H. R. 2682

To amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. POMEROY, Mr. RAMSTAD, Ms. HERSETH, Mr. SIMMONS, Mr. MICHAUD, Mr. SHAYS, Mr. MARKEY, Mr. BOOZMAN, and Mr. KING of New York) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Long-Term Care and

Retirement Security Act of 2005”. 
SEC. 2. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

"SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the amount of eligible long-term care premiums (as defined in section 213(d)(10)) paid during the taxable year for coverage for the taxpayer and the taxpayer’s spouse and dependents under a qualified long-term care insurance contract (as defined in section 7702B(b)).

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005, 2006, or 2007</td>
<td>25</td>
</tr>
<tr>
<td>2008</td>
<td>35</td>
</tr>
<tr>
<td>2009</td>
<td>65</td>
</tr>
<tr>
<td>2010 or thereafter</td>
<td>100</td>
</tr>
</tbody>
</table>
“(c) COORDINATION WITH OTHER DEDUCTIONS.—
Any amount paid by a taxpayer for any qualified long-
term care insurance contract to which subsection (a) ap-
plies shall not be taken into account in computing the
amount allowable to the taxpayer as a deduction under
section 162(l) or 213(a).”.

(b) LONG-TERM CARE INSURANCE PERMITTED TO
BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—The last sentence of
section 125(f) of such Code (defining qualified bene-
fits) is amended by inserting before the period at the end “; except that such term shall include the pay-
ment of premiums for any qualified long-term care
insurance contract (as defined in section 7702B) to
the extent the amount of such payment does not ex-
ceed the eligible long-term care premiums (as de-
defined in section 213(d)(10)) for such contract”.

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

(c) CONFORMING AMENDMENTS.—
(1) Section 62(a) of such Code is amended by inserting before the last sentence at the end the following new paragraph:

“(21) PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—The deduction allowed by section 224.”.

(2) Sections 223(b)(4)(B), 223(d)(4)(C), 223(f)(3)(B), 3231(e)(11), 3306(b)(18), 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of such Code are each amended by striking “section 106(d)” and inserting “section 106(e)”.

(3) Section 6041 of such Code is amended—

(A) in subsection (f)(1) by striking “(as defined in section 106(c)(2))”, and

(B) by adding at the end the following new subsection:

“(h) FLEXIBLE SPENDING ARRANGEMENT DEFINED.—For purposes of this section, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

“(1) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

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

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

(4) The table of sections for part VII of sub-
chapter B of chapter 1 of such Code is amended by
striking the last item and inserting the following
new items:

"Sec. 224. Premiums on qualified long-term care insurance contracts.
"Sec. 225. Cross reference.”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall apply to taxable years beginning after Decem-

(2) CAFETERIA PLANS AND FLEXIBLE SPEND-
ING ARRANGEMENTS.—The amendments made by
subsection (b) shall apply to taxable years beginning
after December 31, 2006.

SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE

NEEDS.

(a) IN GENERAL.—Subpart A of part IV of sub-
chapter A of chapter 1 of the Internal Revenue Code of
1986 (relating to nonrefundable personal credits) is
amended by inserting after section 25B the following new section:

"SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable credit amount multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

"(2) APPLICABLE CREDIT AMOUNT.—For purposes of paragraph (1), the applicable credit amount shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>For taxable years beginning in calendar year—</th>
<th>The applicable credit amount is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005 .................................................</td>
<td>$1,000</td>
</tr>
<tr>
<td>2006 .................................................</td>
<td>1,500</td>
</tr>
<tr>
<td>2007 .................................................</td>
<td>2,000</td>
</tr>
<tr>
<td>2008 .................................................</td>
<td>2,500</td>
</tr>
<tr>
<td>2009 or thereafter ................................</td>
<td>3,000.</td>
</tr>
</tbody>
</table>

"(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $100 for each $1,000 (or fraction
thereof) by which the taxpayer’s modified adjusted
gross income exceeds the threshold amount. For
purposes of the preceding sentence, the term ‘modi-
fied adjusted gross income’ means adjusted gross in-
come increased by any amount excluded from gross
income under section 911, 931, or 933.

