

112TH CONGRESS
1ST SESSION

S. 159

To improve consumer protections for purchasers of long-term care insurance,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. KOHL (for himself, Mr. WYDEN, and Ms. KLOBUCHAR) introduced the
following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve consumer protections for purchasers of long-
term care insurance, 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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Confidence in Long-Term Care Insurance Act of 2011”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—NATIONAL MARKET SURVEY; MODEL DISCLOSURES AND
DEFINITIONS; LTC INSURANCE COMPARE**

Sec. 101. NAIC National Market Survey.

Sec. 102. Model disclosure form.

Sec. 103. LTC Insurance Compare.

TITLE II—IMPROVED STATE CONSUMER PROTECTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS AND MEDICAID PARTNERSHIP POLICIES

Sec. 201. Application of Medicaid partnership required model provisions to all tax-qualified long-term care insurance contracts.

Sec. 202. Streamlined process for applying new or updated model provisions.

TITLE III—IMPROVED CONSUMER PROTECTIONS FOR MEDICAID PARTNERSHIP POLICIES

Sec. 301. Biennial reports on impact of Medicaid long-term care insurance partnerships.

Sec. 302. Additional consumer protections for Medicaid partnerships.

Sec. 303. Report to Congress regarding need for minimum annual compound inflation protection.

TITLE IV—PRESERVATION OF STATE AUTHORITY

Sec. 401. Preservation of State authority.

**1 TITLE I—NATIONAL MARKET
2 SURVEY; MODEL DISCLO-
3 SURES AND DEFINITIONS;
4 LTC INSURANCE COMPARE**

5 SEC. 101. NAIC NATIONAL MARKET SURVEY.

6 (a) IN GENERAL.—The Secretary shall request the
7 NAIC to conduct reviews of the national and State-specific
8 markets for long-term care insurance policies and to sub-
9 mit reports to the Secretary on the results of such reviews
10 every 5 years.

11 (b) CONTENT.—The Secretary shall request that the
12 reviews include, with respect to the period occurring since
13 any prior review, analysis of the following:

14 (1) Information on key market parameters, in-
15 cluding the number of carriers offering long-term
16 care insurance, and the scope of coverage offered

1 under those policies (such as policies offering nurs-
2 ing-home only benefits, policies offering comprehen-
3 sive coverage, cash plans, and reimbursement plans,
4 and hybrid products in which long-term care benefits
5 are present).

6 (2) The number of complaints received and re-
7 solved, including benefit denials.

8 (3) The number of policies that have lapsed.

9 (4) The number of agents trained and whether
10 the training included competency tests.

11 (5) The number of policyholders exhausting
12 benefits.

13 (6) The number of premium rate increases filed
14 by carriers on a policy basis with the States, includ-
15 ing the ranges of the increases approved for or fi-
16 nally used.

17 (7) The number of policyholders affected by any
18 premium rate increases.

19 (8) Requests for exceptions to State permitted
20 accounting practices, as defined by the NAIC.

21 (c) TIMING FOR REVIEWS AND REPORTS.—The Sec-
22 retary shall request the NAIC to—

23 (1) complete the initial market review under
24 this section not later than 2 years after the date of
25 enactment of this Act;

1 (2) submit a report to the Secretary on the re-
2 sults of the initial review not later than December
3 31, 2012; and

4 (3) complete each subsequent review and sub-
5 mit each subsequent report not later than December
6 31 of the fifth succeeding year.

7 (d) CONSULTATION REQUIRED.—The Secretary shall
8 request the NAIC to consult with State insurance commis-
9 sioners, appropriate Federal agencies, issuers of long-term
10 care insurance, States with experience in long-term care
11 insurance partnership plans, other States, representatives
12 of consumer groups, consumers of long-term care insur-
13 ance policies, and such other stakeholders as the Secretary
14 or the NAIC determine appropriate, to conduct the market
15 reviews requested under this section.

16 (e) DEFINITIONS.—In this section and section 102:

17 (1) LONG-TERM CARE INSURANCE POLICY.—

18 The term “long-term care insurance policy”—

19 (A) means—

20 (i) a qualified long-term care insur-
21 ance contract (as defined in section
22 7702B(b) of the Internal Revenue Code of
23 1986); and

24 (ii) a qualified long-term care insur-
25 ance contract that covers an insured who is

1 a resident of a State with a qualified State
2 long-term care insurance partnership
3 under clause (iii) of section 1917(b)(1)(C)
4 of the Social Security Act (42 U.S.C.
5 1396p(b)(1)(C)) or a long-term care insur-
6 ance policy offered in connection with a
7 State plan amendment described in clause
8 (iv) of such section; and

9 (B) includes any other insurance policy or
10 rider described in the definition of “long-term
11 care insurance” in section 4 of the model Act
12 promulgated by the National Association of In-
13 surance Commissioners (as adopted December
14 2006).

15 (2) NAIC.—The term “NAIC” means the Na-
16 tional Association of Insurance Commissioners.

17 (3) SECRETARY.—The term “Secretary” means
18 the Secretary of Health and Human Services.

