

107TH CONGRESS
2^D SESSION

H. R. 4946

IN THE SENATE OF THE UNITED STATES

JULY 25, 2002

Received; read twice and referred to the Committee on Finance

AN ACT

To amend the Internal Revenue Code of 1986 to provide
health care incentives.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Improving Access to Long-Term Care Act of 2002”.

4 (b) AMENDMENT OF 1986 CODE.—Except as other-
5 wise expressly provided, whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Internal Revenue Code of 1986.

10 **SEC. 2. DEDUCTION FOR PREMIUMS ON QUALIFIED LONG-**
11 **TERM CARE INSURANCE CONTRACTS.**

12 (a) IN GENERAL.—Part VII of subchapter B of chap-
13 ter 1 (relating to additional itemized deductions) is
14 amended by redesignating section 223 as section 224 and
15 by inserting after section 222 the following new sub-
16 section:

17 **“SEC. 223. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-**
18 **SURANCE CONTRACTS.**

19 “(a) IN GENERAL.—In the case of an individual,
20 there shall be allowed as a deduction an amount equal to
21 the applicable percentage of eligible long-term care pre-
22 miums (as defined in section 213(d)(10)) paid during the
23 taxable year by the taxpayer for coverage for the taxpayer
24 and the spouse and dependents of the taxpayer.

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

“For taxable years beginning in calendar year—	The applicable percentage is—
2003, 2004, and 2005	25
2006 and 2007	30
2008 and 2009	35
2010 and 2011	40
2012 and thereafter	50.

4 “(c) LIMITATION BASED ON MODIFIED ADJUSTED
 5 GROSS INCOME.—

6 “(1) IN GENERAL.—If the modified adjusted
 7 gross income of the taxpayer for the taxable year ex-
 8 ceeds \$20,000 (twice the preceding dollar amount,
 9 as adjusted under paragraph (2), in the case of a
 10 joint return) the amount which would (but for this
 11 subsection) be allowed as a deduction under sub-
 12 section (a) shall be reduced (but not below zero) by
 13 the amount which bears the same ratio to the
 14 amount which would be so allowed as such excess
 15 bears to \$20,000 (\$40,000 in the case of a joint re-
 16 turn).

17 “(2) ADJUSTMENTS FOR INFLATION.—

18 “(A) IN GENERAL.—In the case of a tax-
 19 able year beginning after December 31, 2003,
 20 the first \$20,000 amount contained in para-
 21 graph (1) shall be increased by an amount
 22 equal to—

1 “(i) such dollar amount, multiplied by

2 “(ii) the cost-of-living adjustment de-
3 termined under section 1(f)(3) for the cal-
4 endar year in which the taxable year be-
5 gins, determined by substituting ‘calendar
6 year 2002’ for ‘calendar year 1992’ in sub-
7 paragraph (B) thereof.

8 “(B) ROUNDING.—If any amount as ad-
9 justed under subparagraph (A) is not a multiple
10 of \$1,000, such amount shall be rounded to the
11 nearest multiple of \$1,000 (or if such amount
12 is a multiple of \$500, such amount shall be
13 rounded to the next highest multiple of \$500).

14 “(3) MODIFIED ADJUSTED GROSS INCOME.—
15 For purposes of paragraph (1), the term ‘modified
16 adjusted gross income’ means adjusted gross income
17 determined—

18 “(A) without regard to this section and
19 sections 911, 931, and 933, and

20 “(B) after application of sections 86, 135,
21 137, 219, 221, 222, and 469.

22 “(d) LIMITATION BASED ON SUBSIDIZED COV-
23 ERAGE.—

1 “(1) IN GENERAL.—Subsection (a) shall not
2 apply to premiums paid for coverage of any indi-
3 vidual for any calendar month if—

4 “(A) for such month such individual is cov-
5 ered by any insurance which is advertised, mar-
6 keted, or offered as long-term care insurance
7 under any health plan maintained by any em-
8 ployer of the taxpayer or of the taxpayer’s
9 spouse, and

10 “(B) 50 percent or more of the cost of any
11 such coverage (determined under section
12 4980B) for such month is paid or incurred by
13 the employer.

14 “(2) PLANS MAINTAINED BY CERTAIN EMPLOY-
15 ERS.—A health plan which is not otherwise de-
16 scribed in paragraph (1)(A) shall be treated as de-
17 scribed in such paragraph if such plan would be so
18 described if all health plans of persons treated as a
19 single employer under subsection (b), (c), (m), or (o)
20 of section 414 were treated as one health plan.

