

104TH CONGRESS
1ST SESSION

H. R. 1221

To amend the Public Health Service Act to establish Federal standards for long-term care insurance policies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 1995

Mr. WYDEN (for himself, Mrs. MORELLA, Mr. KENNEDY of Massachusetts, and Mr. REGULA) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Public Health Service Act to establish Federal standards for long-term care insurance policies, and for other purposes.

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 In-
5 surance Consumer Protection Act of 1995”.

6 **SEC. 2. ESTABLISHMENT OF FEDERAL STANDARDS FOR**
7 **LONG-TERM CARE INSURANCE POLICIES.**

8 The Public Health Service Act (42 U.S.C. 201 et
9 seq.) is amended by adding at the end the following:

1 **“TITLE XXVII—LONG-TERM CARE**
2 **INSURANCE STANDARDS**

3 **“SEC. 2701. IMPLEMENTATION OF POLICY STANDARDS.**

4 “(a) IN GENERAL.—

5 “(1) NEW ISSUES.—No long-term care insur-
6 ance policy (as defined in section 2709) may be is-
7 sued, sold, or offered for sale in a State on or after
8 the date specified in subsection (d) unless—

9 “(A) the Secretary determines that the
10 State has established a regulatory program
11 that—

12 “(i) provides for the application and
13 enforcement of the standards established
14 under subsection (c); and

15 “(ii) complies with the requirements
16 of subsection (e);

17 by the date specified in subsection (d), and the
18 policy has been approved by the State commis-
19 sioner or superintendent of insurance under
20 such program; or

21 “(B) if the State has not established such
22 a program, the policy has been certified by the
23 Secretary (in accordance with such procedures
24 as the Secretary establishes) as meeting the
25 standards established under subsection (c).

1 For purposes of this subsection, the advertising or
2 soliciting with respect to a policy, directly or indi-
3 rectly, shall be deemed the offering for sale of the
4 policy.

5 “(2) REVIEW OF STATE REGULATORY PRO-
6 GRAMS.—The Secretary periodically shall review reg-
7 ulatory programs described in paragraph (1)(A) to
8 determine if they continue to provide for the applica-
9 tion and enforcement of the standards established
10 under subsection (c).

11 “(b) SANCTIONS.—Any person who issues or renews
12 a policy, on or after the date specified in subsection (d),
13 in violation of subsection (a), is subject to a civil money
14 penalty of not to exceed \$25,000 for each such violation.
15 The provisions of section 1128A of the Social Security Act
16 (other than the first sentence of subsection (a) and other
17 than subsection (b)) shall apply to a civil money penalty
18 under this subsection in the same manner as such provi-
19 sions apply to a penalty or proceeding under such section
20 1128A(a).

21 “(c) PROMULGATION OF STANDARDS.—

22 “(1) IN GENERAL.—If, within 12 months after
23 the date of the enactment of this title, the National
24 Association of Insurance Commissioners (in this title
25 referred to as the ‘NAIC’) promulgates model stand-

1 ards that incorporate the requirements of sections
2 2704 through 2708, such standards shall apply
3 under subsection (a).

4 “(2) DEFAULT.—If the NAIC does not promul-
5 gate the model standards under paragraph (1) by
6 the deadline established in that subsection, the Sec-
7 retary shall promulgate, within 12 months after such
8 deadline, a regulation that provides standards that
9 incorporate the requirements of sections 2704
10 through 2708 and such standards shall be applied
11 under subsection (a).

12 “(3) CONSULTATION.—In establishing stand-
13 ards under this subsection, the NAIC or Secretary
14 shall consult with a working group composed of rep-
15 resentatives of issuers of long-term care insurance
16 policies, consumer groups, and other qualified indi-
17 viduals. Such representatives shall be selected in a
18 manner so as to assure balanced representation
19 among the interested groups.

20 “(4) RELATION TO STATE LAW.—Nothing in
21 this title shall be construed as preventing a State
22 from applying standards that provide greater protec-
23 tion to policyholders of long-term care insurance
24 policies.

1 “(d) DEADLINE FOR APPLICATION OF STAND-
2 ARDS.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 the date specified in this subsection for a State is—

5 “(A) the date the State adopts the stand-
6 ards established under subsection (c); or

7 “(B) 1 year after the date such standards
8 are first established;

9 whichever is earlier.

