

107TH CONGRESS
2D SESSION

H. R. 4002

To amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 2002

Mrs. DAVIS of California introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

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 Sup-
5 port and Incentive Act of 2002”.

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

3 (a) IN GENERAL.—Part VII of subchapter B of chap-
 4 ter 1 of the Internal Revenue Code of 1986 (relating to
 5 additional itemized deductions) is amended by redesignig-
 6 nating section 223 as section 224 and by inserting after
 7 section 222 the following new section:

8 **“SEC. 223. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-**
 9 **SURANCE CONTRACTS.**

10 “(a) IN GENERAL.—In the case of an individual,
 11 there shall be allowed as a deduction an amount equal to
 12 the applicable percentage of the amount of eligible long-
 13 term care premiums (as defined in section 213(d)(10))
 14 paid during the taxable year for coverage for the taxpayer
 15 and the spouse and dependents of the taxpayer under a
 16 qualified long-term care insurance contract (as defined in
 17 section 7702B(b)).

18 “(b) APPLICABLE PERCENTAGE.—For purposes of
 19 subsection (a)—

20 “(1) AGE 65 OR OLDER.—In the case of an in-
 21 dividual who has attained age 65 as of the close of
 22 the taxable year, the applicable percentage shall be
 23 75 percent.

24 “(2) UNDER AGE 65.—In the case of an indi-
 25 vidual who has not attained age 65 as of the close

1 of the taxable year, the applicable percentage shall
2 be 50 percent.

3 “(c) COORDINATION WITH OTHER DEDUCTIONS.—
4 Any amount paid by a taxpayer for any qualified long-
5 term care insurance contract to which subsection (a) ap-
6 plies shall not be taken into account in computing the
7 amount allowable to the taxpayer as a deduction under
8 section 162(l) or 213(a).”.

9 (b) LONG-TERM CARE INSURANCE PERMITTED TO
10 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
11 SPENDING ARRANGEMENTS.—

12 (1) CAFETERIA PLANS.—Section 125(f) of the
13 Internal Revenue Code of 1986 (defining qualified
14 benefits) is amended by inserting before the period
15 at the end “; except that such term shall include the
16 payment of premiums for any qualified long-term
17 care insurance contract (as defined in section
18 7702B) to the extent the amount of such payment
19 does not exceed the eligible long-term care premiums
20 (as defined in section 213(d)(10)) for such con-
21 tract”.

22 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
23 Section 106 of such Code (relating to contributions
24 by an employer to accident and health plans) is
25 amended by striking subsection (c).

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 62(a) of the Internal Revenue Code
3 of 1986 is amended by inserting after paragraph
4 (17) the following new item:

5 “(18) PREMIUMS ON QUALIFIED LONG-TERM
6 CARE INSURANCE CONTRACTS.—The deduction al-
7 lowed by section 223.”.

8 (2) The table of sections for part VII of sub-
9 chapter B of chapter 1 of such Code is amended by
10 striking the last item and inserting the following
11 new items:

“Sec. 223. Premiums on qualified long-term care insurance con-
tracts.

“Sec. 224. Cross reference.”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2001.

15 **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**
16 **NEEDS.**

17 (a) IN GENERAL.—Subpart A of part IV of sub-
18 chapter A of chapter 1 of the Internal Revenue Code of
19 1986 (relating to nonrefundable personal credits) is
20 amended by inserting after section 25B the following new
21 section:

1 **“SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM**
2 **CARE NEEDS.**

3 “(a) ALLOWANCE OF CREDIT.—There shall be al-
4 lowed as a credit against the tax imposed by this chapter
5 for the taxable year an amount equal to \$4,000 multiplied
6 by the number of applicable individuals with respect to
7 whom the taxpayer is an eligible caregiver for the taxable
8 year.

9 “(b) LIMITATIONS AND ADJUSTMENTS.—

10 “(1) IN GENERAL.—The amount of the credit
11 allowable under subsection (a) shall be reduced (but
12 not below zero) by \$100 for each \$1,000 (or fraction
13 thereof) by which the taxpayer’s modified adjusted
14 gross income exceeds the threshold amount. For
15 purposes of the preceding sentence, the term ‘modi-
16 fied adjusted gross income’ means adjusted gross in-
17 come increased by any amount excluded from gross
18 income under section 911, 931, or 933.

19 “(2) THRESHOLD AMOUNT.—For purposes of
20 paragraph (1), the term ‘threshold amount’ means—

21 “(A) \$150,000 in the case of a joint re-
22 turn, and

23 “(B) \$75,000 in any other case.