19 **SEC. 102. MODEL DISCLOSURE FORM.**

20 (a) NAIC STUDY AND REPORT ON STATE DISCLO-
21 SURE REQUIREMENTS FOR LONG-TERM CARE INSUR-
22 ANCE.—

23 (1) IN GENERAL.—The Secretary shall request
24 the NAIC to carry out the activities described in

1 paragraph (2) and issue the report described in
2 paragraph (3).

3 (2) REVIEW AND DEVELOPMENT OF PROPOSED
4 MODEL DISCLOSURE REQUIREMENTS.—The activities
5 described in this paragraph are the following:

6 (A) MODEL ACT AND REGULATION DISCLO-
7 SURE REQUIREMENTS.—Review and describe
8 disclosure requirements for long-term care in-
9 surance policies under the Model Act and regu-
10 lation.

11 (B) STATE LAW DISCLOSURE REQUIRE-
12 MENTS.—Review and describe disclosure re-
13 quirements for long-term care insurance policies
14 under State laws, including as part of such de-
15 scription an analysis of the effectiveness of the
16 various existing disclosures.

17 (C) LONG-TERM CARE SERVICES.—Review
18 and describe differences in long-term care serv-
19 ices, including with respect to providers of such
20 services and the settings in which such services
21 are provided among States and develop stand-
22 ardized definitions for long-term care services.

23 (D) IDENTIFICATION OF KEY ISSUES FOR
24 DEVELOPMENT OF MODEL DISCLOSURE MAR-
25 KETING FORM.—Identify and describe key

1 issues to consider in the development of a pro-
2 posed form for marketing long-term care insur-
3 ance policies.

4 (3) REPORT.—The report described in this
5 paragraph is an NAIC White Paper that is issued
6 not later than 12 months after the date of enact-
7 ment of this Act and contains the results of the re-
8 views conducted under paragraph (2) and the de-
9 scriptions required under that paragraph.

10 (b) NAIC WORKING GROUP TO DEVELOP MODEL
11 DISCLOSURE FORM FOR LONG-TERM CARE INSUR-
12 ANCE.—

13 (1) IN GENERAL.—The Secretary shall request
14 the NAIC to establish, not later than 60 days after
15 the date on which the NAIC White Paper described
16 in subsection (a)(3) is issued and in consultation
17 with the Secretary and the Secretary of the Treas-
18 ury, a Working Group to develop a model disclosure
19 form for marketing long-term care insurance poli-
20 cies.

21 (2) WORKING GROUP MEMBERS.—The Working
22 Group established under paragraph (1) shall be com-
23 posed of the following:

24 (A) Representatives from State Depart-
25 ments of Health (or the most appropriate State

1 agencies with responsibility for oversight of the
2 provision of long-term care).

3 (B) Representatives of long-term care pro-
4 viders and facilities.

5 (C) Consumer advocates.

6 (D) Representatives of issuers of long-term
7 care insurance policies.

8 (E) Representatives of the NAIC or State
9 insurance commissioners.

10 (F) Other experts in long-term care and
11 long-term care insurance policies selected by the
12 Secretary and Secretary of the Treasury or the
13 NAIC.

14 (3) REQUIREMENTS FOR DEVELOPMENT OF
15 FORM.—

16 (A) CONSIDERATIONS.—In developing the
17 model form, the Working Group shall consider
18 the following:

19 (i) Variations among providers, serv-
20 ices, and facilities in the long-term care
21 and long-term care insurance markets.

22 (ii) The results of the reviews and the
23 descriptions included in the NAIC White
24 Paper issued under subsection (a)(3).

1 (iii) Such other information and fac-
2 tors as the Working Group determines ap-
3 propriate.

4 (B) MINIMUM STANDARDS.—The Working
5 Group shall ensure that the model has—

6 (i) minimum standard definitions for
7 coverage of the various types of services
8 and benefits provided under long-term care
9 insurance policies;

10 (ii) minimum standard language for
11 use by issuers of such policies, and for
12 agents selling such policies, in explaining
13 the services and benefits covered under the
14 policies and restrictions on the services and
15 benefits;

16 (iii) minimum standard format, color
17 and type size for disclosure documents;
18 and

19 (iv) such other minimum standards as
20 the Working Group determines appro-
21 priate.

22 (4) DEADLINE FOR DEVELOPMENT.—The
23 Working Group shall issue a proposed model disclo-
24 sure form for marketing long-term care insurance

1 policies not later than 1 year after the date on which
2 the Working Group is established.

3 (5) ADOPTION AND INCORPORATION INTO
4 MODEL ACT AND REGULATION.—The Secretary shall
5 request the NAIC to amend the Model Act and regu-
6 lation to incorporate the use of the proposed model
7 disclosure form issued by the Working Group, not
8 later than 1 year after the date on which the Work-
9 ing Group issues the form.

10 (c) REQUIRED USE OF MODEL DISCLOSURE FORM
11 IN MARKETING LONG-TERM CARE INSURANCE POLI-
12 CIES.—

13 (1) APPLICATION TO TAX-QUALIFIED AND MED-
14 ICAID PARTNERSHIP POLICIES.—Not later than 1
15 year after the date on which the Working Group
16 issues the proposed model disclosure form for mar-
17 keting long-term care insurance policies under sub-
18 section (b):

19 (A) TAX-QUALIFIED POLICIES.—The Sec-
20 retary of the Treasury shall promulgate a regu-
21 lation requiring, not later than 1 year after the
22 date on which the regulation is final, any issuer
23 of a qualified long-term care insurance contract
24 (as defined in section 7702B(b) of the Internal
25 Revenue Code of 1986) to use the proposed

1 model disclosure form for marketing such con-
2 tracts, to the extent such disclosure is not in-
3 consistent with State law.