10 “(2) STATE REQUIRING LEGISLATION.—In the
11 case of a State which the Secretary identifies, in
12 consultation with the NAIC, as—

13 “(A) requiring State legislation (other than
14 legislation appropriating funds) in order for the
15 standards established under subsection (c) to be
16 applied; but

17 “(B) having a legislature which is not
18 scheduled to meet in 1997 in a legislative ses-
19 sion in which such legislation may be consid-
20 ered;

21 the date specified in this subsection is the first day
22 of the first calendar quarter beginning after the
23 close of the first legislative session of the State legis-
24 lature that begins on or after January 1, 1997. For
25 purposes of the previous sentence, in the case of a

1 State that has a 2-year legislative session, each year
2 of such session shall be deemed to be a separate reg-
3 ular session of the State legislature.

4 “(e) ADDITIONAL REQUIREMENTS FOR APPROVAL OF
5 STATE REGULATORY PROGRAMS.—For purposes of sub-
6 section (a)(1)(A)(ii), the requirements of this subsection
7 for a State regulatory program are as follows:

8 “(1) CONSUMER ACCESS TO COMPLIANCE IN-
9 FORMATION.—

10 “(A) IN GENERAL.—The program must
11 provide for consumer access to complaints filed
12 with the State commissioner or superintendent
13 of insurance with respect to long-term care in-
14 surance policies.

15 “(B) CONFIDENTIALITY.—The access pro-
16 vided under subparagraph (A) shall be limited
17 to the extent required to protect the confiden-
18 tiality of the identity of individual policyholders.

19 “(2) ACCESS TO OTHER INFORMATION.—The
20 program must provide for consumer access to infor-
21 mation reported under section 2703(d).

22 “(3) PROCESS FOR APPROVAL OF PREMIUMS.—
23 The program must provide for a process for approv-
24 ing or disapproving proposed premium increases
25 with respect to long-term care insurance policies and

1 must establish a policy for the holding of public
2 hearings prior to approval of such a premium in-
3 crease. No such premium increase shall be approved
4 (or deemed approved) unless the proposed increase
5 is accompanied by an actuarial memorandum which
6 supports the increase and which contains such infor-
7 mation as may be required under the standards
8 under section 2701(c).

9 **“SEC. 2702. REGULATION OF SALES PRACTICES.**

10 “(a) DUTY OF GOOD FAITH AND FAIR DEALING.—

11 “(1) IN GENERAL.—Each individual who is sell-
12 ing or offering for sale a long-term care insurance
13 policy has the duty of good faith and fair dealing to
14 the purchaser or potential purchaser of such a pol-
15 icy.

16 “(2) PROHIBITED PRACTICES.—An individual is
17 considered to have violated paragraph (1) if the indi-
18 vidual engages in any of the following practices:

19 “(A) TWISTING.—Knowingly making any
20 misleading representation or incomplete or
21 fraudulent comparison of any health care insur-
22 ance policy or insurers for the purpose of induc-
23 ing, or tending to induce, any person to retain
24 or effect a change with respect to a long-term
25 care insurance policy.

1 “(B) HIGH PRESSURE TACTICS.—Employ-
2 ing any method of marketing having the effect
3 of, or intending to, induce the purchase of long-
4 term care insurance policy through undue pres-
5 sure.

6 “(C) COLD LEAD ADVERTISING.—Making
7 use directly or indirectly of any method of mar-
8 keting which fails to disclose in a conspicuous
9 manner that a purpose of the method of mar-
10 keting is solicitation of insurance and that con-
11 tact will be made by an insurance agent or in-
12 surance company.

13 “(b) COMPLETION OF MEDICAL HISTORIES PROHIB-
14 ITED.—A person who is selling or offering for sale a long-
15 term care insurance policy may not complete the medical
16 history portion of an application.

17 “(c) PROHIBITION OF SALE OR ISSUANCE TO MEDIC-
18 AID BENEFICIARIES.—A person may not knowingly sell or
19 issue a long-term care insurance policy to an individual
20 who is eligible for medical assistance (other than only as
21 a qualified medicare beneficiary) under title XIX of the
22 Social Security Act.

