H. R. 4276

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2015

Mr. Kennedy (for himself, Mr. Tonko, Ms. Matsui, Ms. Clarke of New York, and Ms. Castor of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  

SECTION 1. SHORT TITLE.  

This Act may be cited as the “Behavioral Health Coverage Transparency Act of 2015”.
SEC. 2. STRENGTHENING PARITY IN MENTAL HEALTH AND
SUBSTANCE USE DISORDER BENEFITS.

(a) Public Health Service Act.—Section 2726(a) of the Public Health Service Act (42 U.S.C. 300gg–26(a)) is amended by adding at the end the following new paragraphs:

“(6) Disclosure and enforcement requirements.—

“(A) Disclosure requirements.—

“(i) Regulations.—Not later than June 30, 2016, the Secretary, in cooperation with the Secretaries of Labor and the Treasury, as appropriate, shall issue additional regulations for carrying out this section, including an explanation of documents that must be disclosed by plans and issuers, the process governing such disclosures by plans and issuers, and analyses that must be conducted by plans and issuers by a group health plan or health insurance issuer offering health insurance coverage in the group or individual market in order for such plan or issuer to demonstrate compliance with the provisions of this section.
“(ii) DISCLOSURE REQUIREMENTS.—

Documents required to be disclosed by a group health plan or health insurance issuer offering health insurance coverage in the group or individual market under clause (i) shall include an annual report that details the specific analyses performed to ensure compliance of such plan or coverage with the law and regulations. At a minimum, with respect to the application of non-quantitative treatment limitations (in this paragraph referred to as NQTLs) to benefits under the plan or coverage, such report shall—

“(I) identify the specific factors the plan or coverage used in performing its NQTL analysis;

“(II) identify and define the specific evidentiary standards relied on to evaluate the factors;

“(III) describe how the evidentiary standards are applied to each service category for mental health, substance use disorders, medical benefits, and surgical benefits;
“(IV) disclose the results of the analyses of the specific evidentiary standards in each service category; and

“(V) disclose the specific findings of the plan or coverage in each service category and the conclusions reached with respect to whether the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical and surgical benefits in the same classification.

“(iii) GUIDANCE.—The Secretary, in cooperation with the Secretaries of Labor and the Treasury, as appropriate, shall issue guidance to group health plans and health insurance issuers offering health insurance coverage in the group or individual markets on how to satisfy the requirements
of this section with respect to making in-
formation available to current and poten-
tial participants and beneficiaries. Such in-
formation shall include certificate of cov-
vergence documents and instruments under
which the plan or coverage involved is ad-
ministered and operated that specify, in-
clude, or refer to procedures, formulas, and
methodologies applied to determine a par-
ticipant or beneficiary’s benefit under the
plan or coverage, regardless of whether
such information is contained in a docu-
ment designated as the ‘plan document’.
Such guidance shall include a disclosure of
how the plan or coverage involved has pro-
vided that processes, strategies, evidentiary
standards, and other factors used in applying the NQTL to mental health or sub-
stance use disorder benefits are com-
parable to, and applied no more stringently
than, the processes, strategies, evidentiary
standards, or other factors used in applying the limitation with respect to medical
and surgical benefits in the same classi-
fication.
“(iv) DEFINITIONS.—In this paragraph and paragraph (7), the terms ‘non-quantitative treatment limitations’, ‘comparable to’, and ‘applied no more stringently than’ have the meanings given such terms in sections 146 and 147 of title 45, Code of Federal Regulations (or any successor regulation).

“(B) ENFORCEMENT.—

“(i) PROCESS FOR COMPLAINTS.—The Secretary, in cooperation with the Secretaries of Labor and the Treasury, as appropriate, shall, with respect to group health plans and health insurance issuers offering health insurance coverage in the group or individual market, issue guidance to clarify the process and timeline for current and potential participants and beneficiaries (and authorized representatives and health care providers of such participants and beneficiaries) with respect to such plans and coverage to file formal complaints of such plans or issuers being in violation of this section, including guidance, by plan type, on the relevant State,
regional, and national offices with which such complaints should be filed.

“(ii) Authority for Public Enforcement.—The Secretary, in consultation with the Secretaries of Labor and the Treasury, shall make available to the public on the Consumer Parity Portal website established under paragraph (7) de-identified information on audits and investigations of group health plans and health insurance issuers conducted under this section.

