

110TH CONGRESS  
1ST SESSION

# H. R. 3363

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. POMEROY (for himself, Mr. RAMSTAD, Ms. SCHWARTZ, Mr. HULSHOF, Mr. CROWLEY, Ms. HERSETH SANDLIN, Mr. MICHAUD, Mr. CAMP of Michigan, Mr. WELLER of Illinois, Mrs. CAPITO, Mr. ALLEN, Mr. ENGLISH of Pennsylvania, Mr. BLUMENAUER, Mr. THOMPSON of California, Mr. PASCRELL, Mr. LARSON of Connecticut, Mrs. JONES of Ohio, Mr. PORTER, Mr. TERRY, Mr. NEAL of Massachusetts, Mr. HOLT, Mr. BOUSTANY, Ms. BERKLEY, Mr. VAN HOLLEN, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Long-Term Care Af-  
3 fordability and Security Act of 2007”.

**4 SEC. 2. TREATMENT OF PREMIUMS ON QUALIFIED LONG-  
5 TERM CARE INSURANCE CONTRACTS.****6 (a) IN GENERAL.—**

7 (1) CAFETERIA PLANS.—The last sentence of  
8 section 125(f) of the Internal Revenue Code of 1986  
9 (defining qualified benefits) is amended by inserting  
10 before the period at the end “; except that such term  
11 shall include the payment of premiums for any qual-  
12 ified long-term care insurance contract (as defined in  
13 section 7702B) to the extent the amount of such  
14 payment does not exceed the eligible long-term care  
15 premiums (as defined in section 213(d)(10)) for  
16 such contract”.

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

**22 (b) CONFORMING AMENDMENTS.—**

23 (1) Section 6041 of such Code is amended by  
24 adding at the end the following new subsection:  
25 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-  
26 FINED.—For purposes of this section, a flexible spending

1 arrangement is a benefit program which provides employ-  
2 ees with coverage under which—

3           “(1) specified incurred expenses may be reim-  
4 bursed (subject to reimbursement maximums and  
5 other reasonable conditions), and

6           “(2) the maximum amount of reimbursement  
7 which is reasonably available to a participant for  
8 such coverage is less than 500 percent of the value  
9 of such coverage.

10 In the case of an insured plan, the maximum amount rea-  
11 sonably available shall be determined on the basis of the  
12 underlying coverage.”.

13           (2) The following sections of such Code are  
14 each amended by striking “section 106(d)” and in-  
15 serting “section 106(c)”: sections 223(b)(4)(B),  
16 223(d)(4)(C),           223(f)(3)(B),           3231(e)(11),  
17 3306(b)(18),           3401(a)(22),           4973(g)(1),       and  
18 4973(g)(2)(B)(i).

19           (3) Section 6041(f)(1) of such Code is amended  
20 by striking “(as defined in section 106(c)(2))”.

21           (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2006.

1 **SEC. 3. 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 other than paragraph (5) thereof, and  
17 the requirements of section 6B of the  
18 model Act relating to such section 6A.

19 “(II) Section 6B (relating to pro-  
20 hibitions on limitations and exclu-  
21 sions) other than paragraph (7) there-  
22 of.

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

1                             “(IV) Section 6D (relating to  
2                             continuation or conversion of cov-  
3                             erage).

4                             “(V) Section 6E (relating to dis-  
5                             continuance and replacement of poli-  
6                             cies).

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

9                             “(VII) Section 8 (relating to dis-  
10                             closure), other than sections 8F, 8G,  
11                             8H, and 8I thereof.

12                             “(VIII) Section 11 (relating to  
13                             prohibitions against post-claims un-  
14                             derwriting).

15                             “(IX) Section 12 (relating to  
16                             minimum standards).

17                             “(X) Section 13 (relating to re-  
18                             quirement to offer inflation protec-  
19                             tion).

20                             “(XI) Section 25 (relating to pro-  
21                             hibition against preexisting conditions  
22                             and probationary periods in replace-  
23                             ment policies or certificates).

24                             “(XII) The provisions of section  
25                             28 relating to contingent nonforfeiture

1                   benefits, if the policyholder declines  
2                   the offer of a nonforfeiture provision  
3                   described in paragraph (4) of this  
4                   subsection.

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

7                   “(I) Section 6C (relating to pre-  
8                   existing conditions).

9                   “(II) Section 6D (relating to  
10                  prior hospitalization).

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

17                  “(B) DEFINITIONS.—For purposes of this  
18                  paragraph—

19                  “(i) MODEL REGULATION.—The term  
20                  ‘model regulation’ means the long-term  
21                  care insurance model regulation promul-  
22                  gated by the National Association of Insur-  
23                  ance Commissioners (as adopted as of De-  
24                  cember 2006).

1                             “(ii) MODEL ACT.—The term ‘model  
2                             Act’ means the long-term care insurance  
3                             model Act promulgated by the National  
4                             Association of Insurance Commissioners  
5                             (as adopted as of December 2006).

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

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

18                     (b) EXCISE TAX.—Paragraph (1) of section  
19                     4980C(c) of the Internal Revenue Code of 1986 (relating  
20                     to requirements of model provisions) is amended to read  
21                     as follows:

22                             “(1) REQUIREMENTS OF MODEL PROVISIONS.—  
23                             “(A) MODEL REGULATION.—The following  
24                             requirements of the model regulation must be  
25                             met:

1                     “(i) Section 9 (relating to required  
2 disclosure of rating practices to consumer).

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

5                     “(iii) Section 15 (relating to reporting  
6 requirements).

7                     “(iv) Section 22 (relating to filing re-  
8 quirements for marketing).

9                     “(v) Section 23 (relating to standards  
10 for marketing), including inaccurate com-  
11 pletion of medical histories, other than  
12 paragraphs (1), (6), and (9) of section  
13 23C.

14                     “(vi) Section 24 (relating to suit-  
15 ability).

16                     “(vii) Section 27 (relating to the right  
17 to reduce coverage and lower premiums).

18                     “(viii) Section 31 (relating to stand-  
19 ard format outline of coverage).

20                     “(ix) Section 32 (relating to require-  
21 ment to deliver shopper’s guide).

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

1 consumer protection requirements not imposed by  
2 section 4980C or 7702B.

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

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