23 “(d) PROHIBITION OF SALE OR ISSUANCE OF DUPLI-
24 CATE SERVICE BENEFIT POLICIES.—A person may not

1 sell or issue a service-benefit long-term care insurance pol-
2 icy—

3 “(1) knowing that the policy provides for cov-
4 erage that duplicates coverage already provided in
5 another service-benefit long-term care insurance pol-
6 icy (unless the policy is intended to replace such
7 other policy); or

8 “(2) for the benefit of an individual unless the
9 individual (or a representative of the individual) pro-
10 vides a written statement to the effect that the cov-
11 erage (A) does not duplicate other coverage in effect
12 under a service-benefit long-term care insurance pol-
13 icy or (B) will replace another service-benefit long-
14 term care insurance policy.

15 In this subsection, the term ‘service-benefit long-term care
16 insurance policy’ means a long-term care insurance policy
17 which provides for benefits based on the amount of ex-
18 penses incurred, rather than on an indemnity basis.

19 “(e) PROVISION OF OUTLINE OF COVERAGE.—No
20 person may sell or offer for a sale a long-term care insur-
21 ance policy without providing to the purchaser or potential
22 purchaser (or representative) an outline of coverage that
23 complies with the standards established under section
24 2701(c).

1 “(f) INFORMATION ON FINANCIAL ARRANGEMENTS
2 WITH GROUPS.—No person may sell or offer for sale a
3 long-term care insurance policy with respect to a member
4 of an organization with which the person (or the issuer
5 of the policy) has a financial arrangement of any type un-
6 less the person discloses (in accordance with standards es-
7 tablished under section 2701(c)) the nature of the finan-
8 cial arrangement.

9 “(g) PENALTIES.—Any person who sells, offers for
10 sale, or issues a long-term care insurance policy in viola-
11 tion of this section may be imprisoned not more than 5
12 years, or fined in accordance with title 18, United States
13 Code, and, in addition, is subject to a civil money penalty
14 of not to exceed \$25,000 for each such violation. The pro-
15 visions of section 1128A of the Social Security Act (other
16 than the first sentence of subsection (a) and other than
17 subsection (b)) shall apply to a civil money penalty under
18 this subsection in the same manner as such provisions
19 apply to a penalty or proceeding under such section
20 1128A(a).

21 **“SEC. 2703. ADDITIONAL RESPONSIBILITIES OF ISSUERS.**

22 “(a) REFUND OF PREMIUMS.—If an application for
23 a long-term care insurance policy (or for a certificate
24 under a group long-term care insurance policy) is denied
25 or an applicant returns a policy or certificate within 30

1 days of the date of its issuance pursuant to section 2708,
2 the issuer shall refund to the applicant, not later than 30
3 days after the date of the denial or return, any premiums
4 paid with respect to such a policy.

5 “(b) MAILING OF POLICY.—If an application for a
6 long-term care insurance policy (or for a certificate under
7 a group long-term care insurance policy) is approved, the
8 issuer shall transmit to the applicant the policy (or certifi-
9 cate) of insurance not later than 30 days after the date
10 of the approval.

11 “(c) INFORMATION ON DENIALS OF CLAIMS.—If a
12 claim under a long-term care insurance policy is denied,
13 the issuer shall, within 60 days of the date of a written
14 request by the policyholder or certificateholder (or rep-
15 resentative)—

16 “(1) provide a written explanation of the rea-
17 sons for the denial; and

18 “(2) make available all information directly re-
19 lating to such denial.

20 No claim under such a policy may be denied on the basis
21 of a failure to disclose a condition at the time of issuance
22 of the policy if the application for the policy failed to re-
23 quest information respecting the condition.

24 “(d) REPORTING OF INFORMATION.—The issuer of
25 a long-term care insurance policy shall periodically (not

1 less often than annually) report to the Commissioner or
2 superintendent of insurance of each State in which the
3 policy is sold, and shall make available to the Secretary,
4 upon request, information respecting—

5 “(1) the long-term care insurance policies of the
6 issuer that are in force;

7 “(2) the most recent premiums for such policies
8 and the premiums imposed for such policies during
9 the previous 5-year period;

10 “(3) the lapse rates, replacement rates, and re-
11 scission rates for policies (by agent); and

12 “(4) the claims denied (as a percentage of
13 claims submitted) for such policies.

