110TH CONGRESS
2D SESSION

H. R. 1424

AN ACT

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, and for other purposes.

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. ORGANIZATION OF ACT INTO DIVISIONS; TABLE**
4 **OF CONTENTS.**

5 (a) DIVISIONS.—This Act is organized into two divi-
6 sions as follows:
7 (1) Division A—Paul Wellstone Mental Health
8 and Addiction Equity Act of 2008.
9 (2) Division B—Genetic Information Non-
10 discrimination Act of 2008.
11 (b) TABLE OF CONTENTS.—The table of contents of
12 this Act is as follows:

Sec. 1. Organization of Act into divisions; table of contents.

DIVISION A—PAUL WELLSTONE MENTAL HEALTH AND ADDICTION EQUITY ACT OF 2008

Sec. 101. Short title.
Sec. 102. Amendments to the Employee Retirement Income Security Act of 1974.
Sec. 103. Amendments to the Public Health Service Act relating to the group market.
Sec. 104. Amendments to the Internal Revenue Code of 1986.
Sec. 105. Medicaid drug rebate.
Sec. 106. Limitation on Medicare exception to the prohibition on certain physician referrals for hospitals.
Sec. 107. Studies and reports.

DIVISION B—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

Sec. 100. Short title; findings.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.
Sec. 102. Amendments to the Public Health Service Act.
Sec. 103. Amendments to the Internal Revenue Code of 1986.
Sec. 104. Amendments to title XVIII of the Social Security Act relating to medigap.
Sec. 105. Privacy and confidentiality.
Sec. 106. Assuring coordination.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

Sec. 201. Definitions.
Sec. 202. Employer practices.
Sec. 203. Employment agency practices.
Sec. 204. Labor organization practices.
Sec. 205. Training programs.
Sec. 206. Confidentiality of genetic information.
Sec. 207. Remedies and enforcement.
Sec. 208. Disparate impact.
Sec. 209. Construction.
Sec. 210. Medical information that is not genetic information.
Sec. 211. Regulations.
Sec. 212. Authorization of appropriations.
Sec. 213. Effective date.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Guarantee agency collection retention.
Sec. 302. Severability.

1 # DIVISION A—PAUL WELLSTONE
2 # MENTAL HEALTH AND ADDIC-
3 # TION EQUITY ACT OF 2008

4 **SEC. 101. SHORT TITLE.**

5 This division may be cited as the ''Paul Wellstone
6 Mental Health and Addiction Equity Act of 2008''.

7 **SEC. 102. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
8 **INCOME SECURITY ACT OF 1974.**

9 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
10 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
11 712 of the Employee Retirement Income Security Act of
12 1974 (29 U.S.C. 1185a) is amended—

13 (1) in subsection (a), by adding at the end the
14 following new paragraphs:

15 ''(3) TREATMENT LIMITS.—In the case of a
16 group health plan that provides both medical and

1 surgical benefits and mental health or substance-re-
2 lated disorder benefits—
3 "(A) NO TREATMENT LIMIT.—If the plan
4 or coverage does not include a treatment limit
5 (as defined in subparagraph (D)) on substan-
6 tially all medical and surgical benefits in any
7 category of items or services, the plan or cov-
8 erage may not impose any treatment limit on
9 mental health or substance-related disorder
10 benefits that are classified in the same category
11 of items or services.
12 "(B) TREATMENT LIMIT.—If the plan or
13 coverage includes a treatment limit on substan-
14 tially all medical and surgical benefits in any
15 category of items or services, the plan or cov-
16 erage may not impose such a treatment limit on
17 mental health or substance-related disorder
18 benefits for items and services within such cat-
19 egory that is more restrictive than the predomi-
20 nant treatment limit that is applicable to med-
21 ical and surgical benefits for items and services
22 within such category.
23 "(C) CATEGORIES OF ITEMS AND SERV-
24 ICES FOR APPLICATION OF TREATMENT LIMITS
25 AND BENEFICIARY FINANCIAL REQUIRE-

1 MENTS.—For purposes of this paragraph and
2 paragraph (4), there shall be the following five
3 categories of items and services for benefits,
4 whether medical and surgical benefits or mental
5 health and substance-related disorder benefits,
6 and all medical and surgical benefits and all
7 mental health and substance related benefits
8 shall be classified into one of the following cat-
9 egories:

10 "(i) INPATIENT, IN-NETWORK.—Items
11 and services not described in clause (v)
12 furnished on an inpatient basis and within
13 a network of providers established or rec-
14 ognized under such plan or coverage.

15 "(ii) INPATIENT, OUT-OF-NETWORK.—
16 Items and services not described in clause
17 (v) furnished on an inpatient basis and
18 outside any network of providers estab-
19 lished or recognized under such plan or
20 coverage.

21 "(iii) OUTPATIENT, IN-NETWORK.—
22 Items and services not described in clause
23 (v) furnished on an outpatient basis and
24 within a network of providers established
25 or recognized under such plan or coverage.

1 "(iv) OUTPATIENT, OUT-OF-NET-
2 WORK.—Items and services not described
3 in clause (v) furnished on an outpatient
4 basis and outside any network of providers
5 established or recognized under such plan
6 or coverage.

7 "(v) EMERGENCY CARE.—Items and
8 services, whether furnished on an inpatient
9 or outpatient basis or within or outside
10 any network of providers, required for the
11 treatment of an emergency medical condi-
12 tion (as defined in section 1867(e) of the
13 Social Security Act, including an emer-
14 gency condition relating to mental health
15 or substance-related disorders).

16 "(D) TREATMENT LIMIT DEFINED.—For
17 purposes of this paragraph, the term 'treatment
18 limit' means, with respect to a plan or coverage,
19 limitation on the frequency of treatment, num-
20 ber of visits or days of coverage, or other simi-
21 lar limit on the duration or scope of treatment
22 under the plan or coverage.

23 "(E) PREDOMINANCE.—For purposes of
24 this subsection, a treatment limit or financial
25 requirement with respect to a category of items

1 and services is considered to be predominant if
2 it is the most common or frequent of such type
3 of limit or requirement with respect to such cat-
4 egory of items and services.
5 "(4) BENEFICIARY FINANCIAL REQUIRE-
6 MENTS.—In the case of a group health plan that
7 provides both medical and surgical benefits and
8 mental health or substance-related disorder bene-
9 fits—
10 "(A) NO BENEFICIARY FINANCIAL RE-
11 QUIREMENT.—If the plan or coverage does not
12 include a beneficiary financial requirement (as
13 defined in subparagraph (C)) on substantially
14 all medical and surgical benefits within a cat-
15 egory of items and services (specified under
16 paragraph (3)(C)), the plan or coverage may
17 not impose such a beneficiary financial require-
18 ment on mental health or substance-related dis-
19 order benefits for items and services within
20 such category.
21 "(B) BENEFICIARY FINANCIAL REQUIRE-
22 MENT.—
23 "(i) TREATMENT OF DEDUCTIBLES,
24 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
25 NANCIAL REQUIREMENTS.—If the plan or

coverage includes a deductible, a limitation on out-of-pocket expenses, or similar beneficiary financial requirement that does not apply separately to individual items and services on substantially all medical and surgical benefits within a category of items and services (as specified in paragraph (3)(C)), the plan or coverage shall apply such requirement (or, if there is more than one such requirement for such category of items and services, the predominant requirement for such category) both to medical and surgical benefits within such category and to mental health and substance-related disorder benefits within such category and shall not distinguish in the application of such requirement between such medical and surgical benefits and such mental health and substance-related disorder benefits.

"(ii) OTHER FINANCIAL REQUIREMENTS.—If the plan or coverage includes a beneficiary financial requirement not described in clause (i) on substantially all medical and surgical benefits within a cat-

1 egory of items and services, the plan or
2 coverage may not impose such financial re-
3 quirement on mental health or substance-
4 related disorder benefits for items and
5 services within such category in a way that
6 results in greater out-of-pocket expenses to
7 the participant or beneficiary than the pre-
8 dominant beneficiary financial requirement
9 applicable to medical and surgical benefits
10 for items and services within such cat-
11 egory.
12 ''(C) BENEFICIARY FINANCIAL REQUIRE-
13 MENT DEFINED.—For purposes of this para-
14 graph, the term 'beneficiary financial require-
15 ment' includes, with respect to a plan or cov-
16 erage, any deductible, coinsurance, co-payment,
17 other cost sharing, and limitation on the total
18 amount that may be paid by a participant or
19 beneficiary with respect to benefits under the
20 plan or coverage, but does not include the appli-
21 cation of any aggregate lifetime limit or annual
22 limit.''; and
23 (2) in subsection (b)—

1 (A) by striking ''construed—'' and all that
2 follows through ''(1) as requiring'' and insert-
3 ing ''construed as requiring'';
4 (B) by striking ''; or'' and inserting a pe-
5 riod; and
6 (C) by striking paragraph (2).
7 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER
8 BENEFITS AND REVISION OF DEFINITION.—Such section
9 is further amended—
10 (1) by striking ''mental health benefits'' each
11 place it appears (other than in any provision amend-
12 ed by paragraph (2)) and inserting ''mental health
13 or substance-related disorder benefits'',
14 (2) by striking ''mental health benefits'' each
15 place it appears in subsections (a)(1)(B)(i),
16 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting
17 ''mental health and substance-related disorder bene-
18 fits'', and
19 (3) in subsection (e), by striking paragraph (4)
20 and inserting the following new paragraphs:
21 ''(4) MENTAL HEALTH BENEFITS.—The term
22 'mental health benefits' means benefits with respect
23 to services for mental health conditions, as defined
24 under the terms of the plan and in accordance with

1 applicable law, but does not include substance-re-
2 lated disorder benefits.
3 “(5) SUBSTANCE-RELATED DISORDER BENE-
4 FITS.—The term ‘substance-related disorder bene-
5 fits’ means benefits with respect to services for sub-
6 stance-related disorders, as defined under the terms
7 of the plan and in accordance with applicable law.”.
8 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
9 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
10 such section, as amended by subsection (a)(1), is further
11 amended by adding at the end the following new para-
12 graph:
13 “(5) AVAILABILITY OF PLAN INFORMATION.—
14 The criteria for medical necessity determinations
15 made under the plan with respect to mental health
16 and substance-related disorder benefits (or the
17 health insurance coverage offered in connection with
18 the plan with respect to such benefits) shall be made
19 available by the plan administrator (or the health in-
20 surance issuer offering such coverage) in accordance
21 with regulations to any current or potential partici-
22 pant, beneficiary, or contracting provider upon re-
23 quest. The reason for any denial under the plan (or
24 coverage) of reimbursement or payment for services
25 with respect to mental health and substance-related

disorder benefits in the case of any participant or beneficiary shall, on request or as otherwise required, be made available by the plan administrator (or the health insurance issuer offering such coverage) to the participant or beneficiary in accordance with regulations.''.

(d) MINIMUM BENEFIT REQUIREMENTS.—Subsection (a) of such section is further amended by adding at the end the following new paragraph:

``(6) MINIMUM SCOPE OF COVERAGE AND EQUITY IN OUT-OF-NETWORK BENEFITS.—

``(A) MINIMUM SCOPE OF MENTAL HEALTH AND SUBSTANCE-RELATED DISORDER BENEFITS.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides any mental health or substance-related disorder benefits, the plan or coverage shall include benefits for any mental health condition or substance-related disorder included in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

``(B) EQUITY IN COVERAGE OF OUT-OF-NETWORK BENEFITS.—

1 "(i) IN GENERAL.—In the case of a
2 plan or coverage that provides both med-
3 ical and surgical benefits and mental
4 health or substance-related disorder bene-
5 fits, if medical and surgical benefits are
6 provided for substantially all items and
7 services in a category specified in clause
8 (ii) furnished outside any network of pro-
9 viders established or recognized under such
10 plan or coverage, the mental health and
11 substance-related disorder benefits shall
12 also be provided for items and services in
13 such category furnished outside any net-
14 work of providers established or recognized
15 under such plan or coverage in accordance
16 with the requirements of this section.
17 "(ii) CATEGORIES OF ITEMS AND
18 SERVICES.—For purposes of clause (i),
19 there shall be the following three categories
20 of items and services for benefits, whether
21 medical and surgical benefits or mental
22 health and substance-related disorder bene-
23 fits, and all medical and surgical benefits
24 and all mental health and substance-re-

1 lated disorder benefits shall be classified
2 into one of the following categories:
3 "(I) EMERGENCY.—Items and
4 services, whether furnished on an in-
5 patient or outpatient basis, required
6 for the treatment of an emergency
7 medical condition (as defined in sec-
8 tion 1867(e) of the Social Security
9 Act, including an emergency condition
10 relating to mental health or sub-
11 stance-related disorders).
12 "(II) INPATIENT.—Items and
13 services not described in subclause (I)
14 furnished on an inpatient basis.
15 "(III) OUTPATIENT.—Items and
16 services not described in subclause (I)
17 furnished on an outpatient basis.".
18 (e) REVISION OF INCREASED COST EXEMPTION.—
19 Paragraph (2) of subsection (c) of such section is amended
20 to read as follows:
21 "(2) INCREASED COST EXEMPTION.—
22 "(A) IN GENERAL.—With respect to a
23 group health plan (or health insurance coverage
24 offered in connection with such a plan), if the
25 application of this section to such plan (or cov-

erage) results in an increase for the plan year involved of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance-related disorder benefits under the plan (as determined and certified under subparagraph (C)) by an amount that exceeds the applicable percentage described in subparagraph (B) of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year.

"(B) APPLICABLE PERCENTAGE.—With respect to a plan (or coverage), the applicable percentage described in this paragraph shall be—

"(i) 2 percent in the case of the first plan year to which this paragraph applies; and

"(ii) 1 percent in the case of each subsequent plan year.

"(C) DETERMINATIONS BY ACTUARIES.—Determinations as to increases in actual costs under a plan (or coverage) for purposes of this

1 subsection shall be made in writing and pre-
2 pared and certified by a qualified and licensed
3 actuary who is a member in good standing of
4 the American Academy of Actuaries. Such de-
5 terminations shall be made available by the
6 plan administrator (or health insurance issuer,
7 as the case may be) to the general public.

8 ''(D) 6-MONTH DETERMINATIONS.—If a
9 group health plan (or a health insurance issuer
10 offering coverage in connection with such a
11 plan) seeks an exemption under this paragraph,
12 determinations under subparagraph (A) shall be
13 made after such plan (or coverage) has com-
14 plied with this section for the first 6 months of
15 the plan year involved.

16 ''(E) NOTIFICATION.—An election to mod-
17 ify coverage of mental health and substance-re-
18 lated disorder benefits as permitted under this
19 paragraph shall be treated as a material modi-
20 fication in the terms of the plan as described in
21 section 102(a) and notice of which shall be pro-
22 vided a reasonable period in advance of the
23 change.

24 ''(F) NOTIFICATION OF APPROPRIATE
25 AGENCY.—

1 "(i) IN GENERAL.—A group health
2 plan that, based on a certification de-
3 scribed under subparagraph (C), qualifies
4 for an exemption under this paragraph,
5 and elects to implement the exemption,
6 shall notify the Department of Labor of
7 such election.

8 "(ii) REQUIREMENT.—A notification
9 under clause (i) shall include—

10 "(I) a description of the number
11 of covered lives under the plan (or
12 coverage) involved at the time of the
13 notification, and as applicable, at the
14 time of any prior election of the cost-
15 exemption under this paragraph by
16 such plan (or coverage);

17 "(II) for both the plan year upon
18 which a cost exemption is sought and
19 the year prior, a description of the ac-
20 tual total costs of coverage with re-
21 spect to medical and surgical benefits
22 and mental health and substance-re-
23 lated disorder benefits under the plan;
24 and

1 "(III) for both the plan year
2 upon which a cost exemption is sought
3 and the year prior, the actual total
4 costs of coverage with respect to men-
5 tal health and substance-related dis-
6 order benefits under the plan.
7 "(iii) CONFIDENTIALITY.—A notifica-
8 tion under clause (i) shall be confidential.
9 The Department of Labor shall make
10 available, upon request to the appropriate
11 committees of Congress and on not more
12 than an annual basis, an anonymous
13 itemization of such notifications, that in-
14 cludes—
15 "(I) a breakdown of States by
16 the size and any type of employers
17 submitting such notification; and
18 "(II) a summary of the data re-
19 ceived under clause (ii).
20 "(G) NO IMPACT ON APPLICATION OF
21 STATE LAW.—The fact that a plan or coverage
22 is exempt from the provisions of this section
23 under subparagraph (A) shall not affect the ap-
24 plication of State law to such plan or coverage.

1 ''(H) CONSTRUCTION.—Nothing in this
2 paragraph shall be construed as preventing a
3 group health plan (or health insurance coverage
4 offered in connection with such a plan) from
5 complying with the provisions of this section
6 notwithstanding that the plan or coverage is not
7 required to comply with such provisions due to
8 the application of subparagraph (A).''.

9 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
10 ERS.—Subsection (c)(1)(B) of such section is amended—
11 (1) by inserting ''(or 1 in the case of an em-
12 ployer residing in a State that permits small groups
13 to include a single individual)'' after ''at least 2'' the
14 first place it appears; and
15 (2) by striking ''and who employs at least 2 em-
16 ployees on the first day of the plan year''.

17 (g) ELIMINATION OF SUNSET PROVISION.—Such sec-
18 tion is amended by striking subsection (f).

19 (h) CLARIFICATION REGARDING PREEMPTION.—
20 Such section is further amended by inserting after sub-
21 section (e) the following new subsection:

22 ''(f) PREEMPTION, RELATION TO STATE LAWS.—
23 ''(1) IN GENERAL.—This part shall not be con-
24 strued to supersede any provision of State law which
25 establishes, implements, or continues in effect any

1 consumer protections, benefits, methods of access to
2 benefits, rights, external review programs, or rem-
3 edies solely relating to health insurance issuers in
4 connection with group health insurance coverage (in-
5 cluding benefit mandates or regulation of group
6 health plans of 50 or fewer employees) except to the
7 extent that such provision prevents the application
8 of a requirement of this part.

9 ''(2) CONTINUED PREEMPTION WITH RESPECT
10 TO GROUP HEALTH PLANS.—Nothing in this section
11 shall be construed to affect or modify the provisions
12 of section 514 with respect to group health plans.

13 ''(3) OTHER STATE LAWS.—Nothing in this sec-
14 tion shall be construed to exempt or relieve any per-
15 son from any laws of any State not solely related to
16 health insurance issuers in connection with group
17 health coverage insofar as they may now or here-
18 after relate to insurance, health plans, or health cov-
19 erage.''.

20 (i) CONFORMING AMENDMENTS TO HEADING.—

21 (1) IN GENERAL.—The heading of such section
22 is amended to read as follows:

1 **“SEC. 712. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
2 **RELATED DISORDER BENEFITS.”.**

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1 of such Act is amended by striking
5 the item relating to section 712 and inserting the
6 following new item:

“Sec. 712. Equity in mental health and substance-related disorder benefits.”.

7 (j) EFFECTIVE DATE.—
8 (1) IN GENERAL.—The amendments made by
9 this section shall apply with respect to plan years be-
10 ginning on or after January 1, 2009.
11 (2) SPECIAL RULE FOR COLLECTIVE BAR-
12 GAINING AGREEMENTS.—In the case of a group
13 health plan maintained pursuant to one or more col-
14 lective bargaining agreements between employee rep-
15 resentatives and one or more employers ratified be-
16 fore the date of the enactment of this Act, the
17 amendments made by this section shall not apply to
18 plan years beginning before the later of—
19 (A) the date on which the last of the col-
20 lective bargaining agreements relating to the
21 plan terminates (determined without regard to
22 any extension thereof agreed to after the date
23 of the enactment of this Act), or
24 (B) January 1, 2009.

1 For purposes of subparagraph (A), any plan amend-
2 ment made pursuant to a collective bargaining
3 agreement relating to the plan which amends the
4 plan solely to conform to any requirement added by
5 this section shall not be treated as a termination of
6 such collective bargaining agreement.

7 (k) DOL ANNUAL SAMPLE COMPLIANCE.—The Sec-
8 retary of Labor shall annually sample and conduct random
9 audits of group health plans (and health insurance cov-
10 erage offered in connection with such plans) in order to
11 determine their compliance with the amendments made by
12 this division and shall submit to the appropriate commit-
13 tees of Congress an annual report on such compliance with
14 such amendments. The Secretary shall share the results
15 of such audits with the Secretaries of Health and Human
16 Services and of the Treasury.

17 (l) ASSISTANCE TO PARTICIPANTS AND BENE-
18 FICIARIES.—The Secretary of Labor shall provide assist-
19 ance to participants and beneficiaries of group health
20 plans with any questions or problems with compliance with
21 the requirements of this division. The Secretary shall no-
22 tify participants and beneficiaries how they can obtain as-
23 sistance from State consumer and insurance agencies and
24 the Secretary shall coordinate with State agencies to en-

1 sure that participants and beneficiaries are protected and
2 afforded the rights provided under this division.

