

109TH CONGRESS
1ST SESSION

H. R. 2682

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

MAY 26, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. POMEROY, Mr. RAMSTAD, Ms. HERSETH, Mr. SIMMONS, Mr. MICHAUD, Mr. SHAYS, Mr. MARKEY, Mr. BOOZMAN, and Mr. KING of New York) 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 and
5 Retirement Security Act of 2005”.

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 redesign-
 6 nating section 224 as section 225 and by inserting after
 7 section 223 the following new section:

8 **“SEC. 224. 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 taxpayer’s spouse and dependents under a quali-
 16 fied long-term care insurance contract (as defined in sec-
 17 tion 7702B(b)).

18 “(b) APPLICABLE PERCENTAGE.—For purposes of
 19 subsection (a), the applicable percentage shall be deter-
 20 mined in accordance with the following table:

“For taxable years beginning in calendar year—	The ap- plicable percent- age is—
2005, 2006, or 2007	25
2008	35
2009	65
2010 or thereafter	100.

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

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

10 (1) CAFETERIA PLANS.—The last sentence of
 11 section 125(f) of such Code (defining qualified bene-
 12 fits) is amended by inserting before the period at the
 13 end “; except that such term shall include the pay-
 14 ment of premiums for any qualified long-term care
 15 insurance contract (as defined in section 7702B) to
 16 the extent the amount of such payment does not ex-
 17 ceed the eligible long-term care premiums (as de-
 18 fined in section 213(d)(10)) for such contract”.

19 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
 20 Section 106 of such Code (relating to contributions
 21 by an employer to accident and health plans) is
 22 amended by striking subsection (c) and redesign-
 23 ating subsection (d) as subsection (c).

24 (c) CONFORMING AMENDMENTS.—

1 (1) Section 62(a) of such Code is amended by
2 inserting before the last sentence at the end the fol-
3 lowing new paragraph:

4 “(21) PREMIUMS ON QUALIFIED LONG-TERM
5 CARE INSURANCE CONTRACTS.—The deduction al-
6 lowed by section 224.”.

7 (2) Sections 223(b)(4)(B), 223(d)(4)(C),
8 223(f)(3)(B), 3231(e)(11), 3306(b)(18),
9 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of
10 such Code are each amended by striking “section
11 106(d)” and inserting “section 106(c)”.

12 (3) Section 6041 of such Code is amended—

13 (A) in subsection (f)(1) by striking “(as
14 defined in section 106(c)(2))”, and

15 (B) by adding at the end the following new
16 subsection:

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

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

24 “(2) the maximum amount of reimbursement
25 which is reasonably available to a participant for

1 such coverage is less than 500 percent of the value
2 of such coverage.

3 In the case of an insured plan, the maximum amount rea-
4 sonably available shall be determined on the basis of the
5 underlying coverage.”.

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

“Sec. 224. Premiums on qualified long-term care insurance contracts.
“Sec. 225. Cross reference.”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to taxable years beginning after Decem-
14 ber 31, 2004.

15 (2) CAFETERIA PLANS AND FLEXIBLE SPEND-
16 ING ARRANGEMENTS.—The amendments made by
17 subsection (b) shall apply to taxable years beginning
18 after December 31, 2006.

19 **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**
20 **NEEDS.**

21 (a) IN GENERAL.—Subpart A of part IV of sub-
22 chapter A of chapter 1 of the Internal Revenue Code of
23 1986 (relating to nonrefundable personal credits) is

1 amended by inserting after section 25B the following new
2 section:

3 **“SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM**
4 **CARE NEEDS.**

5 “(a) ALLOWANCE OF CREDIT.—

6 “(1) IN GENERAL.—There shall be allowed as a
7 credit against the tax imposed by this chapter for
8 the taxable year an amount equal to the applicable
9 credit amount multiplied by the number of applica-
10 ble individuals with respect to whom the taxpayer is
11 an eligible caregiver for the taxable year.

12 “(2) APPLICABLE CREDIT AMOUNT.—For pur-
13 poses of paragraph (1), the applicable credit amount
14 shall be determined in accordance with the following
15 table:

“For taxable years beginning in calender year—	The ap- plicable credit amount is—
2005	\$1,000
2006	1,500
2007	2,000
2008	2,500
2009 or thereafter	3,000.

16 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
17 COME.—

18 “(1) IN GENERAL.—The amount of the credit
19 allowable under subsection (a) shall be reduced (but
20 not below zero) by \$100 for each \$1,000 (or fraction

thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

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

“(A) \$150,000 in the case of a joint return, and

“(B) \$75,000 in any other case.

“(3) INDEXING.—In the case of any taxable year beginning in a calendar year after 2005, each dollar amount contained in paragraph (2) shall be increased by an amount equal to the product of—

“(A) such dollar amount, and

“(B) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting ‘August 2004’ for ‘August 1996’ in subclause (II) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

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

1 “(1) APPLICABLE INDIVIDUAL.—

2 “(A) IN GENERAL.—The term ‘applicable
3 individual’ means, with respect to any taxable
4 year, any individual who has been certified, be-
5 fore the due date for filing the return of tax for
6 the taxable year (without extensions), by a phy-
7 sician (as defined in section 1861(r)(1) of the
8 Social Security Act) as being an individual with
9 long-term care needs described in subparagraph
10 (B) for a period—

11 “(i) which is at least 180 consecutive
12 days, and

13 “(ii) a portion of which occurs within
14 the taxable year.