14 Information under this subsection shall be reported in a
15 format specified in the standards established under section
16 2701(c) to carry out this section. For purposes of para-
17 graph (3), there shall not be included as a lapse of policy
18 such a lapse due to the death of the policyholder. For pur-
19 poses of paragraph (4), there shall not be included as a
20 denied claim that is denied solely because of the failure
21 to meet a deductible, waiting period, or exclusionary pe-
22 riod.

23 “(e) ACCESS TO INFORMATION.—Each such issuer
24 shall provide the Secretary and the Commissioner or su-
25 perintendent of insurance of each State in which the policy

1 is sold such information as the Secretary, Commissioner,
2 or superintendent, may request.

3 “(f) PROVISION OF OUTLINE OF COVERAGE FOR RE-
4 NEWALS.—Each issuer of a long-term care insurance pol-
5 icy shall provide, at the time of renewal of such a policy,
6 an outline of coverage that meets the applicable standards
7 established pursuant to this title.

8 “(g) MEDICAL ASSESSMENTS FOR THE ELDERLY.—
9 Before issuing a long-term care insurance policy to an ap-
10 plicant who is 75 years of age or older, if the policy is
11 not guaranteed issue the issuer shall obtain one of the fol-
12 lowing:

13 “(1) A report of a physical examination.

14 “(2) An assessment of functional capacity.

15 “(3) Copies of medical records.

16 “(h) LIMITS ON COMPENSATION FOR SALE OF POLI-
17 CIES.—

18 “(1) IN GENERAL.—The issuer of a long-term
19 care insurance policy may not provide a commission
20 or other compensation to an agent or other rep-
21 resentative for the sale of such a policy in an
22 amount that exceeds 200 percent of the commission
23 or other compensation paid for selling or servicing
24 such a policy in the second or subsequent year.

1 “(2) COMPENSATION DEFINED.—In paragraph
2 (1), the term ‘compensation’ includes pecuniary or
3 nonpecuniary remuneration of any kind relating to
4 the sale or renewal of the policy or certification, in-
5 cluding deferred compensation, bonuses, gifts,
6 prizes, awards, and finders fees.

7 “(i) CIVIL MONEY PENALTY.—Any issuer of a long-
8 term care insurance policy who—

9 “(1) fails to make a refund in accordance with
10 subsection (a);

11 “(2) fails to transmit a policy in accordance
12 with subsection (b);

13 “(3) fails to provide, make available, or report
14 information in accordance with subsection (c), (d),
15 or (e);

16 “(4) fails to provide an outline of coverage in
17 violation of subsection (f);

18 “(5) issues a policy without obtaining certain
19 information in violation of subsection (g); or

20 “(6) provides a commission or compensation in
21 violation of subsection (h),

22 is subject to a civil money penalty of not to exceed \$25,000
23 for each such violation. The provisions of section 1128A
24 of the Social Security Act (other than the first sentence
25 of subsection (a) and other than subsection (b)) shall

1 apply to a civil money penalty under this subsection in
2 the same manner as such provisions apply to a penalty
3 or proceeding under such section 1128A(a).

4 **“SEC. 2704. REQUIREMENTS RELATING TO RENEWABILITY.**

5 “(a) IN GENERAL.—No long-term care insurance pol-
6 icy may be canceled or nonrenewed for any reason other
7 than nonpayment of premium or material misrepresenta-
8 tion.

9 “(b) CONTINUATION AND CONVERSION RIGHTS FOR
10 GROUP POLICIES.—

11 “(1) IN GENERAL.—Each group long-term care
12 insurance policy shall provide covered individuals
13 with a basis for continuation or conversion in ac-
14 cordance with this subsection.

15 “(2) BASIS FOR CONTINUATION.—For purposes
16 of paragraph (1), a policy provides a basis for con-
17 tinuation of coverage if the policy maintains cov-
18 erage under the existing group policy when such cov-
19 erage would otherwise terminate and which is sub-
20 ject only to the continued timely payment of pre-
21 mium when due. A group policy which restricts pro-
22 vision of benefits and services to or contains incen-
23 tives to use certain providers or facility, may provide
24 continuation benefits which are substantially equiva-
25 lent to the benefits of the existing group policy.

