

116TH CONGRESS  
1ST SESSION

# H. R. 3165

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2019

Ms. PORTER (for herself, Mr. BILIRAKIS, and Mr. NORCROSS) 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 “Mental Health Parity  
5 Compliance Act”.

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

8 (a) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
9 OF 1974.—Section 712(a) of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1185a(a)) is  
2 amended by adding at the end the following:

3 “(6) COMPLIANCE REQUIREMENTS.—

4 “(A) NONQUANTITATIVE TREATMENT LIM-  
5 ITATION (NQTL) REQUIREMENTS.—In the case  
6 of a group health plan (or health insurance cov-  
7 erage offered in connection with such a plan)  
8 that provides both medical and surgical benefits  
9 and mental health or substance use disorder  
10 benefits, the plan or coverage shall perform  
11 comparative analyses about the design and ap-  
12 plication of nonquantitative treatment limita-  
13 tions (referred to in this paragraph as the  
14 ‘NQTL’) in accordance with the following proc-  
15 ess, and make available to the Secretary upon  
16 request within 60 days beginning January 1,  
17 2020, and immediately upon request beginning  
18 January 1, 2021, the following information:

19 “(i) The specific plan or coverage lan-  
20 guage regarding the NQTL and a descrip-  
21 tion of all mental health or substance use  
22 disorder and medical/surgical services to  
23 which it applies in each respective benefits  
24 classification.

1           “(ii) The factors used to determine  
2           that an NQTL will apply to mental health  
3           or substance use disorder benefits and  
4           medical/surgical benefits, including factors  
5           that were considered but rejected.

6           “(iii) The evidentiary standard (both  
7           identified and deidentified) for each of the  
8           factors identified in clause (ii) and any  
9           other evidence relied upon to design and  
10          apply the NQTL to mental health or sub-  
11          stance use disorder benefits and medical/  
12          surgical benefits.

13          “(iv) The comparative analyses dem-  
14          onstrating that the processes and strate-  
15          gies used to design the NQTL, as written,  
16          and the as written processes and strategies  
17          used to apply the NQTL for mental health  
18          or substance use disorder benefits are com-  
19          parable to, and are applied no more strin-  
20          gently than, the processes and strategies  
21          used to design the NQTL, as written, and  
22          the as written processes and strategies  
23          used to apply the NQTL to medical/sur-  
24          gical benefits.

1           “(v) The comparative analyses dem-  
2           onstrating that the processes and strate-  
3           gies used to apply the NQTL, in operation,  
4           for mental health and substance use dis-  
5           order benefits are comparable to, and are  
6           applied no more stringently than, the proc-  
7           esses and strategies used to apply each  
8           NQTL, in operation, for medical and sur-  
9           gical benefits.

10           “(vi) A disclosure of the specific find-  
11           ings and conclusions reached by the plan  
12           or coverage that the results of the analyses  
13           described in this subparagraph indicate  
14           that the plan or coverage is in compliance  
15           with this section.

16           “(B) SECRETARY REQUEST PROCESS.—

17           “(i) SUBMISSION UPON COMPLAINT.—  
18           The Secretary shall request that a group  
19           health plan (or health insurance coverage  
20           offered in connection with such a plan)  
21           submit the comparative analyses described  
22           in subparagraph (A) if the Secretary has  
23           received any complaints about such a plan  
24           or coverage that involve mental health or  
25           substance use disorder benefits.

1           “(ii) RANDOM SUBMISSIONS.—The  
2 Secretary shall request the comparative  
3 analyses described in subparagraph (A)  
4 from no fewer than 50 plans or coverages  
5 selected at random, annually, and such  
6 plans or coverages shall not be the same  
7 plans or coverages for which the compara-  
8 tive analyses are requested under clause  
9 (i).

10           “(iii) ADDITIONAL INFORMATION.—In  
11 instances in which the Secretary has con-  
12 cluded that the plan or coverage has not  
13 submitted sufficient information for the  
14 Secretary to review the comparative anal-  
15 yses described in subparagraph (A), as re-  
16 quested under clauses (i) and (ii), the Sec-  
17 retary shall specify to the plan or coverage  
18 the additional information the plan or cov-  
19 erage must submit for the Secretary to re-  
20 view the comparative analyses described in  
21 subparagraph (A) for compliance with this  
22 section.

23           “(iv) REQUIRED ACTION.—In in-  
24 stances in which the Secretary has re-  
25 viewed the comparative analyses described

1 in subparagraph (A), as requested under  
2 clauses (i) and (ii), and determined that  
3 the plan or coverage is not in compliance  
4 with this section, the Secretary shall speci-  
5 fy to the plan or coverage the actions the  
6 plan or coverage must take to be in compli-  
7 ance with this section.

