H. R. 3363

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. POMEROY (for himself, Mr. RAMSTAD, Ms. SCHWARTZ, Mr. HULSHOF, Mr. CROWLEY, Ms. HERSETH SANDLIN, Mr. MICHAUD, Mr. CAMP of Michigan, Mr. WELLER of Illinois, Mrs. CAPITO, Mr. ALLEN, Mr. ENGLISH of Pennsylvania, Mr. BLUMENAUER, Mr. THOMPSON of California, Mr. PASCRELL, Mr. LARSON of Connecticut, Mrs. JONES of Ohio, Mr. PORTER, Mr. TERRY, Mr. NEAL of Massachusetts, Mr. HOLT, Mr. BOUSTANY, Ms. BERKLEY, Mr. VAN HOLLEN, and Ms. HOOLEY) 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 long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Long-Term Care Affordability and Security Act of 2007”.

SEC. 2. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) In General.—

(1) Cafeteria Plans.—The last sentence of section 125(f) of the Internal Revenue Code of 1986 (defining qualified benefits) is amended by inserting before the period at the end “; except that such term shall include the payment 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 exceed the eligible long-term care premiums (as 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 redesignating subsection (d) as subsection (c).

(b) Conforming Amendments.—

(1) Section 6041 of such Code is amended 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 reasonably available shall be determined on the basis of the underlying coverage.”.

(2) The following sections of such Code are each amended by striking “section 106(d)” and inserting “section 106(c)”: 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).

(3) Section 6041(f)(1) of such Code is amended by striking “(as defined in section 106(c)(2))”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.
SEC. 3. 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 prohibitions on limitations and exclusions) other than paragraph (7) thereof.

“(III) Section 6C (relating to extension of benefits).
“(IV) Section 6D (relating to continuation or conversion of coverage).

“(V) Section 6E (relating to discontinuance and replacement of policies).

“(VI) Section 7 (relating to unintentional lapse).

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

“(VIII) Section 11 (relating to prohibitions against post-claims underwriting).

“(IX) Section 12 (relating to minimum 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 28 relating to contingent nonforfeiture
benefits, if the policyholder declines
the offer of a nonforfeiture provision
described in paragraph (4) of this
subsection.

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

“(I) Section 6C (relating to pre-
existing 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) of this
subsection.

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

“(i) MODEL REGULATION.—The term
‘model regulation’ means the long-term
care insurance model regulation promul-
gated by the National Association of Insur-
ance Commissioners (as adopted as of De-
cember 2006).
“(ii) MODEL ACT.—The term ‘model Act’ means the long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of December 2006).

“(iii) 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.

“(iv) 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 re-
quirements for marketing).

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

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

“(vii) Section 27 (relating to the right
to reduce coverage and lower premiums).

“(viii) Section 31 (relating to stand-
ard format outline of coverage).

“(ix) Section 32 (relating to require-
ment to deliver shopper’s guide).

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

“(B) MODEL ACT.—The following requirements 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 requirements 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 incontestability period).

“(vii) Section 9 (relating to producer training requirements).

“(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.