

111TH CONGRESS
1ST SESSION

S. 702

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2009

Mr. GRASSLEY (for himself, Mrs. LINCOLN, Ms. SNOWE, Mr. ENSIGN, Ms. COLLINS, Ms. KLOBUCHAR, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care Af-
5 fordability and Security Act of 2009”.

1 **SEC. 2. TREATMENT OF PREMIUMS ON QUALIFIED LONG-**
2 **TERM CARE INSURANCE CONTRACTS.**

3 (a) IN GENERAL.—

4 (1) CAFETERIA PLANS.—The last sentence of
5 section 125(f) of the Internal Revenue Code of 1986
6 (defining qualified benefits) is amended by inserting
7 before the period at the end “; except that such term
8 shall include the payment of premiums for any quali-
9 fied long-term care insurance contract (as defined in
10 section 7702B) to the extent the amount of such
11 payment does not exceed the eligible long-term care
12 premiums (as defined in section 213(d)(10)) for
13 such contract”.

14 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
15 Section 106 of such Code (relating to contributions
16 by an employer to accident and health plans) is
17 amended by striking subsection (c) and redesign-
18 ating subsections (d) and (e) as subsections (c) and
19 (d), respectively.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 6041 of such Code is amended by
22 adding at the end the following new subsection:

23 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-
24 FINED.—For purposes of this section, a flexible spending
25 arrangement is a benefit program which provides employ-
26 ees with coverage under which—

1 “(1) specified incurred expenses may be reim-
2 bursed (subject to reimbursement maximums and
3 other reasonable conditions), and

4 “(2) the maximum amount of reimbursement
5 which is reasonably available to a participant for
6 such coverage is less than 500 percent of the value
7 of such coverage.

8 In the case of an insured plan, the maximum amount rea-
9 sonably available shall be determined on the basis of the
10 underlying coverage.”.

11 (2) The following sections of such Code are
12 each amended by striking “section 106(d)” and in-
13 serting “section 106(c)”: sections 223(b)(4)(B),
14 223(d)(4)(C), 223(f)(3)(B), 3231(e)(11),
15 3306(b)(18), 3401(a)(22), 4973(g)(1), and
16 4973(g)(2)(B)(i).

17 (3) Section 6041(f)(1) of such Code is amended
18 by striking “(as defined in section 106(c)(2))”.

19 (4) Section 26(b)(2)(S) of such Code is amend-
20 ed by striking “106(e)(3)(A)(ii)” and inserting
21 “106(d)(3)(A)(ii)”.

22 (5) Section 223(e)(1)(B)(iii)(II) of such Code is
23 amended by striking “section 106(e)” and inserting
24 “section 106(d)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

4 **SEC. 3. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-**
5 **TERM CARE INSURANCE.**

6 (a) ADDITIONAL PROTECTIONS APPLICABLE TO
7 LONG-TERM CARE INSURANCE.—Subparagraphs (A) and
8 (B) of section 7702B(g)(2) of the Internal Revenue Code
9 of 1986 (relating to requirements of model regulation and
10 Act) are amended to read as follows:

11 “(A) IN GENERAL.—The requirements of
12 this paragraph are met with respect to any con-
13 tract if such contract meets—

14 “(i) MODEL REGULATION.—The fol-
15 lowing requirements of the model regula-
16 tion:

17 “(I) Section 6A (relating to guar-
18 anteed renewal or noncancellability),
19 other than paragraph (5) thereof, and
20 the requirements of section 6B of the
21 model Act relating to such section 6A.

22 “(II) Section 6B (relating to pro-
23 hibitions on limitations and exclu-
24 sions) other than paragraph (7) there-
25 of.

1 “(III) Section 6C (relating to ex-
2 tension of benefits).

3 “(IV) Section 6D (relating to
4 continuation or conversion of cov-
5 erage).

6 “(V) Section 6E (relating to dis-
7 continuance and replacement of poli-
8 cies).

9 “(VI) Section 7 (relating to unin-
10 tentional lapse).

11 “(VII) Section 8 (relating to dis-
12 closure), other than sections 8F, 8G,
13 8H, and 8I thereof.

14 “(VIII) Section 11 (relating to
15 prohibitions against post-claims un-
16 derwriting).