15 Notwithstanding the preceding sentence, a cer-
16 tification shall not be treated as valid unless it
17 is made within the 39½ month period ending
18 on such due date (or such other period as the
19 Secretary prescribes).

20 “(B) INDIVIDUALS WITH LONG-TERM CARE
21 NEEDS.—An individual is described in this sub-
22 paragraph if the individual meets any of the fol-
23 lowing requirements:

24 “(i) The individual is at least 6 years
25 of age and—

1 “(I) is unable to perform (with-
2 out substantial assistance from an-
3 other individual) at least 3 activities
4 of daily living (as defined in section
5 7702B(c)(2)(B)) due to a loss of
6 functional capacity, or

7 “(II) requires substantial super-
8 vision to protect such individual from
9 threats to health and safety due to se-
10 vere cognitive impairment and is un-
11 able to preform, without reminding or
12 cuing assistance, at least 1 activity of
13 daily living (as so defined) or to the
14 extent provided in regulations pre-
15 scribed by the Secretary (in consulta-
16 tion with the Secretary of Health and
17 Human Services), is unable to engage
18 in age appropriate activities.

19 “(ii) The individual is at least 2 but
20 not 6 years of age and is unable due to a
21 loss of functional capacity to perform
22 (without substantial assistance from an-
23 other individual) at least 2 of the following
24 activities: eating, transferring, or mobility.

1 “(iii) The individual is under 2 years
2 of age and requires specific durable med-
3 ical equipment by reason of a severe health
4 condition or requires a skilled practitioner
5 trained to address the individual’s condi-
6 tion to be available if the individual’s par-
7 ents or guardians are absent.

8 “(2) ELIGIBLE CAREGIVER.—

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

12 “(i) The taxpayer.

13 “(ii) The taxpayer’s spouse.

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

17 “(iv) An individual who would be de-
18 scribed in clause (iii) for the taxable year
19 if section 151(c) were applied by sub-
20 stituting for the exemption amount an
21 amount equal to the sum of the exemption
22 amount, the standard deduction under sec-
23 tion 63(c)(2)(C), and any additional stand-
24 ard deduction under section 63(c)(3) which

1 would be applicable to the individual if
2 clause (iii) applied.

3 “(v) An individual who would be de-
4 scribed in clause (iii) for the taxable year
5 if—

6 “(I) the requirements of clause
7 (iv) are met with respect to the indi-
8 vidual, and

9 “(II) the requirements of sub-
10 paragraph (B) are met with respect to
11 the individual in lieu of the support
12 test under subsection (c)(1)(D) or
13 (d)(1)(C) of section 152.

14 “(B) RESIDENCY TEST.—The require-
15 ments of this subparagraph are met if an indi-
16 vidual has as his principal place of abode the
17 home of the taxpayer and—

18 “(i) in the case of an individual who
19 is an ancestor or descendant of the tax-
20 payer or the taxpayer’s spouse, is a mem-
21 ber of the taxpayer’s household for over
22 half the taxable year, or

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

1 “(C) SPECIAL RULES WHERE MORE THAN
2 1 ELIGIBLE CAREGIVER.—

3 “(i) IN GENERAL.—If more than 1 in-
4 dividual is an eligible caregiver with re-
5 spect to the same applicable individual for
6 taxable years ending with or within the
7 same calendar year, a taxpayer shall be
8 treated as the eligible caregiver if each
9 such individual (other than the taxpayer)
10 files a written declaration (in such form
11 and manner as the Secretary may pre-
12 scribe) that such individual will not claim
13 such applicable individual for the credit
14 under this section.

15 “(ii) NO AGREEMENT.—If each indi-
16 vidual required under clause (i) to file a
17 written declaration under clause (i) does
18 not do so, the individual with the highest
19 adjusted gross income shall be treated as
20 the eligible caregiver.

21 “(iii) MARRIED INDIVIDUALS FILING
22 SEPARATELY.—In the case of married indi-
23 viduals filing separately, the determination
24 under this subparagraph as to whether the
25 husband or wife is the eligible caregiver

1 shall be made under the rules of clause (ii)
 2 (whether or not one of them has filed a
 3 written declaration under clause (i)).

4 “(d) IDENTIFICATION REQUIREMENT.—No credit
 5 shall be allowed under this section to a taxpayer with re-
 6 spect to any applicable individual unless the taxpayer in-
 7 cludes the name and taxpayer identification number of
 8 such individual, and the identification number of the phy-
 9 sician certifying such individual, on the return of tax for
 10 the taxable year.

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

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 6213(g)(2) of such Code is amend-
 18 ed by striking “and” at the end of subparagraph
 19 (L), by striking the period at the end of subpara-
 20 graph (M) and inserting “, and”, and by inserting
 21 after subparagraph (M) the following new subpara-
 22 graph:

23 “(N) an omission of a correct TIN or phy-
 24 sician identification required under section
 25 25C(d) (relating to credit for taxpayers with

1 long-term care needs) to be included on a re-
 2 turn.”.