3 **SEC. 103. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
4 **ACT RELATING TO THE GROUP MARKET.**

5 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
6 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
7 2705 of the Public Health Service Act (42 U.S.C. 300gg–
8 5) is amended—

9 (1) in subsection (a), by adding at the end the
10 following new paragraphs:

11 "(3) TREATMENT LIMITS.—In the case of a
12 group health plan that provides both medical and
13 surgical benefits and mental health or substance-re-
14 lated disorder benefits—

15 "(A) NO TREATMENT LIMIT.—If the plan
16 or coverage does not include a treatment limit
17 (as defined in subparagraph (D)) on substan-
18 tially all medical and surgical benefits in any
19 category of items or services (specified in sub-
20 paragraph (C)), the plan or coverage may not
21 impose any treatment limit on mental health or
22 substance-related disorder benefits that are
23 classified in the same category of items or serv-
24 ices.

1 "(B) TREATMENT LIMIT.—If the plan or
2 coverage includes a treatment limit on substan-
3 tially all medical and surgical benefits in any
4 category of items or services, the plan or cov-
5 erage may not impose such a treatment limit on
6 mental health or substance-related disorder
7 benefits for items and services within such cat-
8 egory that is more restrictive than the predomi-
9 nant treatment limit that is applicable to med-
10 ical and surgical benefits for items and services
11 within such category.

12 "(C) CATEGORIES OF ITEMS AND SERV-
13 ICES FOR APPLICATION OF TREATMENT LIMITS
14 AND BENEFICIARY FINANCIAL REQUIRE-
15 MENTS.—For purposes of this paragraph and
16 paragraph (4), there shall be the following five
17 categories of items and services for benefits,
18 whether medical and surgical benefits or mental
19 health and substance-related disorder benefits,
20 and all medical and surgical benefits and all
21 mental health and substance related benefits
22 shall be classified into one of the following cat-
23 egories:

24 "(i) INPATIENT, IN-NETWORK.—Items
25 and services not described in clause (v)

furnished on an inpatient basis and within a network of providers established or recognized under such plan or coverage.

"(ii) INPATIENT, OUT-OF-NETWORK.—Items and services not described in clause (v) furnished on an inpatient basis and outside any network of providers established or recognized under such plan or coverage.

"(iii) OUTPATIENT, IN-NETWORK.—Items and services not described in clause (v) furnished on an outpatient basis and within a network of providers established or recognized under such plan or coverage.

"(iv) OUTPATIENT, OUT-OF-NETWORK.—Items and services not described in clause (v) furnished on an outpatient basis and outside any network of providers established or recognized under such plan or coverage.

"(v) EMERGENCY CARE.—Items and services, whether furnished on an inpatient or outpatient basis or within or outside any network of providers, required for the treatment of an emergency medical condi-

1 tion (as defined in section 1867(e) of the
2 Social Security Act, including an emer-
3 gency condition relating to mental health
4 or substance-related disorders).
5 "(D) TREATMENT LIMIT DEFINED.—For
6 purposes of this paragraph, the term 'treatment
7 limit' means, with respect to a plan or coverage,
8 limitation on the frequency of treatment, num-
9 ber of visits or days of coverage, or other simi-
10 lar limit on the duration or scope of treatment
11 under the plan or coverage.
12 "(E) PREDOMINANCE.—For purposes of
13 this subsection, a treatment limit or financial
14 requirement with respect to a category of items
15 and services is considered to be predominant if
16 it is the most common or frequent of such type
17 of limit or requirement with respect to such cat-
18 egory of items and services.
19 "(4) BENEFICIARY FINANCIAL REQUIRE-
20 MENTS.—In the case of a group health plan that
21 provides both medical and surgical benefits and
22 mental health or substance-related disorder bene-
23 fits—
24 "(A) NO BENEFICIARY FINANCIAL RE-
25 QUIREMENT.—If the plan or coverage does not

1 include a beneficiary financial requirement (as
2 defined in subparagraph (C)) on substantially
3 all medical and surgical benefits within a cat-
4 egory of items and services (specified in para-
5 graph (3)(C)), the plan or coverage may not im-
6 pose such a beneficiary financial requirement on
7 mental health or substance-related disorder
8 benefits for items and services within such cat-
9 egory.

10 "(B) BENEFICIARY FINANCIAL REQUIRE-
11 MENT.—

12 "(i) TREATMENT OF DEDUCTIBLES,
13 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
14 NANCIAL REQUIREMENTS.—If the plan or
15 coverage includes a deductible, a limitation
16 on out-of-pocket expenses, or similar bene-
17 ficiary financial requirement that does not
18 apply separately to individual items and
19 services on substantially all medical and
20 surgical benefits within a category of items
21 and services, the plan or coverage shall
22 apply such requirement (or, if there is
23 more than one such requirement for such
24 category of items and services, the pre-
25 dominant requirement for such category)

1 both to medical and surgical benefits with-
2 in such category and to mental health and
3 substance-related disorder benefits within
4 such category and shall not distinguish in
5 the application of such requirement be-
6 tween such medical and surgical benefits
7 and such mental health and substance-re-
8 lated disorder benefits.

9 "(ii) OTHER FINANCIAL REQUIRE-
10 MENTS.—If the plan or coverage includes a
11 beneficiary financial requirement not de-
12 scribed in clause (i) on substantially all
13 medical and surgical benefits within a cat-
14 egory of items and services, the plan or
15 coverage may not impose such financial re-
16 quirement on mental health or substance-
17 related disorder benefits for items and
18 services within such category in a way that
19 results in greater out-of-pocket expenses to
20 the participant or beneficiary than the pre-
21 dominant beneficiary financial requirement
22 applicable to medical and surgical benefits
23 for items and services within such cat-
24 egory.

1 "(C) BENEFICIARY FINANCIAL REQUIREMENT DEFINED.—For purposes of this paragraph, the term 'beneficiary financial requirement' includes, with respect to a plan or coverage, any deductible, coinsurance, co-payment, other cost sharing, and limitation on the total amount that may be paid by a participant or beneficiary with respect to benefits under the plan or coverage, but does not include the application of any aggregate lifetime limit or annual limit."; and

12 (2) in subsection (b)—

13 (A) by striking "construed—" and all that follows through "(1) as requiring" and inserting "construed as requiring";

16 (B) by striking "; or" and inserting a period; and

18 (C) by striking paragraph (2).

19 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER BENEFITS AND REVISION OF DEFINITION.—Such section is further amended—

22 (1) by striking "mental health benefits" each place it appears (other than in any provision amended by paragraph (2)) and inserting "mental health or substance-related disorder benefits",

1 (2) by striking ‘‘mental health benefits’’ each
2 place it appears in subsections (a)(1)(B)(i),
3 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting
4 ‘‘mental health and substance-related disorder bene-
5 fits’’, and

6 (3) in subsection (e), by striking paragraph (4)
7 and inserting the following new paragraphs:

8 ‘‘(4) MENTAL HEALTH BENEFITS.—The term
9 ‘mental health benefits’ means benefits with respect
10 to services for mental health conditions, as defined
11 under the terms of the plan and in accordance with
12 applicable law, but does not include substance-re-
13 lated disorder benefits.

14 ‘‘(5) SUBSTANCE-RELATED DISORDER BENE-
15 FITS.—The term ‘substance-related disorder bene-
16 fits’ means benefits with respect to services for sub-
17 stance-related disorders, as defined under the terms
18 of the plan and in accordance with applicable law.’’.

19 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
20 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
21 such section, as amended by subsection (a)(1), is further
22 amended by adding at the end the following new para-
23 graph:

24 ‘‘(5) AVAILABILITY OF PLAN INFORMATION.—
25 The criteria for medical necessity determinations

1 made under the plan with respect to mental health
2 and substance-related disorder benefits (or the
3 health insurance coverage offered in connection with
4 the plan with respect to such benefits) shall be made
5 available by the plan administrator (or the health in-
6 surance issuer offering such coverage) in accordance
7 with regulations to any current or potential partici-
8 pant, beneficiary, or contracting provider upon re-
9 quest. The reason for any denial under the plan (or
10 coverage) of reimbursement or payment for services
11 with respect to mental health and substance-related
12 disorder benefits in the case of any participant or
13 beneficiary shall, on request or as otherwise re-
14 quired, be made available by the plan administrator
15 (or the health insurance issuer offering such cov-
16 erage) to the participant or beneficiary in accord-
17 ance with regulations.''.

18 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
19 section (a) of such section is further amended by adding
20 at the end the following new paragraph:

21 ``(6) MINIMUM SCOPE OF COVERAGE AND EQ-
22 UITY IN OUT-OF-NETWORK BENEFITS.—

23 ``(A) MINIMUM SCOPE OF MENTAL
24 HEALTH AND SUBSTANCE-RELATED DISORDER
25 BENEFITS.—In the case of a group health plan

1 (or health insurance coverage offered in connec-
2 tion with such a plan) that provides any mental
3 health or substance-related disorder benefits,
4 the plan or coverage shall include benefits for
5 any mental health condition or substance-re-
6 lated disorder included in the most recent edi-
7 tion of the Diagnostic and Statistical Manual of
8 Mental Disorders published by the American
9 Psychiatric Association.

10 ''(B) EQUITY IN COVERAGE OF OUT-OF-
11 NETWORK BENEFITS.—

12 ''(i) IN GENERAL.—In the case of a
13 group health plan (or health insurance cov-
14 erage offered in connection with such a
15 plan) that provides both medical and sur-
16 gical benefits and mental health or sub-
17 stance-related disorder benefits, if medical
18 and surgical benefits are provided for sub-
19 stantially all items and services in a cat-
20 egory specified in clause (ii) furnished out-
21 side any network of providers established
22 or recognized under such plan or coverage,
23 the mental health and substance-related
24 disorder benefits shall also be provided for
25 items and services in such category fur-

1 nished outside any network of providers es-
2 tablished or recognized under such plan or
3 coverage in accordance with the require-
4 ments of this section.

5 "(ii) CATEGORIES OF ITEMS AND
6 SERVICES.—For purposes of clause (i),
7 there shall be the following three categories
8 of items and services for benefits, whether
9 medical and surgical benefits or mental
10 health and substance-related disorder bene-
11 fits, and all medical and surgical benefits
12 and all mental health and substance-re-
13 lated disorder benefits shall be classified
14 into one of the following categories:

15 "(I) EMERGENCY.—Items and
16 services, whether furnished on an in-
17 patient or outpatient basis, required
18 for the treatment of an emergency
19 medical condition (as defined in sec-
20 tion 1867(e) of the Social Security
21 Act, including an emergency condition
22 relating to mental health or sub-
23 stance-related disorders).

1 "(II) INPATIENT.—Items and
2 services not described in subclause (I)
3 furnished on an inpatient basis.
4 "(III) OUTPATIENT.—Items and
5 services not described in subclause (I)
6 furnished on an outpatient basis.".
7 (e) REVISION OF INCREASED COST EXEMPTION.—
8 Paragraph (2) of subsection (c) of such section is amended
9 to read as follows:
10 "(2) INCREASED COST EXEMPTION.—
11 "(A) IN GENERAL.—With respect to a
12 group health plan (or health insurance coverage
13 offered in connection with such a plan), if the
14 application of this section to such plan (or cov-
15 erage) results in an increase for the plan year
16 involved of the actual total costs of coverage
17 with respect to medical and surgical benefits
18 and mental health and substance-related dis-
19 order benefits under the plan (as determined
20 and certified under subparagraph (C)) by an
21 amount that exceeds the applicable percentage
22 described in subparagraph (B) of the actual
23 total plan costs, the provisions of this section
24 shall not apply to such plan (or coverage) dur-
25 ing the following plan year, and such exemption

shall apply to the plan (or coverage) for 1 plan year.

"(B) APPLICABLE PERCENTAGE.—With respect to a plan (or coverage), the applicable percentage described in this paragraph shall be—

"(i) 2 percent in the case of the first plan year to which this paragraph applies; and

"(ii) 1 percent in the case of each subsequent plan year.

"(C) DETERMINATIONS BY ACTUARIES.—Determinations as to increases in actual costs under a plan (or coverage) for purposes of this subsection shall be made in writing and prepared and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. Such determinations shall be made available by the plan administrator (or health insurance issuer, as the case may be) to the general public.

"(D) 6-MONTH DETERMINATIONS.—If a group health plan (or a health insurance issuer offering coverage in connection with such a plan) seeks an exemption under this paragraph,

1 determinations under subparagraph (A) shall be
2 made after such plan (or coverage) has com-
3 plied with this section for the first 6 months of
4 the plan year involved.

5 "(E) NOTIFICATION.—A group health plan
6 under this part shall comply with the notice re-
7 quirement under section 712(c)(2)(E) of the
8 Employee Retirement Income Security Act of
9 1974 with respect to a modification of mental
10 health and substance-related disorder benefits
11 as permitted under this paragraph as if such
12 section applied to such plan.

13 "(F) NOTIFICATION OF APPROPRIATE
14 AGENCY.—

15 "(i) IN GENERAL.—A group health
16 plan that, based on a certification de-
17 scribed under subparagraph (C), qualifies
18 for an exemption under this paragraph,
19 and elects to implement the exemption,
20 shall notify the Secretary of Health and
21 Human Services of such election.

22 "(ii) REQUIREMENT.—A notification
23 under clause (i) shall include—

24 "(I) a description of the number
25 of covered lives under the plan (or

1 coverage) involved at the time of the
2 notification, and as applicable, at the
3 time of any prior election of the cost-
4 exemption under this paragraph by
5 such plan (or coverage);
6 "(II) for both the plan year upon
7 which a cost exemption is sought and
8 the year prior, a description of the ac-
9 tual total costs of coverage with re-
10 spect to medical and surgical benefits
11 and mental health and substance-re-
12 lated disorder benefits under the plan;
13 and
14 "(III) for both the plan year
15 upon which a cost exemption is sought
16 and the year prior, the actual total
17 costs of coverage with respect to men-
18 tal health and substance-related dis-
19 order benefits under the plan.
20 "(iii) CONFIDENTIALITY.—A notifica-
21 tion under clause (i) shall be confidential.
22 The Secretary of Health and Human Serv-
23 ices shall make available, upon request to
24 the appropriate committees of Congress
25 and on not more than an annual basis, an

1 anonymous itemization of such notifica-
2 tions, that includes—
3 ‘‘(I) a breakdown of States by
4 the size and any type of employers
5 submitting such notification; and
6 ‘‘(II) a summary of the data re-
7 ceived under clause (ii).
8 ‘‘(G) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed as preventing a
10 group health plan (or health insurance coverage
11 offered in connection with such a plan) from
12 complying with the provisions of this section
13 notwithstanding that the plan or coverage is not
14 required to comply with such provisions due to
15 the application of subparagraph (A).’’.
16 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
17 ERS.—Subsection (c)(1)(B) of such section is amended—
18 (1) by inserting ‘‘(or 1 in the case of an em-
19 ployer residing in a State that permits small groups
20 to include a single individual)’’ after ‘‘at least 2’’ the
21 first place it appears; and
22 (2) by striking ‘‘and who employs at least 2 em-
23 ployees on the first day of the plan year’’.
24 (g) ELIMINATION OF SUNSET PROVISION.—Such sec-
25 tion is amended by striking out subsection (f).

1 (h) CLARIFICATION REGARDING PREEMPTION.—
2 Such section is further amended by inserting after sub-
3 section (e) the following new subsection:
4 ''(f) PREEMPTION, RELATION TO STATE LAWS.—
5 ''(1) IN GENERAL.—Nothing in this section
6 shall be construed to preempt any State law that
7 provides greater consumer protections, benefits,
8 methods of access to benefits, rights or remedies
9 that are greater than the protections, benefits, meth-
10 ods of access to benefits, rights or remedies provided
11 under this section.
12 ''(2) CONSTRUCTION.—Nothing in this section
13 shall be construed to affect or modify the provisions
14 of section 2723 with respect to group health plans.''.
15 (i) CONFORMING AMENDMENT TO HEADING.—The
16 heading of such section is amended to read as follows:
17 **''SEC. 2705. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
18 **RELATED DISORDER BENEFITS.''.**
19 (j) EFFECTIVE DATE.—
20 (1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, the amendments made by
22 this section shall apply with respect to plan years be-
23 ginning on or after January 1, 2009.

1 (2) ELIMINATION OF SUNSET.—The amend-
2 ment made by subsection (g) shall apply to benefits
3 for services furnished after December 31, 2007.
4 (3) SPECIAL RULE FOR COLLECTIVE BAR-
5 GAINING AGREEMENTS.—In the case of a group
6 health plan maintained pursuant to one or more col-
7 lective bargaining agreements between employee rep-
8 resentatives and one or more employers ratified be-
9 fore the date of the enactment of this Act, the
10 amendments made by this section shall not apply to
11 plan years beginning before the later of—
12 (A) the date on which the last of the col-
13 lective bargaining agreements relating to the
14 plan terminates (determined without regard to
15 any extension thereof agreed to after the date
16 of the enactment of this Act), or
17 (B) January 1, 2009.
18 For purposes of subparagraph (A), any plan amend-
19 ment made pursuant to a collective bargaining
20 agreement relating to the plan which amends the
21 plan solely to conform to any requirement added by
22 this section shall not be treated as a termination of
23 such collective bargaining agreement.

1 **SEC. 104. AMENDMENTS TO THE INTERNAL REVENUE CODE**
2 **OF 1986.**

3 (a) EXTENSION OF PARITY TO TREATMENT LIMITS
4 AND BENEFICIARY FINANCIAL REQUIREMENTS.—Section
5 9812 of the Internal Revenue Code of 1986 is amended—
6 (1) in subsection (a), by adding at the end the
7 following new paragraphs:
8 "(3) TREATMENT LIMITS.—In the case of a
9 group health plan that provides both medical and
10 surgical benefits and mental health or substance-re-
11 lated disorder benefits—
12 "(A) NO TREATMENT LIMIT.—If the plan
13 does not include a treatment limit (as defined
14 in subparagraph (D)) on substantially all med-
15 ical and surgical benefits in any category of
16 items or services (specified in subparagraph
17 (C)), the plan may not impose any treatment
18 limit on mental health or substance-related dis-
19 order benefits that are classified in the same
20 category of items or services.
21 "(B) TREATMENT LIMIT.—If the plan in-
22 cludes a treatment limit on substantially all
23 medical and surgical benefits in any category of
24 items or services, the plan may not impose such
25 a treatment limit on mental health or sub-
26 stance-related disorder benefits for items and

1 services within such category that is more re-
2 strictive than the predominant treatment limit
3 that is applicable to medical and surgical bene-
4 fits for items and services within such category.

5 "(C) CATEGORIES OF ITEMS AND SERV-
6 ICES FOR APPLICATION OF TREATMENT LIMITS
7 AND BENEFICIARY FINANCIAL REQUIRE-
8 MENTS.—For purposes of this paragraph and
9 paragraph (4), there shall be the following five
10 categories of items and services for benefits,
11 whether medical and surgical benefits or mental
12 health and substance-related disorder benefits,
13 and all medical and surgical benefits and all
14 mental health and substance related benefits
15 shall be classified into one of the following cat-
16 egories:

17 "(i) INPATIENT, IN-NETWORK.—Items
18 and services not described in clause (v)
19 furnished on an inpatient basis and within
20 a network of providers established or rec-
21 ognized under such plan.

22 "(ii) INPATIENT, OUT-OF-NETWORK.—
23 Items and services not described in clause
24 (v) furnished on an inpatient basis and

1 outside any network of providers established or recognized under such plan.

3 "(iii) OUTPATIENT, IN-NETWORK.—Items and services not described in clause (v) furnished on an outpatient basis and within a network of providers established or recognized under such plan.

8 "(iv) OUTPATIENT, OUT-OF-NETWORK.—Items and services not described in clause (v) furnished on an outpatient basis and outside any network of providers established or recognized under such plan.

13 "(v) EMERGENCY CARE.—Items and services, whether furnished on an inpatient or outpatient basis or within or outside any network of providers, required for the treatment of an emergency medical condition (as defined in section 1867(e) of the Social Security Act, including an emergency condition relating to mental health or substance-related disorders).

22 "(D) TREATMENT LIMIT DEFINED.—For purposes of this paragraph, the term 'treatment limit' means, with respect to a plan, limitation on the frequency of treatment, number of visits

1 or days of coverage, or other similar limit on
2 the duration or scope of treatment under the
3 plan.

4 "(E) PREDOMINANCE.—For purposes of
5 this subsection, a treatment limit or financial
6 requirement with respect to a category of items
7 and services is considered to be predominant if
8 it is the most common or frequent of such type
9 of limit or requirement with respect to such cat-
10 egory of items and services.

11 "(4) BENEFICIARY FINANCIAL REQUIRE-
12 MENTS.—In the case of a group health plan that
13 provides both medical and surgical benefits and
14 mental health or substance-related disorder bene-
15 fits—

16 "(A) NO BENEFICIARY FINANCIAL RE-
17 QUIREMENT.—If the plan does not include a
18 beneficiary financial requirement (as defined in
19 subparagraph (C)) on substantially all medical
20 and surgical benefits within a category of items
21 and services (specified in paragraph (3)(C)),
22 the plan may not impose such a beneficiary fi-
23 nancial requirement on mental health or sub-
24 stance-related disorder benefits for items and
25 services within such category.