1 “(3) BASIS FOR CONVERSION.—For purposes of
2 paragraph (1), a policy provides a basis for conver-
3 sion of coverage if the policy entitles each individ-
4 ual—

5 “(A) whose coverage under the group pol-
6 icy would otherwise be terminated for any rea-
7 son; and

8 “(B) who has been continuously insured
9 under the policy (or group policy which was re-
10 placed) for at least 6 months before the date of
11 the termination;

12 to issuance of a policy providing benefits identical to,
13 substantially equivalent to, or in excess of, those of
14 the policy being terminated, without evidence of in-
15 surability.

16 “(4) TREATMENT OF SUBSTANTIAL EQUIVA-
17 LENCE.—In determining under this subsection
18 whether benefits are substantially equivalent, there
19 shall be taken into consideration the difference be-
20 tween managed care and non-managed care plans.

21 “(5) GROUP REPLACEMENT OF POLICIES.—If a
22 group long-term care insurance policy is replaced by
23 another long-term care insurance policy purchased
24 by the same policyholder, the succeeding issuer shall
25 offer coverage to all persons covered under the old

1 group policy on its date of termination. Coverage
2 under the new group policy shall not result in any
3 exclusion for preexisting conditions that would have
4 been covered under the group policy being replaced.

5 “(c) UPGRADE FOR CURRENT POLICIES.—Each long-
6 term care insurance policy in effect as of the effective date
7 of the standards established under section 2701(c) shall
8 permit the policyholder to purchase a policy that meets
9 all such standards. In offering such a policy, the issuer
10 may impose additional underwriting restrictions only for
11 benefits not held under the previously issued policy.

12 **“SEC. 2705. BENEFIT STANDARDS.**

13 “(a) USE OF STANDARD DEFINITIONS AND TERMI-
14 NOLOGY AND UNIFORM FORMAT.—Each long-term care
15 insurance policy shall, pursuant to standards established
16 under section 2701(c)—

17 “(1) use uniform language and definitions; and

18 “(2) use a uniform format for presenting the
19 outline of coverage under such a policy.

20 “(b) DISCLOSURE.—

21 “(1) OUTLINE OF COVERAGE.—The outline of
22 coverage for each long-term care insurance policy
23 shall include at least the following:

24 “(A) A description of the principal benefits
25 and coverage under the policy.

1 “(B) A statement of the principal exclu-
2 sions, reductions, and limitations contained in
3 the policy.

4 “(C) A statement of the terms under which
5 the policy (or certificate) may be continued in
6 force or discontinued, the terms for continu-
7 ation or conversion, and any reservation in the
8 policy of a right to change premiums.

9 “(D) A statement that the outline of cov-
10 erage is a summary only, not a contract of in-
11 surance, and that the policy (or master policy)
12 contains the contractual provisions that govern.

13 “(E) A statement of the value of the policy
14 (determined in accordance with standard estab-
15 lished to carry out this paragraph).

16 “(F) A description of the terms, specified
17 in section 2708, under which a policy or certifi-
18 cate may be returned and premium refunded.

19 “(G) Information on national average costs
20 for nursing facility and home health care and
21 information (in graphic form) on the relation-
22 ship of the value of the benefits provided under
23 the policy to such national average costs.

1 “(H) A statement of the percentage limit
2 on annual premium increases that is provided
3 under the policy pursuant to subsection (h).

4 “(I) Information (in graphic form) on the
5 projected effect of inflation on the value of ben-
6 efits provided under the policy during a period
7 of at least 20 years.

8 “(2) CERTIFICATES.—A certificate issued pur-
9 suant to a group long-term care insurance policy
10 shall include—

11 “(A) a description of the principal benefits
12 and coverage provided in the policy;

13 “(B) a statement of the principal exclu-
14 sions, reductions, and limitations contained in
15 the policy; and

16 “(C) a statement that the group master
17 policy determines governing contractual provi-
18 sions.