24 “(3) INDEXING.—In the case of any taxable
25 year beginning in a calendar year after 2003, each

1 dollar amount contained in paragraph (2) shall be
 2 increased by an amount equal to the product of—

3 “(A) such dollar amount, and

4 “(B) the medical care cost adjustment de-
 5 termined under section 213(d)(10)(B)(ii) for
 6 the calendar year in which the taxable year be-
 7 gins, determined by substituting ‘August 2002’
 8 for ‘August 1996’ in subclause (II) thereof.

9 If any increase determined under the preceding sen-
 10 tence is not a multiple of \$50, such increase shall
 11 be rounded to the next lowest multiple of \$50.

12 “(4) APPLICATION WITH OTHER CREDITS.—

13 The credit allowed by subsection (a) for any taxable
 14 year shall not exceed the excess of—

15 “(A) the sum of the regular tax liability
 16 (as defined in section 26(b)) plus the tax im-
 17 posed by section 55, over

18 “(B) the sum of the credits allowable
 19 under this subpart (other than this section) and
 20 section 27 for the taxable year.

21 “(c) DEFINITIONS.—For purposes of this section—

22 “(1) APPLICABLE INDIVIDUAL.—

23 “(A) IN GENERAL.—The term ‘applicable
 24 individual’ means, with respect to any taxable
 25 year, any individual—

1 “(i) who has attained age 65, and
2 “(ii) who has been certified, before the
3 due date for filing the return of tax for the
4 taxable year (without extensions), by a
5 physician (as defined in section 1861(r)(1)
6 of the Social Security Act) as being an in-
7 dividual with long-term care needs de-
8 scribed in subparagraph (B) for a period—
9 “(I) which is at least 180 con-
10 secutive days, and
11 “(II) a portion of which occurs
12 within the taxable year.

13 Such term shall not include any individual oth-
14 erwise meeting the requirements of the pre-
15 ceding sentence unless within the 39½ month
16 period ending on such due date (or such other
17 period as the Secretary prescribes) a physician
18 (as so defined) has certified that such indi-
19 vidual meets such requirements.

20 “(B) INDIVIDUALS WITH LONG-TERM CARE
21 NEEDS.—An individual is described in this sub-
22 paragraph if the individual is unable to perform
23 (without substantial assistance from another in-
24 dividual) at least 2 activities of daily living (as

defined in section 7702B(c)(2)(B)) due to a loss of functional capacity.

“(2) ELIGIBLE CAREGIVER.—

“(A) IN GENERAL.—A taxpayer shall be treated as an eligible caregiver for any taxable year with respect to the following individuals:

“(i) The taxpayer.

“(ii) The taxpayer’s spouse.

“(iii) An individual with respect to whom the taxpayer is allowed a deduction under section 151 for the taxable year.

“(iv) An individual who would be described in clause (iii) for the taxable year if section 151(c)(1)(A) were applied by substituting for the exemption amount an amount equal to the sum of the exemption amount, the standard deduction under section 63(c)(2)(C), and any additional standard deduction under section 63(c)(3) which would be applicable to the individual if clause (iii) applied.

“(v) An individual who would be described in clause (iii) for the taxable year if—

1 “(I) the requirements of clause
2 (iv) are met with respect to the indi-
3 vidual, and

4 “(II) the requirements of sub-
5 paragraph (B) are met with respect to
6 the individual in lieu of the support
7 test of section 152(a).

8 “(B) RESIDENCY TEST.—The require-
9 ments of this subparagraph are met if an indi-
10 vidual has as his principal place of abode the
11 home of the taxpayer and—

12 “(i) in the case of an individual who
13 is an ancestor or descendant of the tax-
14 payer or the taxpayer’s spouse, is a mem-
15 ber of the taxpayer’s household for over
16 half the taxable year, or

17 “(ii) in the case of any other indi-
18 vidual, is a member of the taxpayer’s
19 household for the entire taxable year.

20 “(C) SPECIAL RULES WHERE MORE THAN
21 1 ELIGIBLE CAREGIVER.—

22 “(i) IN GENERAL.—If more than 1 in-
23 dividual is an eligible caregiver with re-
24 spect to the same applicable individual for
25 taxable years ending with or within the

1 same calendar year, a taxpayer shall be
2 treated as the eligible caregiver if each
3 such individual (other than the taxpayer)
4 files a written declaration (in such form
5 and manner as the Secretary may pre-
6 scribe) that such individual will not claim
7 such applicable individual for the credit
8 under this section.

9 “(ii) NO AGREEMENT.—If each indi-
10 vidual required under clause (i) to file a
11 written declaration under clause (i) does
12 not do so, the individual with the highest
13 modified adjusted gross income (as defined
14 in section 32(c)(5)) shall be treated as the
15 eligible caregiver.

16 “(iii) MARRIED INDIVIDUALS FILING
17 SEPARATELY.—In the case of married indi-
18 viduals filing separately, the determination
19 under this subparagraph as to whether the
20 husband or wife is the eligible caregiver
21 shall be made under the rules of clause (ii)
22 (whether or not one of them has filed a
23 written declaration under clause (i)).