“(2) Threshold Amount.—For purposes of
paragraph (1), the term ‘threshold amount’ means—

“(A) $150,000 in the case of a joint re-
turn, and

“(B) $75,000 in any other case.

“(3) Indexing.—In the case of any taxable
year beginning in a calendar year after 2005, each
dollar amount contained in paragraph (2) shall be
increased by an amount equal to the product of—

“(A) such dollar amount, and

“(B) the medical care cost adjustment de-
termined under section 213(d)(10)(B)(ii) for
the calendar year in which the taxable year be-
gins, determined by substituting ‘August 2004’
for ‘August 1996’ in subclause (II) thereof.

If any increase determined under the preceding sen-
tence is not a multiple of $50, such increase shall
be rounded to the next lowest multiple of $50.

“(c) Definitions.—For purposes of this section—
“(1) APPLICABLE INDIVIDUAL.—

“(A) IN GENERAL.—The term ‘applicable individual’ means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

“(i) which is at least 180 consecutive days, and

“(ii) a portion of which occurs within the taxable year.

Notwithstanding the preceding sentence, a certification shall not be treated as valid unless it is made within the 39 1⁄2 month period ending on such due date (or such other period as the Secretary prescribes).

“(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this subparagraph if the individual meets any of the following requirements:

“(i) The individual is at least 6 years of age and—
“(I) is unable to perform (without substantial assistance from another individual) at least 3 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

“(II) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to preform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined) or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

“(ii) The individual is at least 2 but not 6 years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least 2 of the following activities: eating, transferring, or mobility.
“(iii) The individual is under 2 years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual’s condition to be available if the individual’s parents or guardians are absent.

“(2) ELIGIBLE CAREGIVER.—

“(A) IN GENERAL.—A taxpayer shall be treated as an eligible caregiver for any taxable year with respect to the following individuals:

“(i) The taxpayer.

“(ii) The taxpayer’s spouse.

“(iii) An individual with respect to whom the taxpayer is allowed a deduction under section 151(e) for the taxable year.

“(iv) An individual who would be described in clause (iii) for the taxable year if section 151(e) were applied by substituting for the exemption amount an amount equal to the sum of the exemption amount, the standard deduction under section 63(e)(2)(C), and any additional standard deduction under section 63(e)(3) which
would be applicable to the individual if clause (iii) applied.

“(v) An individual who would be described in clause (iii) for the taxable year if—

“(I) the requirements of clause (iv) are met with respect to the individual, and

“(II) the requirements of subparagraph (B) are met with respect to the individual in lieu of the support test under subsection (c)(1)(D) or (d)(1)(C) of section 152.

“(B) RESIDENCY TEST.—The requirements of this subparagraph are met if an individual has as his principal place of abode the home of the taxpayer and—

“(i) in the case of an individual who is an ancestor or descendant of the taxpayer or the taxpayer’s spouse, is a member of the taxpayer’s household for over half the taxable year, or

“(ii) in the case of any other individual, is a member of the taxpayer’s household for the entire taxable year.
“(C) Special rules where more than 1 eligible caregiver.—

“(i) In general.—If more than 1 individual is an eligible caregiver with respect to the same applicable individual for taxable years ending with or within the same calendar year, a taxpayer shall be treated as the eligible caregiver if each such individual (other than the taxpayer) files a written declaration (in such form and manner as the Secretary may prescribe) that such individual will not claim such applicable individual for the credit under this section.

“(ii) No agreement.—If each individual required under clause (i) to file a written declaration under clause (i) does not do so, the individual with the highest adjusted gross income shall be treated as the eligible caregiver.

“(iii) Married individuals filing separately.—In the case of married individuals filing separately, the determination under this subparagraph as to whether the husband or wife is the eligible caregiver
shall be made under the rules of clause (ii)
(whether or not one of them has filed a
written declaration under clause (i)).

