

104TH CONGRESS  
2D SESSION

# H. R. 3381

To amend the Internal Revenue Code of 1986 and the Social Security Act to provide tax incentives for the purchase of long-term care insurance and to establish consumer protection standards for such insurance.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1996

Mr. DURBIN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 and the Social Security Act to provide tax incentives for the purchase of long-term care insurance and to establish consumer protection standards for such 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 In-  
5 surance Incentives and Consumer Protection Act of  
6 1996”.

1                   **TITLE I—TAX-RELATED**  
2                                   **PROVISIONS**

3 **SEC. 100. AMENDMENT OF 1986 CODE.**

4           Except as otherwise expressly provided, whenever in  
5 this title an amendment or repeal is expressed in terms  
6 of an amendment to, or repeal of, a section or other provi-  
7 sion, the reference shall be considered to be made to a  
8 section or other provision of the Internal Revenue Code  
9 of 1986.

10 **SEC. 101. TREATMENT OF LONG-TERM CARE INSURANCE.**

11           (a) GENERAL RULE.—Chapter 79 (relating to defini-  
12 tions) is amended by inserting after section 7702A the fol-  
13 lowing new section:

14 **“SEC. 7702B. TREATMENT OF QUALIFIED LONG-TERM CARE**  
15                                   **INSURANCE.**

16           “(a) IN GENERAL.—For purposes of this title—

17                   “(1) a qualified long-term care insurance con-  
18 tract shall be treated as an accident and health in-  
19 surance contract,

20                   “(2) amounts (other than policyholder divi-  
21 dends, as defined in section 808, or premium re-  
22 funds) received under a qualified long-term care in-  
23 surance contract shall be treated as amounts re-  
24 ceived for personal injuries and sickness and shall be  
25 treated as reimbursement for expenses actually in-

1 curred for medical care (as defined in section  
2 213(d)),

3 “(3) any plan of an employer providing cov-  
4 erage under a qualified long-term care insurance  
5 contract shall be treated as an accident and health  
6 plan with respect to such coverage,

7 “(4) except as provided in subsection (e)(3),  
8 amounts paid for a qualified long-term care insur-  
9 ance contract providing the benefits described in  
10 subsection (b)(2)(A) shall be treated as payments  
11 made for insurance for purposes of section  
12 213(d)(1)(D), and

13 “(5) a qualified long-term care insurance con-  
14 tract shall be treated as a guaranteed renewable con-  
15 tract subject to the rules of section 816(e).

16 “(b) QUALIFIED LONG-TERM CARE INSURANCE  
17 CONTRACT.—For purposes of this title—

18 “(1) IN GENERAL.—The term ‘qualified long-  
19 term care insurance contract’ means any insurance  
20 contract if—

21 “(A) the only insurance protection pro-  
22 vided under such contract is coverage of quali-  
23 fied long-term care services,

24 “(B) such contract does not pay or reim-  
25 burse expenses incurred for services or items to

1 the extent that such expenses are reimbursable  
2 under title XVIII of the Social Security Act or  
3 would be so reimbursable but for the applica-  
4 tion of a deductible or coinsurance amount,

5 “(C) such contract is guaranteed renew-  
6 able,

7 “(D) such contract does not provide for a  
8 cash surrender value or other money that can  
9 be—

10 “(i) paid, assigned, or pledged as col-  
11 lateral for a loan, or

12 “(ii) borrowed,

13 other than as provided in subparagraph (E) or  
14 paragraph (2)(C),

15 “(E) all refunds of premiums, and all pol-  
16 icyholder dividends or similar amounts, under  
17 such contract are to be applied as a reduction  
18 in future premiums or to increase future bene-  
19 fits, and

20 “(F) the State in which such contract is is-  
21 sued has a regulatory program approved by the  
22 Secretary of Health and Human Services under  
23 title XXI of the Social Security Act and such  
24 contract is certified under such program.

25 “(2) SPECIAL RULES.—

1           “(A) PER DIEM, ETC. PAYMENTS PER-  
2           MITTED.—A contract shall not fail to be de-  
3           scribed in subparagraph (A) or (B) of para-  
4           graph (1) by reason of payments being made on  
5           a per diem or other periodic basis without re-  
6           gard to the expenses incurred during the period  
7           to which the payments relate.

8           “(B) SPECIAL RULES RELATING TO MEDI-  
9           CARE.—

10           “(i) Paragraph (1)(B) shall not apply  
11           to expenses which are reimbursable under  
12           title XVIII of the Social Security Act only  
13           as a secondary payor.

14           “(ii) No provision of law shall be con-  
15           strued or applied so as to prohibit the of-  
16           fering of a qualified long-term care insur-  
17           ance contract on the basis that the con-  
18           tract coordinates its benefits with those  
19           provided under such title.

20           “(C) REFUNDS OF PREMIUMS.—Paragraph  
21           (1)(E) shall not apply to any refund on the  
22           death of the insured, or on a complete surren-  
23           der or cancellation of the contract, which can-  
24           not exceed the aggregate premiums paid under  
25           the contract. Any refund on a complete surren-

1           der or cancellation of the contract shall be in-  
2           cludible in gross income to the extent that any  
3           deduction or exclusion was allowable with re-  
4           spect to the premiums.

5           “(c) QUALIFIED LONG-TERM CARE SERVICES.—For  
6 purposes of this section—

7           “(1) IN GENERAL.—The term ‘qualified long-  
8 term care services’ means necessary diagnostic, pre-  
9 ventive, therapeutic, curing, treating, mitigating, and  
10 rehabilitative services, and maintenance or personal  
11 care services, which—

12                   “(A) are required by a chronically ill indi-  
13 vidual, and

14                   “(B) are provided pursuant to a plan of  
15 care prescribed by a licensed health care practi-  
16 tioner.