24 “(d) IDENTIFICATION REQUIREMENT.—No credit
25 shall be allowed under this section to a taxpayer with re-

1 spect to any applicable individual unless the taxpayer in-
2 cludes the name and taxpayer identification number of
3 such individual, and the identification number of the phy-
4 sician certifying such individual, on the return of tax for
5 the taxable year.

6 “(e) TAXABLE YEAR MUST BE FULL TAXABLE
7 YEAR.—Except in the case of a taxable year closed by rea-
8 son of the death of the taxpayer, no credit shall be allow-
9 able under this section in the case of a taxable year cov-
10 ering a period of less than 12 months.

11 “(f) CARRYFORWARD OF UNUSED CREDIT.—If the
12 credit allowable under subsection (a) exceeds the limita-
13 tion imposed by subsection (b)(4) for the taxable year,
14 such excess shall be carried to the succeeding taxable year
15 and added to the credit allowable under subsection (a) for
16 such taxable year.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 6213(g)(2) of the Internal Revenue
19 Code of 1986 is amended by striking “and” at the
20 end of subparagraph (L), by striking the period at
21 the end of subparagraph (M) and inserting “, and”,
22 and by inserting after subparagraph (M) the fol-
23 lowing new subparagraph:

24 “(N) an omission of a correct TIN or phy-
25 sician identification required under section

1 25C(d) (relating to credit for taxpayers with
2 long-term care needs) to be included on a re-
3 turn.”.

4 (2) Section 23(b)(4) is amended by striking
5 “this section” and inserting “this section and section
6 25C”.

7 (3) Section 24(b)(3)(B) is amended by striking
8 “23 and 25B” and inserting “23, 25B, and 25C”.

9 (4) Section 25(e)(1)(C) is amended by inserting
10 “25C,” after “25B,”.

11 (5) Section 26(a)(1) is amended by striking
12 “and 25B” and inserting “, 25B, and 25C”.

13 (6) Section 904(h) is amended by striking “and
14 25B” and inserting “, 25B, and 25C”.

15 (7) Section 1400C(d) is amended by striking
16 “and 25B” and inserting “, 25B, and 25C”.

17 (8) The table of sections for subpart A of part
18 IV of subchapter A of chapter 1 of such Code is
19 amended by inserting after the item relating to sec-
20 tion 25B the following new item:

 “Sec. 25C. Credit for taxpayers with long-term care needs.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2002.

1 **SEC. 4. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-**
 2 **TERM CARE INSURANCE.**

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

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

11 “(i) MODEL REGULATION.—The fol-
 12 lowing requirements of the model regula-
 13 tion:

14 “(I) Section 6A (relating to guar-
 15 anteed renewal or noncancellability),
 16 and the requirements of section 6B of
 17 the model Act relating to such section
 18 6A.

19 “(II) Section 6B (relating to pro-
 20 hibitions on limitations and exclu-
 21 sions).

22 “(III) Section 6C (relating to ex-
 23 tension of benefits).

24 “(IV) Section 6D (relating to
 25 continuation or conversion of cov-
 26 erage).

1 “(V) Section 6E (relating to dis-
2 continuance and replacement of poli-
3 cies).

4 “(VI) Section 7 (relating to unin-
5 tentional lapse).

6 “(VII) Section 8 (relating to dis-
7 closure), other than section 8F there-
8 of.

9 “(VIII) Section 11 (relating to
10 prohibitions against post-claims un-
11 derwriting).

12 “(IX) Section 12 (relating to
13 minimum standards).

14 “(X) Section 25 (relating to pro-
15 hibition against preexisting conditions
16 and probationary periods in replace-
17 ment policies or certificates).

18 “(XI) The provisions of section
19 26 relating to contingent nonforfeiture
20 benefits, if the policyholder declines
21 the offer of a nonforfeiture provision
22 described in paragraph (4).

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

1 “(I) Section 6C (relating to pre-
2 existing conditions).

3 “(II) Section 6D (relating to
4 prior hospitalization).

5 “(III) The provisions of section 8
6 relating to contingent nonforfeiture
7 benefits, if the policyholder declines
8 the offer of a nonforfeiture provision
9 described in paragraph (4).

10 “(B) DEFINITIONS.—For purposes of this
11 paragraph—

12 “(i) MODEL PROVISIONS.—The terms
13 ‘model regulation’ and ‘model Act’ mean
14 the long-term care insurance model regula-
15 tion, and the long-term care insurance
16 model Act, respectively, promulgated by
17 the National Association of Insurance
18 Commissioners (as adopted as of Sep-
19 tember 2000).

20 “(ii) COORDINATION.—Any provision
21 of the model regulation or model Act listed
22 under clause (i) or (ii) of subparagraph
23 (A) shall be treated as including any other
24 provision of such regulation or Act nec-
25 essary to implement the provision.

