

110TH CONGRESS
2D SESSION

H. R. 5559

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 6, 2008

Mr. PUTNAM 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 2008”.

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 eligible long-term care pre-
 13 miums (as defined in section 213(d)(10)) paid during the
 14 taxable year for coverage for the taxpayer and the tax-
 15 payer’s spouse and dependents under a qualified long-term
 16 care insurance contract (as defined in section 7702B(b)).

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

“For taxable years beginning in calendar year—	The applicable percentage is—
2009 or 2010	25
2011	35
2012	65
2013 or thereafter	100.

20 “(c) COORDINATION WITH OTHER DEDUCTIONS.—
 21 Any amount paid by a taxpayer for any qualified long-
 22 term care insurance contract to which subsection (a) ap-

plies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a).”.

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

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

(2) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106 of such Code (relating to contributions by an employer to accident and health plans) is amended by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) CONFORMING AMENDMENTS.—

(1) Section 62(a) of such Code is amended by inserting before the last sentence at the end the following new paragraph:

1 “(22) PREMIUMS ON QUALIFIED LONG-TERM
2 CARE INSURANCE CONTRACTS.—The deduction al-
3 lowed by section 224.”.

4 (2) Sections 223(b)(4)(B), 223(d)(4)(C),
5 223(f)(3)(B), 3231(e)(11), 3306(b)(18),
6 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of
7 such Code are each amended by striking “section
8 106(d)” and inserting “section 106(c)”.

9 (3) Section 223(c)(1)(B)(iii)(II) of such Code is
10 amended by striking “106(e)” and inserting
11 “106(d)”.

12 (4) 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 (5) 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 DATE.**—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 2008.

13 **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**
14 **NEEDS.**

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

20 **“SEC. 25E. CREDIT FOR TAXPAYERS WITH LONG-TERM**
21 **CARE NEEDS.**

22 “(a) **ALLOWANCE OF CREDIT.**—

23 “(1) **IN GENERAL.**—There shall be allowed as a
24 credit against the tax imposed by this chapter for

1 the taxable year an amount equal to the applicable
 2 credit amount multiplied by the number of applica-
 3 ble individuals with respect to whom the taxpayer is
 4 an eligible caregiver for the taxable year.

5 “(2) APPLICABLE CREDIT AMOUNT.—For pur-
 6 poses of paragraph (1), the applicable credit amount
 7 shall be determined in accordance with the following
 8 table:

“For taxable years beginning in calendar year—	The applicable credit amount is—
2009	1,500
2010	2,000
2011	2,500
2012 or thereafter	3,000.

9 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
 10 COME.—

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

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

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

3 “(B) \$75,000 in any other case.

4 “(3) INDEXING.—In the case of any taxable
5 year beginning in a calendar year after 2009, each
6 dollar amount contained in paragraph (2) shall be
7 increased by an amount equal to the product of—

8 “(A) such dollar amount, and

9 “(B) the medical care cost adjustment de-
10 termined under section 213(d)(10)(B)(ii) for
11 the calendar year in which the taxable year be-
12 gins, determined by substituting ‘August 2008’
13 for ‘August 1996’ in subclause (II) thereof.

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

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

18 “(1) APPLICABLE INDIVIDUAL.—

19 “(A) IN GENERAL.—The term ‘applicable
20 individual’ means, with respect to any taxable
21 year, any individual who has been certified, be-
22 fore the due date for filing the return of tax for
23 the taxable year (without extensions), by a phy-
24 sician (as defined in section 1861(r)(1) of the
25 Social Security Act) as being an individual with

1 long-term care needs described in subparagraph
2 (B) for a period—

3 “(i) which is at least 180 consecutive
4 days, and

5 “(ii) a portion of which occurs within
6 the taxable year.

7 Notwithstanding the preceding sentence, a cer-
8 tification shall not be treated as valid unless it
9 is made within the 39½ month period ending
10 on such due date (or such other period as the
11 Secretary prescribes).

12 “(B) INDIVIDUALS WITH LONG-TERM CARE
13 NEEDS.—An individual is described in this sub-
14 paragraph if the individual meets any of the fol-
15 lowing requirements:

16 “(i) The individual is at least 6 years
17 of age and—

18 “(I) is unable to perform (with-
19 out substantial assistance from an-
20 other individual) at least 3 activities
21 of daily living (as defined in section
22 7702B(c)(2)(B)) due to a loss of
23 functional capacity, or

24 “(II) requires substantial super-
25 vision to protect such individual from

1 threats to health and safety due to se-
2 vere cognitive impairment and is un-
3 able to perform, without reminding or
4 cuing assistance, at least 1 activity of
5 daily living (as so defined) or to the
6 extent provided in regulations pre-
7 scribed by the Secretary (in consulta-
8 tion with the Secretary of Health and
9 Human Services), is unable to engage
10 in age appropriate activities.

