

109TH CONGRESS
1ST SESSION

H. R. 2935

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

JUNE 16, 2005

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 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 redesignig-
 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 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 PROVISIONS.—
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). Premiums paid by the taxpayer
9 shall not be taken into account under subsection (a) to
10 the extent that an amount is not includible in gross income
11 under section 220(f) or 223(f) with respect to such pay-
12 ment.”.

13 (b) LONG-TERM CARE INSURANCE PERMITTED TO
14 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
15 SPENDING ARRANGEMENTS.—

16 (1) CAFETERIA PLANS.—Section 125(f) of the
17 Internal Revenue Code of 1986 (defining qualified
18 benefits) is amended by inserting before the period
19 at the end “; except that such term shall include the
20 payment of premiums for any qualified long-term
21 care insurance contract (as defined in section
22 7702B) to the extent the amount of such payment
23 does not exceed the eligible long-term care premiums
24 (as defined in section 213(d)(10)) for such con-
25 tract”.

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

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 62(a) of the Internal Revenue Code
 7 of 1986 is amended by adding at the end the fol-
 8 lowing new item:

9 “(21) PREMIUMS ON QUALIFIED LONG-TERM
 10 CARE INSURANCE CONTRACTS.—The deduction al-
 11 lowed by section 224.”.

12 (2) The table of sections for part VII of sub-
 13 chapter B of chapter 1 of such Code is amended by
 14 striking the last item and inserting the following
 15 new items:

“224. Premiums on qualified long-term care insurance contracts.

“225. Cross reference.”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to taxable years beginning after
 18 the date of the enactment of this Act.

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

11 “(b) LIMITATIONS AND ADJUSTMENTS.—

12 “(1) IN GENERAL.—The amount of the credit
13 allowable under subsection (a) shall be reduced (but
14 not below zero) by \$100 for each \$1,000 (or fraction
15 thereof) by which the taxpayer’s modified adjusted
16 gross income exceeds \$75,000 (twice such amount in
17 the case of a joint return). For purposes of the pre-
18 ceding sentence, the term ‘modified adjusted gross
19 income’ means adjusted gross income increased by
20 any amount excluded from gross income under sec-
21 tion 911, 931, or 933.

22 “(2) INDEXING.—In the case of any taxable
23 year beginning in a calendar year after 2005, the
24 \$75,000 amount contained in paragraph (1) shall be
25 increased by an amount equal to the product of—

1 “(A) such dollar amount, and

2 “(B) the medical care cost adjustment de-
 3 termined under section 213(d)(10)(B)(ii) for
 4 the calendar year in which the taxable year be-
 5 gins, determined by substituting ‘August of
 6 2004’ for ‘August of 1996’ in subclause (II)
 7 thereof.

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

11 “(3) APPLICATION WITH OTHER CREDITS.—
 12 The credit allowed by subsection (a) for any taxable
 13 year shall not exceed the excess of—

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

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

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

21 “(1) APPLICABLE INDIVIDUAL.—

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

25 “(i) who has attained age 65, and

“(ii) who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

“(I) which is at least 180 consecutive days, and

“(II) a portion of which occurs within the taxable year.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the 39½ month period ending on such due date (or such other period as the Secretary prescribes) a physician (as so defined) has certified that such individual meets such requirements.

“(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this subparagraph if the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity.

1 “(2) ELIGIBLE CAREGIVER.—A taxpayer shall
2 be treated as an eligible caregiver for any taxable
3 year with respect to the taxpayer and the taxpayer’s
4 spouse and dependents. A taxpayer shall not be
5 treated as an eligible caregiver with respect to him-
6 self for any taxable year beginning in any calendar
7 year if any other person is an eligible caregiver with
8 respect to the taxpayer for a taxable year which be-
9 gins in such calendar year.

10 “(d) IDENTIFICATION REQUIREMENT.—No credit
11 shall be allowed under this section to a taxpayer with re-
12 spect to any applicable individual unless the taxpayer in-
13 cludes the name and taxpayer identification number of
14 such individual, and the identification number of the phy-
15 sician certifying such individual, on the return of tax for
16 the taxable year.

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

22 “(f) CARRYFORWARD OF UNUSED CREDIT.—If the
23 credit allowable under subsection (a) exceeds the limita-
24 tion imposed by subsection (b)(4) for the taxable year,
25 such excess shall be carried to the succeeding taxable year

1 and added to the credit allowable under subsection (a) for
2 such taxable year.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 6213(g)(2) of the Internal Revenue
5 Code of 1986 is amended by striking “and” at the
6 end of subparagraph (L), by striking the period at
7 the end of subparagraph (M) and inserting “, and”,
8 and by inserting after subparagraph (M) the fol-
9 lowing new subparagraph:

10 “(N) an omission of a correct TIN or phy-
11 sician identification required under section
12 25C(d) (relating to credit for taxpayers with
13 long-term care needs) to be included on a re-
14 turn.”.

15 (2) Section 23(b)(4) is amended by striking
16 “this section” and inserting “this section and section
17 25C”.

18 (3) Section 24(b)(3)(B) is amended by striking
19 “23 and 25B” and inserting “23, 25B, and 25C”.

20 (4) Section 25(e)(1)(C) is amended by inserting
21 “25C,” after “25B,”.