4 (B) MEDICAID PARTNERSHIP POLICIES.—

5 The Secretary shall promulgate a regulation re-
6 quiring, not later than 1 year after the date on
7 which the regulation is final, any issuer that
8 markets a qualified long-term care insurance
9 contract intended to cover an insured who is a
10 resident of a State with a qualified State long-
11 term care insurance partnership under clause
12 (iii) of section 1917(b)(1)(C) of the Social Se-
13 curity Act (42 U.S.C. 1396p(b)(1)(C)) or a
14 long-term care insurance policy offered in con-
15 nection with a State plan amendment described
16 in clause (iv) of such section to use the pro-
17 posed model disclosure form for marketing such
18 contracts.

19 (2) APPLICATION TO ALL OTHER LONG-TERM
20 CARE INSURANCE POLICIES.—Not later than 18
21 months, or the earliest date on which an amendment
22 could be enacted for those States with legislatures
23 which meet only every other year, after the date on
24 which the NAIC adopts an amended Model Act and
25 regulation to require the use of the proposed model

1 disclosure form issued by the Working Group under
2 subsection (b), each State shall require by statute or
3 regulation any issuer of a long-term care insurance
4 policy to use the proposed model disclosure form
5 when marketing such a policy in the State.

6 **SEC. 103. LTC INSURANCE COMPARE.**

7 (a) IN GENERAL.—Section 6021(d) of the Deficit Re-
8 duction Act of 2005 (42 U.S.C. 1396p note) is amended—

9 (1) in paragraph (2)—

10 (A) in subparagraph (A)—

11 (i) in clause (ii), by striking “and” at
12 the end;

13 (ii) in clause (iii), by striking the pe-
14 riod at the end and inserting “; and”; and

15 (iii) by adding at the end the fol-
16 lowing:

17 “(iv) establish an Internet directory of
18 information regarding long-term care in-
19 surance, to be known as ‘LTC Insurance
20 Compare’, that shall include the following:

21 “(I) Comparison tools to assist
22 consumers in evaluating long-term
23 care insurance policies (as defined in
24 subparagraph (D)) with different ben-
25 efits and features and that allow con-

1 consumers to compare the price, long-
2 term premium stability, and carrier fi-
3 nancial strength of such policies.

4 “(II) State-specific information
5 about the long-term care insurance
6 policies marketed in a State, including
7 the following:

8 “(aa) Whether a State has
9 promulgated rate stability provi-
10 sions or has rate stability proce-
11 dures in place, and how the
12 standards or procedures work.

13 “(bb) The rating history for
14 at least the most recent pre-
15 ceeding 5 years for issuers selling
16 long-term care insurance policies
17 in the State.

18 “(cc) An appropriate sam-
19 pling of the policy forms mar-
20 keted in the State.

21 “(III) Links to State information
22 regarding long-term care under State
23 Medicaid programs (which may be
24 provided, as appropriate, through
25 Internet linkages to the websites of

1 State Medicaid programs) that in-
2 cludes the following:

3 “(aa) The medical assistance
4 provided under each State’s Med-
5 icaid program for nursing facility
6 services and other long-term care
7 services (including any functional
8 criteria imposed for receipt of
9 such services, as reported in ac-
10 cordance with section
11 1902(a)(28)(D) of the Social Se-
12 curity Act) and any differences
13 from benefits and services offered
14 under long-term care insurance
15 policies in the State and the cri-
16 teria for triggering receipt of
17 such benefits and services.

18 “(bb) If the State has a
19 qualified State long-term care in-
20 surance partnership under sec-
21 tion 1917(b)(1)(C)(iii) of the So-
22 cial Security Act, information re-
23 garding how and when an indi-
24 vidual with a partnership long-
25 term care insurance policy who is

1 receiving benefits under the pol-
2 icy should apply for medical as-
3 sistance for nursing facility serv-
4 ices or other long-term care serv-
5 ices under the State Medicaid
6 program and information regard-
7 ing about how Medicaid asset
8 protection is accumulated over
9 time.”; and

10 (B) by adding at the end the following:

11 “(C) CURRENT INFORMATION.—The Sec-
12 retary of Health and Human Services shall en-
13 sure that, to the greatest extent practicable, the
14 information maintained in the National Clear-
15 ingshouse for Long-Term Care Information, in-
16 cluding the information required for LTC In-
17 surance Compare, is the most recent informa-
18 tion available.