8 “(v) REPORT.—Not later than 1 year  
9 after the date of enactment of this para-  
10 graph, and annually thereafter, the Sec-  
11 retary shall submit to the Committee on  
12 Education and Labor of the House of Rep-  
13 resentatives and the Committee on Health,  
14 Education, Labor, and Pensions of the  
15 Senate a report that contains—

16 “(I) each of the comparative  
17 analyses requested under clauses (i)  
18 and (ii), except that the identity of  
19 each plan or coverage and any con-  
20 tracted entity of a plan or coverage  
21 shall be redacted;

22 “(II) the Secretary’s conclusions  
23 as to whether each plan or coverage  
24 submitted sufficient information for  
25 the Secretary to review the compara-

1           tive analyses requested under clauses  
2           (i) and (ii) for compliance with this  
3           section;

4                   “(III) for each plan or coverage  
5           that did submit sufficient information  
6           for the Secretary to review the com-  
7           parative analyses requested under  
8           clause (i), the Secretary’s conclusions  
9           as to whether the plan or coverage is  
10          in compliance with this section;

11                   “(IV) the Secretary’s specifica-  
12          tions described in clause (iii) for each  
13          plan or coverage that the Secretary  
14          determined did not submit sufficient  
15          information for the Secretary to re-  
16          view the comparative analyses re-  
17          quested under clauses (i) and (ii) for  
18          compliance with this section; and

19                   “(V) the Secretary’s specifica-  
20          tions described in clause (iv) of the  
21          actions each plan or coverage that the  
22          Secretary determined is not in compli-  
23          ance with this section must take to be  
24          in compliance with this section.

1                   “(C) COMPLIANCE PROGRAM GUIDANCE  
2                   DOCUMENT UPDATE PROCESS.—

3                   “(i) IN GENERAL.—The Secretary  
4                   shall include select instances of noncompli-  
5                   ance that the Secretary discovers upon re-  
6                   viewing the comparative analyses requested  
7                   under clauses (i) and (ii) of subparagraph  
8                   (B) in the compliance program guidance  
9                   document described in section 2726(a)(6)  
10                  of the Public Health Service Act, as it is  
11                  updated every 2 years, except that all in-  
12                  stances shall be deidentified and such in-  
13                  stances shall not disclose any protected  
14                  health information or individually identifi-  
15                  able information.

16                  “(ii) INSPECTOR GENERAL.—Any in-  
17                  stances of noncompliance the Secretary  
18                  discovers upon reviewing the comparative  
19                  analyses requested under clauses (i) and  
20                  (ii) of subparagraph (B) shall be shared  
21                  with the Inspector General of the Depart-  
22                  ment of Health and Human Services, the  
23                  Inspector General of the Department of  
24                  Labor, and the Inspector General of the  
25                  Department of the Treasury, in accordance



1 with section 2726(a)(6)(B)(iii)(I) of the  
2 Public Health Service Act.

3 “(iii) STATE.—Any instances of non-  
4 compliance the Secretary discovers upon  
5 reviewing the comparative analyses re-  
6 quested under clauses (i) and (ii) of sub-  
7 paragraph (B) shall be shared with a  
8 State, in accordance with section  
9 2726(a)(6)(B)(iii)(II) of the Public Health  
10 Service Act.”.

11 (b) INTERNAL REVENUE CODE OF 1986.—Section  
12 9812(a) of the Internal Revenue Code of 1986 is amended  
13 by adding at the end the following:

14 “(6) COMPLIANCE REQUIREMENTS.—

15 “(A) NONQUANTITATIVE TREATMENT LIM-  
16 ITATION (NQTL) REQUIREMENTS.—In the case  
17 of a group health plan that provides both med-  
18 ical and surgical benefits and mental health or  
19 substance use disorder benefits, the plan shall  
20 perform comparative analyses about the design  
21 and application of nonquantitative treatment  
22 limitations (referred to in this paragraph as the  
23 ‘NQTL’) in accordance with the following proc-  
24 ess, and make available to the Secretary upon  
25 request within 60 days beginning January 1,

1 2020, and immediately upon request beginning  
2 January 1, 2021, the following information:

3 “(i) The specific plan language re-  
4 garding the NQTL and a description of all  
5 mental health or substance use disorder  
6 and medical/surgical services to which it  
7 applies in each respective benefits classi-  
8 fication.

9 “(ii) The factors used to determine  
10 that an NQTL will apply to mental health  
11 or substance use disorder benefits and  
12 medical/surgical benefits, including factors  
13 that were considered but rejected.