1 "(B) BENEFICIARY FINANCIAL REQUIRE-
2 MENT.—
3 "(i) TREATMENT OF DEDUCTIBLES,
4 OUT-OF-POCKET LIMITS, AND SIMILAR FI-
5 NANCIAL REQUIREMENTS.—If the plan in-
6 cludes a deductible, a limitation on out-of-
7 pocket expenses, or similar beneficiary fi-
8 nancial requirement that does not apply
9 separately to individual items and services
10 on substantially all medical and surgical
11 benefits within a category of items and
12 services, the plan shall apply such require-
13 ment (or, if there is more than one such
14 requirement for such category of items and
15 services, the predominant requirement for
16 such category) both to medical and sur-
17 gical benefits within such category and to
18 mental health and substance-related dis-
19 order benefits within such category and
20 shall not distinguish in the application of
21 such requirement between such medical
22 and surgical benefits and such mental
23 health and substance-related disorder bene-
24 fits.

1 "(ii) OTHER FINANCIAL REQUIRE-
2 MENTS.—If the plan includes a beneficiary
3 financial requirement not described in
4 clause (i) on substantially all medical and
5 surgical benefits within a category of items
6 and services, the plan may not impose such
7 financial requirement on mental health or
8 substance-related disorder benefits for
9 items and services within such category in
10 a way that results in greater out-of-pocket
11 expenses to the participant or beneficiary
12 than the predominant beneficiary financial
13 requirement applicable to medical and sur-
14 gical benefits for items and services within
15 such category.
16 "(C) BENEFICIARY FINANCIAL REQUIRE-
17 MENT DEFINED.—For purposes of this para-
18 graph, the term 'beneficiary financial require-
19 ment' includes, with respect to a plan, any de-
20 ductible, coinsurance, co-payment, other cost
21 sharing, and limitation on the total amount
22 that may be paid by a participant or beneficiary
23 with respect to benefits under the plan, but
24 does not include the application of any aggre-
25 gate lifetime limit or annual limit.", and

1 (2) in subsection (b)—
2 (A) by striking ''construed—'' and all that
3 follows through ''(1) as requiring'' and insert-
4 ing ''construed as requiring'',
5 (B) by striking ''; or'' and inserting a pe-
6 riod, and
7 (C) by striking paragraph (2).
8 (b) EXPANSION TO SUBSTANCE-RELATED DISORDER
9 BENEFITS AND REVISION OF DEFINITION.—Section 9812
10 of such Code is further amended—
11 (1) by striking ''mental health benefits'' each
12 place it appears (other than in any provision amend-
13 ed by paragraph (2)) and inserting ''mental health
14 or substance-related disorder benefits'',
15 (2) by striking ''mental health benefits'' each
16 place it appears in subsections (a)(1)(B)(i),
17 (a)(1)(C), (a)(2)(B)(i), and (a)(2)(C) and inserting
18 ''mental health and substance-related disorder bene-
19 fits'', and
20 (3) in subsection (e), by striking paragraph (4)
21 and inserting the following new paragraphs:
22 ''(4) MENTAL HEALTH BENEFITS.—The term
23 'mental health benefits' means benefits with respect
24 to services for mental health conditions, as defined
25 under the terms of the plan and in accordance with

1 applicable law, but does not include substance-re-
2 lated disorder benefits.
3 "(5) SUBSTANCE-RELATED DISORDER BENE-
4 FITS.—The term 'substance-related disorder bene-
5 fits' means benefits with respect to services for sub-
6 stance-related disorders, as defined under the terms
7 of the plan and in accordance with applicable law.".
8 (c) AVAILABILITY OF PLAN INFORMATION ABOUT
9 CRITERIA FOR MEDICAL NECESSITY.—Subsection (a) of
10 section 9812 of such Code, as amended by subsection
11 (a)(1), is further amended by adding at the end the fol-
12 lowing new paragraph:
13 "(5) AVAILABILITY OF PLAN INFORMATION.—
14 The criteria for medical necessity determinations
15 made under the plan with respect to mental health
16 and substance-related disorder benefits shall be
17 made available by the plan administrator in accord-
18 ance with regulations to any current or potential
19 participant, beneficiary, or contracting provider upon
20 request. The reason for any denial under the plan of
21 reimbursement or payment for services with respect
22 to mental health and substance-related disorder ben-
23 efits in the case of any participant or beneficiary
24 shall, on request or as otherwise required, be made

1 available by the plan administrator to the partici-
2 pant or beneficiary in accordance with regulations.''.
3 (d) MINIMUM BENEFIT REQUIREMENTS.—Sub-
4 section (a) of section 9812 of such Code is further amend-
5 ed by adding at the end the following new paragraph:
6 ''(6) MINIMUM SCOPE OF COVERAGE AND EQ-
7 UITY IN OUT-OF-NETWORK BENEFITS.—
8 ''(A) MINIMUM SCOPE OF MENTAL
9 HEALTH AND SUBSTANCE-RELATED DISORDER
10 BENEFITS.—In the case of a group health plan
11 that provides any mental health or substance-
12 related disorder benefits, the plan shall include
13 benefits for any mental health condition or sub-
14 stance-related disorder included in the most re-
15 cent edition of the Diagnostic and Statistical
16 Manual of Mental Disorders published by the
17 American Psychiatric Association.
18 ''(B) EQUITY IN COVERAGE OF OUT-OF-
19 NETWORK BENEFITS.—
20 ''(i) IN GENERAL.—In the case of a
21 group health plan that provides both med-
22 ical and surgical benefits and mental
23 health or substance-related disorder bene-
24 fits, if medical and surgical benefits are
25 provided for substantially all items and

1 services in a category specified in clause
2 (ii) furnished outside any network of pro-
3 viders established or recognized under such
4 plan, the mental health and substance-re-
5 lated disorder benefits shall also be pro-
6 vided for items and services in such cat-
7 egory furnished outside any network of
8 providers established or recognized under
9 such plan in accordance with the require-
10 ments of this section.

11 "(ii) CATEGORIES OF ITEMS AND
12 SERVICES.—For purposes of clause (i),
13 there shall be the following three categories
14 of items and services for benefits, whether
15 medical and surgical benefits or mental
16 health and substance-related disorder bene-
17 fits, and all medical and surgical benefits
18 and all mental health and substance-re-
19 lated disorder benefits shall be classified
20 into one of the following categories:

21 "(I) EMERGENCY.—Items and
22 services, whether furnished on an in-
23 patient or outpatient basis, required
24 for the treatment of an emergency
25 medical condition (as defined in sec-

1 tion 1867(e) of the Social Security
2 Act, including an emergency condition
3 relating to mental health or sub-
4 stance-related disorders).

5 ‘‘(II) INPATIENT.—Items and
6 services not described in subclause (I)
7 furnished on an inpatient basis.

8 ‘‘(III) OUTPATIENT.—Items and
9 services not described in subclause (I)
10 furnished on an outpatient basis.’’.

11 (e) REVISION OF INCREASED COST EXEMPTION.—
12 Paragraph (2) of section 9812(c) of such Code is amended
13 to read as follows:

14 ‘‘(2) INCREASED COST EXEMPTION.—

15 ‘‘(A) IN GENERAL.—With respect to a
16 group health plan, if the application of this sec-
17 tion to such plan results in an increase for the
18 plan year involved of the actual total costs of
19 coverage with respect to medical and surgical
20 benefits and mental health and substance-re-
21 lated disorder benefits under the plan (as deter-
22 mined and certified under subparagraph (C)) by
23 an amount that exceeds the applicable percent-
24 age described in subparagraph (B) of the actual
25 total plan costs, the provisions of this section

1 shall not apply to such plan during the fol-
2 lowing plan year, and such exemption shall
3 apply to the plan for 1 plan year.
4 "(B) APPLICABLE PERCENTAGE.—With re-
5 spect to a plan, the applicable percentage de-
6 scribed in this paragraph shall be—
7 "(i) 2 percent in the case of the first
8 plan year to which this paragraph applies,
9 and
10 "(ii) 1 percent in the case of each
11 subsequent plan year.
12 "(C) DETERMINATIONS BY ACTUARIES.—
13 Determinations as to increases in actual costs
14 under a plan for purposes of this subsection
15 shall be made in writing and prepared and cer-
16 tified by a qualified and licensed actuary who is
17 a member in good standing of the American
18 Academy of Actuaries. Such determinations
19 shall be made available by the plan adminis-
20 trator to the general public.
21 "(D) 6-MONTH DETERMINATIONS.—If a
22 group health plan seeks an exemption under
23 this paragraph, determinations under subpara-
24 graph (A) shall be made after such plan has

1 complied with this section for the first 6
2 months of the plan year involved.

3 "(E) NOTIFICATION OF APPROPRIATE
4 AGENCY.—

5 "(i) IN GENERAL.—A group health
6 plan that, based on a certification de-
7 scribed under subparagraph (C), qualifies
8 for an exemption under this paragraph,
9 and elects to implement the exemption,
10 shall notify the Secretary of the Treasury
11 of such election.

12 "(ii) REQUIREMENT.—A notification
13 under clause (i) shall include—

14 "(I) a description of the number
15 of covered lives under the plan (or
16 coverage) involved at the time of the
17 notification, and as applicable, at the
18 time of any prior election of the cost-
19 exemption under this paragraph by
20 such plan (or coverage);

21 "(II) for both the plan year upon
22 which a cost exemption is sought and
23 the year prior, a description of the ac-
24 tual total costs of coverage with re-
25 spect to medical and surgical benefits

1 and mental health and substance-re-
2 lated disorder benefits under the plan;
3 and

4 ''(III) for both the plan year
5 upon which a cost exemption is sought
6 and the year prior, the actual total
7 costs of coverage with respect to men-
8 tal health and substance-related dis-
9 order benefits under the plan.

10 ''(iii) CONFIDENTIALITY.—A notifica-
11 tion under clause (i) shall be confidential.
12 The Secretary of the Treasury shall make
13 available, upon request to the appropriate
14 committees of Congress and on not more
15 than an annual basis, an anonymous
16 itemization of such notifications, that in-
17 cludes—

18 ''(I) a breakdown of States by
19 the size and any type of employers
20 submitting such notification; and

21 ''(II) a summary of the data re-
22 ceived under clause (ii).

23 ''(F) CONSTRUCTION.—Nothing in this
24 paragraph shall be construed as preventing a
25 group health plan from complying with the pro-

1 visions of this section notwithstanding that the
2 plan is not required to comply with such provi-
3 sions due to the application of subparagraph
4 (A).''.

5 (f) CHANGE IN EXCLUSION FOR SMALLEST EMPLOY-
6 ERS.—Paragraph (1) of section 9812(c) of such Code is
7 amended to read as follows:

8 ''(1) SMALL EMPLOYER EXEMPTION.—

9 ''(A) IN GENERAL.—This section shall not
10 apply to any group health plan for any plan
11 year of a small employer.

12 ''(B) SMALL EMPLOYER.—For purposes of
13 subparagraph (A), the term 'small employer'
14 means, with respect to a calendar year and a
15 plan year, an employer who employed an aver-
16 age of at least 2 (or 1 in the case of an em-
17 ployer residing in a State that permits small
18 groups to include a single individual) but not
19 more than 50 employees on business days dur-
20 ing the preceding calendar year. For purposes
21 of the preceding sentence, all persons treated as
22 a single employer under subsection (b), (c),
23 (m), or (o) of section 414 shall be treated as 1
24 employer and rules similar to rules of subpara-

1 graphs (B) and (C) of section 4980D(d)(2)
2 shall apply.''.
3 (g) ELIMINATION OF SUNSET PROVISION.—Section
4 9812 of such Code is amended by striking subsection (f).
5 (h) CONFORMING AMENDMENTS TO HEADING.—
6 (1) IN GENERAL.—The heading of section 9812
7 of such Code is amended to read as follows:
8 **''SEC. 9812. EQUITY IN MENTAL HEALTH AND SUBSTANCE-**
9 **RELATED DISORDER BENEFITS.''.**
10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions for subchapter B of chapter 100 of such Code
12 is amended by striking the item relating to section
13 9812 and inserting the following new item:

''Sec. 9812. Equity in mental health and substance-related disorder benefits.''.

14 (i) EFFECTIVE DATE.—
15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, the amendments made by
17 this section shall apply with respect to plan years be-
18 ginning on or after January 1, 2009.
19 (2) ELIMINATION OF SUNSET.—The amend-
20 ment made by subsection (g) shall apply to benefits
21 for services furnished after December 31, 2007.
22 (3) SPECIAL RULE FOR COLLECTIVE BAR-
23 GAINING AGREEMENTS.—In the case of a group
24 health plan maintained pursuant to one or more col-
25 lective bargaining agreements between employee rep-

1 resentatives and one or more employers ratified be-
2 fore the date of the enactment of this Act, the
3 amendments made by this section (other than sub-
4 section (g)) shall not apply to plan years beginning
5 before the later of—
6 (A) the date on which the last of the col-
7 lective bargaining agreements relating to the
8 plan terminates (determined without regard to
9 any extension thereof agreed to after the date
10 of the enactment of this Act), or
11 (B) January 1, 2009.
12 For purposes of subparagraph (A), any plan amend-
13 ment made pursuant to a collective bargaining
14 agreement relating to the plan which amends the
15 plan solely to conform to any requirement added by
16 this section shall not be treated as a termination of
17 such collective bargaining agreement.

18 **SEC. 105. MEDICAID DRUG REBATE.**

19 Paragraph (1)(B)(i) of section 1927(c) of the Social
20 Security Act (42 U.S.C. 1396r–8(c)) is amended—
21 (1) by striking "and" at the end of subclause
22 (IV);
23 (2) in subclause (V)—

1 (A) by inserting "and before January 1,
2 2009, and after December 31, 2014," after
3 "December 31, 1995,"; and
4 (B) by striking the period at the end and
5 inserting "; and"; and
6 (3) by adding at the end the following new sub-
7 clause:
8 "(VI) after December 31, 2008,
9 and before January 1, 2015, is 20.1
10 percent.".

11 **SEC. 106. LIMITATION ON MEDICARE EXCEPTION TO THE**
12 **PROHIBITION ON CERTAIN PHYSICIAN RE-**
13 **FERRALS FOR HOSPITALS.**

14 (a) IN GENERAL.—Section 1877 of the Social Secu-
15 rity Act (42 U.S.C. 1395nn) is amended—
16 (1) in subsection (d)(2)—
17 (A) in subparagraph (A), by striking
18 "and" at the end;
19 (B) in subparagraph (B), by striking the
20 period at the end and inserting "; and"; and
21 (C) by adding at the end the following new
22 subparagraph:
23 "(C) in the case where the entity is a hos-
24 pital, the hospital meets the requirements of
25 paragraph (3)(D).";

1 (2) in subsection (d)(3)—
2 (A) in subparagraph (B), by striking
3 “and” at the end;
4 (B) in subparagraph (C), by striking the
5 period at the end and inserting “; and”; and
6 (C) by adding at the end the following new
7 subparagraph:
8 “(D) the hospital meets the requirements
9 described in subsection (i)(1) not later than 18
10 months after the date of the enactment of this
11 subparagraph.”; and
12 (3) by adding at the end the following new sub-
13 section:
14 “(i) REQUIREMENTS FOR HOSPITALS TO QUALIFY
15 FOR HOSPITAL EXCEPTION TO OWNERSHIP OR INVEST-
16 MENT PROHIBITION.—
17 “(1) REQUIREMENTS DESCRIBED.—For pur-
18 poses of subsection (d)(3)(D), the requirements de-
19 scribed in this paragraph for a hospital are as fol-
20 lows:
21 “(A) PROVIDER AGREEMENT.—The hos-
22 pital had—
23 “(i) physician ownership on the date
24 of enactment of this subsection; and

1 "(ii) a provider agreement under sec-
2 tion 1866 in effect on such date of enact-
3 ment.
4 "(B) LIMITATION ON EXPANSION OF FA-
5 CILITY CAPACITY.—Except as provided in para-
6 graph (3), the number of operating rooms and
7 beds of the hospital at any time on or after the
8 date of the enactment of this subsection are no
9 greater than the number of operating rooms
10 and beds as of such date.
11 "(C) PREVENTING CONFLICTS OF INTER-
12 EST.—
13 "(i) The hospital submits to the Sec-
14 retary an annual report containing a de-
15 tailed description of—
16 "(I) the identity of each physi-
17 cian owner and any other owners of
18 the hospital; and
19 "(II) the nature and extent of all
20 ownership interests in the hospital.
21 "(ii) The hospital has procedures in
22 place to require that any referring physi-
23 cian owner discloses to the patient being
24 referred, by a time that permits the pa-
25 tient to make a meaningful decision re-

1 garding the receipt of care, as determined
2 by the Secretary—
3 ‘‘(I) the ownership interest of
4 such referring physician in the hos-
5 pital; and
6 ‘‘(II) if applicable, any such own-
7 ership interest of the treating physi-
8 cian.
9 ‘‘(iii) The hospital does not condition
10 any physician ownership interests either di-
11 rectly or indirectly on the physician owner
12 making or influencing referrals to the hos-
13 pital or otherwise generating business for
14 the hospital.
15 ‘‘(iv) The hospital discloses the fact
16 that the hospital is partially owned by phy-
17 sicians—
18 ‘‘(I) on any public website for the
19 hospital; and
20 ‘‘(II) in any public advertising
21 for the hospital.
22 ‘‘(D) ENSURING BONA FIDE INVEST-
23 MENT.—
24 ‘‘(i) Physician owners in the aggregate
25 do not own more than 40 percent of the

1 total value of the investment interests held
2 in the hospital or in an entity whose assets
3 include the hospital.
4 "(ii) The investment interest of any
5 individual physician owner does not exceed
6 2 percent of the total value of the invest-
7 ment interests held in the hospital or in an
8 entity whose assets include the hospital.
9 "(iii) Any ownership or investment in-
10 terests that the hospital offers to a physi-
11 cian owner are not offered on more favor-
12 able terms than the terms offered to a per-
13 son who is not a physician owner.
14 "(iv) The hospital (or any investors in
15 the hospital) does not directly or indirectly
16 provide loans or financing for any physi-
17 cian owner investments in the hospital.
18 "(v) The hospital (or any investors in
19 the hospital) does not directly or indirectly
20 guarantee a loan, make a payment toward
21 a loan, or otherwise subsidize a loan, for
22 any individual physician owner or group of
23 physician owners that is related to acquir-
24 ing any ownership interest in the hospital.

1 "(vi) Investment returns are distrib-
2 uted to each investor in the hospital in an
3 amount that is directly proportional to the
4 investment of capital by such investor in
5 the hospital.

6 "(vii) Physician owners do not receive,
7 directly or indirectly, any guaranteed re-
8 ceipt of or right to purchase other business
9 interests related to the hospital, including
10 the purchase or lease of any property
11 under the control of other investors in the
12 hospital or located near the premises of the
13 hospital.

14 "(viii) The hospital does not offer a
15 physician owner the opportunity to pur-
16 chase or lease any property under the con-
17 trol of the hospital or any other investor in
18 the hospital on more favorable terms than
19 the terms offered to an individual who is
20 not a physician owner.