17 “(IX) Section 12 (relating to
18 minimum standards).

19 “(X) Section 13 (relating to re-
20 quirement to offer inflation protec-
21 tion).

22 “(XI) Section 25 (relating to pro-
23 hibition against preexisting conditions
24 and probationary periods in replace-
25 ment policies or certificates).

1 “(XII) The provisions of section
2 28 relating to contingent nonforfeiture
3 benefits, if the policyholder declines
4 the offer of a nonforfeiture provision
5 described in paragraph (4) of this
6 subsection.

7 “(ii) MODEL ACT.—The following re-
8 quirements of the model Act:

9 “(I) Section 6C (relating to pre-
10 existing conditions).

11 “(II) Section 6D (relating to
12 prior hospitalization).

13 “(III) The provisions of section 8
14 relating to contingent nonforfeiture
15 benefits, if the policyholder declines
16 the offer of a nonforfeiture provision
17 described in paragraph (4) of this
18 subsection.

19 “(B) DEFINITIONS.—For purposes of this
20 paragraph—

21 “(i) MODEL REGULATION.—The term
22 ‘model regulation’ means the long-term
23 care insurance model regulation promul-
24 gated by the National Association of Insur-

1 ance Commissioners (as adopted as of De-
2 cember 2006).

3 “(ii) MODEL ACT.—The term ‘model
4 Act’ means the long-term care insurance
5 model Act promulgated by the National
6 Association of Insurance Commissioners
7 (as adopted as of December 2006).

8 “(iii) COORDINATION.—Any provision
9 of the model regulation or model Act listed
10 under clause (i) or (ii) of subparagraph
11 (A) shall be treated as including any other
12 provision of such regulation or Act nec-
13 essary to implement the provision.

14 “(iv) DETERMINATION.—For pur-
15 poses of this section and section 4980C,
16 the determination of whether any require-
17 ment of the model regulation or the model
18 Act has been met shall be made by the
19 Secretary.”.

20 (b) EXCISE TAX.—Paragraph (1) of section
21 4980C(c) of the Internal Revenue Code of 1986 (relating
22 to requirements of model provisions) is amended to read
23 as follows:

24 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

1 “(A) MODEL REGULATION.—The following
2 requirements of the model regulation must be
3 met:

4 “(i) Section 9 (relating to required
5 disclosure of rating practices to consumer).

6 “(ii) Section 14 (relating to applica-
7 tion forms and replacement coverage).

8 “(iii) Section 15 (relating to reporting
9 requirements).

10 “(iv) Section 22 (relating to filing re-
11 quirements for marketing).

12 “(v) Section 23 (relating to standards
13 for marketing), including inaccurate com-
14 pletion of medical histories, other than
15 paragraphs (1), (6), and (9) of section
16 23C.

17 “(vi) Section 24 (relating to suit-
18 ability).

19 “(vii) Section 27 (relating to the right
20 to reduce coverage and lower premiums).

21 “(viii) Section 31 (relating to stand-
22 ard format outline of coverage).

23 “(ix) Section 32 (relating to require-
24 ment to deliver shopper’s guide).

1 The requirements referred to in clause (vi) shall
2 not include those portions of the personal work-
3 sheet described in Appendix B relating to con-
4 sumer protection requirements not imposed by
5 section 4980C or 7702B.

6 “(B) MODEL ACT.—The following require-
7 ments of the model Act must be met:

8 “(i) Section 6F (relating to right to
9 return).

10 “(ii) Section 6G (relating to outline of
11 coverage).

12 “(iii) Section 6H (relating to require-
13 ments for certificates under group plans).

14 “(iv) Section 6J (relating to policy
15 summary).

16 “(v) Section 6K (relating to monthly
17 reports on accelerated death benefits).

18 “(vi) Section 7 (relating to incontest-
19 ability period).

20 “(vii) Section 9 (relating to producer
21 training requirements).

22 “(C) DEFINITIONS.—For purposes of this
23 paragraph, the terms ‘model regulation’ and
24 ‘model Act’ have the meanings given such terms
25 by section 7702B(g)(2)(B).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to policies issued more than 1 year
3 after the date of the enactment of this Act.

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