

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2407

To amend title XIX of the Social Security Act to improve coverage of nursing facility services under the medicaid program and to amend the Internal Revenue Code of 1986 to clarify the tax treatment of long-term care insurance.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1993

Mrs. KENNELLY introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

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## A BILL

To amend title XIX of the Social Security Act to improve coverage of nursing facility services under the medicaid program and to amend the Internal Revenue Code of 1986 to clarify the tax treatment of 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 “Partnership for Long-  
5 Term Care Act of 1993”.

1     **TITLE I—MEDICAID PROGRAM**  
2                     **IMPROVEMENTS**

3     **SEC. 101. REQUIRING MEDICALLY NEEDY PROGRAM FOR**  
4                     **INDIVIDUALS WITH INCOMES BELOW THE**  
5                     **POVERTY LEVEL.**

6             (a) IN GENERAL.—Section 1902(a)(10) of the Social  
7 Security Act (42 U.S.C. 1396a(a)(10)) is amended—

8                     (1) by striking “and” at the end of subpara-  
9 graph (E);

10                    (2) by inserting “and” at the end of subpara-  
11 graph (F); and

12                    (3) by inserting after subparagraph (F) the fol-  
13 lowing new subparagraph:

14                             “(G)(i) for making medical assistance  
15 available under subparagraph (C) for all indi-  
16 viduals—

17                                     “(I) whose income (taking into ac-  
18 count the costs incurred for medical care  
19 or for any other type of remedial care rec-  
20 ognized under State law) does not exceed  
21 100 percent of the official poverty level (as  
22 defined by the Office of Management and  
23 Budget, and revised annually in accord-  
24 ance with section 673(2) of the Omnibus

1 Budget Reconciliation Act of 1981) appli-  
2 cable to a family of the size involved, and

3 “(II) whose resources (as determined  
4 under section 1613 for purposes of the  
5 supplemental security income program) do  
6 not exceed such level (at least equal to the  
7 maximum amount of resources that an in-  
8 dividual may have and obtain benefits  
9 under that program) as the State estab-  
10 lishes; and

11 “(ii) for including in medical assistance  
12 under clause (i)—

13 “(I) for individuals described in sub-  
14 paragraph (C)(ii), at least the care and  
15 services listed in paragraphs (1) through  
16 (5) and (17) of section 1905(a), and

17 “(II) for other individuals at least  
18 nursing facility services (and, to the extent  
19 applicable, services under a waiver under  
20 section 1915(c));”.

21 (b) EFFECTIVE DATE.—(1) The amendments made  
22 by this section apply (except as provided under paragraph  
23 (2)) to payments under title XIX of the Social Security  
24 Act for calendar quarters beginning on or after January  
25 1, 1994, without regard to whether or not final regulations

1 to carry out such amendments have been promulgated by  
2 such date.

3 (2) In the case of a State plan for medical assistance  
4 under title XIX of the Social Security Act which the Sec-  
5 retary of Health and Human Services determines requires  
6 State legislation (other than legislation appropriating  
7 funds) in order for the plan to meet the additional require-  
8 ments imposed by the amendments made by this section,  
9 the State plan shall not be regarded as failing to comply  
10 with the requirements of such title solely on the basis of  
11 its failure to meet these additional requirements before the  
12 first day of the first calendar quarter beginning after the  
13 close of the first regular session of the State legislature  
14 that begins after the date of the enactment of this Act.  
15 For purposes of the previous sentence, in the case of a  
16 State that has a 2-year legislative session, each year of  
17 such session shall be deemed to be a separate regular ses-  
18 sion of the State legislature.