21 "(E) PATIENT SAFETY.—

22 "(i) Insofar as the hospital admits a
23 patient and does not have any physician
24 available on the premises to provide serv-
25 ices during all hours in which the hospital

1 is providing services to such patient, before
2 admitting the patient—
3 ''(I) the hospital discloses such
4 fact to a patient; and
5 ''(II) following such disclosure,
6 the hospital receives from the patient
7 a signed acknowledgment that the pa-
8 tient understands such fact.
9 ''(ii) The hospital has the capacity
10 to—
11 ''(I) provide assessment and ini-
12 tial treatment for patients; and
13 ''(II) refer and transfer patients
14 to hospitals with the capability to
15 treat the needs of the patient in-
16 volved.
17 ''(2) PUBLICATION OF INFORMATION RE-
18 PORTED.—The Secretary shall publish, and update
19 on an annual basis, the information submitted by
20 hospitals under paragraph (1)(C)(i) on the public
21 Internet website of the Centers for Medicare & Med-
22 icaid Services.
23 ''(3) EXCEPTION TO PROHIBITION ON EXPAN-
24 SION OF FACILITY CAPACITY.—
25 ''(A) PROCESS.—

1 "(i) ESTABLISHMENT.—The Secretary
2 shall establish and implement a process
3 under which an applicable hospital (as de-
4 fined in subparagraph (E)) may apply for
5 an exception from the requirement under
6 paragraph (1)(B).
7 "(ii) OPPORTUNITY FOR COMMUNITY
8 INPUT.—The process under clause (i) shall
9 provide individuals and entities in the com-
10 munity that the applicable hospital apply-
11 ing for an exception is located with the op-
12 portunity to provide input with respect to
13 the application.
14 "(iii) TIMING FOR IMPLEMENTA-
15 TION.—The Secretary shall implement the
16 process under clause (i) on the date that is
17 18 months after the date of enactment of
18 this subsection.
19 "(iv) REGULATIONS.—Not later than
20 the date that is 18 months after the date
21 of enactment of this subsection, the Sec-
22 retary shall promulgate regulations to
23 carry out the process under clause (i).
24 "(B) FREQUENCY.—The process described
25 in subparagraph (A) shall permit an applicable

1 hospital to apply for an exception up to once
2 every 2 years.
3 "(C) PERMITTED INCREASE.—
4 "(i) IN GENERAL.—Subject to clause
5 (ii) and subparagraph (D), an applicable
6 hospital granted an exception under the
7 process described in subparagraph (A) may
8 increase the number of operating rooms
9 and beds of the applicable hospital above
10 the baseline number of operating rooms
11 and beds of the applicable hospital (or, if
12 the applicable hospital has been granted a
13 previous exception under this paragraph,
14 above the number of operating rooms and
15 beds of the hospital after the application of
16 the most recent increase under such an ex-
17 ception) by an amount determined appro-
18 priate by the Secretary.
19 "(ii) LIFETIME 50 PERCENT INCREASE
20 LIMITATION.—The Secretary shall not per-
21 mit an increase in the number of operating
22 rooms and beds of an applicable hospital
23 under clause (i) to the extent such increase
24 would result in the number of operating
25 rooms and beds of the applicable hospital

1 exceeding 150 percent of the baseline num-
2 ber of operating rooms and beds of the ap-
3 plicable hospital.
4 "(iii) BASELINE NUMBER OF OPER-
5 ATING ROOMS AND BEDS.—In this para-
6 graph, the term 'baseline number of oper-
7 ating rooms and beds' means the number
8 of operating rooms and beds of the appli-
9 cable hospital as of the date of enactment
10 of this subsection.
11 "(D) INCREASE LIMITED TO FACILITIES
12 ON THE MAIN CAMPUS OF THE HOSPITAL.—
13 Any increase in the number of operating rooms
14 and beds of an applicable hospital pursuant to
15 this paragraph may only occur in facilities on
16 the main campus of the applicable hospital.
17 "(E) APPLICABLE HOSPITAL.—In this
18 paragraph, the term 'applicable hospital' means
19 a hospital—
20 "(i) that is located in a county in
21 which the percentage increase in the popu-
22 lation during the most recent 5-year period
23 (as of the date of the application under
24 subparagraph (A)) is at least 200 percent
25 of the percentage increase in the popu-

1 lation growth of the United States during
2 that period, as estimated by Bureau of the
3 Census;

4 "(ii) whose annual percent of total in-
5 patient admissions and outpatient visits
6 that represent inpatient admissions and
7 outpatient visits under the program under
8 title XIX is equal to or greater than the
9 average percent with respect to such ad-
10 missions and visits for all hospitals located
11 in the State;

12 "(iii) that does not discriminate
13 against beneficiaries of Federal health care
14 programs and does not permit physicians
15 practicing at the hospital to discriminate
16 against such beneficiaries;

17 "(iv) that is located in a State in
18 which the average bed capacity in the
19 State is less than the national average bed
20 capacity; and

21 "(v) in the case of a hospital lo-
22 cated—

23 "(I) in a core-based statistical
24 area, that is located in such an area
25 in which the average bed occupancy

1 rate in such area is greater than 80
2 percent; or
3 ''(II) outside of a core-based sta-
4 tistical area, that is located in a State
5 in which the average bed occupancy
6 rate is greater than 80 percent.
7 ''(F) PUBLICATION OF FINAL DECI-
8 SIONS.—The Secretary shall publish final deci-
9 sions with respect to applications under this
10 paragraph in the Federal Register.
11 ''(G) LIMITATION ON REVIEW.—There
12 shall be no administrative or judicial review
13 under section 1869, section 1878, or otherwise
14 of the process under this paragraph (including
15 the establishment of such process).
16 ''(4) COLLECTION OF OWNERSHIP AND INVEST-
17 MENT INFORMATION.—For purposes of clauses (i)
18 and (ii) of paragraph (1)(D), the Secretary shall col-
19 lect physician ownership and investment information
20 for each hospital as it existed on the date of the en-
21 actment of this subsection.
22 ''(5) PHYSICIAN OWNER DEFINED.—For pur-
23 poses of this subsection, the term 'physician owner'
24 means a physician (or an immediate family member

1 of such physician) with a direct or an indirect own-
2 ership interest in the hospital.''.
3 (b) ENFORCEMENT.—
4 (1) ENSURING COMPLIANCE.—The Secretary of
5 Health and Human Services shall establish policies
6 and procedures to ensure compliance with the re-
7 quirements described in subsection (i)(1) of section
8 1877 of the Social Security Act, as added by sub-
9 section (a)(3), beginning on the date such require-
10 ments first apply. Such policies and procedures may
11 include unannounced site reviews of hospitals.
12 (2) AUDITS.—Beginning not later than 18
13 months after the date of the enactment of this Act,
14 the Secretary of Health and Human Services shall
15 conduct audits to determine if hospitals violate the
16 requirements referred to in paragraph (1).
17 (c) ADJUSTMENT TO PAQI FUND.—Section
18 1848(l)(2)(A)(i)(III) of the Social Security Act (42 U.S.C.
19 1395w–4(l)(2)(A)(i)(III)), as amended by section
20 101(a)(2) of the Medicare, Medicaid, and SCHIP Exten-
21 sion Act of 2007 (Public Law 110–173), is amended by
22 striking ''$4,960,000,000'' and inserting
23 ''$5,120,000,000''.

24 **SEC. 107. STUDIES AND REPORTS.**

25 (a) IMPLEMENTATION OF ACT.—

1 (1) GAO STUDY.—The Comptroller General of
2 the United States shall conduct a study that evalu-
3 ates the effect of the implementation of the amend-
4 ments made by this division on—
5 (A) the cost of health insurance coverage;
6 (B) access to health insurance coverage
7 (including the availability of in-network pro-
8 viders);
9 (C) the quality of health care;
10 (D) Medicare, Medicaid, and State and
11 local mental health and substance abuse treat-
12 ment spending;
13 (E) the number of individuals with private
14 insurance who received publicly funded health
15 care for mental health and substance-related
16 disorders;
17 (F) spending on public services, such as
18 the criminal justice system, special education,
19 and income assistance programs;
20 (G) the use of medical management of
21 mental health and substance-related disorder
22 benefits and medical necessity determinations
23 by group health plans (and health insurance
24 issuers offering health insurance coverage in
25 connection with such plans) and timely access

1 by participants and beneficiaries to clinically-in-
2 dicated care for mental health and substance-
3 use disorders; and

4 (H) other matters as determined appro-
5 priate by the Comptroller General.

6 (2) REPORT.—Not later than 2 years after the
7 date of enactment of this Act, the Comptroller Gen-
8 eral shall prepare and submit to the appropriate
9 committees of the Congress a report containing the
10 results of the study conducted under paragraph (1).

11 (b) GAO REPORT ON UNIFORM PATIENT PLACE-
12 MENT CRITERIA.—Not later than 18 months after the
13 date of the enactment of this Act, the Comptroller General
14 shall submit to each House of the Congress a report on
15 availability of uniform patient placement criteria for men-
16 tal health and substance-related disorders that could be
17 used by group health plans and health insurance issuers
18 to guide determinations of medical necessity and the ex-
19 tent to which health plans utilize such criteria. If such
20 criteria do not exist, the report shall include recommenda-
21 tions on a process for developing such criteria.

22 (c) DOL BIANNUAL REPORT ON ANY OBSTACLES IN
23 OBTAINING COVERAGE.—Every 2 years, the Secretary of
24 Labor, in consultation with the Secretaries of Health and
25 Human Services and the Treasury, shall submit to the ap-

1 propriate committees of each House of the Congress a re-
2 port on obstacles, if any, that individuals face in obtaining
3 mental health and substance-related disorder care under
4 their health plans.

5 DIVISION B—GENETIC INFORMA-
6 TION NONDISCRIMINATION
7 ACT OF 2008

8 **SEC. 100. SHORT TITLE; FINDINGS.**

9 (a) SHORT TITLE.—This division may be cited as the
10 "Genetic Information Nondiscrimination Act of 2008".

11 (b) FINDINGS.—Congress makes the following find-
12 ings:

13 (1) Deciphering the sequence of the human ge-
14 nome and other advances in genetics open major
15 new opportunities for medical progress. New knowl-
16 edge about the genetic basis of illness will allow for
17 earlier detection of illnesses, often before symptoms
18 have begun. Genetic testing can allow individuals to
19 take steps to reduce the likelihood that they will con-
20 tract a particular disorder. New knowledge about ge-
21 netics may allow for the development of better thera-
22 pies that are more effective against disease or have
23 fewer side effects than current treatments. These
24 advances give rise to the potential misuse of genetic

1 information to discriminate in health insurance and
2 employment.
3 (2) The early science of genetics became the
4 basis of State laws that provided for the sterilization
5 of persons having presumed genetic ''defects'' such
6 as mental retardation, mental disease, epilepsy,
7 blindness, and hearing loss, among other conditions.
8 The first sterilization law was enacted in the State
9 of Indiana in 1907. By 1981, a majority of States
10 adopted sterilization laws to ''correct'' apparent ge-
11 netic traits or tendencies. Many of these State laws
12 have since been repealed, and many have been modi-
13 fied to include essential constitutional requirements
14 of due process and equal protection. However, the
15 current explosion in the science of genetics, and the
16 history of sterilization laws by the States based on
17 early genetic science, compels Congressional action
18 in this area.
19 (3) Although genes are facially neutral markers,
20 many genetic conditions and disorders are associated
21 with particular racial and ethnic groups and gender.
22 Because some genetic traits are most prevalent in
23 particular groups, members of a particular group
24 may be stigmatized or discriminated against as a re-
25 sult of that genetic information. This form of dis-

1 crimination was evident in the 1970s, which saw the
2 advent of programs to screen and identify carriers of
3 sickle cell anemia, a disease which afflicts African-
4 Americans. Once again, State legislatures began to
5 enact discriminatory laws in the area, and in the
6 early 1970s began mandating genetic screening of
7 all African Americans for sickle cell anemia, leading
8 to discrimination and unnecessary fear. To alleviate
9 some of this stigma, Congress in 1972 passed the
10 National Sickle Cell Anemia Control Act, which
11 withholds Federal funding from States unless sickle
12 cell testing is voluntary.

13 (4) Congress has been informed of examples of
14 genetic discrimination in the workplace. These in-
15 clude the use of pre-employment genetic screening at
16 Lawrence Berkeley Laboratory, which led to a court
17 decision in favor of the employees in that case Nor-
18 man-Bloodsaw v. Lawrence Berkeley Laboratory
19 (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress
20 clearly has a compelling public interest in relieving
21 the fear of discrimination and in prohibiting its ac-
22 tual practice in employment and health insurance.

23 (5) Federal law addressing genetic discrimina-
24 tion in health insurance and employment is incom-
25 plete in both the scope and depth of its protections.

1 Moreover, while many States have enacted some type
2 of genetic non-discrimination law, these laws vary
3 widely with respect to their approach, application,
4 and level of protection. Congress has collected sub-
5 stantial evidence that the American public and the
6 medical community find the existing patchwork of
7 State and Federal laws to be confusing and inad-
8 equate to protect them from discrimination. There-
9 fore Federal legislation establishing a national and
10 uniform basic standard is necessary to fully protect
11 the public from discrimination and allay their con-
12 cerns about the potential for discrimination, thereby
13 allowing individuals to take advantage of genetic
14 testing, technologies, research, and new therapies.

15 TITLE I—GENETIC NON-
16 DISCRIMINATION IN HEALTH
17 INSURANCE

18 SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-
19 COME SECURITY ACT OF 1974.

20 (a) NO DISCRIMINATION IN GROUP PREMIUMS
21 BASED ON GENETIC INFORMATION.—Section 702(b) of
22 the Employee Retirement Income Security Act of 1974
23 (29 U.S.C. 1182(b)) is amended—

1 (1) in paragraph (2)(A), by inserting before the
2 semicolon the following: ‘‘except as provided in para-
3 graph (3)’’; and
4 (2) by adding at the end the following:
5 ‘‘(3) NO GROUP-BASED DISCRIMINATION ON
6 BASIS OF GENETIC INFORMATION.—For purposes of
7 this section, a group health plan, and a health insur-
8 ance issuer offering group health insurance coverage
9 in connection with a group health plan, may not ad-
10 just premium or contribution amounts for the group
11 covered under such plan on the basis of genetic in-
12 formation.’’.
13 (b) LIMITATIONS ON GENETIC TESTING; PROHIBI-
14 TION ON COLLECTION OF GENETIC INFORMATION; APPLI-
15 CATION TO ALL PLANS.—Section 702 of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C. 1182)
17 is amended by adding at the end the following:
18 ‘‘(c) GENETIC TESTING.—
19 ‘‘(1) LIMITATION ON REQUESTING OR REQUIR-
20 ING GENETIC TESTING.—A group health plan, and a
21 health insurance issuer offering health insurance
22 coverage in connection with a group health plan,
23 shall not request or require an individual or a family
24 member of such individual to undergo a genetic test.

1 "(2) RULE OF CONSTRUCTION.—Paragraph (1)
2 shall not be construed to limit the authority of a
3 health care professional who is providing health care
4 services to an individual to request that such indi-
5 vidual undergo a genetic test.

6 "(3) RULE OF CONSTRUCTION REGARDING PAY-
7 MENT.—

8 "(A) IN GENERAL.—Nothing in paragraph
9 (1) shall be construed to preclude a group
10 health plan, or a health insurance issuer offer-
11 ing health insurance coverage in connection
12 with a group health plan, from obtaining and
13 using the results of a genetic test in making a
14 determination regarding payment (as such term
15 is defined for the purposes of applying the regu-
16 lations promulgated by the Secretary of Health
17 and Human Services under part C of title XI
18 of the Social Security Act and section 264 of
19 the Health Insurance Portability and Account-
20 ability Act of 1996, as may be revised from
21 time to time) consistent with subsection (a).

22 "(B) LIMITATION.—For purposes of sub-
23 paragraph (A), a group health plan, or a health
24 insurance issuer offering health insurance cov-
25 erage in connection with a group health plan,

1 may request only the minimum amount of in-
2 formation necessary to accomplish the intended
3 purpose.

4 "(4) RESEARCH EXCEPTION.—Notwithstanding
5 paragraph (1), a group health plan, or a health in-
6 surance issuer offering health insurance coverage in
7 connection with a group health plan, may request,
8 but not require, that a participant or beneficiary un-
9 dergo a genetic test if each of the following condi-
10 tions is met:

11 "(A) The request is made, in writing, pur-
12 suant to research that complies with part 46 of
13 title 45, Code of Federal Regulations, or equiv-
14 alent Federal regulations, and any applicable
15 State or local law or regulations for the protec-
16 tion of human subjects in research.

17 "(B) The plan or issuer clearly indicates to
18 each participant or beneficiary, or in the case of
19 a minor child, to the legal guardian of such
20 beneficiary, to whom the request is made that—

21 "(i) compliance with the request is
22 voluntary; and

23 "(ii) non-compliance will have no ef-
24 fect on enrollment status or premium or
25 contribution amounts.

1 "(C) No genetic information collected or
2 acquired under this paragraph shall be used for
3 underwriting purposes.
4 "(D) The plan or issuer notifies the Sec-
5 retary in writing that the plan or issuer is con-
6 ducting activities pursuant to the exception pro-
7 vided for under this paragraph, including a de-
8 scription of the activities conducted.
9 "(E) The plan or issuer complies with such
10 other conditions as the Secretary may by regu-
11 lation require for activities conducted under this
12 paragraph.
13 "(d) PROHIBITION ON COLLECTION OF GENETIC IN-
14 FORMATION.—
15 "(1) IN GENERAL.—A group health plan, and a
16 health insurance issuer offering health insurance
17 coverage in connection with a group health plan,
18 shall not request, require, or purchase genetic infor-
19 mation for underwriting purposes (as defined in sec-
20 tion 733).
21 "(2) PROHIBITION ON COLLECTION OF GE-
22 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
23 group health plan, and a health insurance issuer of-
24 fering health insurance coverage in connection with
25 a group health plan, shall not request, require, or

1 purchase genetic information with respect to any in-
2 dividual prior to such individual's enrollment under
3 the plan or coverage in connection with such enroll-
4 ment.

5 "(3) INCIDENTAL COLLECTION.—If a group
6 health plan, or a health insurance issuer offering
7 health insurance coverage in connection with a group
8 health plan, obtains genetic information incidental to
9 the requesting, requiring, or purchasing of other in-
10 formation concerning any individual, such request,
11 requirement, or purchase shall not be considered a
12 violation of paragraph (2) if such request, require-
13 ment, or purchase is not in violation of paragraph
14 (1).

15 "(e) APPLICATION TO ALL PLANS.—The provisions
16 of subsections (a)(1)(F), (b)(3), (c), and (d), and sub-
17 section (b)(1) and section 701 with respect to genetic in-
18 formation, shall apply to group health plans and health
19 insurance issuers without regard to section 732(a).".

20 (c) APPLICATION TO GENETIC INFORMATION OF A
21 FETUS OR EMBRYO.—Such section is further amended by
22 adding at the end the following:

23 "(f) GENETIC INFORMATION OF A FETUS OR EM-
24 BRYO.—Any reference in this part to genetic information

1 concerning an individual or family member of an indi-
2 vidual shall—
3 ''(1) with respect to such an individual or fam-
4 ily member of an individual who is a pregnant
5 woman, include genetic information of any fetus car-
6 ried by such pregnant woman; and
7 ''(2) with respect to an individual or family
8 member utilizing an assisted reproductive tech-
9 nology, include genetic information of any embryo le-
10 gally held by the individual or family member.''.
11 (d) DEFINITIONS.—Section 733(d) of the Employee
12 Retirement Income Security Act of 1974 (29 U.S.C.
13 1191b(d)) is amended by adding at the end the following:
14 ''(5) FAMILY MEMBER.—The term 'family
15 member' means, with respect to an individual—
16 ''(A) a dependent (as such term is used for
17 purposes of section 701(f)(2)) of such indi-
18 vidual, and
19 ''(B) any other individual who is a first-de-
20 gree, second-degree, third-degree, or fourth-de-
21 gree relative of such individual or of an indi-
22 vidual described in subparagraph (A).
23 ''(6) GENETIC INFORMATION.—

1 "(A) IN GENERAL.—The term 'genetic in-
2 formation' means, with respect to any indi-
3 vidual, information about—
4 "(i) such individual's genetic tests,
5 "(ii) the genetic tests of family mem-
6 bers of such individual, and
7 "(iii) subject to subparagraph (D),
8 the manifestation of a disease or disorder
9 in family members of such individual.
10 "(B) INCLUSION OF GENETIC SERVICES.—
11 Such term includes, with respect to any indi-
12 vidual, any request for, or receipt of, genetic
13 services (including genetic services received pur-
14 suant to participation in clinical research) by
15 such individual or any family member of such
16 individual.
17 "(C) EXCLUSIONS.—The term 'genetic in-
18 formation' shall not include information about
19 the sex or age of any individual.
20 "(D) APPLICATION TO FAMILY MEMBERS
21 COVERED UNDER SAME PLAN.—Information de-
22 scribed in clause (iii) of subparagraph (A) shall
23 not be treated as genetic information to the ex-
24 tent that such information is taken into account
25 only with respect to the individual in which

1 such disease or disorder is manifested and not
2 as genetic information with respect to any other
3 individual.
4 ''(7) GENETIC TEST.—
5 ''(A) IN GENERAL.—The term 'genetic
6 test' means an analysis of human DNA, RNA,
7 chromosomes, proteins, or metabolites, that de-
8 tects genotypes, mutations, or chromosomal
9 changes.
10 ''(B) EXCEPTIONS.—The term 'genetic
11 test' does not mean—
12 ''(i) an analysis of proteins or metabo-
13 lites that does not detect genotypes,
14 mutations, or chromosomal changes; or
15 ''(ii) an analysis of proteins or me-
16 tabolites that is directly related to a mani-
17 fested disease, disorder, or pathological
18 condition that could reasonably be detected
19 by a health care professional with appro-
20 priate training and expertise in the field of
21 medicine involved.
22 ''(8) GENETIC SERVICES.—The term 'genetic
23 services' means—
24 ''(A) a genetic test;

1 ‘‘(B) genetic counseling (including obtain-
2 ing, interpreting, or assessing genetic informa-
3 tion); or
4 ‘‘(C) genetic education.
5 ‘‘(9) UNDERWRITING PURPOSES.—The term
6 ‘underwriting purposes’ means, with respect to any
7 group health plan, or health insurance coverage of-
8 fered in connection with a group health plan—
9 ‘‘(A) rules for, or determination of, eligi-
10 bility (including enrollment and continued eligi-
11 bility) for benefits under the plan or coverage;
12 ‘‘(B) the computation of premium or con-
13 tribution amounts under the plan or coverage;
14 ‘‘(C) the application of any pre-existing
15 condition exclusion under the plan or coverage;
16 and
17 ‘‘(D) other activities related to the cre-
18 ation, renewal, or replacement of a contract of
19 health insurance or health benefits.’’.
20 (e) ERISA ENFORCEMENT.—Section 502 of the Em-
21 ployee Retirement Income Security Act of 1974 (29
22 U.S.C. 1132) is amended—
23 (1) in subsection (a)(6), by striking ‘‘(7), or
24 (8)’’ and inserting ‘‘(7), (8), or (9)’’; and

1 (2) in subsection (c), by redesignating paragraph (9) as paragraph (10), and by inserting after paragraph (8) the following new paragraph:

"(9) SECRETARIAL ENFORCEMENT AUTHORITY RELATING TO USE OF GENETIC INFORMATION.—

"(A) GENERAL RULE.—The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 702 or section 701 or 702(b)(1) with respect to genetic information, in connection with the plan.

