SEC. 202. DISCLOSURE OF DIRECT AND INDIRECT COMPENSATION FOR BROKERS AND CONSULTANTS TO EMPLOYER-SPONSORED HEALTH PLANS AND ENROLLEES IN PLANS ON THE INDIVIDUAL MARKET.

(a) Group Health Plans.--Section 408(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(2)) is amended--

(1) by striking ``(2) Contracting or making'' and inserting ``(2)(A) Contracting or making''; and

(2) by adding at the end the following:

``(B)(i) No contract or arrangement for services between a covered plan and a covered service provider, and no extension or renewal of such a contract or arrangement, is reasonable within the meaning of this paragraph unless the requirements of this clause are met.

``(ii)(I) For purposes of this subparagraph:

``(aa) The term `covered plan' means a group health plan as defined section 733(a).

``(bb) The term `covered service provider' means a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 (or such amount as the Secretary may establish in regulations to account for inflation since the date of enactment of the Consolidated Appropriations Act, 2021, as appropriate) or more in compensation, direct or indirect, to be received in connection with providing one or more of the following services, pursuant to the contract or arrangement, regardless of whether such services will be performed, or such compensation received, by the covered service provider, an affiliate, or a subcontractor:

``(AA) Brokerage services, for which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive indirect compensation or direct compensation described in item (dd), provided to a covered plan with respect to selection of insurance products (including vision and dental), recordkeeping services, medical management vendor, benefits administration (including vision and dental), stop-loss insurance, pharmacy benefit management services, wellness services, transparency tools and vendors, group purchasing organization preferred vendor panels, disease management vendors and products, compliance services, employee assistance programs, or third party administration services.

``(BB) Consulting, for which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive indirect compensation or direct compensation described in item (dd), related to the development or implementation of plan design, insurance or insurance product selection (including vision and dental), recordkeeping, medical management, benefits administration selection (including vision and dental), stop-loss insurance, pharmacy benefit management services, wellness design and management services, transparency tools, group purchasing organization agreements and services, participation in and services from preferred vendor panels, disease management, compliance services, employee assistance programs, or third party administration services.

``(cc) The term `affiliate', with respect to a covered service provider, means an entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with, such provider, or is an officer, director, or employee of, or partner in, such provider.

``(dd)(AA) The term `compensation' means anything of monetary value, but does not include non-monetary compensation valued at $250 (or such amount as the Secretary may establish in regulations to account for inflation since the date of enactment of the Consolidated Appropriations Act, 2021, as appropriate) or less, in the aggregate, during the term of the contract or arrangement.

``(BB) The term `direct compensation' means compensation received directly from a covered plan.

``(CC) The term `indirect compensation' means compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, or an affiliate. Compensation received from a subcontractor is indirect compensation, unless it is received in connection with services performed under a contract or arrangement with a subcontractor.

``(ee) The term `responsible plan fiduciary' means a fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contract or arrangement.

``(ff) The term `subcontractor' means any person or entity (or an affiliate of such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 (or such amount as the Secretary may establish in regulations to account for inflation since the date of enactment of the Consolidated Appropriations Act, 2021, as appropriate) or more in compensation for performing one or more services described in item (bb) under a contract or arrangement with the covered plan.

``(II) For purposes of this subparagraph, a description of compensation or cost may be expressed as a monetary amount, formula, or a per capita charge for each enrollee or, if the compensation or cost cannot reasonably be expressed in such terms, by any other reasonable method, including a disclosure that additional compensation may be earned but may not be calculated at the time of contract if such a disclosure includes a description of the circumstances under which the additional compensation may be earned and a reasonable and good faith estimate if the covered service provider cannot otherwise readily describe compensation or cost and explains the methodology and assumptions used to prepare such estimate. Any such description shall contain sufficient information to permit evaluation of the reasonableness of the compensation or cost.