21 “(e) COORDINATION WITH OTHER DEDUCTIONS.—
22 Any amount taken into account under subsection (a) shall
23 not be taken into account in computing the amount allow-
24 able as a deduction under section 162(l) or 213(a).

1 “(f) MARRIED COUPLES MUST FILE JOINT RE-
2 TURN.—

3 “(1) IN GENERAL.—If the taxpayer is married
4 at the close of the taxable year, the deduction shall
5 be allowed under subsection (a) only if the taxpayer
6 and the taxpayer’s spouse file a joint return for the
7 taxable year.

8 “(2) MARITAL STATUS.—For purposes of para-
9 graph (1), marital status shall be determined in ac-
10 cordance with section 7703.

11 “(g) REGULATIONS.—The Secretary shall prescribe
12 such regulations as may be appropriate to carry out this
13 section, including regulations requiring employers to re-
14 port to their employees and the Secretary such informa-
15 tion as the Secretary determines to be appropriate.”.

16 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
17 PAYER ITEMIZES.—Subsection (a) of section 62 is amend-
18 ed by inserting after paragraph (18) the following new
19 item:

20 “(19) PREMIUMS ON QUALIFIED LONG-TERM
21 CARE INSURANCE CONTRACTS.—The deduction al-
22 lowed by section 223.”.

23 (c) CONFORMING AMENDMENTS.—

1 “(d) ADDITIONAL EXEMPTION FOR DEPENDENTS
2 WITH LONG-TERM CARE NEEDS IN TAXPAYER’S
3 HOME.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), an exemption of the exemption amount
6 for each qualified family member of the taxpayer.

7 “(2) PHASE-IN.—In the case of taxable years
8 beginning in calendar years before 2012, the amount
9 of the exemption provided under paragraph (1) shall
10 not exceed the applicable limitation amount deter-
11 mined in accordance with the following table:

“For taxable years beginning in calendar year—	The applicable limitation amount is—
2003 and 2004	\$500
2005 and 2006	1,000
2007 and 2008	1,500
2009 and 2010	2,000
2011	2,500.

12 “(3) QUALIFIED FAMILY MEMBER.—For pur-
13 poses of this subsection, the term ‘qualified family
14 member’ means, with respect to any taxable year,
15 any individual—

16 “(A) who is—

17 “(i) the spouse of the taxpayer, or

18 “(ii) a dependent of the taxpayer with
19 respect to whom the taxpayer is entitled to
20 an exemption under subsection (c),

1 “(B) who is an individual with long-term
2 care needs during any portion of the taxable
3 year, and

4 “(C) other than an individual described in
5 section 152(a)(9), who, for more than half of
6 such year, has as such individual’s principal
7 place of abode the home of the taxpayer and is
8 a member of the taxpayer’s household.

9 “(4) INDIVIDUALS WITH LONG-TERM CARE
10 NEEDS.—For purposes of this subsection, the term
11 ‘individual with long-term care needs’ means, with
12 respect to any taxable year, an individual who has
13 been certified, during the 39½-month period ending
14 on the due date (without extensions) for filing the
15 return of tax for the taxable year (or such other pe-
16 riod as the Secretary prescribes), by a physician (as
17 defined in section 1861(r)(1) of the Social Security
18 Act) as being, for a period which is at least 180 con-
19 secutive days—

20 “(A) an individual who is unable to per-
21 form (without substantial assistance from an-
22 other individual) at least 2 activities of daily liv-
23 ing (as defined in section 7702B(c)(2)(B)) due
24 to a loss of functional capacity, or

1 “(B) an individual who requires substan-
2 tial supervision to protect such individual from
3 threats to health and safety due to severe cog-
4 nitive impairment and is unable to perform,
5 without reminding or cuing assistance, at least
6 1 activity of daily living (as so defined) or to
7 the extent provided in regulations prescribed by
8 the Secretary (in consultation with the Sec-
9 retary of Health and Human Services), is un-
10 able to engage in age appropriate activities.

11 “(5) IDENTIFICATION REQUIREMENT.—No ex-
12 emption shall be allowed under this subsection to a
13 taxpayer with respect to any qualified family mem-
14 ber unless the taxpayer includes, on the return of
15 tax for the taxable year, the name and taxpayer
16 identification of the physician certifying such mem-
17 ber. In the case of a failure to provide the informa-
18 tion required under the preceding sentence, the pre-
19 ceding sentence shall not apply if it is shown that
20 the taxpayer exercised due diligence in attempting to
21 provide the information so required.