19 “(3) LONG-TERM CARE AS PART OF LIFE IN-
20 SURANCE.—In the case of a long-term care insur-
21 ance policy issued as a part of or a rider on a life
22 insurance policy, at the time of policy delivery there
23 shall be provided a policy summary that includes—

24 “(A) an explanation of how the long-term
25 care benefits interact with other components of

1 the policy (including deductions from death
2 benefits);

3 “(B) an illustration of the amount of bene-
4 fits, the length of benefit, and the guaranteed
5 lifetime benefits (if any) for each covered per-
6 son; and

7 “(C) any exclusions, reductions, and limi-
8 tations on benefits of long-term care.

9 “(c) LIMITING CONDITIONS ON BENEFITS; MINIMUM
10 BENEFITS.—

11 “(1) IN GENERAL.—A long-term care insurance
12 policy may not condition or limit eligibility—

13 “(A) for benefits for a type of services to
14 the need for or receipt of any other services;

15 “(B) for any noninstitutional benefit on
16 the medical necessity for such benefit;

17 “(C) for benefits furnished by licensed pro-
18 viders on compliance with conditions which are
19 in addition to those required for licensure under
20 State law; or

21 “(D) for custodial care (if covered under
22 the policy) only (i) to care provided in facilities
23 which provide a higher level of care or (ii) to
24 care provided in facilities which provide for 24-

1 hour or other nursing care not required in order
2 to be licensed by the State.

3 “(2) HOME HEALTH CARE SERVICES.—If a
4 long-term care insurance policy provides benefits for
5 home health care services, the policy—

6 “(A) may not limit such benefits to serv-
7 ices provided by registered nurses or licensed
8 practical nurses;

9 “(B) may not require benefits for such
10 services to be provided by a nurse or therapist
11 that can be provided by a home health aide or
12 other licensed or certified home care worker
13 acting within the scope of the worker’s licensure
14 or certification;

15 “(C) may not limit such benefits to serv-
16 ices provided by agencies or providers certified
17 under title XVIII of the Social Security Act;
18 and

19 “(D) must provide benefits for custodial
20 care, personal care services (including home
21 health aide and homemaker services), home
22 health services, and respite care in an individ-
23 ual’s home.

24 “(3) NURSING FACILITY SERVICES.—If a long-
25 term care insurance policy provides benefits for

1 nursing facility services, the policy must provide
2 such benefits with respect to all nursing facilities (as
3 defined in section 1919(a) of the Social Security
4 Act) in the State.

5 “(4) MINIMUM PERIOD OF COVERAGE.—Each
6 long-term care insurance policy shall provide benefits
7 over a period of at least 12 consecutive months.

8 “(5) PROHIBITION OF DISCRIMINATION.—A
9 long-term care insurance policy may not treat bene-
10 fits under the policy in the case of an individual with
11 Alzheimer’s disease, with any related progressive de-
12 generative dementia of an organic origin, or with
13 any organic or inorganic mental illness differently
14 from an individual having another medical condition
15 for which benefits may be made available.

16 “(e) LIMITATION ON USE OF PREEXISTING CONDI-
17 TION LIMITS.—

18 “(1) INITIAL ISSUANCE.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graph (B), a long-term care insurance policy
21 may not exclude or condition benefits based on
22 a medical condition for which the policyholder
23 received treatment or was otherwise diagnosed
24 before the issuance of the policy.

1 “(B) 6-MONTH LIMIT.—A long-term care
2 insurance policy may exclude benefits under a
3 policy, during its first 6 months, based on a
4 condition for which the policyholder received
5 treatment or was otherwise diagnosed during
6 the 6 months before the policy became effective.

7 “(2) REPLACEMENT POLICIES.—If a long-term
8 care insurance policy replaces another long-term
9 care insurance policy, the issuer of the replacing pol-
10 icy shall waive any time periods applicable to pre-
11 existing conditions, waiting period, elimination peri-
12 ods and probationary periods in the new policy for
13 similar benefits to the extent such time was spent
14 under the original policy.

15 “(f) USE OF FUNCTIONAL ASSESSMENT.—

16 “(1) IN GENERAL.—Each long-term care insur-
17 ance policy—

18 “(A) shall determine eligibility for, and
19 level of, benefits (other than for nursing facility
20 services) available under the policy based on a
21 professional assessment of the policyholder’s
22 functional ability; and

23 “(B) shall specify the level (or levels) of
24 functional impairment required under such an

1 assessment to obtain benefits other than for
2 nursing facility services) under the policy.