17           “(2) CHRONICALLY ILL INDIVIDUAL.—

18                   “(A) IN GENERAL.—The term ‘chronically  
19 ill individual’ means any individual who has  
20 been certified by a licensed health care practi-  
21 tioner as—

22                           “(i) being unable to perform (without  
23 substantial assistance from another indi-  
24 vidual) at least 2 activities of daily living

1 for a period of at least 90 days due to a  
2 loss of functional capacity,

3 “(ii) having a level of disability simi-  
4 lar (as determined by the Secretary in con-  
5 sultation with the Secretary of Health and  
6 Human Services) to the level of disability  
7 described in clause (i), or

8 “(iii) requiring substantial supervision  
9 to protect such individual from threats to  
10 health and safety due to severe cognitive  
11 impairment.

12 Such term shall not include any individual oth-  
13 erwise meeting the requirements of the preced-  
14 ing sentence unless within the preceding 12-  
15 month period a licensed health care practitioner  
16 has certified that such individual meets such re-  
17 quirements.

18 “(B) ACTIVITIES OF DAILY LIVING.—For  
19 purposes of subparagraph (A), each of the fol-  
20 lowing is an activity of daily living:

21 “(i) Eating.

22 “(ii) Toileting.

23 “(iii) Transferring.

24 “(iv) Bathing.

25 “(v) Dressing.

1 “(vi) Continnence.

2 Nothing in this section shall be construed to re-  
3 quire a contract to take into account all of the  
4 preceding activities of daily living.

5 “(3) MAINTENANCE OR PERSONAL CARE SERV-  
6 ICES.—The term ‘maintenance or personal care serv-  
7 ices’ means any care the primary purpose of which  
8 is the provision of needed assistance with any of the  
9 disabilities as a result of which the individual is a  
10 chronically ill individual (including the protection  
11 from threats to health and safety due to severe cog-  
12 nitive impairment).

13 “(4) LICENSED HEALTH CARE PRACTI-  
14 TIONER.—The term ‘licensed health care practi-  
15 tioner’ means any physician (as defined in section  
16 1861(r)(1) of the Social Security Act) and any reg-  
17 istered professional nurse, licensed social worker, or  
18 other individual who meets such requirements as  
19 may be prescribed by the Secretary.

20 “(d) AGGREGATE PAYMENTS IN EXCESS OF LIM-  
21 ITS.—

22 “(1) IN GENERAL.—If the aggregate amount of  
23 periodic payments under all qualified long-term care  
24 insurance contracts with respect to an insured for  
25 any period exceeds the dollar amount in effect for

1 such period under paragraph (3), such excess pay-  
2 ments shall be treated as made for qualified long-  
3 term care services only to the extent of the costs in-  
4 curred by the payee (not otherwise compensated for  
5 by insurance or otherwise) for qualified long-term  
6 care services provided during such period for such  
7 insured.

8 “(2) PERIODIC PAYMENTS.—For purposes of  
9 paragraph (1), the term ‘periodic payment’ means  
10 any payment (whether on a periodic basis or other-  
11 wise) made without regard to the extent of the costs  
12 incurred by the payee for qualified long-term care  
13 services.

14 “(3) DOLLAR AMOUNT.—The dollar amount in  
15 effect under this subsection shall be \$175 per day  
16 (or the equivalent amount in the case of payments  
17 on another periodic basis).

18 “(4) INFLATION ADJUSTMENT.—In the case of  
19 a calendar year after 1997, the dollar amount con-  
20 tained in paragraph (3) shall be increased at the  
21 same time and in the same manner as amounts are  
22 increased pursuant to section 213(d)(10).

23 “(e) TREATMENT OF COVERAGE PROVIDED AS PART  
24 OF A LIFE INSURANCE CONTRACT.—Except as otherwise  
25 provided in regulations prescribed by the Secretary, in the

1 case of any long-term care insurance coverage (whether  
2 or not qualified) provided by a rider on a life insurance  
3 contract—

4 “(1) IN GENERAL.—This section shall apply as  
5 if the portion of the contract providing such cov-  
6 erage is a separate contract.

7 “(2) APPLICATION OF SECTION 7702.—Section  
8 7702(e)(2) (relating to the guideline premium limi-  
9 tation) shall be applied by increasing the guideline  
10 premium limitation with respect to a life insurance  
11 contract, as of any date—

12 “(A) by the sum of any charges (but not  
13 premium payments) against the life insurance  
14 contract’s cash surrender value (within the  
15 meaning of section 7702(f)(2)(A)) for such cov-  
16 erage made to that date under the contract, less

17 “(B) any such charges the imposition of  
18 which reduces the premiums paid for the con-  
19 tract (within the meaning of section  
20 7702(f)(1)).

21 “(3) APPLICATION OF SECTION 213.—No deduc-  
22 tion shall be allowed under section 213(a) for  
23 charges against the life insurance contract’s cash  
24 surrender value described in paragraph (2), unless  
25 such charges are includible in income as a result of

1 the application of section 72(e)(10) and the rider is  
2 a qualified long-term care insurance contract under  
3 subsection (b).

4 “(4) PORTION DEFINED.—For purposes of this  
5 subsection, the term ‘portion’ means only the terms  
6 and benefits under a life insurance contract that are  
7 in addition to the terms and benefits under the con-  
8 tract without regard to the coverage under a quali-  
9 fied long-term care insurance contract.”

10 (b) LONG-TERM CARE INSURANCE NOT PERMITTED  
11 UNDER CAFETERIA PLANS OR FLEXIBLE SPENDING AR-  
12 RANGEMENTS.—

13 (1) CAFETERIA PLANS.—Section 125(f) is  
14 amended by adding at the end the following new  
15 sentence: “Such term shall not include any product  
16 which is advertised, marketed, or offered as long-  
17 term care insurance.”

