

110TH CONGRESS
1ST SESSION

S. 2337

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2007

Mr. GRASSLEY (for himself, Mrs. LINCOLN, Ms. SNOWE, Ms. STABENOW, and Mr. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

3 (a) IN GENERAL.—

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

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

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 6041 of such Code is amended by
 21 adding at the end the following new subsection:

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

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

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

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

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

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

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

22 **SEC. 3. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-**
 23 **TERM CARE INSURANCE.**

24 (a) ADDITIONAL PROTECTIONS APPLICABLE TO
 25 LONG-TERM CARE INSURANCE.—Subparagraphs (A) and

1 (B) of section 7702B(g)(2) of the Internal Revenue Code
 2 of 1986 (relating to requirements of model regulation and
 3 Act) are amended to read as follows:

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

7 “(i) MODEL REGULATION.—The fol-
 8 lowing requirements of the model regula-
 9 tion:

10 “(I) Section 6A (relating to guar-
 11 anteed renewal or noncancellability),
 12 other than paragraph (5) thereof, and
 13 the requirements of section 6B of the
 14 model Act relating to such section 6A.

15 “(II) Section 6B (relating to pro-
 16 hibitions on limitations and exclu-
 17 sions) other than paragraph (7) there-
 18 of.

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

21 “(IV) Section 6D (relating to
 22 continuation or conversion of cov-
 23 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 sections 8F, 8G,
8 8H, and 8I thereof.

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 13 (relating to re-
15 quirement to offer inflation protec-
16 tion).

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

21 “(XII) The provisions of section
22 28 relating to contingent nonforfeiture
23 benefits, if the policyholder declines
24 the offer of a nonforfeiture provision

1 described in paragraph (4) of this
2 subsection.

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

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

7 “(II) Section 6D (relating to
8 prior hospitalization).

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

15 “(B) DEFINITIONS.—For purposes of this
16 paragraph—

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

23 “(ii) MODEL ACT.—The term ‘model
24 Act’ means the long-term care insurance
25 model Act promulgated by the National

1 Association of Insurance Commissioners
 2 (as adopted as of December 2006).

3 “(iii) 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 “(iv) 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 27 (relating to the right
15 to reduce coverage and lower premiums).

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

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

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

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

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

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

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

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

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

13 “(vi) Section 7 (relating to incontest-
14 ability period).

15 “(vii) Section 9 (relating to producer
16 training requirements).

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

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

○