19 **SEC. 102. PREMIUM SUBSIDY PROGRAM.**

20 (a) REQUIREMENT FOR STATE PLAN.—Section  
21 1902(a) of the Social Security Act (42 U.S.C. 1396a(a))  
22 is amended—

23 (1) by striking “and” at the end of paragraph  
24 (54);

1           (2) in the paragraph (55) inserted by section  
2           4602(a)(3) of the Omnibus Budget Reconciliation  
3           Act of 1990 (hereafter referred to as “OBRA–  
4           1990”), by striking the period at the end and insert-  
5           ing a semicolon;

6           (3) by redesignating the paragraph (55) in-  
7           serted by section 4604(b)(3) of OBRA–1990 as  
8           paragraph (56), by transferring and inserting it  
9           after the paragraph (55) inserted by section  
10          4602(a)(3) of such Act, and by striking the period  
11          at the end and inserting a semicolon;

12          (4) by placing paragraphs (57) and (58), in-  
13          serted by section 4751(a)(1)(C) of OBRA–1990, im-  
14          mediately after paragraph (56), as redesignated by  
15          paragraph (3);

16          (5) in the paragraph (58) inserted by section  
17          4751(a)(1)(C) of OBRA–1990, by striking the pe-  
18          riod at the end and inserting a semicolon;

19          (6) by redesignating the paragraph (58) in-  
20          serted by section 4752(c)(1)(C) of OBRA–1990 as  
21          paragraph (59) and by transferring and inserting it  
22          after the paragraph (58) inserted by section  
23          4751(a)(1)(C) of such Act;

1 (7) by striking the period at the end of para-  
2 graph (59) (as so redesignated) and inserting “;  
3 and”; and

4 (8) by inserting after paragraph (59) (as so re-  
5 designated) the following new paragraph:

6 “(60) meet the requirements of section 1928  
7 (relating to a premium subsidy program for low in-  
8 come individuals to purchase long-term care insur-  
9 ance).”.

10 (b) PREMIUM SUBSIDY PROGRAM.—Title XIX of  
11 such Act is amended—

12 (1) by transferring section 1928 to the end;

13 (2) by redesignating section 1928 as section  
14 1931; and

15 (3) by inserting after section 1927 the following  
16 new section:

17 “PREMIUM SUBSIDY PROGRAM

18 “SEC. 1928. (a) In order to meet the requirements  
19 of this section, a State must establish and maintain a pro-  
20 gram to assist low income individuals in the purchase of  
21 qualified long-term care insurance.

22 “(b) Under the program, each low income individual  
23 (as defined in subsection (c)(1) is entitled to payment of  
24 a subsidy, expressed as a percentage of the premium oth-  
25 erwise required for a qualified long-term care insurance,  
26 equal to 50 percent minus 40 percent multiplied by the

1 factor  $(P-100 \text{ percent})/100 \text{ percent}$ , where ‘P’ is the indi-  
2 vidual’s family’s income expressed as a percent of the offi-  
3 cial poverty level.

4 “(c) In this section:

5 “(1) The term ‘low income individual’ means an  
6 individual in a family—

7 “(A) the income of which (as determined  
8 under section 1612 for purposes of the supple-  
9 mental security income program) is at least 100  
10 percent, but does not exceed 200 percent, of the  
11 official poverty level, and

12 “(B) the resources of which (as determined  
13 under section 1613 for purposes of the supple-  
14 mental security income program) do not exceed  
15 an amount established by the State.

16 The resource level established by a State under sub-  
17 paragraph (B) may not be less than twice the maxi-  
18 mum amount of resources that an individual may  
19 have and obtain benefits under the supplemental se-  
20 curity income program under title XVI.

21 “(2) The term ‘official poverty line’ means such  
22 term as defined by the Office of Management and  
23 Budget, and revised annually in accordance with sec-  
24 tion 673(2) of the Omnibus Budget Reconciliation  
25 Act of 1981.

1           “(3) The term ‘qualified long-term care insur-  
2           ance’ means insurance against the costs of nursing  
3           facility services and related long-term care services  
4           which meets requirements established by the State.  
5           In establishing such requirements, the State shall  
6           take into consideration model requirements estab-  
7           lished with respect to such insurance by the Na-  
8           tional Association of Insurance Commissioners as  
9           well as requirements imposed with respect to medi-  
10          care supplemental policies under section 1882.’”.

11          (c) EFFECTIVE DATE.—(1) The amendments made  
12          by this section apply (except as provided under paragraph  
13          (2)) to payments under title XIX of the Social Security  
14          Act for calendar quarters beginning on or after Janu-  
15          ary 1, 1994, without regard to whether or not final regula-  
16          tions to carry out such amendments have been promul-  
17          gated by such date.