18 (2) FLEXIBLE SPENDING ARRANGEMENTS.—  
19 The text of section 106 (relating to contributions by  
20 employer to accident and health plans) is amended  
21 to read as follows:

22 “(a) GENERAL RULE.—Except as provided in sub-  
23 section (b), gross income of an employee does not include  
24 employer-provided coverage under an accident or health  
25 plan.

1       “(b) INCLUSION OF LONG-TERM CARE BENEFITS  
2 PROVIDED THROUGH FLEXIBLE SPENDING ARRANGE-  
3 MENTS.—

4           “(1) IN GENERAL.—Effective on and after Jan-  
5 uary 1, 1997, gross income of an employee shall in-  
6 clude employer-provided coverage for qualified long-  
7 term care services (as defined in section 7702B(e))  
8 to the extent that such coverage is provided through  
9 a flexible spending or similar arrangement.

10          “(2) FLEXIBLE SPENDING ARRANGEMENT.—  
11 For purposes of this subsection, a flexible spending  
12 arrangement is a benefit program which provides  
13 employees with coverage under which—

14           “(A) specified incurred expenses may be  
15 reimbursed (subject to reimbursement maxi-  
16 mums and other reasonable conditions), and

17           “(B) the maximum amount of reimburse-  
18 ment which is reasonably available to a partici-  
19 pant for such coverage is less than 500 percent  
20 of the value of such coverage.

21 In the case of an insured plan, the maximum  
22 amount reasonably available shall be determined on  
23 the basis of the underlying coverage.”

1 (c) CONTINUATION COVERAGE EXCISE TAX NOT TO  
 2 APPLY.—Subsection (f) of section 4980B is amended by  
 3 adding at the end the following new paragraph:

4 “(9) CONTINUATION OF LONG-TERM CARE COV-  
 5 ERAGE NOT REQUIRED.—A group health plan shall  
 6 not be treated as failing to meet the requirements of  
 7 this subsection solely by reason of failing to provide  
 8 coverage under any qualified long-term care insur-  
 9 ance contract (as defined in section 7702B(b)).”

10 (d) CLERICAL AMENDMENT.—The table of sections  
 11 for chapter 79 is amended by inserting after the item re-  
 12 lating to section 7702A the following new item:

“Sec. 7702B. Treatment of qualified long-term care insurance.”.

13 (e) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by  
 15 this section shall apply to contracts issued after De-  
 16 cember 31, 1996.

17 (2) CONTINUATION OF EXISTING POLICIES.—In  
 18 the case of any contract issued before January 1,  
 19 1997, which met the long-term care insurance re-  
 20 quirements of the State in which the contract was  
 21 situated at the time the contract was issued—

22 (A) such contract shall be treated for pur-  
 23 poses of the Internal Revenue Code of 1986 as  
 24 a qualified long-term care insurance contract

1 (as defined in section 7702B(b) of such Code),  
2 and

3 (B) services provided under, or reimbursed  
4 by, such contract shall be treated for such pur-  
5 poses as qualified long-term care services (as  
6 defined in section 7702B(c) of such Code).

7 (3) EXCHANGES OF EXISTING POLICIES.—If,  
8 after the date of enactment of this Act and before  
9 January 1, 1998, a contract providing for long-term  
10 care insurance coverage is exchanged solely for a  
11 qualified long-term care insurance contract (as de-  
12 fined in section 7702B(b) of such Code), no gain or  
13 loss shall be recognized on the exchange. If, in addi-  
14 tion to a qualified long-term care insurance contract,  
15 money or other property is received in the exchange,  
16 then any gain shall be recognized to the extent of  
17 the sum of the money and the fair market value of  
18 the other property received. For purposes of this  
19 paragraph, the cancellation of a contract providing  
20 for long-term care insurance coverage and reinvest-  
21 ment of the cancellation proceeds in a qualified long-  
22 term care insurance contract within 60 days there-  
23 after shall be treated as an exchange.

24 (4) ISSUANCE OF CERTAIN RIDERS PER-  
25 MITTED.—For purposes of applying sections 101(f),

1 7702, and 7702A of the Internal Revenue Code of  
2 1986 to any contract—

3 (A) the issuance of a rider which is treated  
4 as a qualified long-term care insurance contract  
5 under section 7702B, and

6 (B) the addition of any provision required  
7 to conform any other long-term care rider to be  
8 so treated,

9 shall not be treated as a modification or material  
10 change of such contract.

11 **SEC. 102. QUALIFIED LONG-TERM CARE SERVICES TREAT-**  
12 **ED AS MEDICAL CARE.**

13 (a) GENERAL RULE.—Paragraph (1) of section  
14 213(d) (defining medical care) is amended by striking  
15 “or” at the end of subparagraph (B), by redesignating  
16 subparagraph (C) as subparagraph (D), and by inserting  
17 after subparagraph (B) the following new subparagraph:

18 “(C) for qualified long-term care services  
19 (as defined in section 7702B(c)), or”.

20 (b) DEDUCTION FOR PREMIUMS ALLOWED WITHOUT  
21 REGARD TO ADJUSTED GROSS INCOME THRESHOLD.—  
22 Subsection (a) of section 213 is amended to read as fol-  
23 lows:

1       “(a) ALLOWANCE OF DEDUCTION.—There shall be  
2 allowed as a deduction the following amounts not com-  
3 pensated for by insurance or otherwise—

4               “(1) the amount by which the expenses paid  
5 during the taxable year (reduced by the amount de-  
6 ductible under paragraph (2)) for medical care of  
7 the taxpayer, his spouse, and dependents (as defined  
8 in section 152) exceeds 7.5 percent of adjusted gross  
9 income, and

10              “(2) the amount of the eligible long-term care  
11 premiums paid during the taxable year.”

12       (c) TECHNICAL AMENDMENTS.—

13              (1) Subparagraph (D) of section 213(d)(1) (as  
14 redesignated by subsection (a)) is amended by in-  
15 serting before the period “or for any qualified long-  
16 term care insurance contract (as defined in section  
17 7702B(b))”.