3 (2) The table of sections for subpart A of part
 4 IV of subchapter A of chapter 1 of such Code is
 5 amended by inserting after the item relating to sec-
 6 tion 25B the following new item:

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

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to taxable years beginning after
 9 December 31, 2004.

10 **SEC. 4. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-**
 11 **TERM CARE INSURANCE.**

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

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

20 “(i) MODEL REGULATION.—The fol-
 21 lowing requirements of the model regula-
 22 tion:

23 “(I) Section 6A (relating to guar-
 24 anteed renewal or noncancellability),
 25 other than paragraph (5) thereof, and

1 the requirements of section 6B of the
2 model Act relating to such section 6A.

3 “(II) Section 6B (relating to pro-
4 hibitions on limitations and exclu-
5 sions) other than paragraph (7) there-
6 of.

7 “(III) Section 6C (relating to ex-
8 tension of benefits).

9 “(IV) Section 6D (relating to
10 continuation or conversion of cov-
11 erage).

12 “(V) Section 6E (relating to dis-
13 continuance and replacement of poli-
14 cies).

15 “(VI) Section 7 (relating to unin-
16 tentional lapse).

17 “(VII) Section 8 (relating to dis-
18 closure), other than sections 8F, 8G,
19 8H, and 8I thereof.

20 “(VIII) Section 11 (relating to
21 prohibitions against post-claims un-
22 derwriting).

23 “(IX) Section 12 (relating to
24 minimum standards).

1 “(X) Section 13 (relating to re-
2 quirement to offer inflation protec-
3 tion).

4 “(XI) Section 25 (relating to pro-
5 hibition against preexisting conditions
6 and probationary periods in replace-
7 ment policies or certificates).

8 “(XII) The provisions of section
9 26 relating to contingent nonforfeiture
10 benefits, if the policyholder declines
11 the offer of a nonforfeiture provision
12 described in paragraph (4).

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

15 “(I) Section 6C (relating to pre-
16 existing conditions).

17 “(II) Section 6D (relating to
18 prior hospitalization).

19 “(III) The provisions of section 8
20 relating to contingent nonforfeiture
21 benefits, if the policyholder declines
22 the offer of a nonforfeiture provision
23 described in paragraph (4).

24 “(B) DEFINITIONS.—For purposes of this
25 paragraph—

1 “(i) MODEL PROVISIONS.—The terms
2 ‘model regulation’ and ‘model Act’ mean
3 the long-term care insurance model regula-
4 tion, and the long-term care insurance
5 model Act, respectively, promulgated by
6 the National Association of Insurance
7 Commissioners (as adopted as of October
8 2000).

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

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

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

25 “(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 29 (relating to standard
20 format outline of coverage).

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

23 The requirements referred to in clause (vi) shall
24 not include those portions of the personal work-
25 sheet described in Appendix B relating to con-

sumer protection requirements not imposed by
section 4980C or 7702B.

“(B) MODEL ACT.—The following requirements of the model Act must be met:

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

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

“(iii) Section 6H (relating to requirements for certificates under group plans).

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

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

“(vi) Section 7 (relating to incontestability period).

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

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

1 **SEC. 5. TREATMENT OF EXCHANGES OF LONG-TERM CARE**
2 **INSURANCE CONTRACTS.**

3 (a) IN GENERAL.—Subsection (a) of section 1035 of
4 the Internal Revenue Code of 1986 (relating to exchanges
5 of insurance policies) is amended by striking the period
6 at the end of paragraph (3) and inserting “; or” and by
7 adding at the end the following new paragraph:

8 “(4) a qualified long-term care insurance con-
9 tract for another qualified long-term care insurance
10 contract.”.

11 (b) QUALIFIED LONG-TERM CARE INSURANCE CON-
12 TRACT.—Subsection (b) of section 1035 of such Code (re-
13 lating to definitions) is amended by adding at the end the
14 following new paragraph:

15 “(4) QUALIFIED LONG-TERM CARE INSURANCE
16 CONTRACT.—The term ‘qualified long-term care in-
17 surance contract’ means—

18 “(A) any qualified long-term care insur-
19 ance contract (as defined in section 7702B),
20 and

21 “(B) any contract which is treated as such
22 by section 321(f)(2) of the Health Insurance
23 Portability and Accountability Act of 1996.”.

24 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to exchanges after December
3 31, 1997.

4 (2) WAIVER OF LIMITATIONS.—If the credit or
5 refund of any overpayment of tax with respect to a
6 taxable year ending before the date of the enactment
7 of this Act resulting from the application of section
8 1035(a)(4) of the Internal Revenue Code of 1986, as
9 added by this section, is prevented at any time by
10 the operation of any law or rule of law (including res
11 judicata), such credit or refund may nevertheless be
12 allowed or made if the claim therefor is filed before
13 the close of the 1-year period beginning on the date
14 of the enactment of this Act.

○