"(B) AMOUNT.—

"(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each participant or beneficiary to whom such failure relates.

"(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'non-

compliance period' means, with respect to any failure, the period—

"(I) beginning on the date such failure first occurs; and

"(II) ending on the date the failure is corrected.

"(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

"(i) IN GENERAL.—In the case of 1 or more failures with respect to a participant or beneficiary—

"(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

"(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than $2,500.

"(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for

1 which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

"(D) LIMITATIONS.—

"(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

"(I) such failure was due to reasonable cause and not to willful neglect; and

"(II) such failure is corrected during the 30-day period beginning on

1 the first date the person otherwise lia-
2 ble for such penalty knew, or exer-
3 cising reasonable diligence would have
4 known, that such failure existed.

5 ''(iii) OVERALL LIMITATION FOR UN-
6 INTENTIONAL FAILURES.—In the case of
7 failures which are due to reasonable cause
8 and not to willful neglect, the penalty im-
9 posed by subparagraph (A) for failures
10 shall not exceed the amount equal to the
11 lesser of—

12 ''(I) 10 percent of the aggregate
13 amount paid or incurred by the plan
14 sponsor (or predecessor plan sponsor)
15 during the preceding taxable year for
16 group health plans; or

17 ''(II) $500,000.

18 ''(E) WAIVER BY SECRETARY.—In the case
19 of a failure which is due to reasonable cause
20 and not to willful neglect, the Secretary may
21 waive part or all of the penalty imposed by sub-
22 paragraph (A) to the extent that the payment
23 of such penalty would be excessive relative to
24 the failure involved.

1 "(F) DEFINITIONS.—Terms used in this
2 paragraph which are defined in section 733
3 shall have the meanings provided such terms in
4 such section.".
5 (f) REGULATIONS AND EFFECTIVE DATE.—
6 (1) REGULATIONS.—The Secretary of Labor
7 shall issue final regulations not later than 1 year
8 after the date of enactment of this Act to carry out
9 the amendments made by this section.
10 (2) EFFECTIVE DATE.—The amendments made
11 by this section shall apply with respect to group
12 health plans for plan years beginning after the date
13 that is 18 months after the date of enactment of
14 this Act.
15 **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
16 **ACT.**
17 (a) AMENDMENTS RELATING TO THE GROUP MAR-
18 KET.—
19 (1) NO DISCRIMINATION IN GROUP PREMIUMS
20 BASED ON GENETIC INFORMATION.—Section
21 2702(b) of the Public Health Service Act (42 U.S.C.
22 300gg–1(b)) is amended—
23 (A) in paragraph (2)(A), by inserting be-
24 fore the semicolon the following: "except as pro-
25 vided in paragraph (3)"; and

1 (B) by adding at the end the following:
2 "(3) NO GROUP-BASED DISCRIMINATION ON
3 BASIS OF GENETIC INFORMATION.—For purposes of
4 this section, a group health plan, and health insur-
5 ance issuer offering group health insurance coverage
6 in connection with a group health plan, may not ad-
7 just premium or contribution amounts for the group
8 covered under such plan on the basis of genetic in-
9 formation.".
10 (2) LIMITATIONS ON GENETIC TESTING; PROHI-
11 BITION ON COLLECTION OF GENETIC INFORMATION;
12 APPLICATION TO ALL PLANS.—Section 2702 of the
13 Public Health Service Act (42 U.S.C. 300gg–1) is
14 amended by adding at the end the following:
15 "(c) GENETIC TESTING.—
16 "(1) LIMITATION ON REQUESTING OR REQUIR-
17 ING GENETIC TESTING.—A group health plan, and a
18 health insurance issuer offering health insurance
19 coverage in connection with a group health plan,
20 shall not request or require an individual or a family
21 member of such individual to undergo a genetic test.
22 "(2) RULE OF CONSTRUCTION.—Paragraph (1)
23 shall not be construed to limit the authority of a
24 health care professional who is providing health care

1 services to an individual to request that such indi-
2 vidual undergo a genetic test.
3 "(3) RULE OF CONSTRUCTION REGARDING PAY-
4 MENT.—
5 "(A) IN GENERAL.—Nothing in paragraph
6 (1) shall be construed to preclude a group
7 health plan, or a health insurance issuer offer-
8 ing health insurance coverage in connection
9 with a group health plan, from obtaining and
10 using the results of a genetic test in making a
11 determination regarding payment (as such term
12 is defined for the purposes of applying the regu-
13 lations promulgated by the Secretary under
14 part C of title XI of the Social Security Act and
15 section 264 of the Health Insurance Portability
16 and Accountability Act of 1996, as may be re-
17 vised from time to time) consistent with sub-
18 section (a).
19 "(B) LIMITATION.—For purposes of sub-
20 paragraph (A), a group health plan, or a health
21 insurance issuer offering health insurance cov-
22 erage in connection with a group health plan,
23 may request only the minimum amount of in-
24 formation necessary to accomplish the intended
25 purpose.

1 "(4) RESEARCH EXCEPTION.—Notwithstanding
2 paragraph (1), a group health plan, or a health in-
3 surance issuer offering health insurance coverage in
4 connection with a group health plan, may request,
5 but not require, that a participant or beneficiary un-
6 dergo a genetic test if each of the following condi-
7 tions is met:
8 "(A) The request is made pursuant to re-
9 search that complies with part 46 of title 45,
10 Code of Federal Regulations, or equivalent Fed-
11 eral regulations, and any applicable State or
12 local law or regulations for the protection of
13 human subjects in research.
14 "(B) The plan or issuer clearly indicates to
15 each participant or beneficiary, or in the case of
16 a minor child, to the legal guardian of such
17 beneficiary, to whom the request is made that—
18 "(i) compliance with the request is
19 voluntary; and
20 "(ii) non-compliance will have no ef-
21 fect on enrollment status or premium or
22 contribution amounts.
23 "(C) No genetic information collected or
24 acquired under this paragraph shall be used for
25 underwriting purposes.

1 “(D) The plan or issuer notifies the Sec-
2 retary in writing that the plan or issuer is con-
3 ducting activities pursuant to the exception pro-
4 vided for under this paragraph, including a de-
5 scription of the activities conducted.
6 “(E) The plan or issuer complies with such
7 other conditions as the Secretary may by regu-
8 lation require for activities conducted under this
9 paragraph.
10 “(d) PROHIBITION ON COLLECTION OF GENETIC IN-
11 FORMATION.—
12 “(1) IN GENERAL.—A group health plan, and a
13 health insurance issuer offering health insurance
14 coverage in connection with a group health plan,
15 shall not request, require, or purchase genetic infor-
16 mation for underwriting purposes (as defined in sec-
17 tion 2791).
18 “(2) PROHIBITION ON COLLECTION OF GE-
19 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
20 group health plan, and a health insurance issuer of-
21 fering health insurance coverage in connection with
22 a group health plan, shall not request, require, or
23 purchase genetic information with respect to any in-
24 dividual prior to such individual’s enrollment under

1 the plan or coverage in connection with such enroll-
2 ment.

3 "(3) INCIDENTAL COLLECTION.—If a group
4 health plan, or a health insurance issuer offering
5 health insurance coverage in connection with a group
6 health plan, obtains genetic information incidental to
7 the requesting, requiring, or purchasing of other in-
8 formation concerning any individual, such request,
9 requirement, or purchase shall not be considered a
10 violation of paragraph (2) if such request, require-
11 ment, or purchase is not in violation of paragraph
12 (1).

13 "(e) APPLICATION TO ALL PLANS.—The provisions
14 of subsections (a)(1)(F), (b)(3), (c) , and (d) and sub-
15 section (b)(1) and section 2701 with respect to genetic in-
16 formation, shall apply to group health plans and health
17 insurance issuers without regard to section 2721(a).".

18 (3) APPLICATION TO GENETIC INFORMATION OF
19 A FETUS OR EMBRYO.—Such section is further
20 amended by adding at the end the following:

21 "(f) GENETIC INFORMATION OF A FETUS OR EM-
22 BRYO.—Any reference in this part to genetic information
23 concerning an individual or family member of an indi-
24 vidual shall—

1 "(1) with respect to such an individual or fam-
2 ily member of an individual who is a pregnant
3 woman, include genetic information of any fetus car-
4 ried by such pregnant woman; and
5 "(2) with respect to an individual or family
6 member utilizing an assisted reproductive tech-
7 nology, include genetic information of any embryo le-
8 gally held by the individual or family member.".
9 (4) DEFINITIONS.—Section 2791(d) of the Pub-
10 lic Health Service Act (42 U.S.C. 300gg–91(d)) is
11 amended by adding at the end the following:
12 "(15) FAMILY MEMBER.—The term 'family
13 member' means, with respect to any individual—
14 "(A) a dependent (as such term is used for
15 purposes of section 2701(f)(2)) of such indi-
16 vidual; and
17 "(B) any other individual who is a first-de-
18 gree, second-degree, third-degree, or fourth-de-
19 gree relative of such individual or of an indi-
20 vidual described in subparagraph (A).
21 "(16) GENETIC INFORMATION.—
22 "(A) IN GENERAL.—The term 'genetic in-
23 formation' means, with respect to any indi-
24 vidual, information about—
25 "(i) such individual's genetic tests,

1 “(ii) the genetic tests of family members of such individual, and

3 “(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

6 “(B) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

13 “(C) EXCLUSIONS.—The term ‘genetic information’ shall not include information about the sex or age of any individual.

16 “(D) APPLICATION TO FAMILY MEMBERS COVERED UNDER SAME PLAN.—Information described in clause (iii) of subparagraph (A) shall not be treated as genetic information to the extent that such information is taken into account only with respect to the individual in which such disease or disorder is manifested and not as genetic information with respect to any other individual.

25 “(17) GENETIC TEST.—

1 "(A) IN GENERAL.—The term 'genetic
2 test' means an analysis of human DNA, RNA,
3 chromosomes, proteins, or metabolites, that de-
4 tects genotypes, mutations, or chromosomal
5 changes.
6 "(B) EXCEPTIONS.—The term 'genetic
7 test' does not mean—
8 "(i) an analysis of proteins or metabo-
9 lites that does not detect genotypes,
10 mutations, or chromosomal changes; or
11 "(ii) an analysis of proteins or me-
12 tabolites that is directly related to a mani-
13 fested disease, disorder, or pathological
14 condition that could reasonably be detected
15 by a health care professional with appro-
16 priate training and expertise in the field of
17 medicine involved.
18 "(18) GENETIC SERVICES.—The term 'genetic
19 services' means—
20 "(A) a genetic test;
21 "(B) genetic counseling (including obtain-
22 ing, interpreting, or assessing genetic informa-
23 tion); or
24 "(C) genetic education.

1 "(19) UNDERWRITING PURPOSES.—The term
2 'underwriting purposes' means, with respect to any
3 group health plan, or health insurance coverage of-
4 fered in connection with a group health plan—
5 "(A) rules for, or determination of, eligi-
6 bility (including enrollment and continued eligi-
7 bility) for benefits under the plan or coverage;
8 "(B) the computation of premium or con-
9 tribution amounts under the plan or coverage;
10 "(C) the application of any pre-existing
11 condition exclusion under the plan or coverage;
12 and
13 "(D) other activities related to the cre-
14 ation, renewal, or replacement of a contract of
15 health insurance or health benefits.".
16 (5) REMEDIES AND ENFORCEMENT.—Section
17 2722(b) of the Public Health Service Act (42 U.S.C.
18 300gg–22(b)) is amended by adding at the end the
19 following:
20 "(3) ENFORCEMENT AUTHORITY RELATING TO
21 GENETIC DISCRIMINATION.—
22 "(A) GENERAL RULE.—In the cases de-
23 scribed in paragraph (1), notwithstanding the
24 provisions of paragraph (2)(C), the succeeding
25 subparagraphs of this paragraph shall apply

1 with respect to an action under this subsection
2 by the Secretary with respect to any failure of
3 a health insurance issuer in connection with a
4 group health plan, to meet the requirements of
5 subsection (a)(1)(F), (b)(3), (c), or (d) of sec-
6 tion 2702 or section 2701 or 2702(b)(1) with
7 respect to genetic information in connection
8 with the plan.

9 ''(B) AMOUNT.—

10 ''(i) IN GENERAL.—The amount of
11 the penalty imposed under this paragraph
12 shall be $100 for each day in the non-
13 compliance period with respect to each par-
14 ticipant or beneficiary to whom such fail-
15 ure relates.

16 ''(ii) NONCOMPLIANCE PERIOD.—For
17 purposes of this paragraph, the term 'non-
18 compliance period' means, with respect to
19 any failure, the period—

20 ''(I) beginning on the date such
21 failure first occurs; and

22 ''(II) ending on the date the fail-
23 ure is corrected.

1 "(C) MINIMUM PENALTIES WHERE FAIL-
2 URE DISCOVERED.—Notwithstanding clauses (i)
3 and (ii) of subparagraph (D):
4 "(i) IN GENERAL.—In the case of 1 or
5 more failures with respect to an indi-
6 vidual—
7 "(I) which are not corrected be-
8 fore the date on which the plan re-
9 ceives a notice from the Secretary of
10 such violation; and
11 "(II) which occurred or continued
12 during the period involved;
13 the amount of penalty imposed by subpara-
14 graph (A) by reason of such failures with
15 respect to such individual shall not be less
16 than $2,500.
17 "(ii) HIGHER MINIMUM PENALTY
18 WHERE VIOLATIONS ARE MORE THAN DE
19 MINIMIS.—To the extent violations for
20 which any person is liable under this para-
21 graph for any year are more than de mini-
22 mis, clause (i) shall be applied by sub-
23 stituting '$15,000' for '$2,500' with re-
24 spect to such person.
25 "(D) LIMITATIONS.—

1 "(i) PENALTY NOT TO APPLY WHERE
2 FAILURE NOT DISCOVERED EXERCISING
3 REASONABLE DILIGENCE.—No penalty
4 shall be imposed by subparagraph (A) on
5 any failure during any period for which it
6 is established to the satisfaction of the
7 Secretary that the person otherwise liable
8 for such penalty did not know, and exer-
9 cising reasonable diligence would not have
10 known, that such failure existed.

11 "(ii) PENALTY NOT TO APPLY TO
12 FAILURES CORRECTED WITHIN CERTAIN
13 PERIODS.—No penalty shall be imposed by
14 subparagraph (A) on any failure if—

15 "(I) such failure was due to rea-
16 sonable cause and not to willful ne-
17 glect; and

18 "(II) such failure is corrected
19 during the 30-day period beginning on
20 the first date the person otherwise lia-
21 ble for such penalty knew, or exer-
22 cising reasonable diligence would have
23 known, that such failure existed.

24 "(iii) OVERALL LIMITATION FOR UN-
25 INTENTIONAL FAILURES.—In the case of

1 failures which are due to reasonable cause
2 and not to willful neglect, the penalty im-
3 posed by subparagraph (A) for failures
4 shall not exceed the amount equal to the
5 lesser of—
6 ''(I) 10 percent of the aggregate
7 amount paid or incurred by the em-
8 ployer (or predecessor employer) dur-
9 ing the preceding taxable year for
10 group health plans; or
11 ''(II) $500,000.
12 ''(E) WAIVER BY SECRETARY.—In the case
13 of a failure which is due to reasonable cause
14 and not to willful neglect, the Secretary may
15 waive part or all of the penalty imposed by sub-
16 paragraph (A) to the extent that the payment
17 of such penalty would be excessive relative to
18 the failure involved.''.
19 (b) AMENDMENT RELATING TO THE INDIVIDUAL
20 MARKET.—
21 (1) IN GENERAL.—The first subpart 3 of part
22 B of title XXVII of the Public Health Service Act
23 (42 U.S.C. 300gg–51 et seq.) (relating to other re-
24 quirements) is amended—

1 (A) by redesignating such subpart as sub-
2 part 2; and
3 (B) by adding at the end the following:

4 **“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON**
5 **THE BASIS OF GENETIC INFORMATION.**

6 “(a) PROHIBITION ON GENETIC INFORMATION AS A
7 CONDITION OF ELIGIBILITY.—A health insurance issuer
8 offering health insurance coverage in the individual mar-
9 ket may not establish rules for the eligibility (including
10 continued eligibility) of any individual to enroll in indi-
11 vidual health insurance coverage based on genetic infor-
12 mation.

13 “(b) PROHIBITION ON GENETIC INFORMATION IN
14 SETTING PREMIUM RATES.—A health insurance issuer of-
15 fering health insurance coverage in the individual market
16 shall not adjust premium or contribution amounts for an
17 individual on the basis of genetic information concerning
18 the individual or a family member of the individual.

19 “(c) PROHIBITION ON GENETIC INFORMATION AS
20 PREEXISTING CONDITION.—A health insurance issuer of-
21 fering health insurance coverage in the individual market
22 may not, on the basis of genetic information, impose any
23 preexisting condition exclusion (as defined in section
24 2701(b)(1)(A)) with respect to such coverage.

25 “(d) GENETIC TESTING.—

1 "(1) LIMITATION ON REQUESTING OR REQUIR-
2 ING GENETIC TESTING.—A health insurance issuer
3 offering health insurance coverage in the individual
4 market shall not request or require an individual or
5 a family member of such individual to undergo a ge-
6 netic test.

7 "(2) RULE OF CONSTRUCTION.—Paragraph (1)
8 shall not be construed to limit the authority of a
9 health care professional who is providing health care
10 services to an individual to request that such indi-
11 vidual undergo a genetic test.

12 "(3) RULE OF CONSTRUCTION REGARDING PAY-
13 MENT.—

14 "(A) IN GENERAL.—Nothing in paragraph
15 (1) shall be construed to preclude a health in-
16 surance issuer offering health insurance cov-
17 erage in the individual market from obtaining
18 and using the results of a genetic test in mak-
19 ing a determination regarding payment (as such
20 term is defined for the purposes of applying the
21 regulations promulgated by the Secretary under
22 part C of title XI of the Social Security Act and
23 section 264 of the Health Insurance Portability
24 and Accountability Act of 1996, as may be re-

1 vised from time to time) consistent with sub-
2 sections (a) and (c).
3 "(B) LIMITATION.—For purposes of sub-
4 paragraph (A), a health insurance issuer offer-
5 ing health insurance coverage in the individual
6 market may request only the minimum amount
7 of information necessary to accomplish the in-
8 tended purpose.
9 "(4) RESEARCH EXCEPTION.—Notwithstanding
10 paragraph (1), a health insurance issuer offering
11 health insurance coverage in the individual market
12 may request, but not require, that an individual or
13 a family member of such individual undergo a ge-
14 netic test if each of the following conditions is met:
15 "(A) The request is made pursuant to re-
16 search that complies with part 46 of title 45,
17 Code of Federal Regulations, or equivalent Fed-
18 eral regulations, and any applicable State or
19 local law or regulations for the protection of
20 human subjects in research.
21 "(B) The issuer clearly indicates to each
22 individual, or in the case of a minor child, to
23 the legal guardian of such child, to whom the
24 request is made that—

1 "(i) compliance with the request is
2 voluntary; and
3 "(ii) non-compliance will have no ef-
4 fect on enrollment status or premium or
5 contribution amounts.
6 "(C) No genetic information collected or
7 acquired under this paragraph shall be used for
8 underwriting purposes.
9 "(D) The issuer notifies the Secretary in
10 writing that the issuer is conducting activities
11 pursuant to the exception provided for under
12 this paragraph, including a description of the
13 activities conducted.
14 "(E) The issuer complies with such other
15 conditions as the Secretary may by regulation
16 require for activities conducted under this para-
17 graph.
18 "(e) PROHIBITION ON COLLECTION OF GENETIC IN-
19 FORMATION.—
20 "(1) IN GENERAL.—A health insurance issuer
21 offering health insurance coverage in the individual
22 market shall not request, require, or purchase ge-
23 netic information for underwriting purposes (as de-
24 fined in section 2791).

1 "(2) PROHIBITION ON COLLECTION OF GE-
2 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
3 health insurance issuer offering health insurance
4 coverage in the individual market shall not request,
5 require, or purchase genetic information with respect
6 to any individual prior to such individual's enroll-
7 ment under the plan in connection with such enroll-
8 ment.

9 "(3) INCIDENTAL COLLECTION.—If a health in-
10 surance issuer offering health insurance coverage in
11 the individual market obtains genetic information in-
12 cidental to the requesting, requiring, or purchasing
13 of other information concerning any individual, such
14 request, requirement, or purchase shall not be con-
15 sidered a violation of paragraph (2) if such request,
16 requirement, or purchase is not in violation of para-
17 graph (1).