11 “(ii) The individual is at least 2 but
12 not 6 years of age and is unable due to a
13 loss of functional capacity to perform
14 (without substantial assistance from an-
15 other individual) at least 2 of the following
16 activities: eating, transferring, or mobility.

17 “(iii) The individual is under 2 years
18 of age and requires specific durable med-
19 ical equipment by reason of a severe health
20 condition or requires a skilled practitioner
21 trained to address the individual’s condi-
22 tion to be available if the individual’s par-
23 ents or guardians are absent.

24 “(2) ELIGIBLE CAREGIVER.—

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

4 “(i) The taxpayer.

5 “(ii) The taxpayer’s spouse.

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

9 “(iv) An individual who would be de-
10 scribed in clause (iii) for the taxable year
11 if section 151(c) were applied by sub-
12 stituting for the exemption amount an
13 amount equal to the sum of the exemption
14 amount, the standard deduction under sec-
15 tion 63(c)(2)(C), and any additional stand-
16 ard deduction under section 63(c)(3) which
17 would be applicable to the individual if
18 clause (iii) applied.

19 “(v) An individual who would be de-
20 scribed in clause (iii) for the taxable year
21 if—

22 “(I) the requirements of clause
23 (iv) are met with respect to the indi-
24 vidual, and

1 “(II) the requirements of sub-
2 paragraph (B) are met with respect to
3 the individual in lieu of the support
4 test under subsection (c)(1)(D) or
5 (d)(1)(C) of section 152.

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

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

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

18 “(C) SPECIAL RULES WHERE MORE THAN
19 1 ELIGIBLE CAREGIVER.—

20 “(i) IN GENERAL.—If more than 1 in-
21 dividual is an eligible caregiver with re-
22 spect to the same applicable individual for
23 taxable years ending with or within the
24 same calendar year, a taxpayer shall be
25 treated as the eligible caregiver if each

1 such individual (other than the taxpayer)
2 files a written declaration (in such form
3 and manner as the Secretary may pre-
4 scribe) that such individual will not claim
5 such applicable individual for the credit
6 under this section.

7 “(ii) NO AGREEMENT.—If each indi-
8 vidual required under clause (i) to file a
9 written declaration under clause (i) does
10 not do so, the individual with the highest
11 adjusted gross income shall be treated as
12 the eligible caregiver.

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

21 “(d) IDENTIFICATION REQUIREMENT.—No credit
22 shall be allowed under this section to a taxpayer with re-
23 spect to any applicable individual unless the taxpayer in-
24 cludes the name and taxpayer identification number of
25 such individual, and the identification number of the phy-

1 sician certifying such individual, on the return of tax for
2 the taxable year.

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

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 6213(g)(2) of such Code is amend-
10 ed by striking “and” at the end of subparagraph
11 (L), by striking the period at the end of subpara-
12 graph (M) and inserting “, and”, and by inserting
13 after subparagraph (M) the following new subpara-
14 graph:

15 “(N) an omission of a correct TIN or phy-
16 sician identification required under section
17 25E(d) (relating to credit for taxpayers with
18 long-term care needs) to be included on a re-
19 turn.”.

20 (2) The table of sections for subpart A of part
21 IV of subchapter A of chapter 1 of such Code is
22 amended by inserting after the item relating to sec-
23 tion 25D the following new item:

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

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2008.

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

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

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

14 “(i) MODEL REGULATION.—The fol-
 15 lowing requirements of the model regula-
 16 tion:

17 “(I) Section 6A (relating to guar-
 18 anteed renewal or noncancellability),
 19 other than paragraph (5) thereof, and
 20 the requirements of section 6B of the
 21 model Act relating to such section 6A.

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

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

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

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

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

11 “(VII) Section 8 (relating to dis-
12 closure), other than sections 8F, 8G,
13 8H, and 8I thereof.

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

17 “(IX) Section 12 (relating to
18 minimum standards).

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

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

1 “(XII) The provisions of section
2 26 relating to contingent nonforfeiture
3 benefits, if the policyholder declines
4 the offer of a nonforfeiture provision
5 described in paragraph (4).

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

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

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

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

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

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

1 Commissioners (as adopted as of December
2 31, 2008).

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

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

15 (b) EXCISE TAX.—Paragraph (1) of section
16 4980C(c) of the Internal Revenue Code of 1986 (relating
17 to requirements of model provisions) is amended to read
18 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 consumer).

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

3 “(iii) Section 15 (relating to reporting
4 requirements).

5 “(iv) Section 22 (relating to filing re-
6 quirements for marketing).

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

12 “(vi) Section 24 (relating to suit-
13 ability).

14 “(vii) Section 29 (relating to standard
15 format outline of coverage).

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

18 The requirements referred to in clause (vi) shall
19 not include those portions of the personal work-
20 sheet described in Appendix B relating to con-
21 sumer protection requirements not imposed by
22 section 4980C or 7702B.

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

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

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

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

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

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

11 “(vi) Section 7 (relating to incontest-
12 ability period).

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

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to policies issued after December
19 31, 2008.

○