1 “(iii) DETERMINATION.—For pur-
 2 poses of this section and section 4980C,
 3 the determination of whether any require-
 4 ment of a model regulation or the model
 5 Act has been met shall be made by the
 6 Secretary.”.

7 (b) EXCISE TAX.—Paragraph (1) of section
 8 4980C(c) of such Code (relating to requirements of model
 9 provisions) is amended to read as follows:

10 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

11 “(A) MODEL REGULATION.—The following
 12 requirements of the model regulation must be
 13 met:

14 “(i) Section 9 (relating to required
 15 disclosure of rating practices to con-
 16 sumer).”

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

19 “(iii) Section 15 (relating to reporting
 20 requirements), except that the issuer shall
 21 also report at least annually the number of
 22 claims denied during the reporting period
 23 for each class of business (expressed as a
 24 percentage of claims denied), other than
 25 claims denied for failure to meet the wait-

1 ing period or because of any applicable
2 preexisting condition.

3 “(iv) Section 22 (relating to filing re-
4 quirements for marketing).

5 “(v) Section 23 (relating to standards
6 for marketing), including inaccurate com-
7 pletion of medical histories, other than
8 paragraphs (1), (6), and (9) of section
9 23C, except that—

10 “(I) in addition to such require-
11 ments, no person shall, in selling or
12 offering to sell a qualified long-term
13 care insurance contract, misrepresent
14 a material fact; and

15 “(II) no such requirements shall
16 include a requirement to inquire or
17 identify whether a prospective appli-
18 cant or enrollee for long-term care in-
19 surance has accident and sickness in-
20 surance.

21 “(vi) Section 24 (relating to suit-
22 ability).

23 “(vii) Section 29 (relating to standard
24 format outline of coverage).

1 “(viii) Section 30 (relating to require-
2 ment to deliver shopper’s guide).

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

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

10 “(i) Section 6F (relating to right to
11 return), except that such section shall also
12 apply to denials of applications and any re-
13 fund shall be made within 30 days of the
14 return or denial.

15 “(ii) Section 6G (relating to outline of
16 coverage).

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

19 “(iv) Section 6I (relating to policy
20 summary).

21 “(v) Section 6J (relating to monthly
22 reports on accelerated death benefits).

23 “(vi) Section 7 (relating to incontest-
24 ability period).

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

5 (c) ADDITIONAL PROTECTIONS.—

6 (1) IN GENERAL.—Paragraph (1) of section
7 7702B(g) of such Code (relating to consumer pro-
8 tection provisions) is amended by striking “and” at
9 the end of subparagraph (B), by striking the period
10 at the end of subparagraph (C) and inserting a
11 comma, and by adding at the end the following new
12 subparagraphs:

13 “(D) the inflation protection requirement
14 of paragraph (5),

15 “(E) the lifetime deductible requirement of
16 paragraph (6),

17 “(F) the interchangeability requirement of
18 paragraph (7), and

19 “(G) the care management/care coordina-
20 tion requirement of paragraph (8).”

21 (2) REQUIREMENTS.—Subsection (g) of section
22 7702B of such Code is amended by redesignating
23 paragraph (5) as paragraph (9) and by inserting
24 after paragraph (4) the following new paragraphs:

1 “(5) INFLATION PROTECTION REQUIREMENT.—

2 The requirement of this paragraph is met if the con-
3 tract provides for benefit levels to rise at a rate
4 which is meaningful to account for reasonably antici-
5 pated increases in the cost of long-term care services
6 covered by the contract.

7 “(6) LIFETIME DEDUCTIBLE REQUIREMENT.—

8 The requirement of this paragraph is met if the con-
9 tract requires that no more than 1 deductible
10 amount applies for all benefits provided during the
11 entire lifetime of the covered individual.

12 “(7) INTERCHANGEABILITY REQUIREMENT.—

13 The requirement of this paragraph is met if the pol-
14 icyholder has the sole discretion to designate how
15 any maximum benefit amount under the contract is
16 allocated among the benefits provided under the con-
17 tract.

18 “(8) CARE MANAGEMENT/CARE COORDINATION
19 REQUIREMENT.—

20 “(A) IN GENERAL.—The requirement of
21 this paragraph is met if the contract requires
22 that the covered individual is assigned a care
23 manager/coordinator.

24 “(B) CARE MANAGER/COORDINATOR.—For
25 purposes of subparagraph (A), the term ‘care

1 manager/coordinator’ means an individual who,
2 either alone or as part of a team, is responsible
3 for performing assessments and reassessments,
4 developing plans of care, coordinating the provi-
5 sion of care, and monitoring the delivery of
6 services.”

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to policies issued more than 1 year
9 after the date of the enactment of this Act.

○