19 “(D) LONG-TERM CARE INSURANCE POL-
20 ICY DEFINED.—In subparagraph (A)(iv), the
21 term ‘long-term care insurance policy’ means a
22 qualified long-term care insurance contract (as
23 defined in section 7702B(b) of the Internal
24 Revenue Code of 1986), a qualified long-term
25 care insurance contract that covers an insured

1 who is a resident of a State with a qualified
2 State long-term care insurance partnership
3 under clause (iii) of section 1917(b)(1)(C) of
4 the Social Security Act (42 U.S.C.
5 1396p(b)(1)(C)) or a long-term care insurance
6 policy offered in connection with a State plan
7 amendment described in clause (iv) of such sec-
8 tion, and includes any other insurance policy or
9 rider described in the definition of ‘long-term
10 care insurance’ in section 4 of the model Act
11 promulgated by the National Association of In-
12 surance Commissioners (as adopted December
13 2006).”;

14 (2) in paragraph (3)—

15 (A) by striking “2010” and inserting
16 “2015”; and

17 (B) by redesignating such paragraph as
18 paragraph (4); and

19 (3) by inserting after paragraph (2) the fol-
20 lowing:

21 “(3) CONSULTATION ON LTC INSURANCE COM-
22 PARE.—The Secretary of Health and Human Serv-
23 ices shall consult with the National Association of
24 Insurance Commissioners and the entities and stake-
25 holders specified in section 101(d) of the Confidence

1 in Long-Term Care Insurance Act of 2011 in de-
2 signing and implementing the LTC Insurance Com-
3 pare required under paragraph (2)(A)(iv).”.

4 (b) MEDICAID STATE PLAN REQUIREMENT TO SUB-
5 MIT NURSING FACILITY SERVICES FUNCTIONAL CRI-
6 TERIA DATA.—Section 1902(a)(28) of the Social Security
7 Act (42 U.S.C. 1396a(a)(28)) is amended—

8 (1) in subparagraph (C), by striking “and”
9 after the semicolon;

10 (2) in subparagraph (D)(iii), by adding “and”
11 after the semicolon; and

12 (3) by inserting after subparagraph (D)(iii), the
13 following new subparagraph:

14 “(E) for the annual submission of data re-
15 lating to functional criteria for the receipt of
16 nursing facility services under the plan (in such
17 form and manner as the Secretary shall speci-
18 fy);”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 take effect on the date of enactment of this Act.

23 (2) EXTENSION OF EFFECTIVE DATE FOR
24 STATE LAW AMENDMENT.—In the case of a State
25 plan under title XIX of the Social Security Act (42

1 U.S.C. 1396 et seq.) which the Secretary of Health
2 and Human Services determines requires State legis-
3 lation or State regulation in order for the plan to
4 meet the additional requirements imposed by the
5 amendments made by subsection (b), the State plan
6 shall not be regarded as failing to comply with the
7 requirements of such title solely on the basis of its
8 failure to meet these additional requirements before
9 the first day of the first calendar quarter beginning
10 after the close of the first regular session of the
11 State legislature that begins after the date of enact-
12 ment of this Act. For purposes of the previous sen-
13 tence, in the case of a State that has a 2-year legis-
14 lative session, each year of the session is considered
15 to be a separate regular session of the State legisla-
16 ture.

1 **TITLE II—IMPROVED STATE**
 2 **CONSUMER PROTECTIONS**
 3 **FOR QUALIFIED LONG-TERM**
 4 **CARE INSURANCE CON-**
 5 **TRACTS AND MEDICAID PART-**
 6 **nership Policies**

7 **SEC. 201. APPLICATION OF MEDICAID PARTNERSHIP RE-**
 8 **QUIRED MODEL PROVISIONS TO ALL TAX-**
 9 **QUALIFIED LONG-TERM CARE INSURANCE**
 10 **CONTRACTS.**

11 (a) IN GENERAL.—Section 7702B(g)(1) of the Inter-
 12 nal Revenue Code of 1986 (relating to consumer protec-
 13 tion provisions) is amended—

14 (1) in subparagraph (A), by inserting “(but
 15 only to the extent such requirements do not conflict
 16 with requirements applicable under subparagraph
 17 (B)),” after “paragraph (2)”,

18 (2) by redesignating subparagraphs (B) and
 19 (C) as subparagraphs (C) and (D), respectively, and

20 (3) by inserting after subparagraph (A), the fol-
 21 lowing new subparagraph:

22 “(B) the requirements of the model regula-
 23 tion and model Act described in section
 24 1917(b)(5) of the Social Security Act,”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to contracts issued on or after
3 the date that is 1 year after the date of enactment of this
4 Act.

5 **SEC. 202. STREAMLINED PROCESS FOR APPLYING NEW OR**
6 **UPDATED MODEL PROVISIONS.**

7 (a) SECRETARIAL REVIEW.—

8 (1) TAX-QUALIFIED POLICIES.—

9 (A) 2000 AND 2006 MODEL PROVISIONS.—

10 Not later than 12 months after the date of en-
11 actment of this Act, the Secretary of the Treas-
12 ury, in consultation with the Secretary of
13 Health and Human Services, shall review the
14 model provisions specified in subsection (c)(1)
15 for purposes of determining whether updating
16 any such provisions for a provision specified in
17 section 7702B(g)(2) of the Internal Revenue
18 Code of 1986, or the inclusion of any such pro-
19 visions in such section, for purposes of an in-
20 surance contract qualifying for treatment as a
21 qualified long-term care insurance contract
22 under such Code, would improve consumer pro-
23 tections for insured individuals under such con-
24 tracts.