18 "(f) GENETIC INFORMATION OF A FETUS OR EM-
19 BRYO.—Any reference in this part to genetic information
20 concerning an individual or family member of an indi-
21 vidual shall—

22 "(1) with respect to such an individual or fam-
23 ily member of an individual who is a pregnant
24 woman, include genetic information of any fetus car-
25 ried by such pregnant woman; and

1 "(2) with respect to an individual or family
2 member utilizing an assisted reproductive tech-
3 nology, include genetic information of any embryo le-
4 gally held by the individual or family member.".
5 (2) REMEDIES AND ENFORCEMENT.—Section
6 2761(b) of the Public Health Service Act (42 U.S.C.
7 300gg–61(b)) is amended to read as follows:
8 "(b) SECRETARIAL ENFORCEMENT AUTHORITY.—
9 The Secretary shall have the same authority in relation
10 to enforcement of the provisions of this part with respect
11 to issuers of health insurance coverage in the individual
12 market in a State as the Secretary has under section
13 2722(b)(2), and section 2722(b)(3) with respect to viola-
14 tions of genetic nondiscrimination provisions, in relation
15 to the enforcement of the provisions of part A with respect
16 to issuers of health insurance coverage in the small group
17 market in the State.".
18 (c) ELIMINATION OF OPTION OF NON-FEDERAL
19 GOVERNMENTAL PLANS TO BE EXCEPTED FROM RE-
20 QUIREMENTS CONCERNING GENETIC INFORMATION.—
21 Section 2721(b)(2) of the Public Health Service Act (42
22 U.S.C. 300gg–21(b)(2)) is amended—
23 (1) in subparagraph (A), by striking "If the
24 plan sponsor" and inserting "Except as provided in
25 subparagraph (D), if the plan sponsor"; and

1 (2) by adding at the end the following:
2 "(D) ELECTION NOT APPLICABLE TO RE-
3 QUIREMENTS CONCERNING GENETIC INFORMA-
4 TION.—The election described in subparagraph
5 (A) shall not be available with respect to the
6 provisions of subsections (a)(1)(F), (b)(3), (c),
7 and (d) of section 2702 and the provisions of
8 sections 2701 and 2702(b) to the extent that
9 such provisions apply to genetic information.".
10 (d) REGULATIONS AND EFFECTIVE DATE.—
11 (1) REGULATIONS.—Not later than 1 year after
12 the date of enactment of this Act, the Secretary of
13 Health and Human Services shall issue final regula-
14 tions to carry out the amendments made by this sec-
15 tion.
16 (2) EFFECTIVE DATE.—The amendments made
17 by this section shall apply—
18 (A) with respect to group health plans, and
19 health insurance coverage offered in connection
20 with group health plans, for plan years begin-
21 ning after the date that is 18 months after the
22 date of enactment of this Act; and
23 (B) with respect to health insurance cov-
24 erage offered, sold, issued, renewed, in effect, or
25 operated in the individual market after the date

1 that is 18 months after the date of enactment
2 of this Act.

3 **SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE**
4 **OF 1986.**

5 (a) NO DISCRIMINATION IN GROUP PREMIUMS
6 BASED ON GENETIC INFORMATION.—Subsection (b) of
7 section 9802 of the Internal Revenue Code of 1986 is
8 amended—

9 (1) in paragraph (2)(A), by inserting before the
10 semicolon the following: ‘‘except as provided in para-
11 graph (3)’’; and

12 (2) by adding at the end the following:

13 ‘‘(3) NO GROUP-BASED DISCRIMINATION ON
14 BASIS OF GENETIC INFORMATION.—For purposes of
15 this section, a group health plan may not adjust pre-
16 mium or contribution amounts for the group covered
17 under such plan on the basis of genetic informa-
18 tion.’’.

19 (b) LIMITATIONS ON GENETIC TESTING; PROHIBI-
20 TION ON COLLECTION OF GENETIC INFORMATION; APPLI-
21 CATION TO ALL PLANS.—Section 9802 of such Code is
22 amended by redesignating subsection (c) as subsection (f)
23 and by inserting after subsection (b) the following new
24 subsections:

25 ‘‘(c) GENETIC TESTING.—

1 "(1) LIMITATION ON REQUESTING OR REQUIR-
2 ING GENETIC TESTING.—A group health plan may
3 not request or require an individual or a family
4 member of such individual to undergo a genetic test.
5 "(2) RULE OF CONSTRUCTION.—Paragraph (1)
6 shall not be construed to limit the authority of a
7 health care professional who is providing health care
8 services to an individual to request that such indi-
9 vidual undergo a genetic test.
10 "(3) RULE OF CONSTRUCTION REGARDING PAY-
11 MENT.—
12 "(A) IN GENERAL.—Nothing in paragraph
13 (1) shall be construed to preclude a group
14 health plan from obtaining and using the re-
15 sults of a genetic test in making a determina-
16 tion regarding payment (as such term is defined
17 for the purposes of applying the regulations
18 promulgated by the Secretary of Health and
19 Human Services under part C of title XI of the
20 Social Security Act and section 264 of the
21 Health Insurance Portability and Accountability
22 Act of 1996, as may be revised from time to
23 time) consistent with subsection (a).
24 "(B) LIMITATION.—For purposes of sub-
25 paragraph (A), a group health plan may re-

1 quest only the minimum amount of information
2 necessary to accomplish the intended purpose.
3 "(4) RESEARCH EXCEPTION.—Notwithstanding
4 paragraph (1), a group health plan may request, but
5 not require, that a participant or beneficiary under-
6 go a genetic test if each of the following conditions
7 is met:
8 "(A) The request is made pursuant to re-
9 search that complies with part 46 of title 45,
10 Code of Federal Regulations, or equivalent Fed-
11 eral regulations, and any applicable State or
12 local law or regulations for the protection of
13 human subjects in research.
14 "(B) The plan clearly indicates to each
15 participant or beneficiary, or in the case of a
16 minor child, to the legal guardian of such bene-
17 ficiary, to whom the request is made that—
18 "(i) compliance with the request is
19 voluntary; and
20 "(ii) non-compliance will have no ef-
21 fect on enrollment status or premium or
22 contribution amounts.
23 "(C) No genetic information collected or
24 acquired under this paragraph shall be used for
25 underwriting purposes.

1 "(D) The plan notifies the Secretary in
2 writing that the plan is conducting activities
3 pursuant to the exception provided for under
4 this paragraph, including a description of the
5 activities conducted.

6 "(E) The plan complies with such other
7 conditions as the Secretary may by regulation
8 require for activities conducted under this para-
9 graph.

10 "(d) PROHIBITION ON COLLECTION OF GENETIC IN-
11 FORMATION.—

12 "(1) IN GENERAL.—A group health plan shall
13 not request, require, or purchase genetic information
14 for underwriting purposes (as defined in section
15 9832).

16 "(2) PROHIBITION ON COLLECTION OF GE-
17 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
18 group health plan shall not request, require, or pur-
19 chase genetic information with respect to any indi-
20 vidual prior to such individual's enrollment under
21 the plan or in connection with such enrollment.

22 "(3) INCIDENTAL COLLECTION.—If a group
23 health plan obtains genetic information incidental to
24 the requesting, requiring, or purchasing of other in-
25 formation concerning any individual, such request,

1 requirement, or purchase shall not be considered a
2 violation of paragraph (2) if such request, require-
3 ment, or purchase is not in violation of paragraph
4 (1).

5 ''(e) APPLICATION TO ALL PLANS.—The provisions
6 of subsections (a)(1)(F), (b)(3), (c), and (d) and sub-
7 section (b)(1) and section 9801 with respect to genetic in-
8 formation, shall apply to group health plans without re-
9 gard to section 9831(a)(2).''.

10 (c) APPLICATION TO GENETIC INFORMATION OF A
11 FETUS OR EMBRYO.—Such section is further amended by
12 adding at the end the following:

13 ''(f) GENETIC INFORMATION OF A FETUS OR EM-
14 BRYO.—Any reference in this chapter to genetic informa-
15 tion concerning an individual or family member of an indi-
16 vidual shall—

17 ''(1) with respect to such an individual or fam-
18 ily member of an individual who is a pregnant
19 woman, include genetic information of any fetus car-
20 ried by such pregnant woman; and

21 ''(2) with respect to an individual or family
22 member utilizing an assisted reproductive tech-
23 nology, include genetic information of any embryo le-
24 gally held by the individual or family member.''.

1 (d) DEFINITIONS.—Subsection (d) of section 9832 of
2 such Code is amended by adding at the end the following:
3 ''(6) FAMILY MEMBER.—The term 'family
4 member' means, with respect to any individual—
5 ''(A) a dependent (as such term is used for
6 purposes of section 9801(f)(2)) of such indi-
7 vidual, and
8 ''(B) any other individual who is a first-de-
9 gree, second-degree, third-degree, or fourth-de-
10 gree relative of such individual or of an indi-
11 vidual described in subparagraph (A).
12 ''(7) GENETIC INFORMATION.—
13 ''(A) IN GENERAL.—The term 'genetic in-
14 formation' means, with respect to any indi-
15 vidual, information about—
16 ''(i) such individual's genetic tests,
17 ''(ii) the genetic tests of family mem-
18 bers of such individual, and
19 ''(iii) subject to subparagraph (D),
20 the manifestation of a disease or disorder
21 in family members of such individual.
22 ''(B) INCLUSION OF GENETIC SERVICES.—
23 Such term includes, with respect to any indi-
24 vidual, any request for, or receipt of, genetic
25 services (including genetic services received pur-

1 suant to participation in clinical research) by
2 such individual or any family member of such
3 individual.

4 "(C) EXCLUSIONS.—The term 'genetic in-
5 formation' shall not include information about
6 the sex or age of any individual.

7 "(D) APPLICATION TO FAMILY MEMBERS
8 COVERED UNDER SAME PLAN.—Information de-
9 scribed in clause (iii) of subparagraph (A) shall
10 not be treated as genetic information to the ex-
11 tent that such information is taken into account
12 only with respect to the individual in which
13 such disease or disorder is manifested and not
14 as genetic information with respect to any other
15 individual.

16 "(8) GENETIC TEST.—

17 "(A) IN GENERAL.—The term 'genetic
18 test' means an analysis of human DNA, RNA,
19 chromosomes, proteins, or metabolites, that de-
20 tects genotypes, mutations, or chromosomal
21 changes.

22 "(B) EXCEPTIONS.—The term 'genetic
23 test' does not mean—

1 "(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or

"(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

"(9) GENETIC SERVICES.—The term 'genetic services' means—

"(A) a genetic test;

"(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

"(C) genetic education.

"(10) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to any group health plan ,or health insurance coverage offered in connection with a group health plan—

"(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

1 "(B) the computation of premium or con-
2 tribution amounts under the plan or coverage;
3 "(C) the application of any pre-existing
4 condition exclusion under the plan or coverage;
5 and
6 "(D) other activities related to the cre-
7 ation, renewal, or replacement of a contract of
8 health insurance or health benefits.".
9 (e) ENFORCEMENT.—
10 (1) IN GENERAL.—Subchapter C of chapter
11 100 of the Internal Revenue Code of 1986 (relating
12 to general provisions) is amended by adding at the
13 end the following new section:

14 **"SEC. 9834. ENFORCEMENT.**

15 "For the imposition of tax on any failure of a group
16 health plan to meet the requirements of this chapter, see
17 section 4980D.".
18 (2) CONFORMING AMENDMENT.—The table of
19 sections for subchapter C of chapter 100 of such
20 Code is amended by adding at the end the following
21 new item:

"Sec. 9834. Enforcement.".

22 (f) REGULATIONS AND EFFECTIVE DATE.—
23 (1) REGULATIONS.—The Secretary of the
24 Treasury shall issue final regulations or other guid-
25 ance not later than 1 year after the date of the en-

1 actment of this Act to carry out the amendments
2 made by this section.

3 (2) EFFECTIVE DATE.—The amendments made
4 by this section shall apply with respect to group
5 health plans for plan years beginning after the date
6 that is 18 months after the date of the enactment
7 of this Act.

8 **SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-**
9 **CURITY ACT RELATING TO MEDIGAP.**

10 (a) NONDISCRIMINATION.—Section 1882(s)(2) of the
11 Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended
12 by adding at the end the following:

13 ''(E) An issuer of a medicare supplemental
14 policy shall not deny or condition the issuance
15 or effectiveness of the policy (including the im-
16 position of any exclusion of benefits under the
17 policy based on a pre-existing condition) and
18 shall not discriminate in the pricing of the pol-
19 icy (including the adjustment of premium rates)
20 of an individual on the basis of the genetic in-
21 formation with respect to such individual.''.

22 (b) LIMITATIONS ON GENETIC TESTING AND GE-
23 NETIC INFORMATION.—

1 (1) IN GENERAL.—Section 1882 of the Social
2 Security Act (42 U.S.C. 1395ss) is amended by add-
3 ing at the end the following:
4 ''(x) LIMITATIONS ON GENETIC TESTING AND IN-
5 FORMATION.—
6 ''(1) GENETIC TESTING.—
7 ''(A) LIMITATION ON REQUESTING OR RE-
8 QUIRING GENETIC TESTING.—An issuer of a
9 medicare supplemental policy shall not request
10 or require an individual or a family member of
11 such individual to undergo a genetic test.
12 ''(B) RULE OF CONSTRUCTION.—Subpara-
13 graph (A) shall not be construed to limit the
14 authority of a health care professional who is
15 providing health care services to an individual
16 to request that such individual undergo a ge-
17 netic test.
18 ''(C) RULE OF CONSTRUCTION REGARDING
19 PAYMENT.—
20 ''(i) IN GENERAL.—Nothing in sub-
21 paragraph (A) shall be construed to pre-
22 clude an issuer of a medicare supplemental
23 policy from obtaining and using the results
24 of a genetic test in making a determination
25 regarding payment (as such term is de-

1 fined for the purposes of applying the reg-
2 ulations promulgated by the Secretary
3 under part C of title XI and section 264
4 of the Health Insurance Portability and
5 Accountability Act of 1996, as may be re-
6 vised from time to time) consistent with
7 subsection (s)(2)(E).

8 ''(ii) LIMITATION.—For purposes of
9 clause (i), an issuer of a medicare supple-
10 mental policy may request only the min-
11 imum amount of information necessary to
12 accomplish the intended purpose.

13 ''(D) RESEARCH EXCEPTION.—Notwith-
14 standing subparagraph (A), an issuer of a
15 medicare supplemental policy may request, but
16 not require, that an individual or a family mem-
17 ber of such individual undergo a genetic test if
18 each of the following conditions is met:

19 ''(i) The request is made pursuant to
20 research that complies with part 46 of title
21 45, Code of Federal Regulations, or equiv-
22 alent Federal regulations, and any applica-
23 ble State or local law or regulations for the
24 protection of human subjects in research.

1 "(ii) The issuer clearly indicates to
2 each individual, or in the case of a minor
3 child, to the legal guardian of such child,
4 to whom the request is made that—
5 "(I) compliance with the request
6 is voluntary; and
7 "(II) non-compliance will have no
8 effect on enrollment status or pre-
9 mium or contribution amounts.
10 "(iii) No genetic information collected
11 or acquired under this subparagraph shall
12 be used for underwriting, determination of
13 eligibility to enroll or maintain enrollment
14 status, premium rating, or the creation, re-
15 newal, or replacement of a plan, contract,
16 or coverage for health insurance or health
17 benefits.
18 "(iv) The issuer notifies the Secretary
19 in writing that the issuer is conducting ac-
20 tivities pursuant to the exception provided
21 for under this subparagraph, including a
22 description of the activities conducted.
23 "(v) The issuer complies with such
24 other conditions as the Secretary may by

1 regulation require for activities conducted
2 under this subparagraph.
3 "(2) PROHIBITION ON COLLECTION OF GE-
4 NETIC INFORMATION.—
5 "(A) IN GENERAL.—An issuer of a medi-
6 care supplemental policy shall not request, re-
7 quire, or purchase genetic information for un-
8 derwriting purposes (as defined in paragraph
9 (3)).
10 "(B) PROHIBITION ON COLLECTION OF
11 GENETIC INFORMATION PRIOR TO ENROLL-
12 MENT.—An issuer of a medicare supplemental
13 policy shall not request, require, or purchase ge-
14 netic information with respect to any individual
15 prior to such individual's enrollment under the
16 policy in connection with such enrollment.
17 "(C) INCIDENTAL COLLECTION.—If an
18 issuer of a medicare supplemental policy obtains
19 genetic information incidental to the requesting,
20 requiring, or purchasing of other information
21 concerning any individual, such request, re-
22 quirement, or purchase shall not be considered
23 a violation of subparagraph (B) if such request,
24 requirement, or purchase is not in violation of
25 subparagraph (A).

1 "(3) DEFINITIONS.—In this subsection:
2 "(A) FAMILY MEMBER.—The term 'family
3 member' means with respect to an individual,
4 any other individual who is a first-degree, sec-
5 ond-degree, third-degree, or fourth-degree rel-
6 ative of such individual.
7 "(B) GENETIC INFORMATION.—
8 "(i) IN GENERAL.—The term 'genetic
9 information' means, with respect to any in-
10 dividual, information about—
11 "(I) such individual's genetic
12 tests,
13 "(II) the genetic tests of family
14 members of such individual, and
15 "(III) subject to clause (iv), the
16 manifestation of a disease or disorder
17 in family members of such individual.
18 "(ii) INCLUSION OF GENETIC SERV-
19 ICES.—Such term includes, with respect to
20 any individual, any request for, or receipt
21 of, genetic services (including genetic serv-
22 ices received pursuant to participation in
23 clinical research) by such individual or any
24 family member of such individual.

1 "(iii) EXCLUSIONS.—The term 'ge-
2 netic information' shall not include infor-
3 mation about the sex or age of any indi-
4 vidual.
5 "(C) GENETIC TEST.—
6 "(i) IN GENERAL.—The term 'genetic
7 test' means an analysis of human DNA,
8 RNA, chromosomes, proteins, or metabo-
9 lites, that detects genotypes, mutations, or
10 chromosomal changes.
11 "(ii) EXCEPTIONS.—The term 'genetic
12 test' does not mean—
13 "(I) an analysis of proteins or
14 metabolites that does not detect
15 genotypes, mutations, or chromosomal
16 changes; or
17 "(II) an analysis of proteins or
18 metabolites that is directly related to
19 a manifested disease, disorder, or
20 pathological condition that could rea-
21 sonably be detected by a health care
22 professional with appropriate training
23 and expertise in the field of medicine
24 involved.

1 "(D) GENETIC SERVICES.—The term 'ge-
2 netic services' means—
3 "(i) a genetic test;
4 "(ii) genetic counseling (including ob-
5 taining, interpreting, or assessing genetic
6 information); or
7 "(iii) genetic education.
8 "(E) UNDERWRITING PURPOSES.—The
9 term 'underwriting purposes' means, with re-
10 spect to a medicare supplemental policy—
11 "(i) rules for, or determination of, eli-
12 gibility (including enrollment and contin-
13 ued eligibility) for benefits under the pol-
14 icy;
15 "(ii) the computation of premium or
16 contribution amounts under the policy;
17 "(iii) the application of any pre-exist-
18 ing condition exclusion under the policy;
19 and
20 "(iv) other activities related to the
21 creation, renewal, or replacement of a con-
22 tract of health insurance or health bene-
23 fits.
24 "(F) ISSUER OF A MEDICARE SUPPLE-
25 MENTAL POLICY.—The term 'issuer of a medi-

1 care supplemental policy' includes a third-party
2 administrator or other person acting for or on
3 behalf of such issuer.''.

4 (2) APPLICATION TO GENETIC INFORMATION OF
5 A FETUS OR EMBRYO.—Section 1882(x) of such Act,
6 as added by paragraph (1), is further amended by
7 adding at the end the following:

8 ''(4) GENETIC INFORMATION OF A FETUS OR
9 EMBRYO.—Any reference in this section to genetic
10 information concerning an individual or family mem-
11 ber of an individual shall—

12 ''(A) with respect to such an individual or
13 family member of an individual who is a preg-
14 nant woman, include genetic information of any
15 fetus carried by such pregnant woman; and

16 ''(B) with respect to an individual or fam-
17 ily member utilizing an assisted reproductive
18 technology, include genetic information of any
19 embryo legally held by the individual or family
20 member.''.

21 (3) CONFORMING AMENDMENT.—Section
22 1882(o) of the Social Security Act (42 U.S.C.
23 1395ss(o)) is amended by adding at the end the fol-
24 lowing:

1 "(4) The issuer of the medicare supplemental
2 policy complies with subsection (s)(2)(E) and sub-
3 section (x).".
4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to an issuer of a medi-
6 care supplemental policy for policy years beginning on or
7 after the date that is 18 months after the date of enact-
8 ment of this Act.
9 (d) TRANSITION PROVISIONS.—
10 (1) IN GENERAL.—If the Secretary of Health
11 and Human Services identifies a State as requiring
12 a change to its statutes or regulations to conform its
13 regulatory program to the changes made by this sec-
14 tion, the State regulatory program shall not be con-
15 sidered to be out of compliance with the require-
16 ments of section 1882 of the Social Security Act due
17 solely to failure to make such change until the date
18 specified in paragraph (4).
19 (2) NAIC STANDARDS.—If, not later than June
20 30, 2008, the National Association of Insurance
21 Commissioners (in this subsection referred to as the
22 "NAIC") modifies its NAIC Model Regulation relat-
23 ing to section 1882 of the Social Security Act (re-
24 ferred to in such section as the 1991 NAIC Model
25 Regulation, as subsequently modified) to conform to

1 the amendments made by this section, such revised
2 regulation incorporating the modifications shall be
3 considered to be the applicable NAIC model regula-
4 tion (including the revised NAIC model regulation
5 and the 1991 NAIC Model Regulation) for the pur-
6 poses of such section.