14 “(iii) The evidentiary standard (both  
15 identified and deidentified) for each of the  
16 factors identified in clause (ii) and any  
17 other evidence relied upon to design and  
18 apply the NQTL to mental health or sub-  
19 stance use disorder benefits and medical/  
20 surgical benefits.

21 “(iv) The comparative analyses dem-  
22 onstrating that the processes and strate-  
23 gies used to design the NQTL, as written,  
24 and the as written processes and strategies  
25 used to apply the NQTL for mental health

1 or substance use disorder benefits are com-  
2 parable to, and are applied no more strin-  
3 gently than, the processes and strategies  
4 used to design the NQTL, as written, and  
5 the as written processes and strategies  
6 used to apply the NQTL to medical/sur-  
7 gical benefits.

8 “(v) The comparative analyses dem-  
9 onstrating that the processes and strate-  
10 gies used to apply the NQTL, in operation,  
11 for mental health and substance use dis-  
12 order benefits are comparable to, and are  
13 applied no more stringently than, the proc-  
14 esses and strategies used to apply each  
15 NQTL, in operation, for medical and sur-  
16 gical benefits.

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

23 “(B) SECRETARY REQUEST PROCESS.—

24 “(i) SUBMISSION UPON COMPLAINT.—  
25 The Secretary shall request that a group

1 health plan submit the comparative anal-  
2 yses described in subparagraph (A) if the  
3 Secretary has received any complaints  
4 about such a plan that involve mental  
5 health or substance use disorder benefits.

6 “(ii) RANDOM SUBMISSIONS.—The  
7 Secretary shall request the comparative  
8 analyses described in subparagraph (A)  
9 from no fewer than 50 plans selected at  
10 random, annually, and such plans shall not  
11 be the same plans for which the compara-  
12 tive analyses are requested under clause  
13 (i).

14 “(iii) ADDITIONAL INFORMATION.—In  
15 instances in which the Secretary has con-  
16 cluded that the plan has not submitted suf-  
17 ficient information for the Secretary to re-  
18 view the comparative analyses described in  
19 subparagraph (A), as requested under  
20 clauses (i) and (ii), the Secretary shall  
21 specify to the plan the additional informa-  
22 tion the plan must submit for the Sec-  
23 retary to review the comparative analyses  
24 described in subparagraph (A) for compli-  
25 ance with this section.

1           “(iv) REQUIRED ACTION.—In in-  
2 stances in which the Secretary has re-  
3 viewed the comparative analyses described  
4 in subparagraph (A), as requested under  
5 clauses (i) and (ii), and determined that  
6 the plan is not in compliance with this sec-  
7 tion, the Secretary shall specify to the plan  
8 the actions the plan must take to be in  
9 compliance with this section.

10           “(v) REPORT.—Not later than 1 year  
11 after the date of enactment of this para-  
12 graph, and annually thereafter, the Sec-  
13 retary shall submit to the Committee on  
14 Ways and Means of the House of Rep-  
15 resentatives and the Committee on Finance  
16 of the Senate a report that contains—

17           “(I) each of the comparative  
18 analyses requested under clauses (i)  
19 and (ii), except that the identity of  
20 each plan and any contracted entity of  
21 a plan shall be redacted;

22           “(II) the Secretary’s conclusions  
23 as to whether each plan submitted  
24 sufficient information for the Sec-  
25 retary to review the comparative anal-

1           yses requested under clauses (i) and  
2           (ii) for compliance with this section;

3                   “(III) for each plan that did sub-  
4           mit sufficient information for the Sec-  
5           retary to review the comparative anal-  
6           yses requested under clause (i), the  
7           Secretary’s conclusions as to whether  
8           the plan is in compliance with this  
9           section;

10                   “(IV) the Secretary’s specifica-  
11           tions described in clause (iii) for each  
12           plan that the Secretary determined  
13           did not submit sufficient information  
14           for the Secretary to review the com-  
15           parative analyses requested under  
16           clauses (i) and (ii) for compliance  
17           with this section; and

18                   “(V) the Secretary’s specifica-  
19           tions described in clause (iv) of the  
20           actions each plan that the Secretary  
21           determined is not in compliance with  
22           this section must take to be in compli-  
23           ance with this section.

24                   “(C) COMPLIANCE PROGRAM GUIDANCE

25                   DOCUMENT UPDATE PROCESS.—

1           “(i) IN GENERAL.—The Secretary  
2 shall include select instances of noncompli-  
3 ance that the Secretary discovers upon re-  
4 viewing the comparative analyses requested  
5 under clauses (i) and (ii) of subparagraph  
6 (B) in the compliance program guidance  
7 document described in section 2726(a)(6)  
8 of the Public Health Service Act, as it is  
9 updated every 2 years, except that all in-  
10 stances shall be deidentified and such in-  
11 stances shall not disclose any protected  
12 health information or individually identifi-  
13 able information.