18              (2)(A) Paragraph (1) of section 213(d) is  
19 amended by adding at the end the following new  
20 flush sentence:

21              “In the case of a qualified long-term care insurance  
22 contract (as defined in section 7702B(b)), only eligi-  
23 ble long-term care premiums (as defined in para-  
24 graph (10)) shall be taken into account under sub-  
25 paragraph (D).”

1 (B) Subsection (d) of section 213 is amended  
 2 by adding at the end the following new paragraphs:

3 “(10) ELIGIBLE LONG-TERM CARE PRE-  
 4 MIUMS.—

5 “(A) IN GENERAL.—For purposes of this  
 6 section, the term ‘eligible long-term care pre-  
 7 miums’ means the amount paid during a tax-  
 8 able year for any qualified long-term care insur-  
 9 ance contract (as defined in section 7702B(b))  
 10 covering an individual, to the extent such  
 11 amount does not exceed the limitation deter-  
 12 mined under the following table:

<b>“In the case of an individual with an attained age before the close of the taxable year of:</b>	<b>The limitation is:</b>
40 or less .....	\$ 200
More than 40 but not more than 50 .....	375
More than 50 but not more than 60 .....	750
More than 60 but not more than 70 .....	2,000
More than 70 .....	2,500.

13 “(B) INDEXING.—

14 “(i) IN GENERAL.—In the case of any  
 15 taxable year beginning in a calendar year  
 16 after 1997, each dollar amount contained  
 17 in subparagraph (A) shall be increased by  
 18 the medical care cost adjustment of such  
 19 amount for such calendar year. If any in-  
 20 crease determined under the preceding sen-  
 21 tence is not a multiple of \$10, such in-

1           crease shall be rounded to the nearest mul-  
2           tiple of \$10.

3           “(ii) MEDICAL CARE COST ADJUST-  
4           MENT.—For purposes of clause (i), the  
5           medical care cost adjustment for any cal-  
6           endar year is the percentage (if any) by  
7           which—

8                   “(I) the medical care component  
9                   of the Consumer Price Index (as de-  
10                  fined in section 1(f)(5)) for August of  
11                  the preceding calendar year, exceeds

12                   “(II) such component for August  
13                  of 1996.

14           The Secretary shall, in consultation with  
15           the Secretary of Health and Human Serv-  
16           ices, prescribe an adjustment which the  
17           Secretary determines is more appropriate  
18           for purposes of this paragraph than the  
19           adjustment described in the preceding sen-  
20           tence, and the adjustment so prescribed  
21           shall apply in lieu of the adjustment de-  
22           scribed in the preceding sentence.

23           “(11) CERTAIN PAYMENTS TO RELATIVES  
24           TREATED AS NOT PAID FOR MEDICAL CARE.—An  
25           amount paid for a qualified long-term care service

1 (as defined in section 7702B(c)) provided to an indi-  
2 vidual shall be treated as not paid for medical care  
3 if such service is provided—

4 “(A) by the spouse of the individual or by  
5 a relative (directly or through a partnership,  
6 corporation, or other entity) unless the service  
7 is provided by a licensed professional with re-  
8 spect to such service, or

9 “(B) by a corporation or partnership which  
10 is related (within the meaning of section 267(b)  
11 or 707(b)) to the individual.

12 For purposes of this paragraph, the term ‘relative’  
13 means an individual bearing a relationship to the in-  
14 dividual which is described in any of paragraphs (1)  
15 through (8) of section 152(a). This paragraph shall  
16 not apply for purposes of section 105(b) with respect  
17 to reimbursements through insurance.”

18 (3) Paragraph (6) of section 213(d) is  
19 amended—

20 (A) by striking “subparagraphs (A) and  
21 (B)” and inserting “subparagraphs (A), (B),  
22 and (C)”, and

23 (B) by striking “paragraph (1)(C)” in sub-  
24 paragraph (A) and inserting “paragraph  
25 (1)(D)”.

1           (4) Paragraph (7) of section 213(d) is amended  
2           by striking “subparagraphs (A) and (B)” and insert-  
3           ing “subparagraphs (A), (B), and (C)”.

4           (d) EFFECTIVE DATE.—

5           (1) IN GENERAL.—The amendments made by  
6           this section shall apply to taxable years beginning  
7           after December 31, 1996.

8           (2) DEDUCTION FOR LONG-TERM CARE SERV-  
9           ICES.—Amounts paid for qualified long-term care  
10          services (as defined in section 7702B(c) of the Inter-  
11          nal Revenue Code of 1986, as added by this Act)  
12          furnished in any taxable year beginning before Janu-  
13          ary 1, 1997, shall not be taken into account under  
14          section 213 of the Internal Revenue Code of 1986.

15 **SEC. 103. CERTAIN EXCHANGES OF LIFE INSURANCE CON-**  
16 **TRACTS FOR QUALIFIED LONG-TERM CARE**  
17 **INSURANCE CONTRACTS NOT TAXABLE.**

18          (a) IN GENERAL.—Subsection (a) of section 1035  
19          (relating to certain exchanges of insurance contracts) is  
20          amended by striking the period at the end of paragraph  
21          (3) and inserting “; or”, and by adding at the end the  
22          following new paragraph:

23                 “(4) a contract of life insurance or an endow-  
24          ment or annuity contract for a qualified long-term

1 care insurance contract (as defined in section  
2 7702B(b)).”

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 1996.