“(iii) Audits.—

“(I) Randomized Audits.—The Secretary in cooperation with the Secretaries of Labor and the Treasury, is authorized to conduct randomized audits of group health plans and health insurance issuers offering health insurance coverage in the group or individual market to determine compliance with this section. Such audits shall be conducted on no fewer than twelve plans and issuers per plan year. Information from such audits
shall be made plainly available on the Consumer Parity Portal website established under paragraph (7).

“(II) ADDITIONAL AUDITS.—In the case of a group health plan or health insurance issuer offering health insurance coverage in the group or individual market with respect to which any claim has been filed during a plan year, the Secretary may audit the books and records of such plan or issuer to determine compliance with this section. Information detailing the results of the audit shall be made available on the Consumer Parity Portal website established under paragraph (7).

“(iv) DENIAL RATES.—The Secretary shall collect information on the rates of and reasons for denial by group health plans and health insurance issuers offering health insurance coverage in the group or individual market of claims for outpatient and inpatient mental health and substance use disorder services compared to the rates
of and reasons for denial of claims for medical and surgical services. For the first plan year beginning at least two years after the date of the enactment of this paragraph and each subsequent plan year, the Secretary shall submit to the Energy and Commerce Committee of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, and make plainly available on the Consumer Parity Portal website under paragraph (7), the information collected under the previous sentence with respect to the previous plan year.

“(7) Consumer parity portal website.—The Secretary, in consultation with the Secretaries of Labor and the Treasury, shall establish a one-stop Internet website portal for—

“(A) submitting complaints and violations relating to this section, section 712 of the Employee Retirement Income Security Act of 1974, and section 9812 of the Internal Revenue Code of 1986; and

“(B) for each of such Secretaries to submit information in order to provide such informa-
tion to health care consumers pursuant to para-
graph (6), section 712(a)(6) of the Employee
Retirement Income Security Act of 1974, and
section 9812(a)(6) of the Internal Revenue

Such portal shall have the ability to take basic infor-
mation related to the complaint, including name,
contact information, and brief narrative, and trans-
mit such information in a timely fashion to the ap-
propriate State or Federal enforcement agency. Once
the consumer information is submitted, such portal
shall provide the consumer with contact information
for the appropriate enforcement agency to follow-up
on the complaint.”.

(b) Employee Retirement Income Security Act
of 1974.—Section 712(a) of the Employee Retirement In-
come Security Act of 1974 (29 U.S.C. 1185a(a)) is
amended by adding at the end the following new para-
graph:

“(6) Disclosure and Enforcement Re-
quirements.—

“(A) Disclosure requirements.—

“(i) Regulations.—Not later than
June 30, 2016, the Secretary, in coopera-
tion with the Secretaries of Health and
Human Services and the Treasury, as appropriate, shall issue additional regulations for carrying out this section, including an explanation of documents that must be disclosed by plans and issuers, the process governing such disclosures by plans and issuers, and analyses that must be conducted by plans and issuers by a group health plan (and health insurance coverage offered in connection with such a plan) in order for such plan or issuer to demonstrate compliance with the provisions of this section.

“(ii) Disclosure requirements.—Documents required to be disclosed by a group health plan (and health insurance coverage offered in connection with such a plan) under clause (i) shall include an annual report that details the specific analyses performed to ensure compliance of such plan or coverage with the law and regulations. At a minimum, with respect to the application of non-quantitative treatment limitations (in this paragraph re-
ferred to as NQTLs) to benefits under the plan or coverage, such report shall—

“(I) identify the specific factors the plan or coverage used in performing its NQTL analysis;

“(II) identify and define the specific evidentiary standards relied on to evaluate the factors;

“(III) describe how the evidentiary standards are applied to each service category for mental health, substance use disorders, medical benefits, and surgical benefits;

“(IV) disclose the results of the analyses of the specific evidentiary standards in each service category; and

“(V) disclose the specific findings of the plan or coverage in each service category and the conclusions reached with respect to whether the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits are comparable
to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical and surgical benefits in the same classification.

“(iii) GUIDANCE.—The Secretary, in cooperation with the Secretaries of Health and Human Services and the Treasury, as appropriate, shall issue guidance to group health plans (and health insurance coverage offered in connection with such a plan) on how to satisfy the requirements of this section with respect to making information available to current and potential participants and beneficiaries. Such information shall include certificate of coverage documents and instruments under which the plan or coverage involved is administered and operated that specify, include, or refer to procedures, formulas, and methodologies applied to determine a participant or beneficiary’s benefit under the plan or coverage, regardless of whether such information is contained in a document des-
ignated as the ‘plan document’. Such guid-
ance shall include a disclosure of how the
plan or coverage involved has provided that
processes, strategies, evidentiary stand-
ards, and other factors used in applying
the NQTL to mental health or substance
use disorder benefits are comparable to,
and applied no more stringently than, the
processes, strategies, evidentiary stand-
ards, or other factors used in applying the
limitation with respect to medical and sur-
gical benefits in the same classification.