14           “(ii) INSPECTOR GENERAL.—Any in-  
15 stances of noncompliance the Secretary  
16 discovers upon reviewing the comparative  
17 analyses requested under clauses (i) and  
18 (ii) of subparagraph (B) shall be shared  
19 with the Inspector General of the Depart-  
20 ment of Health and Human Services, the  
21 Inspector General of the Department of  
22 Labor, and the Inspector General of the  
23 Department of the Treasury, in accordance  
24 with section 2726(a)(6)(B)(iii)(I) of the  
25 Public Health Service Act.

1           “(iii) STATE.—Any instances of non-  
2           compliance the Secretary discovers upon  
3           reviewing the comparative analyses re-  
4           quested under clauses (i) and (ii) of sub-  
5           paragraph (B) shall be shared with a  
6           State, in accordance with section  
7           2726(a)(6)(B)(iii)(II) of the Public Health  
8           Service Act.”.

9           (c) PUBLIC HEALTH SERVICE ACT.—Section 2726 of  
10          the Public Health Service Act (42 U.S.C. 300gg–26) is  
11          amended—

12                 (1) in subsection (a), by adding at the end the  
13          following:

14                 “(8) COMPLIANCE REQUIREMENTS.—

15                         “(A) NONQUANTITATIVE TREATMENT LIM-  
16                         ITATION (NQTL) REQUIREMENTS.—In the case  
17                         of a group health plan or a health insurance  
18                         issuer offering group or individual health insur-  
19                         ance coverage that provides both medical and  
20                         surgical benefits and mental health or sub-  
21                         stance use disorder benefits, the plan or issuer  
22                         offering group or individual health insurance  
23                         coverage shall perform comparative analyses  
24                         about the design and application of non-  
25                         quantitative treatment limitations (referred to



1 in this paragraph as the ‘NQTL’) in accordance  
2 with the following process, and make available  
3 to State, or to the Secretary as permitted under  
4 subsections (a)(2) and (b)(1) of section 2723,  
5 upon request within 60 days beginning January  
6 1, 2020, and immediately upon request begin-  
7 ning January 1, 2021, the following informa-  
8 tion:

9 “(i) The specific plan or coverage lan-  
10 guage regarding the NQTL and a descrip-  
11 tion of all mental health or substance use  
12 disorder and medical/surgical services to  
13 which it applies in each respective benefits  
14 classification.

15 “(ii) The factors used to determine  
16 that an NQTL will apply to mental health  
17 or substance use disorder benefits and  
18 medical/surgical benefits, including factors  
19 that were considered but rejected.

20 “(iii) The evidentiary standard (both  
21 identified and deidentified) for each of the  
22 factors identified in clause (ii) and any  
23 other evidence relied upon to design and  
24 apply the NQTL to mental health or sub-

1           stance use disorder benefits and medical/  
2           surgical benefits.

3           “(iv) The comparative analyses dem-  
4           onstrating that the processes and strate-  
5           gies used to design the NQTL, as written,  
6           and the as written processes and strategies  
7           used to apply the NQTL for mental health  
8           or substance use disorder benefits are com-  
9           parable to, and are applied no more strin-  
10          gently than, the processes and strategies  
11          used to design the NQTL, as written, and  
12          the as written processes and strategies  
13          used to apply the NQTL to medical/sur-  
14          gical benefits.

15          “(v) The comparative analyses dem-  
16          onstrating that the processes and strate-  
17          gies used to apply the NQTL, in operation,  
18          for mental health and substance use dis-  
19          order benefits are comparable to, and are  
20          applied no more stringently than, the proc-  
21          esses and strategies used to apply each  
22          NQTL, in operation, for medical and sur-  
23          gical benefits.

24          “(vi) A disclosure of the specific find-  
25          ings and conclusions reached by the plan

1 or health insurance issuer offering group  
2 or individual health insurance coverage  
3 that the results of the analyses described  
4 in this subparagraph indicate that the plan  
5 or coverage is in compliance with this sec-  
6 tion.

7 “(B) SECRETARY REQUEST PROCESS.—

8 “(i) SUBMISSION UPON COMPLAINT.—

9 As permitted under subsections (a)(2) and  
10 (b)(1) of section 2723, the Secretary shall  
11 request that a group health plan or a  
12 health insurance issuer offering group or  
13 individual health insurance coverage sub-  
14 mit the comparative analyses described in  
15 subparagraph (A) if the Secretary has re-  
16 ceived any complaints about such a plan or  
17 issuer that involve mental health or sub-  
18 stance use disorder benefits.