6 **SEC. 104. EXCEPTION FROM PENALTY TAX FOR AMOUNTS**  
7 **WITHDRAWN FROM CERTAIN RETIREMENT**  
8 **PLANS FOR QUALIFIED LONG-TERM CARE IN-**  
9 **SURANCE.**

10 (a) IN GENERAL.—Paragraph (2) of section 72(t) is  
11 amended by adding at the end the following new subpara-  
12 graph:

13 “(F) PREMIUMS FOR QUALIFIED LONG-  
14 TERM CARE INSURANCE CONTRACTS.—Distribu-  
15 tions to an individual from an individual retire-  
16 ment plan, or from amounts attributable to em-  
17 ployer contributions made pursuant to elective  
18 deferrals described in subparagraph (A) or (C)  
19 of section 402(g)(3), to the extent such dis-  
20 tributions do not exceed the premiums for a  
21 qualified long-term care insurance contract (as  
22 defined in section 7702B(b)) for such individual  
23 or the spouse of such individual. In applying  
24 subparagraph (B), such premiums shall be  
25 treated as amounts not paid for medical care.”

1 (b) DISTRIBUTIONS PERMITTED FROM CERTAIN  
2 PLANS TO PAY LONG-TERM CARE PREMIUMS.—

3 (1) Section 401(k)(2)(B)(i) is amended by  
4 striking “or” at the end of subclause (III), by strik-  
5 ing “and” at the end of subclause (IV) and inserting  
6 “or”, and by inserting after subclause (IV) the fol-  
7 lowing new subclause:

8 “(V) the date distributions for  
9 premiums for a long-term care insur-  
10 ance contract (as defined in section  
11 7702B(b)) for coverage of such indi-  
12 vidual or the spouse of such individual  
13 are made, and”.

14 (2) Section 403(b)(11) is amended by striking  
15 “or” at the end of subparagraph (A), by striking the  
16 period at the end of subparagraph (B) and inserting  
17 “, or”, and by inserting after subparagraph (B) the  
18 following new subparagraph:

19 “(C) for the payment of premiums for a  
20 long-term care insurance contract (as defined in  
21 section 7702B(b)) for coverage of the employee  
22 or the spouse of the employee.”

23 (3) Subparagraph (A) of section 457(d)(1) is  
24 amended by striking “or” at the end of clause (ii),  
25 by striking “and” at the end of clause (iii) and in-

1       serting “or”, and by inserting after clause (iii) the  
2       following new clause:

3                   “(iv) the date distributions for pre-  
4                   miums for a long-term care insurance con-  
5                   tract (as defined in section 7702B(b)) for  
6                   coverage of such individual or the spouse  
7                   of such individual are made, and”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9       this section shall apply to payments and distributions after  
10      December 31, 1996.

11      **SEC. 105. REPORTING REQUIREMENTS.**

12       (a) IN GENERAL.—Subpart B of part III of sub-  
13      chapter A of chapter 61 is amended by adding at the end  
14      the following new section:

15      **“SEC. 6050Q. CERTAIN LONG-TERM CARE BENEFITS.**

16       “(a) REQUIREMENT OF REPORTING.—Any person  
17      who pays long-term care benefits shall make a return, ac-  
18      cording to the forms or regulations prescribed by the Sec-  
19      retary, setting forth—

20                   “(1) the aggregate amount of such benefits  
21                   paid by such person to any individual during any  
22                   calendar year, and

23                   “(2) the name, address, and TIN of such indi-  
24                   vidual.

1           “(b) STATEMENTS TO BE FURNISHED TO PERSONS  
2 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

3 Every person required to make a return under subsection  
4 (a) shall furnish to each individual whose name is required  
5 to be set forth in such return a written statement show-  
6 ing—

7           “(1) the name of the person making the pay-  
8 ments, and

9           “(2) the aggregate amount of long-term care  
10 benefits paid to the individual which are required to  
11 be shown on such return.

12 The written statement required under the preceding sen-  
13 tence shall be furnished to the individual on or before Jan-  
14 uary 31 of the year following the calendar year for which  
15 the return under subsection (a) was required to be made.

16           “(c) LONG-TERM CARE BENEFITS.—For purposes of  
17 this section, the term ‘long-term care benefit’ means—

18           “(1) any amount paid under any product which  
19 is advertised, marketed, or offered as long-term care  
20 insurance, and

21           “(2) payments which are excludable from gross  
22 income by reason of section 101(g).”.

23           (b) PENALTIES.—

24           (1) Subparagraph (B) of section 6724(d)(1) is  
25 amended by redesignating clauses (ix) through (xiv)

1 as clauses (x) through (xv), respectively, and by in-  
2 serting after clause (viii) the following new clause:

3 “(ix) section 6050Q (relating to cer-  
4 tain long-term care benefits),”.

5 (2) Paragraph (2) of section 6724(d) is amend-  
6 ed by redesignating subparagraphs (Q) through (T)  
7 as subparagraphs (R) through (U), respectively, and  
8 by inserting after subparagraph (P) the following  
9 new subparagraph:

10 “(Q) section 6050Q(b) (relating to certain  
11 long-term care benefits),”.

12 (c) CLERICAL AMENDMENT.—The table of sections  
13 for subpart B of part III of subchapter A of chapter 61  
14 is amended by adding at the end the following new item:

“Sec. 6050Q. Certain long-term care benefits.”

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to benefits paid after December  
17 31, 1996.

1 **TITLE II—FEDERAL STANDARDS**  
2 **FOR PRIVATE LONG-TERM**  
3 **CARE INSURANCE CON-**  
4 **TRACTS**

5 **SEC. 201. FEDERAL STANDARDS FOR PRIVATE LONG-TERM**  
6 **CARE INSURANCE CONTRACTS.**

7 (a) IN GENERAL.—The Social Security Act is amend-  
8 ed by adding at the end the following:

9 “TITLE XXI—FEDERAL STANDARDS FOR PRI-  
10 VATE LONG-TERM CARE INSURANCE CON-  
11 TRACTS

12 “**SEC. 2101. REQUIREMENTS FOR STATE ENFORCEMENT**  
13 **PROGRAMS.**

14 “(a) IN GENERAL.—The Secretary shall review, ap-  
15 prove, and periodically reapprove State programs that cer-  
16 tify long-term care insurance contracts as meeting the  
17 Federal standards established under this title. The Sec-  
18 retary may not approve or reapprove such a program un-  
19 less it meets the requirements of this section.