18          (2) In the case of a State plan for medical assistance  
19          under title XIX of the Social Security Act which the Sec-  
20          retary of Health and Human Services determines requires  
21          State legislation (other than legislation appropriating  
22          funds) in order for the plan to meet the additional require-  
23          ment imposed by the amendments made by this section,  
24          the State plan shall not be regarded as failing to comply  
25          with the requirements of such title solely on the basis of

1 its failure to meet this additional requirement before the  
2 first day of the first calendar quarter beginning after the  
3 close of the first regular session of the State legislature  
4 that begins after the date of the enactment of this Act.  
5 For purposes of the previous sentence, in the case of a  
6 State that has a 2-year legislative session, each year of  
7 such session shall be deemed to be a separate regular ses-  
8 sion of the State legislature.

9 **TITLE II—MEDICAID AMEND-**  
10 **MENTS RELATING TO TREAT-**  
11 **MENT OF PAYMENTS UNDER**  
12 **QUALIFIED LONG-TERM CARE**  
13 **INSURANCE POLICIES**

14 **SEC. 201. PROTECTION OF ASSETS TO THE EXTENT OF PAY-**  
15 **MENTS UNDER QUALIFIED LONG-TERM CARE**  
16 **INSURANCE POLICIES.**

17 (a) IN GENERAL.—Section 1902(a) of the Social Se-  
18 curity Act (42 U.S.C. 1396a(a)), as amended by section  
19 102(a), is amended—

20 (1) by striking “and” at the end of paragraph  
21 (59);

22 (2) by striking the period at the end of para-  
23 graph (60) and inserting “, and”; and

24 (3) by inserting after paragraph (60) the fol-  
25 lowing new paragraph:

1           “(61) notwithstanding paragraph (17), in deter-  
2           mining the eligibility of an individual for medical as-  
3           sistance under the plan, provide for reducing the  
4           amount of assets the individual is considered to have  
5           by the amount of any payments made with respect  
6           to, and for the benefit of, the individual under a pol-  
7           icy of qualified long-term care insurance (as defined  
8           in section 1928(c)(3)).”.

9           (b) EFFECTIVE DATE.—(1) The amendments made  
10          by this section apply (except as provided under paragraph  
11          (2)) to payments under title XIX of the Social Security  
12          Act for calendar quarters beginning on or after January  
13          1, 1994, without regard to whether or not final regulations  
14          to carry out such amendments have been promulgated by  
15          such date.

16          (2) In the case of a State plan for medical assistance  
17          under title XIX of the Social Security Act which the Sec-  
18          retary of Health and Human Services determines requires  
19          State legislation (other than legislation appropriating  
20          funds) in order for the plan to meet the additional require-  
21          ment imposed by the amendments made by this section,  
22          the State plan shall not be regarded as failing to comply  
23          with the requirements of such title solely on the basis of  
24          its failure to meet this additional requirement before the  
25          first day of the first calendar quarter beginning after the

1 close of the first regular session of the State legislature  
2 that begins after the date of the enactment of this Act.  
3 For purposes of the previous sentence, in the case of a  
4 State that has a 2-year legislative session, each year of  
5 such session shall be deemed to be a separate regular ses-  
6 sion of the State legislature.

7 **TITLE III—TAX TREATMENT OF**  
8 **LONG-TERM CARE INSURANCE**

9 **SEC. 301. QUALIFIED LONG-TERM CARE INSURANCE DE-**  
10 **FINED AND TREATED AS ACCIDENT OR**  
11 **HEALTH INSURANCE.**

12 (a) IN GENERAL.—Section 818 of the Internal Reve-  
13 nue Code of 1986 (relating to definitions) is amended by  
14 adding at the end thereof the following new subsection:

15 “(g) QUALIFIED LONG-TERM CARE INSURANCE  
16 TREATED AS ACCIDENT OR HEALTH INSURANCE.—For  
17 purposes of this subchapter—

18 “(1) IN GENERAL.—Any reference to  
19 noncancellable accident or health insurance contracts  
20 shall be treated as including a reference to qualified  
21 long-term care insurance.