3 Such assessment may not be conducted by an indi-
4 vidual who has a direct or indirect ownership or con-
5 trol interest, or direct or indirect affiliation or rela-
6 tionship with, the issuer of the policy or an entity
7 that provides services for which benefits are avail-
8 able under the long-term care insurance policy.

9 “(2) APPEALS PROCESS.—Each long-term care
10 insurance policy shall provide for an appeals process,
11 meeting standards established under this section, for
12 individuals who dispute the results of an assessment
13 conducted under this subsection.

14 “(g) INFLATION PROTECTION.—Each long-term care
15 insurance policy shall provide, at the time of each annual
16 renewal, for an increase of a specified percentage (but not
17 less than 5 percent) in the dollar payment levels and the
18 maximum payment limit on benefit coverage above the lev-
19 els or limit in effect during the previous policy year. In
20 applying this subsection, the increases shall be
21 compounded annually and the policy may provide for
22 rounding such an increase to the nearest multiple of \$1
23 (in the case of dollar payment levels) or \$100 (in the case
24 of the maximum payment limit).

1 “(h) SPECIFICATION OF LIMITS ON PREMIUM IN-
2 CREASES.—Each long-term care insurance policy shall
3 specify a limit on the percentage increase in premiums for
4 a policy that may be made in any between one policy year
5 and the subsequent policy year.

6 **“SEC. 2706. NONFORFEITURE.**

7 “(a) IN GENERAL.—Each long-term care insurance
8 policy shall provide that if the policy lapses after the policy
9 has been in effect for a minimum period (specified under
10 the standards under section 2701(c)), the policy will pro-
11 vide without payment of any additional premiums benefits
12 equal to—

13 “(1) a percentage (specified under such stand-
14 ards) of the benefits otherwise available at term; or

15 “(2) such other type of benefits as such stand-
16 ards may provide.

17 “(b) ESTABLISHMENT OF STANDARDS.—The stand-
18 ards under section 2701(c)—

19 “(1) may not provide more than 2 additional
20 types of benefits under subsection (a)(2); and

21 “(2) may provide that the percentage or
22 amount of benefits under subsection (a) must in-
23 crease based upon the period of time in which the
24 policy was in effect.

1 **“SEC. 2707. LIMIT OF PERIOD OF CONTESTABILITY.**

2 “The issuer of a long-term care insurance policy may
3 not cancel such a policy or deny a claim under the policy
4 based on fraud or misrepresentation relating to the issu-
5 ance of the policy unless notice of such fraud or misrepre-
6 sentation is provided within 6 months after the date of
7 the issuance of the policy.

8 **“SEC. 2708. RIGHT TO RETURN (FREE LOOK).**

9 “Each applicant for a long-term care insurance policy
10 shall have the right to return the policy (or certificate)
11 within 30 days of the date of its delivery (and to have
12 the premium refunded) if, after examination of the policy
13 or certificate, the applicant is not satisfied for any reason.

14 **“SEC. 2709. LONG-TERM CARE INSURANCE POLICY DE-**
15 **FINED.**

16 “(a) IN GENERAL.—In this title, except as otherwise
17 provided in this section, the term ‘long-term care insur-
18 ance policy’ means any insurance policy, certificate, or
19 rider advertised, marketed, offered, or designed to provide
20 coverage for each covered person on an expense incurred,
21 indemnity, prepaid, or other basis, for one or more diag-
22 nostic, preventive, therapeutic, rehabilitative, maintenance
23 or personal care services, provided in a setting other than
24 an acute care unit of a hospital. Such term includes a
25 group or individual annuity or life insurance policy or

1 rider which provides directly (or which supplements) long-
2 term care insurance.

3 “(b) POLICIES EXCLUDED.—Except as provided in
4 subsection (d), the term ‘long-term care insurance policy’
5 does not include any medicare supplemental policy (as de-
6 fined in section 1882(g) of the Social Security Act) and
7 any insurance which is offered primarily to provide—

8 “(1) basic hospital expense coverage, basic med-
9 ical-surgical expense coverage, hospital confinement
10 indemnity coverage, or major medical expense cov-
11 erage;

12 “(2) disability income or related asset-protec-
13 tion coverage;

14 “(3) accident only coverage;

15 “(4) specified disease or specified accident cov-
16 erage; or

17 “(5) limited benefit health coverage.