20 “(b) GENERAL REQUIREMENT.—In order to be ap-  
21 proved, a State program must include such laws and pro-  
22 cedures as may be necessary to ensure the compliance of  
23 long-term care insurance contracts certified by the State,  
24 and insurers issuing such contracts and their agents, with  
25 the Federal requirements established under this title.

1       “(c) SPECIFIC ACTIVITIES UNDER STATE PRO-  
2 GRAM.—In order to be approved, a State program shall  
3 provide for the following procedures and activities:

4           “(1) MONITORING OF INSURERS AND CON-  
5 TRACTS.—Procedures for ongoing monitoring of the  
6 compliance of insurers doing business in the State,  
7 and of long-term care insurance contracts issued in  
8 the State, with requirements under this title.

9           “(2) CONTRACT REVIEW AND CERTIFI-  
10 CATION.—Procedures for review and certification  
11 (and annual recertification) of each such contract  
12 sold in the State.

13           “(3) CONSUMER COMPLAINTS AND DISPUTE  
14 RESOLUTION.—Administrative procedures for the in-  
15 vestigation and resolution of complaints by consum-  
16 ers, and disputes between consumers and insurers,  
17 with respect to long-term care insurance, including  
18 procedures for the filing, investigation, and adjudica-  
19 tion of consumer complaints with respect to the com-  
20 pliance of insurers and contracts with requirements  
21 under this title, or other requirements under State  
22 law.

1 **“SEC. 2102. REQUIREMENTS TO FACILITATE UNDERSTAND-**  
2 **ING AND COMPARISON OF BENEFITS.**

3       “(a) IN GENERAL.—The Secretary, in consultation  
4 with the National Association of Insurance Commissioners  
5 (in this title referred to as the ‘NAIC’), shall promulgate  
6 regulations designed to standardize formats and terminol-  
7 ogy used in long-term care insurance contracts, to require  
8 insurers to provide to customers and beneficiaries infor-  
9 mation on the range of public and private long-term care  
10 coverage available, and to establish such other require-  
11 ments as may be appropriate to promote consumer under-  
12 standing and facilitate comparison of benefits, which shall  
13 include at a minimum the requirements specified in this  
14 section.

15       “(b) UNIFORM TERMS, DEFINITIONS, AND FOR-  
16 MATS.—Insurers shall be required to use, in long-term  
17 care insurance contracts, uniform terminology, definitions  
18 of terms, and formats, in accordance with regulations pro-  
19 mulgated by the Secretary.

20       “(c) STANDARD OUTLINE OF COVERAGE.—

21               “(1) IN GENERAL.—Insurers shall be required  
22 to develop for each long-term care insurance con-  
23 tract offered or sold, to include as a part of each  
24 such contract, and to make available to each poten-  
25 tial purchaser and furnish to each insured individual

1 and contractholder, an outline of coverage under  
2 such contract that—

3 “(A) includes the elements specified in  
4 paragraph (2),

5 “(B) is in a uniform format,

6 “(C) accurately and clearly reflects the  
7 contents of the contract, and

8 “(D) is updated periodically on such time-  
9 table as may be required by the Secretary (or  
10 more frequently as necessary to reflect signifi-  
11 cant changes in outlined information).

12 “(2) CONTENTS OF OUTLINE.—The outline of  
13 coverage for each long-term care insurance contract  
14 shall include at least the following:

15 “(A) BENEFITS.—A description of—

16 “(i) the principal benefits covered, in-  
17 cluding the extent of—

18 “(I) benefits for services fur-  
19 nished in residential care facilities,  
20 and

21 “(II) other benefits,

22 “(ii) the principal exclusions from and  
23 limitations on coverage,

1           “(iii) the terms and conditions, if any,  
2           upon which the insured individual may ob-  
3           tain upgraded benefits, and

4           “(iv) the threshold conditions for enti-  
5           tlement to receive benefits.

6           “(B) CANCELLATION.—A statement of the  
7           circumstances in which a contract may be ter-  
8           minated, and the refund or nonforfeitures bene-  
9           fits (if any) applicable in each such cir-  
10          cumstance, including—

11           “(i) death of the insured individual,

12           “(ii) nonpayment of premiums,

13           “(iii) election by the insured individ-  
14          ual not to renew,

15           “(iv) any other circumstance.

16          “(C) PREMIUM.—A statement of—

17           “(i) the total annual premium, and  
18           the portion of such premium attributable  
19           to each covered benefit,

20           “(ii) any reservation by the insurer of  
21           a right to change premiums,

22           “(iii) any limit on annual premium in-  
23           creases,

24           “(iv) any expected premium increases  
25           associated with automatic or optional bene-

1 fit increases (including inflation protec-  
2 tion), and

3 “(v) any circumstances under which  
4 payment of premium is waived.

5 “(D) COST/VALUE COMPARISON.—

6 “(i) Information on average costs  
7 (and variation in such costs) for nursing  
8 facility care (and such other care as the  
9 Secretary may specify) in the United  
10 States, information on the value of benefits  
11 relative to such costs, and a statement that  
12 this national average varies by geographic  
13 region.

14 “(ii) A comparison of benefits, over a  
15 period of at least 20 years, for contracts  
16 with and without inflation protection.

17 “(iii) A declaration as to whether the  
18 amount of benefits will increase over time,  
19 and, if so, a statement of the type and  
20 amount of, any limitations on, and any  
21 premium increases for, such benefit in-  
22 creases.