22 “(2) QUALIFIED LONG-TERM CARE INSUR-  
23 ANCE.—For purposes of this subsection—

24 “(A) IN GENERAL.—Subject to subpara-  
25 graphs (B) and (C), the term ‘qualified long-

1 term care insurance’ means insurance under a  
2 policy or rider, issued by a qualified issuer, to  
3 be advertised, marketed, offered, or designed to  
4 provide coverage—

5 “(i) for not less than 12 consecutive  
6 months for each covered person,

7 “(ii) on an expense incurred, indem-  
8 nity, prepaid or other basis,

9 “(iii) for 1 or more necessary or medi-  
10 cally necessary diagnostic services, preven-  
11 tive services, therapeutic services, rehabili-  
12 tation services, maintenance services, or  
13 personal care services,

14 “(iv) for the loss of functional capac-  
15 ity, and

16 “(v) provided in a setting other than  
17 an acute care unit of a hospital.

18 “(B) QUALIFIED ISSUER.—For purposes  
19 of subparagraph (A), the term ‘qualified issuer’  
20 means any of the following provided they are  
21 subject to the jurisdiction and regulation of at  
22 least one State insurance department:

23 “(i) Private insurance company.

24 “(ii) Fraternal benefit society.

25 “(iii) Nonprofit health corporation.

1 “(iv) Nonprofit hospital corporation.

2 “(v) Nonprofit medical service cor-  
3 poration.

4 “(vi) Prepaid health plan.”

5 (b) EFFECTIVE DATE.—The amendment made by  
6 subsection (a) shall apply to taxable years beginning after  
7 December 31, 1993.

8 **SEC. 302. QUALIFIED LONG-TERM CARE INSURANCE TREAT-**  
9 **ED AS ACCIDENT AND HEALTH INSURANCE**  
10 **FOR PURPOSES OF EXCLUSION FOR BENE-**  
11 **FITS RECEIVED UNDER SUCH INSURANCE**  
12 **AND FOR EMPLOYER CONTRIBUTIONS FOR**  
13 **SUCH INSURANCE.**

14 (a) IN GENERAL.—Section 105 of the Internal Reve-  
15 nue Code of 1986 (relating to amounts received under ac-  
16 cident and health plans) is amended by adding at the end  
17 thereof the following new subsection:

18 “(j) SPECIAL RULES RELATING TO QUALIFIED  
19 LONG-TERM CARE INSURANCE.—For purposes of section  
20 104, this section, and section 106—

21 “(1) BENEFITS TREATED AS PAYABLE FOR  
22 SICKNESS, ETC.—Any benefit received through quali-  
23 fied long-term care insurance (as defined in section  
24 818(g)) shall be treated as amounts received

1 through accident or health insurance for personal in-  
2 juries or sickness.

3 “(2) EXPENSES FOR WHICH REIMBURSEMENT  
4 PROVIDED UNDER QUALIFIED LONG-TERM CARE IN-  
5 SURANCE TREATED AS INCURRED FOR MEDICAL  
6 CARE OR FUNCTIONAL LOSS.—Expenses incurred by  
7 an individual to the extent of benefits paid under  
8 qualified long-term care insurance (as defined in sec-  
9 tion 818(g)) shall be treated for purposes of sub-  
10 section (b) as incurred for medical care (as defined  
11 in section 213(d)) and for purposes of subsection (c)  
12 as payment for the permanent loss or loss of use of  
13 a member or function of the body or the permanent  
14 disfigurement of the taxpayer, his spouse, any de-  
15 pendent of the taxpayer, or any parent of the tax-  
16 payer of his spouse.

17 “(3) REFERENCES TO ACCIDENT AND HEALTH  
18 PLANS.—Any reference to an accident or health plan  
19 shall be treated as including a reference to a plan  
20 providing qualified long-term care insurance (as de-  
21 fined in section 818(g)).”