(B) SUBSEQUENT MODEL PROVISIONS.—

1
2 Not later than 12 months after model provi-
3 sions described in paragraph (2) or (3) of sub-
4 section (c) are adopted by the National Associa-
5 tion of Insurance Commissioners, the Secretary
6 of the Treasury, in consultation with the Sec-
7 retary of Health and Human Services, shall re-
8 view the model provisions to determine whether
9 the application of such provisions to an insur-
10 ance contract for purposes of qualifying for
11 treatment as a qualified long-term care insur-
12 ance contract under section 7702B(g)(2) of the
13 Internal Revenue Code of 1986, would improve
14 consumer protections for insured individuals
15 under such contracts.

16 (2) MEDICAID PARTNERSHIP POLICIES.—

17 (A) SUBSEQUENT MODEL PROVISIONS.—

18 Not later than 12 months after model provi-
19 sions described in paragraph (2) or (3) of sub-
20 section (c) are adopted by the National Associa-
21 tion of Insurance Commissioners, the Secretary
22 of Health and Human Services, in consultation
23 with the Secretary of the Treasury, shall review
24 the model provisions to determine whether the
25 application of such provisions to an insurance

1 contract for purposes of satisfying the require-
2 ments for participation in a qualified State
3 long-term care insurance partnership under sec-
4 tion 1917(b)(1)(C)(iii) of such Act (42 U.S.C.
5 1396p(b)(1)(C)(iii)) would improve consumer
6 protections for insured individuals under such
7 contracts.

8 (B) REVIEW OF OTHER PARTNERSHIP RE-
9 QUIREMENTS.—The Secretary of Health and
10 Human Services, in consultation with the Sec-
11 retary of the Treasury, shall review clauses (iii)
12 and (iv) of section 1917(b)(1)(C) for purposes
13 of determining whether the requirements speci-
14 fied in such clauses should be modified to pro-
15 vide improved consumer protections or, as ap-
16 propriate, to resolve any conflicts with the ap-
17 plication of the 2006 model provisions under
18 paragraph (5) of section 1917(b) (as amended
19 by section 302(a)) or with the application of
20 any model provisions that the Secretary deter-
21 mines should apply to an insurance contract as
22 a result of a review required under subpara-
23 graph (A).

24 (b) EXPEDITED RULEMAKING.—

1 (1) TAX-QUALIFIED POLICIES.—Subject to
2 paragraph (3), if the Secretary of the Treasury de-
3 termines that any model provisions reviewed under
4 subsection (a)(1) should apply for purposes of an in-
5 surance contract qualifying for treatment as a quali-
6 fied long-term care insurance contract under the In-
7 ternal Revenue Code of 1986, the Secretary shall
8 promulgate an interim final rule applying such pro-
9 visions for such purposes not later than 3 months
10 after making such determination.

11 (2) MEDICAID PARTNERSHIP POLICIES.—Sub-
12 ject to paragraph (3), if the Secretary of Health and
13 Human Services determines that any model provi-
14 sions or requirements reviewed under subsection
15 (a)(2) should apply for purposes of an insurance
16 contract satisfying the requirements for participation
17 in a qualified State long-term care insurance part-
18 nership under section 1917(b)(1)(C)(iii) of such Act
19 (42 U.S.C. 1396p(b)(1)(C)(iii)), the Secretary shall
20 promulgate an interim final rule applying such pro-
21 visions for such purposes not later than 3 months
22 after making such determination.

23 (3) CONSULTATION REQUIRED.—The Secretary
24 of the Treasury and the Secretary of Health and
25 Human Services, respectively, shall consult with the

1 National Association of Insurance Commissioners
2 and the entities and stakeholders specified in section
3 101(d) regarding the extent to which it is appro-
4 priate to apply the model provisions described in
5 paragraph (1) or (2) (as applicable) to insurance
6 contracts described in such paragraphs through pro-
7 mulgation of an interim final rule. If, after such
8 consultation—

9 (A) the Secretary of the Treasury deter-
10 mines it would be appropriate to promulgate an
11 interim final rule, the Secretary of the Treasury
12 shall use notice and comment rulemaking to
13 promulgate a rule applying such provisions to
14 insurance contracts described in paragraph (1);
15 and

16 (B) the Secretary of Health and Human
17 Services determines it would be appropriate to
18 promulgate an interim final rule, the Secretary
19 of Health and Human Services shall use notice
20 and comment rulemaking to promulgate a rule
21 applying such provisions to insurance contracts
22 described in paragraph (2).

23 (4) RULE OF CONSTRUCTION RELATING TO AP-
24 PPLICATION OF CONGRESSIONAL REVIEW ACT.—Noth-
25 ing in paragraphs (1), (2), or (3) shall be construed

1 as affecting the application of the sections 801
2 through 808 of title 5, United States Code (com-
3 monly known as the “Congressional Review Act”) to
4 any interim final rule issued in accordance with such
5 paragraphs.

6 (5) TECHNICAL AMENDMENT ELIMINATING
7 PRIOR REVIEW STANDARD MADE OBSOLETE.—Sec-
8 tion 1917(b)(5) of the Social Security Act (42
9 U.S.C. 1396p(b)(5)) is amended by striking sub-
10 paragraph (C).