22 “(6) SPECIAL RULES.—Rules similar to the
23 rules of paragraphs (2), (3), and (4) of section 21(e)
24 shall apply for purposes of this subsection.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1(f)(6)(A) is amended by striking
2 “151(d)(4)” and inserting “151(e)(4)”.

3 (2) Section 1(f)(6)(B) is amended by striking
4 “151(d)(4)(A)” and inserting “151(e)(4)(A)”.

5 (3) Section 3402(f)(1)(A) is amended by strik-
6 ing “151(d)(2)” and inserting “151(e)(2)”.

7 (4) Section 3402(r)(2)(B) is amended by strik-
8 ing “151(d)” and inserting “151(e)”.

9 (5) Section 6012(a)(1)(D)(ii) is amended—

10 (A) by striking “151(d)” and inserting
11 “151(e)”, and

12 (B) by striking “151(d)(2)” and inserting
13 “151(e)(2)”.

14 (6) Section 6013(b)(3)(A) is amended by strik-
15 ing “151(d)” and inserting “151(e)”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2002.

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

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

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

4 “(i) MODEL REGULATION.—The fol-
5 lowing requirements of the model regula-
6 tion:

7 “(I) Section 6A (relating to guar-
8 anteed renewal or noncancellability),
9 and the requirements of section 6B of
10 the model Act relating to such section
11 6A.

12 “(II) Section 6B (relating to pro-
13 hibitions on limitations and exclu-
14 sions).

15 “(III) Section 6C (relating to ex-
16 tension of benefits).

17 “(IV) Section 6D (relating to
18 continuation or conversion of cov-
19 erage).

20 “(V) Section 6E (relating to dis-
21 continuance and replacement of poli-
22 cies).

23 “(VI) Section 7 (relating to unin-
24 tentional lapse).

1 “(VII) Section 8 (relating to dis-
2 closure), other than section 8F there-
3 of.

4 “(VIII) Section 11 (relating to
5 prohibitions against post-claims un-
6 derwriting).

7 “(IX) Section 12 (relating to
8 minimum standards).

9 “(X) Section 13 (relating to re-
10 quirement to offer inflation protec-
11 tion), except that any requirement for
12 a signature on a rejection of inflation
13 protection shall permit the signature
14 to be on an application or on a sepa-
15 rate form.

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

20 “(XII) The provisions of section
21 26 relating to contingent nonforfeiture
22 benefits, if the policyholder declines
23 the offer of a nonforfeiture provision
24 described in paragraph (4).

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

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

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

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

12 “(B) DEFINITIONS.—For purposes of this
13 paragraph—

14 “(i) MODEL PROVISIONS.—The terms
15 ‘model regulation’ and ‘model Act’ means
16 the long-term care insurance model regula-
17 tion, and the long-term care insurance
18 model Act, respectively, promulgated by
19 the National Association of Insurance
20 Commissioners (as adopted as of October
21 2000).

22 “(ii) COORDINATION.—Any provision
23 of the model regulation or model Act listed
24 under clause (i) or (ii) of subparagraph
25 (A) shall be treated as including any other

1 provision of such regulation or Act nec-
2 essary to implement the provision.

3 “(iii) DETERMINATION.—For pur-
4 poses of this section and section 4980C,
5 the determination of whether any require-
6 ment of a model regulation or the model
7 Act has been met shall be made by the
8 Secretary.”.

9 (b) EXCISE TAX.—Paragraph (1) of section
10 4980C(c) of the Internal Revenue Code of 1986 (relating
11 to requirements of model provisions) is amended to read
12 as follows:

13 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

14 “(A) MODEL REGULATION.—The following
15 requirements of the model regulation must be
16 met:

17 “(i) Section 9 (relating to required
18 disclosure of rating practices to consumer).

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

21 “(iii) Section 15 (relating to reporting
22 requirements), except that the issuer shall
23 also report at least annually the number of
24 claims denied during the reporting period
25 for each class of business (expressed as a

1 percentage of claims denied), other than
2 claims denied for failure to meet the wait-
3 ing period or because of any applicable
4 preexisting condition.

