

105TH CONGRESS
1ST SESSION

H. R. 1764

To amend title XIX of the Social Security Act to restrict imposition of Medicaid liens and Medicaid estate recovery for long-term care services in the case of certain individuals who have received benefits under long-term care insurance policies for at least 3 years, and to amend the Internal Revenue Code of 1986 to allow the carryover of reimbursement maximums for flexible spending arrangements, to allow the reimbursement of long-term care insurance premiums by FSA's, and to repeal the inclusion in income of long-term care coverage provided through FSA's.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1997

Mr. HILL (for himself, Mrs. CHENOWETH, and Mr. HUTCHINSON) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XIX of the Social Security Act to restrict imposition of Medicaid liens and Medicaid estate recovery for long-term care services in the case of certain individuals who have received benefits under long-term care insurance policies for at least 3 years, and to amend the Internal Revenue Code of 1986 to allow the carryover of reimbursement maximums for flexible spending arrangements, to allow the reimbursement of long-term care insurance premiums by FSA's, and to repeal the

inclusion in income of long-term care coverage provided through FSA's.

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. RESTRICTING MEDICAID LIENS AND MEDICAID**
 4 **ESTATE RECOVERY FOR LONG-TERM CARE**
 5 **SERVICES IN THE CASE OF CERTAIN INDIVID-**
 6 **UALS WHO HAVE RECEIVED BENEFITS**
 7 **UNDER LONG-TERM CARE INSURANCE POLI-**
 8 **CIES FOR AT LEAST 3 YEARS.**

9 (a) LIMITATION ON LIENS.—Subsection (a) of sec-
 10 tion 1917 of the Social Security Act (42 U.S.C. 1396p)
 11 is amended by adding at the end the following new para-
 12 graph:

13 “(4) No lien may be imposed under paragraph (1)(B)
 14 on an individual's home on account of medical assistance
 15 paid with respect to the provision of long-term care serv-
 16 ices (including nursing facility services and home health
 17 care services) if the individual (as of the date of provision
 18 of such services) had received benefits under a qualified
 19 long-term care insurance contract (as defined in section
 20 7702B(b)(1) of the Internal Revenue Code of 1986) for
 21 at least 3 years during the 5-year period ending on such
 22 date.”.

23 (b) LIMITATION ON ESTATE RECOVERY.—Subsection
 24 (b) of such section is amended—

1 (1) in paragraph (1)(C)(i), by inserting “and
 2 except as provided in paragraph (5)” after “except
 3 as provided in such clause”, and

4 (2) by adding at the end the following new
 5 paragraph:

6 “(5) A State shall not seek adjustment or recovery
 7 of any medical assistance correctly paid on behalf of an
 8 individual under the State plan under this subsection in
 9 the case of medical assistance for which a lien may not
 10 be imposed under subsection (a)(4).”.

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to adjustments or recoveries initi-
 13 ated on or after the date of the enactment of this Act.

14 **SEC. 2. TREATMENT OF CARRYOVERS AND LONG-TERM**
 15 **CARE INSURANCE UNDER FLEXIBLE SPEND-**
 16 **ING ARRANGEMENTS.**

17 (a) ALLOWANCE OF CARRYOVERS, PERMITTED REIM-
 18 BURSEMENT OF LONG-TERM CARE INSURANCE PRE-
 19 MIUMS (AND HEALTH INSURANCE PREMIUMS DURING
 20 UNEMPLOYMENT), AND REPEAL OF INCOME INCLUSION
 21 FOR LONG-TERM CARE INSURANCE.—Subsection (c) of
 22 section 106 of the Internal Revenue Code of 1986 (relat-
 23 ing to inclusion of long-term care benefits provided
 24 through flexible spending arrangements) is amended to
 25 read as follows:

1 “(c) SPECIAL RULES RELATING TO FLEXIBLE
2 SPENDING ARRANGEMENTS FOR HEALTH.—

3 “(1) CARRYOVER PERMITTED.—

4 “(A) IN GENERAL.—For purposes of this
5 title, a flexible spending arrangement for health
6 shall not cease to be treated as such an ar-
7 rangement, and no amount shall be includible
8 in the gross income of the participant in such
9 arrangement, solely because the maximum
10 amount of reimbursement otherwise available to
11 a participant under such arrangement for any
12 year is increased by the carryover amount.