22 (b) CURRENT DEDUCTION FOR EMPLOYER PRE-  
23 MIUMS FOR LONG-TERM CARE POLICIES.—Subparagraph  
24 (B) of section 404(b)(2) of such Code (relating to plans  
25 providing certain deferred benefits) is amended by striking

1 “or” at the end of clause (i), by striking the period at  
2 the end of clause (ii) and inserting “, or”, and by adding  
3 at the end thereof the following new clause:

4 “(iii) any benefit provided under a  
5 policy of qualified long-term care insurance  
6 (as defined in section 818(g)) through the  
7 payment (in whole or in part) of premiums  
8 by an employer pursuant to a plan for its  
9 active or retired employees, but only if any  
10 refund of premiums is applied to reduce  
11 the future costs of the plan or increase  
12 benefits under the plan.”

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 1993.

16 **SEC. 303. EARLY DISTRIBUTION PENALTY TAX NOT TO**  
17 **APPLY TO AMOUNTS WITHDRAWN FROM**  
18 **QUALIFIED PLANS, INDIVIDUAL RETIREMENT**  
19 **PLANS, ETC. FOR QUALIFIED LONG-TERM IN-**  
20 **SURANCE.**

21 (a) IN GENERAL.—Paragraph (1) of section 72(t) of  
22 the Internal Revenue Code of 1986 (relating to 10-percent  
23 additional tax on early distributions from qualified retire-  
24 ment plans) is amended by adding at the end thereof the  
25 following new subparagraph:





1           (1) Paragraph (2) of section 419A(c) of the In-  
2           ternal Revenue Code of 1986 (relating to additional  
3           reserve for post-retirement medical and life insur-  
4           ance benefits) is amended by striking “or” at the  
5           end of subparagraph (A), by striking the period at  
6           the end of subparagraph (B) and inserting “, or”,  
7           and by adding at the end thereof the following new  
8           subparagraph:

9                   “(C) post-retirement long-term care bene-  
10                   fits (as defined in section 818(g)) to be pro-  
11                   vided to covered employees.”

12           (2) The paragraph heading for such paragraph  
13           (2) is amended by inserting “, LONG-TERM CARE,”  
14           after “MEDICAL”.

15           (b) RESERVE FOR LONG-TERM CARE BENEFITS  
16           MUST BE NONDISCRIMINATORY.—

17           (1) Paragraph (1) of section 419A(e) of such  
18           Code (relating to special limitations on reserves for  
19           medical benefits or life insurance benefits provided  
20           to retired employees) is amended by inserting “,  
21           long-term care benefits,” after “medical benefits”  
22           each place it appears.

23           (2) The subsection heading for section 419A(e)  
24           of such Code is amended by inserting “, LONG-TERM  
25           CARE BENEFITS,” after “MEDICAL BENEFITS”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 1993.

4 **SEC. 306. QUALIFIED LONG-TERM CARE INSURANCE PER-**  
5 **MITTED TO BE OFFERED IN CAFETERIA**  
6 **PLANS.**

7 (a) IN GENERAL.—Paragraph (2) of section 125(c)  
8 of the Internal Revenue Code of 1986 (relating to the ex-  
9 clusion of deferred compensation) is amended by adding  
10 at the end thereof the following new subparagraph:

11 “(D) EXCEPTION FOR LONG-TERM CARE  
12 INSURANCE.—For purposes of subparagraph  
13 (A), a plan shall not be treated as providing de-  
14 ferred compensation by reason of providing  
15 qualified long-term care insurance (as defined  
16 in section 818(g)) if—

17 “(i) the employee may not surrender  
18 such insurance for cash, and

19 “(ii) the terms of the plan permits,  
20 the employee may elect to continue the in-  
21 surance upon cessation of participation in  
22 the plan.”

23 (b) LONG-TERM CARE INSURANCE INCLUDED AS  
24 QUALIFIED BENEFIT.—Paragraph (2) of section 125(e)  
25 of such Code (defining qualified benefits) is amended by

1 striking “and” at the end of subparagraph (A), by striking  
2 the period at the end of subparagraph (B) and inserting  
3 “, and”, and by adding at the end thereof the following  
4 new subparagraph:

5                   “(C) qualified long-term care insurance (as  
6                   defined in section 818(g)).”

7           (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years beginning after  
9 December 31, 1993.

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