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

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

12 “(I) in addition to such require-
13 ments, no person shall, in selling or
14 offering to sell a qualified long-term
15 care insurance contract, misrepresent
16 a material fact; and

17 “(II) no such requirements shall
18 include a requirement to inquire or
19 identify whether a prospective appli-
20 cant or enrollee for long-term care in-
21 surance has accident and sickness in-
22 surance.

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

1 “(vii) Section 29 (relating to standard
2 format outline of coverage).

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

5 The requirements referred to in clause (vi) shall
6 not include those portions of the personal work-
7 sheet described in Appendix B of the model reg-
8 ulation relating to consumer protection require-
9 ments not imposed by section 4980C or 7702B.

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

12 “(i) Section 6F (relating to right to
13 return), except that such section shall also
14 apply to denials of applications and any re-
15 fund shall be made within 30 days of the
16 return or denial.

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

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

21 “(iv) Section 6J (relating to policy
22 summary).

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

1 “(vi) Section 7 (relating to incontest-
2 ability period).

3 “(C) DEFINITIONS.—For purposes of this
4 paragraph, the terms ‘model regulation’ and
5 ‘model Act’ have the meanings given such term
6 by section 7702B(g)(2)(B).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to policies issued after December
9 31, 2002.

10 **SEC. 5. EXPANSION OF HUMAN CLINICAL TRIALS QUALI-**
11 **FYING FOR ORPHAN DRUG CREDIT.**

12 (a) IN GENERAL.—Paragraph (2) of section 45C(b)
13 of the Internal Revenue Code of 1986 is amended by add-
14 ing at the end the following new subparagraph:

15 “(C) TREATMENT OF CERTAIN EXPENSES
16 INCURRED BEFORE DESIGNATION.—For pur-
17 poses of subparagraph (A)(ii)(I), if a drug is
18 designated under section 526 of the Federal
19 Food, Drug, and Cosmetic Act not later than
20 the due date (including extensions) for filing
21 the return of tax under this subtitle for the tax-
22 able year in which the application for such des-
23 ignation of such drug was filed, such drug shall
24 be treated as having been designated on the
25 date that such application was filed.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to expenses incurred after the
3 date of the enactment of this Act.

4 **SEC. 6. VACCINE TAX TO APPLY TO HEPATITIS A VACCINE.**

5 (a) IN GENERAL.—Paragraph (1) of section 4132(a)
6 (defining taxable vaccine) is amended by redesignating
7 subparagraphs (I), (J), (K), and (L) as subparagraphs
8 (J), (K), (L), and (M), respectively, and by inserting after
9 subparagraph (H) the following new subparagraph:

10 “(I) Any vaccine against hepatitis A.”.

11 (b) EFFECTIVE DATE.—

12 (1) SALES, ETC.—The amendments made by
13 subsection (a) shall apply to sales and uses on or
14 after the first day of the first month which begins
15 more than 4 weeks after the date of the enactment
16 of this Act.

17 (2) DELIVERIES.—For purposes of paragraph
18 (1) and section 4131 of the Internal Revenue Code
19 of 1986, in the case of sales on or before the effec-
20 tive date described in such paragraph for which de-
21 livery is made after such date, the delivery date shall
22 be considered the sale date.

1 **SEC. 7. ELIGIBILITY FOR ARCHER MSA'S EXTENDED TO AC-**
2 **COUNT HOLDERS OF MEDICARE+CHOICE**
3 **MSA'S.**

4 (a) IN GENERAL.—Subparagraph (B) of section
5 220(c)(2) of the Internal Revenue Code of 1986 is amend-
6 ed by adding at the end the following new clause:

7 “(iii) MEDICARE+CHOICE MSA’S.—In
8 the case of an individual who is covered
9 under an MSA plan (as defined in section
10 1859(b)(3) of the Social Security Act)
11 which such individual elected under section
12 1851(a)(2)(B) of such Act—

13 “(I) such plan shall be treated as
14 a high deductible health plan for pur-
15 poses of this section,

16 “(II) subsection (b)(2)(A) shall
17 be applied by substituting ‘100 per-
18 cent’ for ‘65 percent’ with respect to
19 such individual,

20 “(III) with respect to such indi-
21 vidual, the limitation under subsection
22 (d)(1)(A)(ii) shall be 100 percent of
23 the highest annual deductible limita-
24 tion under section 1859(b)(3)(B) of
25 the Social Security Act,