23 **“SEC. 2103. LIMITING CONDITIONS ON BENEFITS.**

24 “(a) IN GENERAL.—A long-term care insurance con-  
25 tract may not—

1           “(1) condition eligibility for benefits for a type  
2 of service on the need for or receipt of any other  
3 type of service (such as prior hospitalization or insti-  
4 tutionalization, or a higher level of care than the  
5 care for which benefits are covered);

6           “(2) condition eligibility for any benefit (where  
7 the need for such benefit has been established by an  
8 independent assessment of impairment) on any par-  
9 ticular medical diagnosis (including any acute condi-  
10 tion) or on one of a group of diagnoses;

11           “(3) condition eligibility for benefits furnished  
12 by licensed or certified providers on compliance by  
13 such providers with conditions not required under  
14 Federal or State law; or

15           “(4) condition coverage of any service on provi-  
16 sion of such service by a provider, or in a setting,  
17 providing a higher level of care than that required  
18 by an insured individual.

19           “(b) HOME CARE OR COMMUNITY-BASED SERV-  
20 ICES.—A long-term care insurance contract that provides  
21 benefits for any home care or community-based services  
22 provided in a setting other than a residential care facil-  
23 ity—

1           “(1) may not limit such benefits to services pro-  
2           vided by registered nurses or licensed practical  
3           nurses;

4           “(2) may not limit such benefits to services fur-  
5           nished by persons or entities participating in pro-  
6           grams under titles XVIII and XIX of this Act; and

7           “(3) must provide, at a minimum, benefits for  
8           personal assistance with activities of daily living,  
9           home health care, adult day care, and respite care.

10          “(c) NURSING FACILITY SERVICES.—A long-term  
11          care insurance contract that provides benefits for any  
12          nursing facility services—

13                 “(1) must provide benefits for such services  
14                 provided by all types of nursing facilities licensed by  
15                 the State, and

16                 “(2) may provide benefits for care in other resi-  
17                 dential facilities.

18          “(d) PROHIBITION ON DISCRIMINATION BY DIAG-  
19          NOSIS.—A long-term care insurance contract may not pro-  
20          vide for treatment of—

21                 “(1) Alzheimer’s disease or any other progres-  
22                 sive degenerative dementia of an organic origin,

23                 “(2) any organic or inorganic mental illness,

24                 “(3) mental retardation or any other cognitive  
25                 or mental impairment, or

1           “(4) HIV infection or AIDS,  
2           different from the treatment of any other medical  
3           condition for purposes of determining whether  
4           threshold conditions for the receipt of benefits have  
5           been met, or the amount of benefits under the con-  
6           tract.

7   **“SEC. 2104. INFLATION PROTECTION.**

8           “(a) IN GENERAL.—The Secretary, after consulta-  
9           tion with NAIC, shall promulgate regulations establishing  
10          requirements with respect to inflation protection, which  
11          shall include at a minimum the requirements specified in  
12          this section.

13          “(b) REQUIREMENT TO OFFER.—An insurer offering  
14          for sale any long-term care insurance contract shall be re-  
15          quired to afford the purchaser the option to obtain cov-  
16          erage under such contract (upon payment of increased  
17          premiums) of annual increases in benefits at rates in ac-  
18          cordance with subsection (c).

19          “(c) RATE INCREASE IN BENEFITS.—For purposes  
20          of subsection (b), the benefits under a contract for each  
21          year shall be increased by a percentage of the full value  
22          of benefits under the contract for the previous year, which  
23          shall be not less than 5 percent of such value (or such  
24          other rate of increase as may be determined by the Sec-  
25          retary to be adequate to offset increases in the costs of

1 long-term care services for which coverage is provided  
2 under the contract).

3       “(d) REQUIREMENT OF WRITTEN REJECTION.—In-  
4 flation protection in accordance with subsection (b) may  
5 be excluded from the coverage under a contract only if  
6 the insured individual (or, if different, the person respon-  
7 sible for payment of premiums) has rejected in writing the  
8 option to obtain such coverage.

9       **“SEC. 2105. NONFORFEITURE BENEFITS.**

10       “(a) IN GENERAL.—The Secretary, after consulta-  
11 tion with NAIC, shall promulgate regulations establishing  
12 requirements with respect to nonforfeiture benefits, which  
13 shall include at a minimum the requirements specified in  
14 this section.

15       “(b) REQUIREMENT.—Each long-term care insurance  
16 contract that lapses for any reason (including nonpayment  
17 of premiums, cancellation, or failure to renew, but exclud-  
18 ing lapses due to death) after remaining in effect beyond  
19 a specified minimum period shall provide for appropriate  
20 nonforfeiture benefits.

21       “(c) NONFORFEITURE BENEFITS.—The standards  
22 established under this section shall require that the  
23 amount or percentage of nonforfeiture benefits shall in-  
24 crease proportionally with the amount of premiums paid  
25 by a contractholder.

1 **“SEC. 2106. CONTINUATION, RENEWAL, REPLACEMENT,**  
2 **CONVERSION, AND CANCELLATION OF CON-**  
3 **TRACTS.**

4 “(a) IN GENERAL.—The Secretary, in consultation  
5 with NAIC, shall promulgate regulations establishing re-  
6 quirements applicable to the renewal, replacement, conver-  
7 sion, and cancellation of long-term care insurance con-  
8 tracts, which shall include at a minimum the requirements  
9 specified in this section.

10 “(b) INSURED’S RIGHT TO CANCEL DURING EXAM-  
11 INATION PERIOD.—Each individual insured (or, if dif-  
12 ferent, each individual liable for payment of premiums)  
13 under a long-term care insurance contract shall have the  
14 unconditional right to return the contract within 30 days  
15 after the date of its issuance and delivery, and to obtain  
16 a full refund of any premium paid.

17 “(c) CONTINUATION, RENEWAL, REPLACEMENT, AND  
18 CONVERSION OF CONTRACTS.—

19 “(1) IN GENERAL.—Insurers shall not be per-  
20 mitted to cancel, or refuse to renew (or replace with  
21 a substantial equivalent), any long-term care insur-  
22 ance contract for any reason other than for fraud or  
23 material misrepresentation or for nonpayment of  
24 premium.

