1 of the first calendar year that
12 begins more than 1 year after the date of the enact-
13 ment of this Act.

14 (2) TERMINATION OF CERTAIN PROVISIONS.—
15 Section 2705 of the Public Health Service Act (42
16 U.S.C. 300gg-5) is amended by striking subsection
17 (f) and inserting the following:

18 “(f) SUNSET.—This section shall not apply to bene-
19 fits for services furnished after the effective date described
20 in section 3(a) of the Paul Wellstone Mental Health and
21 Addiction Equity Act of 2007.”.