19 “(ii) RANDOM SUBMISSIONS.—As per-  
20 mitted under subsections (a)(2) and (b)(1)  
21 of section 2723, the Secretary shall request  
22 the comparative analyses described in sub-  
23 paragraph (A) from no fewer than 50  
24 plans or issuers selected at random, annu-  
25 ally, and such plans or issuers shall not be

1 the same plans or issuers for which the  
2 comparative analyses are requested under  
3 clause (i).

4 “(iii) ADDITIONAL INFORMATION.—In  
5 instances in which the Secretary has con-  
6 cluded that the plan or issuer has not sub-  
7 mitted sufficient information for the Sec-  
8 retary to review the comparative analyses  
9 described in subparagraph (A), as re-  
10 quested under clauses (i) and (ii), the Sec-  
11 retary shall specify to the plan or issuer  
12 the additional information the plan or  
13 issuer must submit for the Secretary to re-  
14 view the comparative analyses described in  
15 subparagraph (A) for compliance with this  
16 section.

17 “(iv) REQUIRED ACTION.—In in-  
18 stances in which the Secretary has re-  
19 viewed the comparative analyses described  
20 in subparagraph (A), as requested under  
21 clauses (i) and (ii), and determined that  
22 the plan or issuer is not in compliance with  
23 this section, the Secretary shall specify to  
24 the plan or issuer the actions the plan or

1 issuer must take to be in compliance with  
2 this section.

3 “(v) REPORT.—Not later than 1 year  
4 after the date of enactment of this para-  
5 graph, and annually thereafter, the Sec-  
6 retary shall submit to the Committee on  
7 Energy and Commerce of the House of  
8 Representatives and the Committee on  
9 Health, Education, Labor, and Pensions of  
10 the Senate a report that contains—

11 “(I) each of the comparative  
12 analyses requested under clauses (i)  
13 and (ii), except that the identity of  
14 each plan or issuer and any con-  
15 tracted entity of a plan or issuer shall  
16 be redacted;

17 “(II) the Secretary’s conclusions  
18 as to whether each plan or issuer sub-  
19 mitted sufficient information for the  
20 Secretary to review the comparative  
21 analyses requested under clauses (i)  
22 and (ii) for compliance with this sec-  
23 tion;

24 “(III) for each plan or issuer  
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 the plan or issuer is in  
5 compliance with this section;

6 “(IV) the Secretary's specifica-  
7 tions described in clause (iii) for each  
8 plan or issuer that the Secretary de-  
9 termined did not submit sufficient in-  
10 formation for the Secretary to review  
11 the comparative analyses requested  
12 under clauses (i) and (ii) for compli-  
13 ance with this section; and

14 “(V) the Secretary's specifica-  
15 tions described in clause (iv) of the  
16 actions each plan or issuer that the  
17 Secretary determined is not in compli-  
18 ance with this section must take to be  
19 in compliance with this section.

20 “(C) COMPLIANCE PROGRAM GUIDANCE

21 DOCUMENT UPDATE PROCESS.—

22 “(i) IN GENERAL.—The Secretary  
23 shall include select instances of noncompli-  
24 ance that the Secretary discovers upon re-  
25 viewing the comparative analyses requested

1 under clauses (i) and (ii) of subparagraph  
2 (B) in the compliance program guidance  
3 document described in subsection (a)(6), as  
4 it is updated every 2 years, except that all  
5 instances shall be deidentified and such in-  
6 stances shall not disclose any protected  
7 health information or individually identifi-  
8 able information.

9 “(ii) INSPECTOR GENERAL.—Any in-  
10 stances of noncompliance the Secretary  
11 discovers upon reviewing the comparative  
12 analyses requested under clauses (i) and  
13 (ii) of subparagraph (B) shall be shared  
14 with the Inspector General of the Depart-  
15 ment of Health and Human Services, the  
16 Inspector General of the Department of  
17 Labor, and the Inspector General of the  
18 Department of the Treasury, in accordance  
19 with subsection (a)(6)(B)(iii)(I).

20 “(iii) STATE.—Any instances of non-  
21 compliance the Secretary discovers upon  
22 reviewing the comparative analyses re-  
23 quested under clauses (i) and (ii) of sub-  
24 paragraph (B) shall be shared with a

1 State, in accordance with subsection  
2 (a)(6)(B)(iii)(II).”.

○