13 “(B) CARRYOVER AMOUNT.—For purposes
14 of this paragraph, the term ‘carryover amount’
15 means, for any participant, for any year, and
16 with respect to any flexible spending arrange-
17 ment, the excess (if any) of—

18 “(i) the maximum amount of reim-
19 bursement available to such participant
20 under such arrangement for the preceding
21 year (determined after the application of
22 this paragraph), over

23 “(ii) the actual amount of reimburse-
24 ment to which such participant is entitled
25 under such arrangement for such preced-

1 ing year by reason of covered claims in-
2 curred.

3 In no event shall the carryover amount exceed
4 the sum of the premiums paid for coverage
5 under such arrangement with respect to such
6 participant for such year and such preceding
7 year.

8 “(2) REIMBURSEMENT FOR LONG-TERM CARE
9 INSURANCE PREMIUMS AND (DURING UNEMPLOY-
10 MENT) FOR HEALTH INSURANCE PREMIUMS.—For
11 purposes of this title, a flexible spending arrange-
12 ment for health shall not cease to be treated as such
13 an arrangement, and no amount shall be includible
14 in the gross income of the participant in such ar-
15 rangement, solely because such arrangement—

16 “(A) treats premium payments for any
17 qualified long-term care insurance contract (as
18 defined in section 7702B(b)) for the taxpayer
19 and the taxpayer’s family members as reim-
20 bursable expenses, or

21 “(B) treats premium payments for medical
22 insurance for the taxpayer and the taxpayer’s
23 family members as reimbursable expenses if
24 such payments are made—

1 “(i) after separation of the taxpayer
2 from employment, and

3 “(ii) to obtain insurance for the pe-
4 riod beginning on or after the date of such
5 separation and ending on or before the
6 earlier of—

7 “(I) the date which is 18 months
8 after the date of such separation, or

9 “(II) the date on which the tax-
10 payer becomes employed full-time.

11 “(3) DEFINITIONS AND SPECIAL RULE REGARD-
12 ING INSURANCE PREMIUMS.—For purposes of para-
13 graph (2)—

14 “(A) FAMILY MEMBER.—The term ‘family
15 member’ means, with respect to any taxpayer—

16 “(i) the spouse of the taxpayer,

17 “(ii) any child (within the meaning of
18 section 151) of the taxpayer, if such child
19 has not attained the age of 19 at the close
20 of the calendar year in which the taxable
21 year of the taxpayer begins, and

22 “(iii) any parent or stepparent of the
23 taxpayer or of the taxpayer’s spouse.

24 “(B) MEDICAL INSURANCE.—The term
25 ‘medical insurance’ means insurance covering

1 medical care referred to in subparagraph (A) or
2 (B) of section 213(d)(1).

3 “(C) LIMITATION ON LONG-TERM CARE IN-
4 SURANCE PREMIUMS.—The rule of the last sen-
5 tence of section 213(d)(1) and the rules of sec-
6 tion 213(d)(10) (relating to eligible long-term
7 care premiums) shall apply.

8 “(4) FLEXIBLE SPENDING ARRANGEMENT.—
9 For purposes of this subsection, a flexible spending
10 arrangement is a benefit program which provides
11 employees with coverage under which—

12 “(A) specified incurred expenses may be
13 reimbursed (subject to reimbursement maxi-
14 mums and other reasonable conditions), and

15 “(B) the maximum amount of reimburse-
16 ment which is reasonably available to a partici-
17 pant for such coverage is less than 500 percent
18 of the value of such coverage.

19 In the case of an insured plan, the maximum
20 amount reasonably available shall be determined on
21 the basis of the underlying coverage.

22 “(5) COORDINATION WITH CAFETERIA PLAN
23 PROVISIONS.—Section 125(a) shall not fail to apply
24 to a participant in a plan, and a plan shall not fail
25 to be treated as a cafeteria plan, solely because a

1 flexible spending arrangement available under the
2 plan—

3 “(A) increases the maximum amount of re-
4 imbursement otherwise available by the carry-
5 over amount, as described in paragraph (1), or

6 “(B) treats premium payments as reim-
7 bursable expenses as described paragraph (2).”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to years beginning after the date
10 of the enactment of this Act.

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