“(iv) DEFINITIONS.—In this para-
graph, the terms ‘non-quantitative treat-
ment limitations’, ‘comparable to’, and ‘ap-
plied no more stringently than’ have the
meanings given such terms in sections 146
and 147 of title 45, Code of Federal Regu-
lations (or any successor regulation).

“(B) ENFORCEMENT.—

“(i) PROCESS FOR COMPLAINTS.—The
Secretary, in cooperation with the Secre-
taries of Health and Human Services and
the Treasury, as appropriate, shall, with
respect to group health plans (and health
insurance coverage offered in connection with such a plan), issue guidance to clarify the process and timeline for current and potential participants and beneficiaries (and authorized representatives and health care providers of such participants and beneficiaries) with respect to such plans (and coverage) to file formal complaints of such plans (or coverage) being in violation of this section, including guidance, by plan type, on the relevant State, regional, and national offices with which such complaints should be filed.

“(ii) AUTHORITY FOR PUBLIC ENFORCEMENT.—The Secretary, in consultation with the Secretaries of Labor and the Treasury, shall make available to the public on the Consumer Parity Portal website established under section 2726(a)(7) of the Public Health Service Act de-identified information on audits and investigations of group health plans (and health insurance coverage offered in connection with such a plan) conducted under this section.

“(iii) AUDITS.—
“(I) RANDOMIZED AUDITS.—The Secretary in cooperation with the Secretaries of Health and Human Services and the Treasury, is authorized to conduct randomized audits of group health plans (and health insurance coverage offered in connection with such a plan) to determine compliance with this section. Such audits shall be conducted on no fewer than twelve plans and coverage per plan year. Information from such audits shall be made plainly available on the Consumer Parity Portal website established under section 2726(a)(7) of the Public Health Service Act.

“(II) ADDITIONAL AUDITS.—In the case of a group health plan (and health insurance coverage offered in connection with such a plan) with respect to which any claim has been filed during a plan year, the Secretary may audit the books and records of such plan (or coverage) to determine compliance with this section. Informa-
tion detailing the results of the audit shall be made available on the Consumer Parity Portal website established under section 2726(a)(7) of the Public Health Service Act.

“(iv) DENIAL RATES.—The Secretary shall collect information on the rates of and reasons for denial by group health plans (and health insurance coverage offered in connection with such a plan) of claims for outpatient and inpatient mental health and substance use disorder services compared to the rates of and reasons for denial of claims for medical and surgical services. For the first plan year beginning at least two years after the date of the enactment of this paragraph and each subsequent plan year, the Secretary shall submit to the Energy and Commerce Committee of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, and make plainly available on the Consumer Parity Portal website under section 2726(a)(7) of the Public Health Service Act, the infor-
mation collected under the previous sen-
tence with respect to the previous plan
year.”.

(e) INTERNAL REVENUE CODE OF 1986.—Section
9812(a) of the Internal Revenue Code of 1986 is amended
by adding at the end the following new paragraph:

“(6) DISCLOSURE AND ENFORCEMENT RE-
QUIREMENTS.—

“(A) DISCLOSURE REQUIREMENTS.—

“(i) REGULATIONS.—Not later than
June 30, 2016, the Secretary, in coopera-
tion with the Secretaries of Health and
Human Services and Labor, as appro-
priate, shall issue additional regulations for
carrying out this section, including an ex-
planation of documents that must be dis-
closed by plans and issuers, the process
governing such disclosures by plans and
issuers, and analyses that must be con-
ducted by plans and issuers by a group
health plan in order for such plan to dem-
strate compliance with the provisions of
this section.

“(ii) DISCLOSURE REQUIREMENTS.—
Documents required to be disclosed by a
group health plan under clause (i) shall include an annual report that details the specific analyses performed to ensure compliance of such plan with the law and regulations. At a minimum, with respect to the application of non-quantitative treatment limitations (in this paragraph referred to as NQTLs) to benefits under the plan, such report shall—

“(I) identify the specific factors the plan used in performing its NQTL analysis;

“(II) identify and define the specific evidentiary standards relied on to evaluate the factors;

“(III) describe how the evidentiary standards are applied to each service category for mental health, substance use disorders, medical benefits, and surgical benefits;

“(IV) disclose the results of the analyses of the specific evidentiary standards in each service category; and
“(V) disclose the specific findings of the plan in each service category and the conclusions reached with respect to whether the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical and surgical benefits in the same classification.