7 (3) SECRETARY STANDARDS.—If the NAIC
8 does not make the modifications described in para-
9 graph (2) within the period specified in such para-
10 graph, the Secretary of Health and Human Services
11 shall, not later than October 1, 2008, make the
12 modifications described in such paragraph and such
13 revised regulation incorporating the modifications
14 shall be considered to be the appropriate regulation
15 for the purposes of such section.

16 (4) DATE SPECIFIED.—

17 (A) IN GENERAL.—Subject to subpara-
18 graph (B), the date specified in this paragraph
19 for a State is the earlier of—

20 (i) the date the State changes its stat-
21 utes or regulations to conform its regu-
22 latory program to the changes made by
23 this section, or

24 (ii) October 1, 2008.

1 (B) ADDITIONAL LEGISLATIVE ACTION RE-
2 QUIRED.—In the case of a State which the Sec-
3 retary identifies as—
4 (i) requiring State legislation (other
5 than legislation appropriating funds) to
6 conform its regulatory program to the
7 changes made in this section, but
8 (ii) having a legislature which is not
9 scheduled to meet in 2008 in a legislative
10 session in which such legislation may be
11 considered, the date specified in this para-
12 graph is the first day of the first calendar
13 quarter beginning after the close of the
14 first legislative session of the State legisla-
15 ture that begins on or after July 1, 2008.
16 For purposes of the previous sentence, in
17 the case of a State that has a 2-year legis-
18 lative session, each year of such session
19 shall be deemed to be a separate regular
20 session of the State legislature.

21 **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

22 (a) IN GENERAL.—Part C of title XI of the Social
23 Security Act is amended by adding at the end the fol-
24 lowing new section:

1 ''APPLICATION OF HIPAA REGULATIONS TO GENETIC
2 INFORMATION

3 ''SEC. 1180. (a) IN GENERAL.—The Secretary shall
4 revise the HIPAA privacy regulation (as defined in sub-
5 section (b)) so it is consistent with the following:

6 ''(1) Genetic information shall be treated as
7 health information described in section 1171(4)(B).

8 ''(2) The use or disclosure by a covered entity
9 that is a group health plan, health insurance issuer
10 that issues health insurance coverage, or issuer of a
11 medicare supplemental policy of protected health in-
12 formation that is genetic information about an indi-
13 vidual for underwriting purposes under the group
14 health plan, health insurance coverage, or medicare
15 supplemental policy shall not be a permitted use or
16 disclosure.

17 ''(b) DEFINITIONS.—For purposes of this section:

18 ''(1) GENETIC INFORMATION; GENETIC TEST;
19 FAMILY MEMBER.—The terms 'genetic information',
20 'genetic test', and 'family member' have the mean-
21 ings given such terms in section 2791 of the Public
22 Health Service Act (42 U.S.C. 300gg–91), as
23 amended by the Genetic Information Nondiscrimina-
24 tion Act of 2008.

1 "(2) GROUP HEALTH PLAN; HEALTH INSUR-
2 ANCE COVERAGE; MEDICARE SUPPLEMENTAL POL-
3 ICY.—The terms 'group health plan' and 'health in-
4 surance coverage' have the meanings given such
5 terms under section 2791 of the Public Health Serv-
6 ice Act (42 U.S.C. 300gg–91), and the term 'medi-
7 care supplemental policy' has the meaning given
8 such term in section 1882(g).
9 "(3) HIPAA PRIVACY REGULATION.—The term
10 'HIPAA privacy regulation' means the regulations
11 promulgated by the Secretary under this part and
12 section 264 of the Health Insurance Portability and
13 Accountability Act of 1996 (42 U.S.C. 1320d–2
14 note).
15 "(4) UNDERWRITING PURPOSES.—The term
16 'underwriting purposes' means, with respect to a
17 group health plan, health insurance coverage, or a
18 medicare supplemental policy—
19 "(A) rules for eligibility (including enroll-
20 ment and continued eligibility) for, or deter-
21 mination of, benefits under the plan, coverage,
22 or policy;
23 "(B) the computation of premium or con-
24 tribution amounts under the plan, coverage, or
25 policy;

1 "(C) the application of any pre-existing
2 condition exclusion under the plan, coverage, or
3 policy; and

4 "(D) other activities related to the cre-
5 ation, renewal, or replacement of a contract of
6 health insurance or health benefits.

7 "(c) PROCEDURE.—The revisions under subsection
8 (a) shall be made by notice in the Federal Register pub-
9 lished not later than 60 days after the date of the enact-
10 ment of this section and shall be effective upon publica-
11 tion, without opportunity for any prior public comment,
12 but may be revised, consistent with this section, after op-
13 portunity for public comment.

14 "(d) ENFORCEMENT.—In addition to any other sanc-
15 tions or remedies that may be available under law, a cov-
16 ered entity that is a group health plan, health insurance
17 issuer, or issuer of a medicare supplemental policy and
18 that violates the HIPAA privacy regulation (as revised
19 under subsection (a) or otherwise) with respect to the use
20 or disclosure of genetic information shall be subject to the
21 penalties described in sections 1176 and 1177 in the same
22 manner and to the same extent that such penalties apply
23 to violations of this part.".

24 (b) REGULATIONS; EFFECTIVE DATE.—

1 (1) REGULATIONS.—Not later than 1 year after
2 the date of the enactment of this Act, the Secretary
3 of Health and Human Services shall issue final reg-
4 ulations to carry out the revision required by section
5 1180(a) of the Social Security Act, as added by sub-
6 section (a). The Secretary has the sole authority to
7 promulgate such regulations, but shall promulgate
8 such regulations in consultation with the Secretaries
9 of Labor and the Treasury.
10 (2) EFFECTIVE DATE.—The amendment made
11 by subsection (a) shall take effect on the date that
12 is 18 months after the date of the enactment of this
13 Act.

14 **SEC. 106. ASSURING COORDINATION.**

15 Except as provided in section 105(b)(1), the Sec-
16 retary of Health and Human Services, the Secretary of
17 Labor, and the Secretary of the Treasury shall ensure,
18 through the execution of an interagency memorandum of
19 understanding among such Secretaries, that—
20 (1) regulations, rulings, and interpretations
21 issued by such Secretaries relating to the same mat-
22 ter over which two or more such Secretaries have re-
23 sponsibility under this title (and the amendments
24 made by this title) are administered so as to have
25 the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the

1 Government Employee Rights Act of 1991
2 (42 U.S.C. 2000e–16c(a));
3 (iii) a covered employee (including an
4 applicant), as defined in section 101 of the
5 Congressional Accountability Act of 1995
6 (2 U.S.C. 1301);
7 (iv) a covered employee (including an
8 applicant), as defined in section 411(c) of
9 title 3, United States Code; or
10 (v) an employee or applicant to which
11 section 717(a) of the Civil Rights Act of
12 1964 (42 U.S.C. 2000e–16(a)) applies.
13 (B) EMPLOYER.—The term ''employer''
14 means—
15 (i) an employer (as defined in section
16 701(b) of the Civil Rights Act of 1964 (42
17 U.S.C. 2000e(b)));
18 (ii) an entity employing a State em-
19 ployee described in section 304(a) of the
20 Government Employee Rights Act of 1991;
21 (iii) an employing office, as defined in
22 section 101 of the Congressional Account-
23 ability Act of 1995;

1 (iv) an employing office, as defined in
2 section 411(c) of title 3, United States
3 Code; or
4 (v) an entity to which section 717(a)
5 of the Civil Rights Act of 1964 applies.
6 (C) EMPLOYMENT AGENCY; LABOR ORGA-
7 NIZATION.—The terms "employment agency"
8 and "labor organization" have the meanings
9 given the terms in section 701 of the Civil
10 Rights Act of 1964 (42 U.S.C. 2000e).
11 (D) MEMBER.—The term "member", with
12 respect to a labor organization, includes an ap-
13 plicant for membership in a labor organization.
14 (3) FAMILY MEMBER.—The term "family mem-
15 ber" means, with respect to an individual—
16 (A) a dependent (as such term is used for
17 purposes of section 701(f)(2) of the Employee
18 Retirement Income Security Act of 1974) of
19 such individual, and
20 (B) any other individual who is a first-de-
21 gree, second-degree, third-degree, or fourth-de-
22 gree relative of such individual or of an indi-
23 vidual described in subparagraph (A).
24 (4) GENETIC INFORMATION.—

1 (A) IN GENERAL.—The term ''genetic in-
2 formation'' means, with respect to any indi-
3 vidual, information about—
4 (i) such individual's genetic tests,
5 (ii) the genetic tests of family mem-
6 bers of such individual, and
7 (iii) subject to subparagraph (D), the
8 manifestation of a disease or disorder in
9 family members of such individual.
10 (B) INCLUSION OF GENETIC SERVICES.—
11 Such term includes, with respect to any indi-
12 vidual, any request for, or receipt of, genetic
13 services (including genetic services received pur-
14 suant to participation in clinical research) by
15 such individual or any family member of such
16 individual.
17 (C) EXCLUSIONS.—The term ''genetic in-
18 formation'' shall not include information about
19 the sex or age of any individual.
20 (5) GENETIC MONITORING.—The term ''genetic
21 monitoring'' means the periodic examination of em-
22 ployees to evaluate acquired modifications to their
23 genetic material, such as chromosomal damage or
24 evidence of increased occurrence of mutations, that
25 may have developed in the course of employment due

1 to exposure to toxic substances in the workplace, in
2 order to identify, evaluate, and respond to the ef-
3 fects of or control adverse environmental exposures
4 in the workplace.

5 (6) GENETIC SERVICES.—The term "genetic
6 services" means—

7 (A) a genetic test;

8 (B) genetic counseling (including obtain-
9 ing, interpreting, or assessing genetic informa-
10 tion); or

11 (C) genetic education.

12 (7) GENETIC TEST.—

13 (A) IN GENERAL.—The term "genetic
14 test" means an analysis of human DNA, RNA,
15 chromosomes, proteins, or metabolites, that de-
16 tects genotypes, mutations, or chromosomal
17 changes.

18 (B) EXCEPTIONS.—The term "genetic
19 test" does not mean an analysis of proteins or
20 metabolites that does not detect genotypes,
21 mutations, or chromosomal changes.

22 **SEC. 202. EMPLOYER PRACTICES.**

23 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
24 TION.—It shall be an unlawful employment practice for
25 an employer—

(1) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

1 (B) the employee provides prior, knowing,
2 voluntary, and written authorization;
3 (C) only the employee (or family member
4 if the family member is receiving genetic serv-
5 ices) and the licensed health care professional
6 or board certified genetic counselor involved in
7 providing such services receive individually iden-
8 tifiable information concerning the results of
9 such services; and
10 (D) any individually identifiable genetic in-
11 formation provided under subparagraph (C) in
12 connection with the services provided under
13 subparagraph (A) is only available for purposes
14 of such services and shall not be disclosed to
15 the employer except in aggregate terms that do
16 not disclose the identity of specific employees;
17 (3) where an employer requests or requires
18 family medical history from the employee to comply
19 with the certification provisions of section 103 of the
20 Family and Medical Leave Act of 1993 (29 U.S.C.
21 2613) or such requirements under State family and
22 medical leave laws;
23 (4) where an employer purchases documents
24 that are commercially and publicly available (includ-
25 ing newspapers, magazines, periodicals, and books,

1 but not including medical databases or court
2 records) that include family medical history;
3 (5) where the information involved is to be used
4 for genetic monitoring of the biological effects of
5 toxic substances in the workplace, but only if—
6 (A) the employer provides written notice of
7 the genetic monitoring to the employee;
8 (B)(i) the employee provides prior, know-
9 ing, voluntary, and written authorization; or
10 (ii) the genetic monitoring is required by
11 Federal or State law;
12 (C) the employee is informed of individual
13 monitoring results;
14 (D) the monitoring is in compliance with—
15 (i) any Federal genetic monitoring
16 regulations, including any such regulations
17 that may be promulgated by the Secretary
18 of Labor pursuant to the Occupational
19 Safety and Health Act of 1970 (29 U.S.C.
20 651 et seq.), the Federal Mine Safety and
21 Health Act of 1977 (30 U.S.C. 801 et
22 seq.), or the Atomic Energy Act of 1954
23 (42 U.S.C. 2011 et seq.); or
24 (ii) State genetic monitoring regula-
25 tions, in the case of a State that is imple-

menting genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory, includes such analysis in the Combined DNA Index System pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), and requests or requires genetic information of such employer's employees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection

1 (a) or treated or disclosed in a manner that violates sec-
2 tion 206.

3 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

4 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
5 TION.—It shall be an unlawful employment practice for
6 an employment agency—

7 (1) to fail or refuse to refer for employment, or
8 otherwise to discriminate against, any individual be-
9 cause of genetic information with respect to the indi-
10 vidual;

11 (2) to limit, segregate, or classify individuals or
12 fail or refuse to refer for employment any individual
13 in any way that would deprive or tend to deprive any
14 individual of employment opportunities, or otherwise
15 adversely affect the status of the individual as an
16 employee, because of genetic information with re-
17 spect to the individual; or

18 (3) to cause or attempt to cause an employer to
19 discriminate against an individual in violation of this
20 title.

21 (b) ACQUISITION OF GENETIC INFORMATION.—It
22 shall be an unlawful employment practice for an employ-
23 ment agency to request, require, or purchase genetic infor-
24 mation with respect to an individual or a family member
25 of the individual except—

1 (1) where an employment agency inadvertently
2 requests or requires family medical history of the in-
3 dividual or family member of the individual;
4 (2) where—
5 (A) health or genetic services are offered
6 by the employment agency, including such serv-
7 ices offered as part of a bona fide wellness pro-
8 gram;
9 (B) the individual provides prior, knowing,
10 voluntary, and written authorization;
11 (C) only the individual (or family member
12 if the family member is receiving genetic serv-
13 ices) and the licensed health care professional
14 or board certified genetic counselor involved in
15 providing such services receive individually iden-
16 tifiable information concerning the results of
17 such services; and
18 (D) any individually identifiable genetic in-
19 formation provided under subparagraph (C) in
20 connection with the services provided under
21 subparagraph (A) is only available for purposes
22 of such services and shall not be disclosed to
23 the employment agency except in aggregate
24 terms that do not disclose the identity of spe-
25 cific individuals;

1 (3) where an employment agency requests or re-
2 quires family medical history from the individual to
3 comply with the certification provisions of section
4 103 of the Family and Medical Leave Act of 1993
5 (29 U.S.C. 2613) or such requirements under State
6 family and medical leave laws;
7 (4) where an employment agency purchases
8 documents that are commercially and publicly avail-
9 able (including newspapers, magazines, periodicals,
10 and books, but not including medical databases or
11 court records) that include family medical history; or
12 (5) where the information involved is to be used
13 for genetic monitoring of the biological effects of
14 toxic substances in the workplace, but only if—
15 (A) the employment agency provides writ-
16 ten notice of the genetic monitoring to the indi-
17 vidual;
18 (B)(i) the individual provides prior, know-
19 ing, voluntary, and written authorization; or
20 (ii) the genetic monitoring is required by
21 Federal or State law;
22 (C) the individual is informed of individual
23 monitoring results;
24 (D) the monitoring is in compliance with—

1 (i) any Federal genetic monitoring
2 regulations, including any such regulations
3 that may be promulgated by the Secretary
4 of Labor pursuant to the Occupational
5 Safety and Health Act of 1970 (29 U.S.C.
6 651 et seq.), the Federal Mine Safety and
7 Health Act of 1977 (30 U.S.C. 801 et
8 seq.), or the Atomic Energy Act of 1954
9 (42 U.S.C. 2011 et seq.); or
10 (ii) State genetic monitoring regula-
11 tions, in the case of a State that is imple-
12 menting genetic monitoring regulations
13 under the authority of the Occupational
14 Safety and Health Act of 1970 (29 U.S.C.
15 651 et seq.); and
16 (E) the employment agency, excluding any
17 licensed health care professional or board cer-
18 tified genetic counselor that is involved in the
19 genetic monitoring program, receives the results
20 of the monitoring only in aggregate terms that
21 do not disclose the identity of specific individ-
22 uals.
23 (c) PRESERVATION OF PROTECTIONS.—In the case
24 of information to which any of paragraphs (1) through
25 (5) of subsection (b) applies, such information may not

1 be used in violation of paragraph (1), (2), or (3) of sub-
2 section (a) or treated or disclosed in a manner that vio-
3 lates section 206.

4 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

5 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
6 TION.—It shall be an unlawful employment practice for
7 a labor organization—

8 (1) to exclude or to expel from the membership
9 of the organization, or otherwise to discriminate
10 against, any member because of genetic information
11 with respect to the member;

12 (2) to limit, segregate, or classify the members
13 of the organization, or fail or refuse to refer for em-
14 ployment any member, in any way that would de-
15 prive or tend to deprive any member of employment
16 opportunities, or otherwise adversely affect the sta-
17 tus of the member as an employee, because of ge-
18 netic information with respect to the member; or

19 (3) to cause or attempt to cause an employer to
20 discriminate against a member in violation of this
21 title.

22 (b) ACQUISITION OF GENETIC INFORMATION.—It
23 shall be an unlawful employment practice for a labor orga-
24 nization to request, require, or purchase genetic informa-

1 tion with respect to a member or a family member of the
2 member except—
3 (1) where a labor organization inadvertently re-
4 quests or requires family medical history of the
5 member or family member of the member;
6 (2) where—
7 (A) health or genetic services are offered
8 by the labor organization, including such serv-
9 ices offered as part of a bona fide wellness pro-
10 gram;
11 (B) the member provides prior, knowing,
12 voluntary, and written authorization;
13 (C) only the member (or family member if
14 the family member is receiving genetic services)
15 and the licensed health care professional or
16 board certified genetic counselor involved in
17 providing such services receive individually iden-
18 tifiable information concerning the results of
19 such services; and
20 (D) any individually identifiable genetic in-
21 formation provided under subparagraph (C) in
22 connection with the services provided under
23 subparagraph (A) is only available for purposes
24 of such services and shall not be disclosed to
25 the labor organization except in aggregate

1 terms that do not disclose the identity of spe-
2 cific members;
3 (3) where a labor organization requests or re-
4 quires family medical history from the members to
5 comply with the certification provisions of section
6 103 of the Family and Medical Leave Act of 1993
7 (29 U.S.C. 2613) or such requirements under State
8 family and medical leave laws;
9 (4) where a labor organization purchases docu-
10 ments that are commercially and publicly available
11 (including newspapers, magazines, periodicals, and
12 books, but not including medical databases or court
13 records) that include family medical history; or
14 (5) where the information involved is to be used
15 for genetic monitoring of the biological effects of
16 toxic substances in the workplace, but only if—
17 (A) the labor organization provides written
18 notice of the genetic monitoring to the member;
19 (B)(i) the member provides prior, knowing,
20 voluntary, and written authorization; or
21 (ii) the genetic monitoring is required by
22 Federal or State law;
23 (C) the member is informed of individual
24 monitoring results;
25 (D) the monitoring is in compliance with—

1 (i) any Federal genetic monitoring
2 regulations, including any such regulations
3 that may be promulgated by the Secretary
4 of Labor pursuant to the Occupational
5 Safety and Health Act of 1970 (29 U.S.C.
6 651 et seq.), the Federal Mine Safety and
7 Health Act of 1977 (30 U.S.C. 801 et
8 seq.), or the Atomic Energy Act of 1954
9 (42 U.S.C. 2011 et seq.); or
10 (ii) State genetic monitoring regula-
11 tions, in the case of a State that is imple-
12 menting genetic monitoring regulations
13 under the authority of the Occupational
14 Safety and Health Act of 1970 (29 U.S.C.
15 651 et seq.); and
16 (E) the labor organization, excluding any
17 licensed health care professional or board cer-
18 tified genetic counselor that is involved in the
19 genetic monitoring program, receives the results
20 of the monitoring only in aggregate terms that
21 do not disclose the identity of specific members.
22 (c) PRESERVATION OF PROTECTIONS.—In the case
23 of information to which any of paragraphs (1) through
24 (5) of subsection (b) applies, such information may not
25 be used in violation of paragraph (1), (2), or (3) of sub-

1 section (a) or treated or disclosed in a manner that vio-
2 lates section 206.

3 **SEC. 205. TRAINING PROGRAMS.**

4 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
5 TION.—It shall be an unlawful employment practice for
6 any employer, labor organization, or joint labor-manage-
7 ment committee controlling apprenticeship or other train-
8 ing or retraining, including on-the-job training pro-
9 grams—

10 (1) to discriminate against any individual be-
11 cause of genetic information with respect to the indi-
12 vidual in admission to, or employment in, any pro-
13 gram established to provide apprenticeship or other
14 training or retraining;

15 (2) to limit, segregate, or classify the applicants
16 for or participants in such apprenticeship or other
17 training or retraining, or fail or refuse to refer for
18 employment any individual, in any way that would
19 deprive or tend to deprive any individual of employ-
20 ment opportunities, or otherwise adversely affect the
21 status of the individual as an employee, because of
22 genetic information with respect to the individual; or

23 (3) to cause or attempt to cause an employer to
24 discriminate against an applicant for or a partici-

1 pant in such apprenticeship or other training or re-
2 training in violation of this title.