25 “(2) CONTINUATION AND CONVERSION RIGHTS  
26 WITH RESPECT TO GROUP CONTRACTS.—

1           “(A) IN GENERAL.—Insurers shall be re-  
2           quired to include in each group long-term care  
3           insurance contract, a provision affording to  
4           each insured individual, when such contract  
5           would otherwise terminate, the opportunity (at  
6           the insurer’s option, subject to approval of the  
7           State insurance commissioner) either to con-  
8           tinue or to convert coverage under such con-  
9           tract in accordance with this paragraph.

10           “(B) RIGHTS OF RELATED INDIVIDUALS.—  
11           In the case of any insured individual whose eli-  
12           gibility for coverage under a group contract is  
13           based on relationship to another individual, the  
14           insurer shall be required to continue such cov-  
15           erage upon termination of the relationship due  
16           to divorce or death.

17           “(C) CONTINUATION OF COVERAGE.—A  
18           group contract shall be considered to meet the  
19           requirements of this paragraph with respect to  
20           rights of an insured individual to continuation  
21           of coverage if coverage of the same (or substan-  
22           tially equivalent) benefits for such individual  
23           under such contract is maintained, subject only  
24           to timely payment of premiums.

1           “(D) CONVERSION OF COVERAGE.—A  
2           group contract shall be considered to meet the  
3           requirements of this paragraph with respect to  
4           conversion if it entitles each individual who has  
5           been continuously covered under the contract  
6           for at least 6 months before the date of the ter-  
7           mination to issuance of a replacement contract  
8           providing benefits identical to, substantially  
9           equivalent to, or in excess of, the benefits under  
10          such terminated group contract—

11                   “(i) without requiring evidence of in-  
12                   surability with respect to benefits covered  
13                   under such previous contract, and

14                   “(ii) at premium rates no higher than  
15                   would apply if the insured individual had  
16                   initially obtained coverage under such re-  
17                   placement contract on the date such in-  
18                   sured individual initially obtained coverage  
19                   under such group contract.

20 **“SEC. 2107. DEFINITIONS.**

21           “For purposes of this title:

22                   “(1) ACTIVITY OF DAILY LIVING.—The term  
23                   ‘activity of daily living’ means any of the following:  
24                   eating, toileting, dressing, bathing, transferring, and  
25                   continence.

1           “(2) ADULT DAY CARE.—The term ‘adult day  
2           care’ means a program providing social and health-  
3           related services during the day to six or more adults  
4           with disabilities (or such smaller number as the Sec-  
5           retary may specify in regulations) in a community  
6           group setting outside the home.

7           “(3) CONTRACTHOLDER.—The term ‘contract-  
8           holder’ means the entity which is the holder of  
9           record of a group long-term care insurance contract.

10           “(4) HOME HEALTH CARE.—The term ‘home  
11           health care’ means medical and nonmedical services  
12           including such services as homemaker services, as-  
13           sistance with activities of daily living, and respite  
14           care provided to individuals in their residences.

15           “(5) INSURED INDIVIDUAL.—The term ‘insured  
16           individual’ means, with respect to a long-term care  
17           insurance contract, any individual who has coverage  
18           of benefits under such contract.

19           “(6) INSURER.—The term ‘insurer’ means any  
20           person that offers or sells an individual or group  
21           long-term care insurance contract under which such  
22           person is at risk for all or part of the cost of bene-  
23           fits under the contract, and includes any agent of  
24           such person.

1           “(7) LONG-TERM CARE INSURANCE CON-  
2           TRACT.—The term ‘long-term care insurance con-  
3           tract’ has the meaning given such term in section  
4           7702B(b) of the Internal Revenue Code of 1986  
5           (without regard to paragraph (1)(F) of such sec-  
6           tion).

7           “(8) NURSING FACILITY.—The term ‘nursing  
8           facility’ means a facility licensed by the State to pro-  
9           vide to residents—

10                   “(A) skilled nursing care and related serv-  
11                   ices for residents who require medical or nurs-  
12                   ing care;

13                   “(B) rehabilitation services for the reha-  
14                   bilitation of injured, disabled, or sick individ-  
15                   uals, or

16                   “(C) on a regular basis, health-related care  
17                   and services to individuals who because of their  
18                   mental or physical condition require care and  
19                   services (above the level of room and board)  
20                   which can be made available to them only  
21                   through institutional facilities.

22           “(9) RESIDENTIAL CARE FACILITY.—The term  
23           ‘residential care facility’ means a facility (including  
24           a nursing facility) that—

1           “(A) provides to residents medical or per-  
2           sonal care services (including at a minimum as-  
3           sistance with activities of daily living) in a set-  
4           ting other than an individual or single-family  
5           home, and

6           “(B) does not provide services of a higher  
7           level than can be provided by a nursing facility.

8           “(10) RESPITE CARE.—The term ‘respite care’  
9           means the temporary provision of care (including as-  
10          sistance with activities of daily living) to an individ-  
11          ual, in the individual’s home or another setting in  
12          the community, for the purpose of affording such in-  
13          dividual’s unpaid caregiver a respite from the re-  
14          sponsibilities of such care.

15          “(11) STATE INSURANCE COMMISSIONER.—The  
16          term ‘State insurance commissioner’ means the  
17          State official bearing such title, or, in the case of a  
18          jurisdiction where such title is not used, the State  
19          official with primary responsibility for the regulation  
20          of insurance.”.

21          (b) DEFINITION OF STATE.—Section 1101(a)(1) of  
22          the Social Security Act (42 U.S.C. 1301(a)(1)) is amend-  
23          ed by adding at the end “Such term when used in title

- 1 XXI includes only the several States and the District of
- 2 Columbia.”.