“(iii) GUIDANCE.—The Secretary, in cooperation with the Secretaries of Health and Human Services and Labor, as appropriate, shall issue guidance to group health plans on how to satisfy the requirements of this section with respect to making information available to current and potential participants and beneficiaries. Such information shall include certificate of coverage documents and instruments under which the plan involved is administered and oper-
ated that specify, include, or refer to procedures, formulas, and methodologies applied to determine a participant or beneficiary’s benefit under the plan, regardless of whether such information is contained in a document designated as the ‘plan document’. Such guidance shall include a disclosure of how the plan involved has provided that processes, strategies, evidentiary standards, and other factors used in applying the NQTL to mental health or substance use disorder benefits are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical and surgical benefits in the same classification.

“(iv) Definitions.—In this paragraph, the terms ‘non-quantitative treatment limitations’, ‘comparable to’, and ‘applied no more stringently than’ have the meanings given such terms in sections 146 and 147 of title 45, Code of Federal Regulations (or any successor regulation).
“(B) Enforcement.—

“(i) Process for complaints.—The Secretary, in cooperation with the Secretaries of Health and Human Services and Labor, as appropriate, shall, with respect to group health plans, issue guidance to clarify the process and timeline for current and potential participants and beneficiaries (and authorized representatives and health care providers of such participants and beneficiaries) with respect to such plans to file formal complaints of such plans being in violation of this section, including guidance, by plan type, on the relevant State, regional, and national offices with which such complaints should be filed.

“(ii) Authority for public enforcement.—The Secretary, in consultation with the Secretaries of Labor and the Treasury, shall make available to the public on the Consumer Parity Portal website established under section 2726(a)(7) of the Public Health Service Act de-identified information on audits and investigations of
group health plans conducted under this section.

“(iii) AUDITS.—

“(I) RANDOMIZED AUDITS.—The Secretary in cooperation with the Secretaries of Health and Human Services and Labor, is authorized to conduct randomized audits of group health plans to determine compliance with this section. Such audits shall be conducted on no fewer than twelve plans per plan year. Information from such audits shall be made plainly available on the Consumer Parity Portal website established under section 2726(a)(7) of the Public Health Service Act.

“(II) ADDITIONAL AUDITS.—In the case of a group health plan with respect to which any claim has been filed during a plan year, the Secretary may audit the books and records of such plan to determine compliance with this section. Information detailing the results of the audit shall be
made available on the Consumer Par-
ity Portal website established under
section 2726(a)(7) of the Public
Health Service Act.

“(iv) DENIAL RATES.—The Secretary
shall collect information on the rates of
and reasons for denial by group health
plans of claims for outpatient and inpa-
tient mental health and substance use dis-
order services compared to the rates of and
reasons for denial of claims for medical
and surgical services. For the first plan
year beginning at least two years after the
date of the enactment of this paragraph
and each subsequent plan year, the Sec-
retary shall submit to the Energy and
Commerce Committee of the House of
Representatives and the Committee on
Health, Education, Labor, and Pensions of
the Senate, and make plainly available on
the Consumer Parity Portal website under
section 2726(a)(7) of the Public Health
Service Act, the information collected
under the previous sentence with respect to
the previous plan year.”.
(d) GAO Study on Mental Health and Substance Use Parity Enforcement Efforts.—Not later than one year after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury, shall submit to Congress, and make plainly available on the Consumer Parity Portal website under paragraph (7) of section 2726(a) of the Public Health Service Act (42 U.S.C. 300gg–26(a)), as added by subsection (a), a report detailing the enforcement efforts of the responsible departments and agencies in implementing sections 2726 of the Public Health Service Act 42 U.S.C. 300gg–26), 712 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a), and 9812 of the Internal Revenue Code of 1986, including—

(1) the number of investigations and audits that have been conducted into potential parity violations; and

(2) details on the investigation, audits, or enforcement action that was carried out as a result of such investigations that would not identify the subject of such investigation or enforcement.

(e) Authorization of Appropriations.—There is authorized to be appropriated $2,000,000 for each of fis-
cal years 2016 through 2020 to carry out this section, in-
cluding the amendments made by this section.