“(d) IDENTIFICATION REQUIREMENT.—No credit
shall be allowed under this section to a taxpayer with re-
spect to any applicable individual unless the taxpayer in-
cludes the name and taxpayer identification number of
such individual, and the identification number of the phy-
sician certifying such individual, on the return of tax for
the taxable year.

“(e) TAXABLE YEAR MUST BE FULL TAXABLE
YEAR.—Except in the case of a taxable year closed by rea-
son of the death of the taxpayer, no credit shall be allow-
able under this section in the case of a taxable year cov-
ering a period of less than 12 months.”

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2) of such Code is amend-
ed by striking “and” at the end of subparagraph
(L), by striking the period at the end of subpara-
graph (M) and inserting “, and”, and by inserting
after subparagraph (M) the following new subpara-
graph:

“(N) an omission of a correct TIN or phy-
sician identification required under section
25C(d) (relating to credit for taxpayers with
long-term care needs) to be included on a return.”.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

“Sec. 25C. Credit for taxpayers with long-term care needs.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

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

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

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to any contract if such contract meets—

“(i) MODEL REGULATION.—The following requirements of the model regulation:

“(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and
the requirements of section 6B of the
model Act relating to such section 6A.

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

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

“(IV) Section 6D (relating to con-
tinuation or conversion of cov-
erage).

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

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

“(VII) Section 8 (relating to dis-
closure), other than sections 8F, 8G,
8H, and 8I thereof.

“(VIII) Section 11 (relating to pro-
hibitions against post-claims un-
derwriting).

“(IX) Section 12 (relating to min-
imum standards).
“(X) Section 13 (relating to requirement to offer inflation protection).

“(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

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

“(ii) MODEL ACT.—The following requirements of the model Act:

“(I) Section 6C (relating to preexisting conditions).

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

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

“(B) DEFINITIONS.—For purposes of this paragraph—
“(i) MODEL PROVISIONS.—The terms ‘model regulation’ and ‘model Act’ mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000).

“(ii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

“(iii) DETERMINATION.—For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary.”.

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

“(1) REQUIREMENTS OF MODEL PROVISIONS.—
“(A) MODEL REGULATION.—The following requirements of the model regulation must be met:

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

“(ii) Section 14 (relating to application forms and replacement coverage).

“(iii) Section 15 (relating to reporting requirements).

“(iv) Section 22 (relating to filing requirements for marketing).

“(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

“(vi) Section 24 (relating to suitability).

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

“(viii) Section 30 (relating to requirement to deliver shopper’s guide).

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

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

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

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

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by
this section shall apply to policies issued more than 1 year
after the date of the enactment of this Act.
SEC. 5. TREATMENT OF EXCHANGES OF LONG-TERM CARE INSURANCE CONTRACTS.

(a) In General.—Subsection (a) of section 1035 of the Internal Revenue Code of 1986 (relating to exchanges of insurance policies) is amended by striking the period at the end of paragraph (3) and inserting “; or” and by adding at the end the following new paragraph:

“(4) a qualified long-term care insurance contract for another qualified long-term care insurance contract.”.

(b) Qualified Long-Term Care Insurance Contract.—Subsection (b) of section 1035 of such Code (relating to definitions) is amended by adding at the end the following new paragraph:

“(4) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term ‘qualified long-term care insurance contract’ means—

“(A) any qualified long-term care insurance contract (as defined in section 7702B), and

“(B) any contract which is treated as such by section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996.”.

(c) Effective Date.—
(1) IN GENERAL.—The amendments made by this section shall apply to exchanges after December 31, 1997.

(2) WAIVER OF LIMITATIONS.—If the credit or refund of any overpayment of tax with respect to a taxable year ending before the date of the enactment of this Act resulting from the application of section 1035(a)(4) of the Internal Revenue Code of 1986, as added by this section, is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the enactment of this Act.