11 (c) MODEL PROVISIONS.—In this section, the term
12 “model provisions” means—

13 (1) each provision of the long-term care insur-
14 ance model regulation, and the long-term care insur-
15 ance model Act, respectively, promulgated by the
16 National Association of Insurance Commissioners
17 (as adopted as of October 2000 and as of December
18 2006);

19 (2) each provision of the model language relat-
20 ing to marketing disclosures and definitions devel-
21 oped under section 102(b)(1); and

22 (3) each provision of any long-term care insur-
23 ance model regulation, or the long-term care insur-
24 ance model Act, respectively, promulgated by the

1 National Association of Insurance Commissioners
2 and adopted after December 2006.

3 **TITLE III—IMPROVED CON-**
4 **SUMER PROTECTIONS FOR**
5 **MEDICAID PARTNERSHIP**
6 **POLICIES**

7 **SEC. 301. BIENNIAL REPORTS ON IMPACT OF MEDICAID**
8 **LONG-TERM CARE INSURANCE PARTNER-**
9 **SHIPS.**

10 Section 6021(c) of the Deficit Reduction Act of 2005
11 (42 U.S.C. 1396p note) is amended to read as follows:

12 “(c) BIENNIAL REPORTS.—

13 “(1) IN GENERAL.—Not later than January 1,
14 2012, and biennially thereafter, the Secretary of
15 Health and Human Services (in this subsection re-
16 ferred to as the ‘Secretary’) shall issue a report to
17 States and Congress on the long-term care insurance
18 partnerships established in accordance with section
19 1917(b)(1)(C)(ii) of the Social Security Act (42
20 U.S.C. 1396p(b)(1)(C)(ii)). Each report shall in-
21 clude (with respect to the period the report address-
22 es) the following information, nationally and on a
23 State-specific basis:

24 “(A) Analyses of the extent to which such
25 partnerships improve access of individuals to af-

1 fordable long-term care services and benefits
2 and the impact of such partnerships on Federal
3 and State expenditures on long-term care under
4 the Medicare and Medicaid programs.

5 “(B) Analyses of the impact of such part-
6 nerships on consumer decisionmaking with re-
7 spect to purchasing, accessing, and retaining
8 coverage under long-term care insurance poli-
9 cies (as defined in subsection (d)(2)(D)), in-
10 cluding a description of the benefits and serv-
11 ices offered under such policies, the average
12 premiums for coverage under such policies, the
13 number of policies sold and at what ages, the
14 number of policies retained and for how long,
15 the number of policies for which coverage was
16 exhausted, and the number of insured individ-
17 uals who were determined eligible for medical
18 assistance under the State Medicaid program.

19 “(2) DATA.—The reports by issuers of partner-
20 ship long-term care insurance policies required under
21 section 1917(b)(1)(C)(iii)(VI) of the Social Security
22 Act shall include such data as the Secretary shall
23 specify in order to conduct the analyses required
24 under paragraph (1).

1 “(3) PUBLIC AVAILABILITY.—The Secretary
2 shall make each report issued under this subsection
3 publicly available through the LTC Insurance Com-
4 pare website required under subsection (d).

5 “(4) RULE OF CONSTRUCTION.—Nothing in
6 this section shall be construed as requiring the Sec-
7 retary to conduct an independent review of each
8 long-term care insurance policy offered under or in
9 connection with such a partnership.”.

10 **SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR MED-**
11 **ICAID PARTNERSHIPS.**

12 (a) APPLICATION OF 2006 MODEL PROVISIONS.—

13 (1) UPDATING OF 2000 REQUIREMENTS.—

14 (A) IN GENERAL.—Section
15 1917(b)(5)(B)(i) of the Social Security Act (42
16 U.S.C. 1396p(b)(5)(B)(i)) is amended by strik-
17 ing “October 2000” and inserting “December
18 2006”.

19 (B) CONFORMING AMENDMENTS.—

20 (i) Subclause (XVII) of such section is
21 amended by striking “section 26” and in-
22 serting “section 28”.

23 (ii) Subclause (XVIII) of such section
24 is amended by striking “section 29” and
25 inserting “section 31”.

1 (iii) Subclause (XIX) of such section
2 is amended by striking “section 30” and
3 inserting “section 32”.

4 (2) APPLICATION TO GRANDFATHERED PART-
5 NERSHIPS.—Section 1917(b)(1)(C)(iv) of such Act
6 (42 U.S.C. 1396p(b)(1)(C)(iv)) is amended by in-
7 serting “, and the State satisfies the requirements of
8 paragraph (5)” after “2005”.

9 (b) APPLICATION OF PRODUCER TRAINING MODEL
10 ACT REQUIREMENTS.—Section 1917(b)(1)(C) of such Act
11 (42 U.S.C. 1396p(b)(1)(C)) is amended—

12 (1) in clause (iii)(V), by inserting “and satisfies
13 the producer training requirements specified in sec-
14 tion 9 of the model Act specified in paragraph (5)”
15 after “coverage of long-term care”; and

16 (2) in clause (iv), as amended by subsection
17 (a)(2), by inserting “clause (iii)(V) and” before
18 “paragraph (5)”.