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

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

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

3 (8) 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:

“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 the date of the enactment of this Act.

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 and the requirements of section 6B of

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

3 “(II) Section 6B (relating to pro-
4 hibitions on limitations and exclu-
5 sions).

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

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

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

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

16 “(VII) Section 8 (relating to dis-
17 closure), other than section 8F there-
18 of.

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

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

24 “(X) Section 25 (relating to pro-
25 hibition against preexisting conditions

1 and probationary periods in replace-
2 ment policies or certificates).

3 “(XI) The provisions of section
4 26 relating to contingent nonforfeiture
5 benefits, if the policyholder declines
6 the offer of a nonforfeiture provision
7 described in paragraph (4).

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

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

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

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

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

21 “(i) MODEL PROVISIONS.—The terms
22 ‘model regulation’ and ‘model Act’ mean
23 the long-term care insurance model regula-
24 tion, and the long-term care insurance
25 model Act, respectively, promulgated by

1 the National Association of Insurance
2 Commissioners (as adopted as of October
3 2000).

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

10 “(iii) DETERMINATION.—For pur-
11 poses of this section and section 4980C,
12 the determination of whether any require-
13 ment of a model regulation or the model
14 Act has been met shall be made by the
15 Secretary.”.

16 (b) EXCISE TAX.—Paragraph (1) of section
17 4980C(c) of such Code (relating to requirements of model
18 provisions) is amended to read as follows:

19 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

20 “(A) MODEL REGULATION.—The following
21 requirements of the model regulation must be
22 met:

23 “(i) Section 9 (relating to required
24 disclosure of rating practices to con-
25 sumer).”

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

3 “(iii) Section 15 (relating to reporting
4 requirements), except that the issuer shall
5 also report at least annually the number of
6 claims denied during the reporting period
7 for each class of business (expressed as a
8 percentage of claims denied), other than
9 claims denied for failure to meet the wait-
10 ing period or because of any applicable
11 preexisting condition.

12 “(iv) Section 22 (relating to filing re-
13 quirements for advertising).

14 “(v) Section 23 (relating to standards
15 for marketing), including inaccurate com-
16 pletion of medical histories, other than
17 paragraphs (1), (6), and (9) of section
18 23C, except that—

19 “(I) in addition to such require-
20 ments, no person shall, in selling or
21 offering to sell a qualified long-term
22 care insurance contract, misrepresent
23 a material fact; and

24 “(II) no such requirements shall
25 include a requirement to inquire or

1 identify whether a prospective appli-
2 cant or enrollee for long-term care in-
3 surance has accident and sickness in-
4 surance.

5 “(vi) Section 24 (relating to suit-
6 ability).

7 “(vii) Section 29 (relating to standard
8 format outline of coverage).

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

11 The requirements referred to in clause (vi) shall not in-
12 clude those portions of the personal worksheet described
13 in Appendix B relating to consumer protection require-
14 ments not imposed by section 4980C or 7702B.

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

17 “(i) Section 6F (relating to right to
18 return), except that such section shall also
19 apply to denials of applications and any re-
20 fund shall be made within 30 days of the
21 return or denial.

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

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

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

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

5 “(vi) Section 7 (relating to incontest-
6 ability period).

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

11 (c) ADDITIONAL PROTECTIONS.—

12 (1) IN GENERAL.—Paragraph (1) of section
13 7702B(g) of such Code (relating to consumer pro-
14 tection provisions) is amended by striking “and” at
15 the end of subparagraph (B), by striking the period
16 at the end of subparagraph (C) and inserting a
17 comma, and by adding at the end the following new
18 subparagraphs:

19 “(D) the inflation protection requirement
20 of paragraph (5),

21 “(E) the lifetime deductible requirement of
22 paragraph (6),

23 “(F) the interchangeability requirement of
24 paragraph (7), and

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

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

7 “(5) INFLATION PROTECTION REQUIREMENT.—
8 The requirement of this paragraph is met if the con-
9 tract provides for benefit levels to rise at a rate
10 which is meaningful to account for reasonably antici-
11 pated increases in the cost of long-term care services
12 covered by the contract.

13 “(6) LIFETIME DEDUCTIBLE REQUIREMENT.—
14 The requirement of this paragraph is met if the con-
15 tract requires that no more than 1 deductible
16 amount applies for all benefits provided during the
17 entire lifetime of the covered individual.

18 “(7) INTERCHANGEABILITY REQUIREMENT.—
19 The requirement of this paragraph is met if the pol-
20 icyholder has the sole discretion to designate how
21 any maximum benefit amount under the contract is
22 allocated among the benefits provided under the con-
23 tract.

24 “(8) CARE MANAGEMENT/CARE COORDINATION
25 REQUIREMENT.—

1 “(A) IN GENERAL.—The requirement of
2 this paragraph is met if the contract requires
3 that the covered individual is assigned a care
4 manager/coordinator.

5 “(B) CARE MANAGER/COORDINATOR.—For
6 purposes of subparagraph (A), the term ‘care
7 manager/coordinator’ means an individual who,
8 either alone or as part of a team, is responsible
9 for performing assessments and reassessments,
10 developing plans of care, coordinating the provi-
11 sion of care, and monitoring the delivery of
12 services.”

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

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