3 (b) ACQUISITION OF GENETIC INFORMATION.—It
4 shall be an unlawful employment practice for an employer,
5 labor organization, or joint labor-management committee
6 described in subsection (a) to request, require, or purchase
7 genetic information with respect to an individual or a fam-
8 ily member of the individual except—

9 (1) where the employer, labor organization, or
10 joint labor-management committee inadvertently re-
11 quests or requires family medical history of the indi-
12 vidual or family member of the individual;

13 (2) where—

14 (A) health or genetic services are offered
15 by the employer, labor organization, or joint
16 labor-management committee, including such
17 services offered as part of a bona fide wellness
18 program;

19 (B) the individual provides prior, knowing,
20 voluntary, and written authorization;

21 (C) only the individual (or family member
22 if the family member is receiving genetic serv-
23 ices) and the licensed health care professional
24 or board certified genetic counselor involved in
25 providing such services receive individually iden-

1 tifiable information concerning the results of
2 such services; and
3 (D) any individually identifiable genetic in-
4 formation provided under subparagraph (C) in
5 connection with the services provided under
6 subparagraph (A) is only available for purposes
7 of such services and shall not be disclosed to
8 the employer, labor organization, or joint labor-
9 management committee except in aggregate
10 terms that do not disclose the identity of spe-
11 cific individuals;
12 (3) where the employer, labor organization, or
13 joint labor-management committee requests or re-
14 quires family medical history from the individual to
15 comply with the certification provisions of section
16 103 of the Family and Medical Leave Act of 1993
17 (29 U.S.C. 2613) or such requirements under State
18 family and medical leave laws;
19 (4) where the employer, labor organization, or
20 joint labor-management committee purchases docu-
21 ments that are commercially and publicly available
22 (including newspapers, magazines, periodicals, and
23 books, but not including medical databases or court
24 records) that include family medical history;

1 (5) where the information involved is to be used
2 for genetic monitoring of the biological effects of
3 toxic substances in the workplace, but only if—
4 (A) the employer, labor organization, or
5 joint labor-management committee provides
6 written notice of the genetic monitoring to the
7 individual;
8 (B)(i) the individual provides prior, know-
9 ing, voluntary, and written authorization; or
10 (ii) the genetic monitoring is required by
11 Federal or State law;
12 (C) the individual is informed of individual
13 monitoring results;
14 (D) the monitoring is in compliance with—
15 (i) any Federal genetic monitoring
16 regulations, including any such regulations
17 that may be promulgated by the Secretary
18 of Labor pursuant to the Occupational
19 Safety and Health Act of 1970 (29 U.S.C.
20 651 et seq.), the Federal Mine Safety and
21 Health Act of 1977 (30 U.S.C. 801 et
22 seq.), or the Atomic Energy Act of 1954
23 (42 U.S.C. 2011 et seq.); or
24 (ii) State genetic monitoring regula-
25 tions, in the case of a State that is imple-

1 menting genetic monitoring regulations
2 under the authority of the Occupational
3 Safety and Health Act of 1970 (29 U.S.C.
4 651 et seq.); and
5 (E) the employer, labor organization, or
6 joint labor-management committee, excluding
7 any licensed health care professional or board
8 certified genetic counselor that is involved in
9 the genetic monitoring program, receives the re-
10 sults of the monitoring only in aggregate terms
11 that do not disclose the identity of specific indi-
12 viduals; or
13 (6) where the employer conducts DNA analysis
14 for law enforcement purposes as a forensic labora-
15 tory, includes such analysis in the Combined DNA
16 Index System pursuant to section 210304 of the
17 Violent Crime Control and Law Enforcement Act of
18 1994 (42 U.S.C. 14132), and requests or requires
19 genetic information of such employer's apprentices
20 or trainees, but only to the extent that such genetic
21 information is used for analysis of DNA identifica-
22 tion markers for quality control to detect sample
23 contamination.
24 (c) PRESERVATION OF PROTECTIONS.—In the case
25 of information to which any of paragraphs (1) through

(6) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member, such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member. An employer, employment agency, labor organization, or joint labor-management committee shall be considered to be in compliance with the maintenance of information requirements of this subsection with respect to genetic information subject to this subsection that is maintained with and treated as a confidential medical record under section 102(d)(3)(B) of the Americans With Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member except—

1 (1) to the employee or member of a labor orga-
2 nization (or family member if the family member is
3 receiving the genetic services) at the written request
4 of the employee or member of such organization;
5 (2) to an occupational or other health re-
6 searcher if the research is conducted in compliance
7 with the regulations and protections provided for
8 under part 46 of title 45, Code of Federal Regula-
9 tions;
10 (3) in response to an order of a court, except
11 that—
12 (A) the employer, employment agency,
13 labor organization, or joint labor-management
14 committee may disclose only the genetic infor-
15 mation expressly authorized by such order; and
16 (B) if the court order was secured without
17 the knowledge of the employee or member to
18 whom the information refers, the employer, em-
19 ployment agency, labor organization, or joint
20 labor-management committee shall inform the
21 employee or member of the court order and any
22 genetic information that was disclosed pursuant
23 to such order;

1 (4) to government officials who are inves-
2 tigating compliance with this title if the information
3 is relevant to the investigation; or
4 (5) to the extent that such disclosure is made
5 in connection with the employee's compliance with
6 the certification provisions of section 103 of the
7 Family and Medical Leave Act of 1993 (29 U.S.C.
8 2613) or such requirements under State family and
9 medical leave laws.
10 (c) RELATIONSHIP TO HIPAA REGULATIONS.—With
11 respect to the regulations promulgated by the Secretary
12 of Health and Human Services under part C of title XI
13 of the Social Security Act (42 U.S.C. 1320d et seq.) and
14 section 264 of the Health Insurance Portability and Ac-
15 countability Act of 1996 (42 U.S.C. 1320d–2 note), this
16 title does not prohibit a covered entity under such regula-
17 tions from any use or disclosure of health information that
18 is authorized for the covered entity under such regula-
19 tions. The previous sentence does not affect the authority
20 of such Secretary to modify such regulations.
21 **SEC. 207. REMEDIES AND ENFORCEMENT.**
22 (a) EMPLOYEES COVERED BY TITLE VII OF THE
23 CIVIL RIGHTS ACT OF 1964.—
24 (1) IN GENERAL.—The powers, remedies, and
25 procedures provided in sections 705, 706, 707, 709,

1 710, and 711 of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e–4 et seq.) to the Commission, the At-
3 torney General, or any person, alleging a violation of
4 title VII of that Act (42 U.S.C. 2000e et seq.) shall
5 be the powers, remedies, and procedures this title
6 provides to the Commission, the Attorney General,
7 or any person, respectively, alleging an unlawful em-
8 ployment practice in violation of this title against an
9 employee described in section 201(2)(A)(i), except as
10 provided in paragraphs (2) and (3).

11 (2) COSTS AND FEES.—The powers, remedies,
12 and procedures provided in subsections (b) and (c)
13 of section 722 of the Revised Statutes of the United
14 States (42 U.S.C. 1988), shall be powers, remedies,
15 and procedures this title provides to the Commis-
16 sion, the Attorney General, or any person, alleging
17 such a practice.

18 (3) DAMAGES.—The powers, remedies, and pro-
19 cedures provided in section 1977A of the Revised
20 Statutes of the United States (42 U.S.C. 1981a), in-
21 cluding the limitations contained in subsection (b)(3)
22 of such section 1977A, shall be powers, remedies,
23 and procedures this title provides to the Commis-
24 sion, the Attorney General, or any person, alleging
25 such a practice (not an employment practice specifi-

1 cally excluded from coverage under section
2 1977A(a)(1) of the Revised Statutes of the United
3 States).

4 (b) EMPLOYEES COVERED BY GOVERNMENT EM-
5 PLOYEE RIGHTS ACT OF 1991.—

6 (1) IN GENERAL.—The powers, remedies, and
7 procedures provided in sections 302 and 304 of the
8 Government Employee Rights Act of 1991 (42
9 U.S.C. 2000e–16b, 2000e–16c) to the Commission,
10 or any person, alleging a violation of section
11 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1))
12 shall be the powers, remedies, and procedures this
13 title provides to the Commission, or any person, re-
14 spectively, alleging an unlawful employment practice
15 in violation of this title against an employee de-
16 scribed in section 201(2)(A)(ii), except as provided
17 in paragraphs (2) and (3).

18 (2) COSTS AND FEES.—The powers, remedies,
19 and procedures provided in subsections (b) and (c)
20 of section 722 of the Revised Statutes of the United
21 States (42 U.S.C. 1988), shall be powers, remedies,
22 and procedures this title provides to the Commis-
23 sion, or any person, alleging such a practice.

24 (3) DAMAGES.—The powers, remedies, and pro-
25 cedures provided in section 1977A of the Revised

1 Statutes of the United States (42 U.S.C. 1981a), in-
2 cluding the limitations contained in subsection (b)(3)
3 of such section 1977A, shall be powers, remedies,
4 and procedures this title provides to the Commis-
5 sion, or any person, alleging such a practice (not an
6 employment practice specifically excluded from cov-
7 erage under section 1977A(a)(1) of the Revised
8 Statutes of the United States).

9 (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-
10 COUNTABILITY ACT OF 1995.—

11 (1) IN GENERAL.—The powers, remedies, and
12 procedures provided in the Congressional Account-
13 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
14 Board (as defined in section 101 of that Act (2
15 U.S.C. 1301)), or any person, alleging a violation of
16 section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1))
17 shall be the powers, remedies, and procedures this
18 title provides to that Board, or any person, alleging
19 an unlawful employment practice in violation of this
20 title against an employee described in section
21 201(2)(A)(iii), except as provided in paragraphs (2)
22 and (3).

23 (2) COSTS AND FEES.—The powers, remedies,
24 and procedures provided in subsections (b) and (c)
25 of section 722 of the Revised Statutes of the United

1 States (42 U.S.C. 1988), shall be powers, remedies,
2 and procedures this title provides to that Board, or
3 any person, alleging such a practice.

4 (3) DAMAGES.—The powers, remedies, and pro-
5 cedures provided in section 1977A of the Revised
6 Statutes of the United States (42 U.S.C. 1981a), in-
7 cluding the limitations contained in subsection (b)(3)
8 of such section 1977A, shall be powers, remedies,
9 and procedures this title provides to that Board, or
10 any person, alleging such a practice (not an employ-
11 ment practice specifically excluded from coverage
12 under section 1977A(a)(1) of the Revised Statutes
13 of the United States).

14 (4) OTHER APPLICABLE PROVISIONS.—With re-
15 spect to a claim alleging a practice described in
16 paragraph (1), title III of the Congressional Ac-
17 countability Act of 1995 (2 U.S.C. 1381 et seq.)
18 shall apply in the same manner as such title applies
19 with respect to a claim alleging a violation of section
20 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

21 (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
22 3, UNITED STATES CODE.—

23 (1) IN GENERAL.—The powers, remedies, and
24 procedures provided in chapter 5 of title 3, United
25 States Code, to the President, the Commission, the

1 Merit Systems Protection Board, or any person, al-
2 leging a violation of section 411(a)(1) of that title,
3 shall be the powers, remedies, and procedures this
4 title provides to the President, the Commission, such
5 Board, or any person, respectively, alleging an un-
6 lawful employment practice in violation of this title
7 against an employee described in section
8 201(2)(A)(iv), except as provided in paragraphs (2)
9 and (3).

10 (2) COSTS AND FEES.—The powers, remedies,
11 and procedures provided in subsections (b) and (c)
12 of section 722 of the Revised Statutes of the United
13 States (42 U.S.C. 1988), shall be powers, remedies,
14 and procedures this title provides to the President,
15 the Commission, such Board, or any person, alleging
16 such a practice.

17 (3) DAMAGES.—The powers, remedies, and pro-
18 cedures provided in section 1977A of the Revised
19 Statutes of the United States (42 U.S.C. 1981a), in-
20 cluding the limitations contained in subsection (b)(3)
21 of such section 1977A, shall be powers, remedies,
22 and procedures this title provides to the President,
23 the Commission, such Board, or any person, alleging
24 such a practice (not an employment practice specifi-
25 cally excluded from coverage under section

1977A(a)(1) of the Revised Statutes of the United States).

(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
2 cedures provided in section 1977A of the Revised
3 Statutes of the United States (42 U.S.C. 1981a), in-
4 cluding the limitations contained in subsection (b)(3)
5 of such section 1977A, shall be powers, remedies,
6 and procedures this title provides to the Commis-
7 sion, the Attorney General, the Librarian of Con-
8 gress, or any person, alleging such a practice (not an
9 employment practice specifically excluded from cov-
10 erage under section 1977A(a)(1) of the Revised
11 Statutes of the United States).

12 (f) DEFINITION.—In this section, the term ''Commis-
13 sion'' means the Equal Employment Opportunity Commis-
14 sion.

15 **SEC. 208. DISPARATE IMPACT.**

16 (a) GENERAL RULE.—Notwithstanding any other
17 provision of this division, ''disparate impact'', as that term
18 is used in section 703(k) of the Civil Rights Act of 1964
19 (42 U.S.C. 2000e–2(k)), on the basis of genetic informa-
20 tion does not establish a cause of action under this divi-
21 sion.

22 (b) COMMISSION.—On the date that is 6 years after
23 the date of enactment of this Act, there shall be estab-
24 lished a commission, to be known as the Genetic Non-
25 discrimination Study Commission (referred to in this sec-

1 tion as the ''Commission'') to review the developing
2 science of genetics and to make recommendations to Con-
3 gress regarding whether to provide a disparate impact
4 cause of action under this division.

5 (c) MEMBERSHIP.—

6 (1) IN GENERAL.—The Commission shall be
7 composed of eight members, of which—

8 (A) one member shall be appointed by the
9 Majority Leader of the Senate;

10 (B) one member shall be appointed by the
11 Minority Leader of the Senate;

12 (C) one member shall be appointed by the
13 Chairman of the Committee on Health, Edu-
14 cation, Labor, and Pensions of the Senate;

15 (D) one member shall be appointed by the
16 ranking minority member of the Committee on
17 Health, Education, Labor, and Pensions of the
18 Senate;

19 (E) one member shall be appointed by the
20 Speaker of the House of Representatives;

21 (F) one member shall be appointed by the
22 Minority Leader of the House of Representa-
23 tives;

1 (G) one member shall be appointed by the
2 Chairman of the Committee on Education and
3 Labor of the House of Representatives; and
4 (H) one member shall be appointed by the
5 ranking minority member of the Committee on
6 Education and Labor of the House of Rep-
7 resentatives.
8 (2) COMPENSATION AND EXPENSES.—The
9 members of the Commission shall not receive com-
10 pensation for the performance of services for the
11 Commission, but shall be allowed travel expenses, in-
12 cluding per diem in lieu of subsistence, at rates au-
13 thorized for employees of agencies under subchapter
14 I of chapter 57 of title 5, United States Code, while
15 away from their homes or regular places of business
16 in the performance of services for the Commission.
17 (d) ADMINISTRATIVE PROVISIONS.—
18 (1) LOCATION.—The Commission shall be lo-
19 cated in a facility maintained by the Equal Employ-
20 ment Opportunity Commission.
21 (2) DETAIL OF GOVERNMENT EMPLOYEES.—
22 Any Federal Government employee may be detailed
23 to the Commission without reimbursement, and such
24 detail shall be without interruption or loss of civil
25 service status or privilege.

1 (3) INFORMATION FROM FEDERAL AGENCIES.—
2 The Commission may secure directly from any Fed-
3 eral department or agency such information as the
4 Commission considers necessary to carry out the
5 provisions of this section. Upon request of the Com-
6 mission, the head of such department or agency
7 shall furnish such information to the Commission.

8 (4) HEARINGS.—The Commission may hold
9 such hearings, sit and act at such times and places,
10 take such testimony, and receive such evidence as
11 the Commission considers advisable to carry out the
12 objectives of this section, except that, to the extent
13 possible, the Commission shall use existing data and
14 research.

15 (5) POSTAL SERVICES.—The Commission may
16 use the United States mails in the same manner and
17 under the same conditions as other departments and
18 agencies of the Federal Government.

19 (e) REPORT.—Not later than 1 year after all of the
20 members are appointed to the Commission under sub-
21 section (c)(1), the Commission shall submit to Congress
22 a report that summarizes the findings of the Commission
23 and makes such recommendations for legislation as are
24 consistent with this division.

1 (f) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Equal Employ-
3 ment Opportunity Commission such sums as may be nec-
4 essary to carry out this section.

5 **SEC. 209. CONSTRUCTION.**

6 (a) IN GENERAL.—Nothing in this title shall be con-
7 strued to—

8 (1) limit the rights or protections of an indi-
9 vidual under any other Federal or State statute that
10 provides equal or greater protection to an individual
11 than the rights or protections provided for under
12 this title, including the protections of an individual
13 under the Americans with Disabilities Act of 1990
14 (42 U.S.C. 12101 et seq.) (including coverage af-
15 forded to individuals under section 102 of such Act
16 (42 U.S.C. 12112)), or under the Rehabilitation Act
17 of 1973 (29 U.S.C. 701 et seq.);

18 (2)(A) limit the rights or protections of an indi-
19 vidual to bring an action under this title against an
20 employer, employment agency, labor organization, or
21 joint labor-management committee for a violation of
22 this title; or

23 (B) provide for enforcement of, or penalties for
24 violation of, any requirement or prohibition applica-
25 ble to any employer, employment agency, labor orga-

1 nization, or joint labor-management committee the
2 enforcement of which, or penalties for which, are
3 provided under the amendments made by title I;
4 (3) apply to the Armed Forces Repository of
5 Specimen Samples for the Identification of Remains;
6 (4) limit or expand the protections, rights, or
7 obligations of employees or employers under applica-
8 ble workers' compensation laws;
9 (5) limit the authority of a Federal department
10 or agency to conduct or sponsor occupational or
11 other health research that is conducted in compli-
12 ance with the regulations contained in part 46 of
13 title 45, Code of Federal Regulations (or any cor-
14 responding or similar regulation or rule);
15 (6) limit the statutory or regulatory authority
16 of the Occupational Safety and Health Administra-
17 tion or the Mine Safety and Health Administration
18 to promulgate or enforce workplace safety and
19 health laws and regulations; or
20 (7) require any specific benefit for an employee
21 or member or a family member of an employee or
22 member under any group health plan or health in-
23 surance issuer offering group health insurance cov-
24 erage in connection with a group health plan.

1 (b) GENETIC INFORMATION OF A FETUS OR EM-
2 BRYO.—Any reference in this title to genetic information
3 concerning an individual or family member of an indi-
4 vidual shall—

5 (1) with respect to such an individual or family
6 member of an individual who is a pregnant woman,
7 include genetic information of any fetus carried by
8 such pregnant woman; and

9 (2) with respect to an individual or family
10 member utilizing an assisted reproductive tech-
11 nology, include genetic information of any embryo le-
12 gally held by the individual or family member.

13 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**
14 **INFORMATION.**

15 An employer, employment agency, labor organization,
16 or joint labor-management committee shall not be consid-
17 ered to be in violation of this title based on the use, acqui-
18 sition, or disclosure of medical information that is not ge-
19 netic information about a manifested disease, disorder, or
20 pathological condition of an employee or member, includ-
21 ing a manifested disease, disorder, or pathological condi-
22 tion that has or may have a genetic basis.

1 **SEC. 211. REGULATIONS.**

2 Not later than 1 year after the date of enactment
3 of this title, the Commission shall issue final regulations
4 to carry out this title.

5 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out this title (except for sec-
8 tion 208).

9 **SEC. 213. EFFECTIVE DATE.**

10 This title takes effect on the date that is 18 months
11 after the date of enactment of this Act.

12 TITLE III—MISCELLANEOUS
13 PROVISIONS

14 **SEC. 301. GUARANTEE AGENCY COLLECTION RETENTION.**

15 Clause (ii) of section 428(c)(6)(A) of the Higher
16 Education Act of 1965 (20 U.S.C. 1078(c)(6)(A)) is
17 amended to read as follows:

18 ''(ii) an amount equal to 23 percent of
19 such payments for use in accordance with sec-
20 tion 422B, except that beginning October 1,
21 2007, and ending September 30, 2008, this
22 subparagraph shall be applied by substituting
23 '22 percent' for '23 percent'.''.

24 **SEC. 302. SEVERABILITY.**

25 If any provision of this division, an amendment made
26 by this division, or the application of such provision or

1 amendment to any person or circumstance is held to be
2 unconstitutional, the remainder of this division, the
3 amendments made by this division, and the application of
4 such provisions to any person or circumstance shall not
5 be affected thereby.

Passed the House of Representatives March 5, 2008.

Attest:

Clerk.

110TH CONGRESS
2D SESSION

H. R. 1424

AN ACT

To amend section 712 of the Employee Retirement Income Security Act of 1974, section 2705 of the Public Health Service Act, section 9812 of the Internal Revenue Code of 1986 to require equity in the provision of mental health and substance-related disorder benefits under group health plans, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, and for other purposes.