19 (c) APPLICATION OF ADDITIONAL REQUIREMENTS
20 FOR ALL PARTNERSHIPS.—Section 1917(b) of the Social
21 Security Act (42 U.S.C. 1396p(b)) is amended—

22 (1) in paragraph (1)(C)—

23 (A) in clause (iii)—

24 (i) by inserting after subclause (VII)

25 the following new subclause:

1 “(VIII) The State satisfies the re-
2 quirements of paragraph (6).”; and

3 (ii) in the flush sentence at the end,
4 by striking “paragraph (5)” and inserting
5 “paragraphs (5) and (6)”; and

6 (B) in clause (iv), as amended by sub-
7 sections (a)(2) and (b)(2), by striking “para-
8 graph (5)” and inserting “paragraphs (5) and
9 (6)”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(6) For purposes of clauses (iii)(VIII) and (iv) of
13 paragraph (1)(C), the requirements of this paragraph are
14 the following:

15 “(A) The State requires issuers of long-term
16 care insurance policies to—

17 “(i) use marketing materials filed with the
18 State for purposes of the partnership in all
19 sales and marketing activities conducted or sup-
20 ported by the issuers in the State with respect
21 to any long-term care insurance policies mar-
22 keted by the issuer in the State;

23 “(ii) provide such materials to all agents
24 selling long-term care insurance policies in the
25 State;

1 “(iii) ensure that agent training and edu-
2 cation courses conducted or supported by the
3 issuers incorporate discussion of marketing ma-
4 terials; and

5 “(iv) make such materials available to any
6 consumer upon request, and to make such ma-
7 terials available to all prospective purchasers of
8 a policy offered under a qualified State long-
9 term care insurance partnership before submis-
10 sion of an application for coverage under that
11 policy.

12 “(B) The State requires issuers of long-term
13 care insurance policies sold in the State to require
14 agents to use any inflation protection comparison
15 form developed by the National Association of Insur-
16 ance Commissioners when selling the policies in the
17 State.

18 “(C) The State requires issuers of long-term
19 care insurance policies sold in the State to comply
20 with the provisions of section 8 of the model Act
21 specified in paragraph (5) relating to contingent
22 nonforfeiture benefits.

23 “(D) The State enacts legislation, not later
24 than January 1, 2013, that establishes rating stand-
25 ards for all issuers of long-term care insurance poli-

1 cies sold in the State that result in rates over the
2 life of the policy that are no less protective of con-
3 sumers than those produced by the premium rate
4 schedule increase standards specified in section 20
5 of the model regulation specified in paragraph (5),
6 unless the State has more stringent procedures or
7 requirements.

8 “(E) The State develops and updates marketing
9 materials filed with the State whenever changes are
10 made under the State plan that relate to eligibility
11 for medical assistance for nursing facility services,
12 including other long-term care services or the
13 amount, duration, or scope of medical assistance for
14 nursing facility services, and also provides to individ-
15 uals at the time of application for medical assistance
16 under the State plan, or under a waiver of the plan
17 materials that describe in clear, simple language the
18 terms of eligibility, the benefits and services pro-
19 vided as such assistance, and rules relating to ad-
20 justment or recovery from the estate of an individual
21 who receives such assistance. Such materials shall
22 include a clear disclosure that medical assistance is
23 not guaranteed to partnership policyholders who ex-
24 haust benefits under a partnership policy, and that
25 Federal changes to the program under this title or

1 State changes to the State plan may affect an indi-
2 vidual’s eligibility for, or receipt of, such assistance.

3 “(F) The State—

4 “(i) through the State Medicaid agency
5 under section 1902(a)(5) and in consultation
6 with the State insurance department, develops
7 materials explaining how the benefits and rules
8 of long-term care policies offered by issuers par-
9 ticipating in the partnership interact with the
10 benefits and rules under the State plan under
11 this title;

12 “(ii) requires agents to use such materials
13 when selling or otherwise discussing how long-
14 term care policies offered by issuers partici-
15 pating in the partnership work with potential
16 purchasers and to provide the materials to any
17 such purchasers upon request;

18 “(iii) informs holders of such policies of
19 any changes in eligibility requirements under
20 the State plan under this title and of any
21 changes in estate recovery rules under the State
22 plan as soon as practicable after such changes
23 are made at the time or at the time of applica-
24 tion for medical assistance; and

1 “(iv) agrees to honor the asset protections
2 of any such policy that were provided under the
3 policy when purchased, regardless of whether
4 the State subsequently terminates a partnership
5 program under the State plan.

6 “(G) The State Medicaid agency under section
7 1902(a)(5) and the State insurance department
8 enter into a memorandum of understanding to—

9 “(i) inform consumers about long-term
10 care policies offered by issuers participating in
11 the partnership, the amount, duration, or scope
12 of medical assistance for nursing facility serv-
13 ices or other long-term care services offered
14 under the State plan, consumer protections, and
15 any other issues such agency and department
16 determine appropriate through such means as
17 the State determines appropriate; and

18 “(ii) jointly facilitate coordination in eligi-
19 bility determinations for medical assistance
20 under the State plan and the provision of bene-
21 fits or other services under such policies and
22 medical assistance provided under the State
23 plan that includes—

1 “(I) the number of policyholders ap-
2 plying for medical assistance under the
3 State plan; and

4 “(II) the number of policyholders
5 deemed eligible (and, if applicable, ineli-
6 gible) for such assistance.