18 “(c) TREATMENT OF CERTAIN LIFE INSURANCE
19 POLICIES.—Except as provided in subsection (d), the term
20 ‘long-term care insurance policy’ does not include life in-
21 surance policies—

22 “(1) which accelerate the death benefit specifi-
23 cally for—

24 “(A) one or more of the qualifying events
25 of terminal illness;

1 “(B) medical conditions requiring extraor-
2 dinary medical intervention; or

3 “(C) permanent institutional confinement;

4 “(2) which provide the option of a lump-sum
5 payment for those benefits; and

6 “(3) in which neither the benefits nor the eligi-
7 bility for the benefits is conditioned upon the receipt
8 of long-term care.

9 “(d) INCLUSION OF POLICIES MARKETED AS LONG-
10 TERM CARE INSURANCE.—The term ‘long-term care in-
11 surance policy’ also means any product which is adver-
12 tised, marketed, or offered as long-term care insurance.”.

13 **SEC. 3. AMENDMENTS TO THE MEDICAID PROGRAM.**

14 (a) STATE MEDICAID REQUIREMENT FOR REGU-
15 LATORY PROGRAM.—Section 1902(a) of the Social Secu-
16 rity Act (42 U.S.C. 1396(a)) is amended—

17 (1) by striking “and” at the end of paragraph
18 (61);

19 (2) by striking the period at the end of para-
20 graph (62) and inserting “; and”; and

21 (3) by inserting after paragraph (62) the fol-
22 lowing new paragraph:

23 “(63) establish, by the date specified in section
24 2701(d) of the Public Health Service Act, a State

1 regulatory program, that meets the requirements of
2 section 2701(a)(1)(A) of such Act.”.

3 (b) DENIAL OF MEDICAID FUNDS FOR FAILURE TO
4 ESTABLISH REGULATORY PROGRAM.—Section 1903(i) of
5 the Social Security Act (42 U.S.C. 1396b(i)) is amend-
6 ed—

7 (1) by striking “or” at the end of paragraph
8 (14);

9 (2) by striking the period at the end of para-
10 graph (15) and inserting “; or”; and

11 (3) by inserting after paragraph (15) the fol-
12 lowing new paragraph.

13 “(16) with respect to any amount expended for
14 medical assistance for nursing facility services (fur-
15 nished on and after the date specified in section
16 2701(d) of the Public Health Service Act) during
17 such period as the state has failed to establish and
18 maintain a regulatory program that meets the re-
19 quirements of section 2701(a)(1)(A) of such Act.”.

20 **SEC. 4. REPORTS AND STUDY.**

21 (a) REPORT ON ASSESSMENT METHODS FOR FUNC-
22 TIONAL ABILITY.—Within 2 years after the date of the
23 enactment of this Act, the Secretary of Health and
24 Human Services shall submit to Congress a report on the
25 different methods that may be used to conduct assess-

1 ments of functional ability described in section 2705(f)(1)
2 of the Public Health Service Act (including the methods
3 used under section 1929(c) of the Social Security Act) and
4 the relative effectiveness of each of such methods.

5 (b) REPORT ON SOLVENCY PROTECTION.—Within 2
6 years after the date of the enactment of this Act, the Sec-
7 retary of Health and Human Services shall submit to Con-
8 gress a report on standards that may be applied to assure
9 the solvency of insurers with respect to long-term care in-
10 surance policies.

11 (c) STUDY OF STANDARD MEASURE OF VALUE FOR
12 LONG-TERM CARE INSURANCE POLICIES.—The Secretary
13 of Health and Human Services shall provide for a study
14 to develop a standard measure of value for long-term care
15 insurance policies. Within 2 years after the date of the
16 enactment of this Act, the Secretary shall submit to Con-
17 gress a report on such study.

18 **SEC. 5. FUNDING FOR LONG-TERM CARE INSURANCE IN-**
19 **FORMATION, COUNSELING, AND ASSISTANCE.**

20 There are authorized to be appropriated to provide
21 information, counseling, and assistance relating to the
22 procurement of adequate and appropriate long-term care
23 insurance, \$20,000,000 for each of fiscal years 1997,
24 1998, and 1999.

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