``(III) No person or entity is a `covered service provider' within the meaning of subclause (I)(bb) solely on the basis of providing services as an affiliate or a subcontractor that is performing one or more of the services described in subitem (AA) or (BB) of such subclause under the contract or arrangement with the covered plan.

``(iii) A covered service provider shall disclose to a responsible plan fiduciary, in writing, the following:

``(I) A description of the services to be provided to the covered plan pursuant to the contract or arrangement.

``(II) If applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as a fiduciary (within the meaning of section 3(21)).

``(III) A description of all direct compensation, either in the aggregate or by service, that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described in subclause (I).

``(IV)(aa) A description of all indirect compensation that

the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described in subclause (I)--

``(AA) including compensation from a vendor to a brokerage firm based on a structure of incentives not solely related to the contract with the covered plan; and

``(BB) not including compensation received by an employee from an employer on account of work performed by the employee.

``(bb) A description of the arrangement between the payer and the covered service provider, an affiliate, or a subcontractor, as applicable, pursuant to which such indirect compensation is paid.

``(cc) Identification of the services for which the indirect compensation will be received, if applicable.

``(dd) Identification of the payer of the indirect compensation.

``(V) A description of any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with the services described in subclause (I) if such compensation is set on a transaction basis (such as commissions, finder's fees, or other similar incentive compensation based on business placed or retained), including identification of the services for which such compensation will be paid and identification of the payers and recipients of such compensation (including the status of a payer or recipient as an affiliate or a subcontractor), regardless of whether such compensation also is disclosed pursuant to subclause (III) or (IV).

``(VI) A description of any compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination.

``(iv) A covered service provider shall disclose to a responsible plan fiduciary, in writing a description of the manner in which the compensation described in clause (iii), as applicable, will be received.

``(v)(I) A covered service provider shall disclose the information required under clauses (iii) and (iv) to the responsible plan fiduciary not later than the date that is reasonably in advance of the date on which the contract or arrangement is entered into, and extended or renewed.

``(II) A covered service provider shall disclose any change to the information required under clause (iii) and (iv) as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information shall be disclosed as soon as practicable.

``(vi)(I) Upon the written request of the responsible plan fiduciary or covered plan administrator, a covered service provider shall furnish any other information relating to the compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements under this Act.

``(II) The covered service provider shall disclose the information required under clause (iii)(I) reasonably in advance of the date upon which such responsible plan fiduciary or covered plan administrator states that it is required to comply with the applicable reporting or disclosure requirement, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the

information shall be disclosed as soon as practicable.

``(vii) No contract or arrangement will fail to be reasonable under this subparagraph solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required pursuant to clause (iii) (or a change to such information disclosed pursuant to clause (v)(II)) or clause (vi), provided that the covered service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of such error or omission.

``(viii)(I) Pursuant to subsection (a), subparagraphs (C) and (D) of section 406(a)(1) shall not apply to a responsible plan fiduciary, notwithstanding any failure by a covered service provider to disclose information required under clause (iii), if the following conditions are met:

``(aa) The responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required to be disclosed.

``(bb) The responsible plan fiduciary, upon discovering that the covered service provider failed to disclose the required information, requests in writing that the covered service provider furnish such information.

``(cc) If the covered service provider fails to comply with a written request described in subclause (II) within 90 days of the request, the responsible plan fiduciary notifies the Secretary of the covered service provider's failure, in accordance with subclauses (II) and (III).

``(II) A notice described in subclause (I)(cc) shall contain--

``(aa) the name of the covered plan;

``(bb) the plan number used for the annual report on the covered plan;

``(cc) the plan sponsor's name, address, and employer identification number;

``(dd) the name, address, and telephone number of the responsible plan fiduciary;

``(ee) the name, address, phone number, and, if known, employer identification number of the covered service provider;

``(ff) a description of the services provided to the covered plan;

``(gg) a description of the information that the covered service provider failed to disclose;

``(hh) the date on which such information was requested in writing from the covered service provider; and

``(ii) a statement as to whether the covered service provider continues to provide services to the plan.