7 “(H) Subject to subparagraph (I), the State en-
8 ters into agreements with other States that have es-
9 tablished qualified State long-term care insurance
10 partnerships under which such States agree to pro-
11 vide reciprocity for policyholders under such partner-
12 ships, including providing guaranteed asset protec-
13 tion to all individuals covered under a policy offered
14 under a qualified State long-term care insurance
15 partnership who bought such a policy in the State
16 or in another State with such a partnership and
17 with which the State has a reciprocity agreement.

18 “(I)(i) In the case of a State described in para-
19 graph (1)(C)(iv) (in this subparagraph referred to as
20 a ‘grandfathered partnership State’)—

21 “(I) the grandfathered partnership State
22 may, in lieu of entering into agreements that
23 satisfy subparagraph (I), enter into individual
24 reciprocity agreements with other States that

1 have established qualified State long-term care
2 insurance partnerships; and

3 “(II) if the grandfathered partnership
4 State has not, as of January 1, 2014, entered
5 into a reciprocity agreement with each State
6 that has a qualified State long-term care insur-
7 ance partnership, the grandfathered partnership
8 State shall enter into and comply with a reci-
9 procity agreement developed by the Secretary in
10 accordance with clause (ii) for each partnership
11 State that the grandfathered State does not
12 have a reciprocity agreement with and, with re-
13 spect to each such State, for so long as the
14 grandfathered partnership State does not have
15 an individual reciprocity agreement with that
16 State.

17 “(ii) In developing a reciprocity agreement for
18 purposes of clause (i)(II), the Secretary shall take
19 into account—

20 “(I) the difference in consumer protections
21 under the partnership program of the grand-
22 fathered partnership State and the other part-
23 nership State that will be covered by the agree-
24 ment, and, to the greatest extent possible, pre-
25 serve the more protective requirements; and

1 “(II) the impact the reciprocity agreement
2 will have on expenditures under the State plan
3 under this title (including under any waivers of
4 such plan) of each such State and, to the great-
5 est extent possible, minimize any negative im-
6 pact on such expenditures and States.”.

7 (d) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 take effect on the date that is 1 year after the date
11 of enactment of this Act.

12 (2) EXTENSION OF EFFECTIVE DATE FOR
13 STATE LAW AMENDMENT.—In the case of a State
14 plan under title XIX of the Social Security Act (42
15 U.S.C. 1396 et seq.) which the Secretary of Health
16 and Human Services determines requires State legis-
17 lation in order for the plan to meet the additional
18 requirements imposed by the amendments made by
19 this section, the State plan shall not be regarded as
20 failing to comply with the requirements of such title
21 solely on the basis of its failure to meet these addi-
22 tional requirements before the first day of the first
23 calendar quarter beginning after the close of the
24 first regular session of the State legislature that be-
25 gins after the date of enactment of this Act. For

1 purposes of the previous sentence, in the case of a
2 State that has a 2-year legislative session, each year
3 of the session is considered to be a separate regular
4 session of the State legislature.

5 **SEC. 303. REPORT TO CONGRESS REGARDING NEED FOR**
6 **MINIMUM ANNUAL COMPOUND INFLATION**
7 **PROTECTION.**

8 Not later than 18 months after the date of enactment
9 of this Act, the Secretary of Health and Human Services
10 (in this section referred to as the “Secretary”) shall sub-
11 mit a report to Congress that includes the Secretary’s rec-
12 ommendation regarding whether legislative or other ad-
13 ministrative action should be taken to require all long-
14 term care insurance policies sold after a date determined
15 by the Secretary in connection with a qualified State long-
16 term care insurance partnership under clause (iii) of sec-
17 tion 1917(b)(1)(C) of the Social Security Act (42 U.S.C.
18 1396p(b)(1)(C)) or a long-term care insurance policy of-
19 fered in connection with a State plan amendment de-
20 scribed in clause (iv) of such section, provide a minimum
21 level of annual compound inflation protection, and if so,
22 whether such requirements should be imposed on a basis
23 related to the age of the policyholder at the time of pur-
24 chase. The Secretary shall include in the report informa-
25 tion on the various levels of inflation protection available

1 under such long-term care insurance partnerships and the
2 methodologies used by issuers of such policies to calculate
3 and present various inflation protection options under
4 such policies, including policies with a future purchase op-
5 tion feature.

6 **TITLE IV—PRESERVATION OF**
7 **STATE AUTHORITY**

8 **SEC. 401. PRESERVATION OF STATE AUTHORITY.**

9 Nothing in this Act, any amendments made by this
10 Act, or any rules promulgated to carry out this Act or
11 such amendments, shall be construed to limit the authority
12 of a State to enact, adopt, promulgate, and enforce any
13 law, rule, regulation, or other measure with respect to
14 long-term care insurance that is in addition to, or more
15 stringent than, requirements established under this Act
16 and the amendments made by this Act.

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