``(III) A notice described in subclause (I)(cc) shall be filed with the Department not later than 30 days following the earlier of--

``(aa) The covered service provider's refusal to furnish the information requested by the written request described in subclause (I)(bb); or

``(bb) 90 days after the written request referred to in subclause (I)(cc) is made.

``(IV) If the covered service provider fails to comply with the written request under subclause (I)(bb) within 90 days of such request, the responsible plan fiduciary shall determine whether to terminate or continue the contract or arrangement under section 404. If the requested information relates to future services and is not disclosed promptly after the end of the 90-day period, the responsible plan fiduciary shall terminate the contract or arrangement as expeditiously as possible, consistent with such duty

of prudence.

``(ix) Nothing in this subparagraph shall be construed to supersede any provision of State law that governs disclosures by parties that provide the services described in this section, except to the extent that such law prevents the application of a requirement of this section.''.

(b) Applicability of Existing Regulations.--Nothing in the amendments made by subsection (a) shall be construed to affect the applicability of section 2550.408b-2 of title 29, Code of Federal Regulations (or any successor regulations), with respect to any applicable entity other than a covered plan or a covered service provider (as defined in section 408(b)(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, as amended by subsection (a)).

(c) Individual Market Coverage.--Subpart 1 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-41 et seq.) is amended by adding at the end the following:

``SEC. 2746. DISCLOSURE TO ENROLLEES OF INDIVIDUAL MARKET COVERAGE.

``(a) In General.--A health insurance issuer offering individual health insurance coverage or a health insurance issuer offering short-term limited duration insurance coverage shall make disclosures to enrollees in such coverage, as described in subsection (b), and reports to the Secretary, as described in subsection (c), regarding direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage.

``(b) Disclosure.--A health insurance issuer described in subsection (a) shall disclose to an enrollee the amount of direct or indirect compensation provided to an agent or broker for services provided by such agent or broker associated with plan selection and enrollment. Such disclosure shall be--

``(1) made prior to the individual finalizing plan selection; and

``(2) included on any documentation confirming the individual's enrollment.

``(c) Reporting.--A health insurance issuer described in subsection (a) shall annually report to the Secretary, prior to the beginning of open enrollment, any direct or indirect compensation provided to an agent or broker associated with enrolling individuals in such coverage.

``(d) Rulemaking.--Not later than 1 year after the date of enactment of the Consolidated Appropriations Act, 2021, the Secretary shall finalize, through notice-and-comment rulemaking, the timing, form, and manner in which issuers described in subsection (a) are required to make the disclosures described in subsection (b) and the reports described in subsection (c). Such rulemaking may also include adjustments to notice requirements to reflect the different processes for plan renewals, in order to provide enrollees with full, timely information.''.

(d) Transition Rule.--No contract executed prior to the effective date described in subsection (e) by a group health plan subject to the requirements of section 408(b)(2)(B) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) or by a health insurance issuer subject to the requirements of section 2746 of the Public Health Service Act (as added by subsection (c)) shall be subject to the requirements of such section 408(b)(2)(B) or such section 2746, as applicable.

(e) Application.--The amendments made by subsections (a) and (c) shall apply beginning 1 year after the date of enactment of this Act.

SEC. 203. STRENGTHENING PARITY IN MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS.

(a) In General.--

(1) PHSA.--Section 2726(a) of the Public Health Service Act (42 U.S.C. 300gg-26(a)) is amended by adding at the end the following:

``(8) Compliance requirements.--

``(A) Nonquantitative treatment limitation (nqtl)

requirements.--In the case of a group health plan or a health insurance issuer offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits and that imposes nonquantitative treatment limitations (referred to in this section as `NQTLs') on mental health or substance use disorder benefits, such plan or issuer shall perform and document comparative analyses of the design and application of NQTLs and, beginning 45 days after the