

111TH CONGRESS  
1ST SESSION

# S. 1177

To improve consumer protections for purchasers of long-term care insurance,  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 3, 2009

Mr. KOHL (for himself and Mr. WYDEN) introduced the following bill; which  
was read twice and referred to the Committee on Finance

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## A BILL

To improve consumer protections for purchasers of long-  
term care insurance, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Confidence in Long-Term Care Insurance Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—NATIONAL MARKET SURVEY; MODEL DISCLOSURES AND  
DEFINITIONS; LTC INSURANCE COMPARE**

Sec. 101. NAIC national market survey.

Sec. 102. Model disclosures and definitions.

Sec. 103. LTC Insurance Compare.

**TITLE II—IMPROVED STATE CONSUMER PROTECTIONS FOR  
QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS AND  
MEDICAID PARTNERSHIP POLICIES**

Sec. 201. Application of Medicaid partnership required model provisions to all tax-qualified long-term care insurance contracts.

Sec. 202. Streamlined process for applying new or updated model provisions.

**TITLE III—IMPROVED CONSUMER PROTECTIONS FOR MEDICAID  
PARTNERSHIP POLICIES**

Sec. 301. Biennial reports on impact of Medicaid long-term care insurance partnerships.

Sec. 302. Additional consumer protections for Medicaid partnerships.

Sec. 303. Report to Congress regarding need for minimum annual compound inflation protection.

**1 TITLE I—NATIONAL MARKET  
2 SURVEY; MODEL DISCLO-  
3 SURES AND DEFINITIONS;  
4 LTC INSURANCE COMPARE**

**5 SEC. 101. NAIC NATIONAL MARKET SURVEY.**

6 (a) IN GENERAL.—The Secretary shall request the  
7 NAIC to conduct biennial reviews of the national and  
8 State-specific markets for long-term care insurance poli-  
9 cies and to submit biennial reports to the Secretary on  
10 the results of such reviews.

11 (b) CONTENT.—The Secretary shall request that the  
12 biennial reviews include, with respect to the period occur-  
13 ring since any prior review, analysis of the following:

14 (1) Information on key market parameters, in-  
15 cluding the number of carriers offering long-term  
16 care insurance, and the scope of coverage offered  
17 under those policies (such as policies offering nurs-

1 ing-home only benefits, policies offering comprehen-  
2 sive coverage, and hybrid products in which long-  
3 term care benefits are present).

4 (2) The number of complaints received and re-  
5 solved, including benefit denials.

6 (3) The number of policies that are cancelled  
7 (including because of having lapsed or not being re-  
8 newed) and reasons for such cancellations.

9 (4) The number of agents trained and the con-  
10 tent of that training, including a description of  
11 agent training standards, the extent to which com-  
12 petency tests are included in such standards, and  
13 the pass and fail rates associated with such tests.

14 (5) The number of policyholders exhausting  
15 benefits.

16 (6) Premium rate increases sought by carriers  
17 and the range of the amount of the increase sought.

18 (7) Premium rate increases that were approved  
19 and the range of the amount of increase.

20 (8) The number of policyholders affected by any  
21 approved premium rate increases.

22 (9) Requests for exceptions to State reserving  
23 or capital requirements.

24 (c) TIMING FOR BIENNIAL REVIEW AND REPORT.—

25 The Secretary shall request the NAIC to—

1           (1) complete the initial market review under  
2 this section not later than 2 years after the date of  
3 enactment of this Act;

4           (2) submit a report to the Secretary on the re-  
5 sults of the initial review not later than December  
6 31, 2011; and

7           (3) complete each subsequent biennial review  
8 and submit each subsequent biennial report not later  
9 than December 31 of each second succeeding year.

10          (d) CONSULTATION REQUIRED.—The Secretary shall  
11 request the NAIC to consult with State insurance commis-  
12 sioners, appropriate Federal agencies, issuers of long-term  
13 care insurance, States with experience in long-term care  
14 insurance partnership plans, other States, representatives  
15 of consumer groups, consumers of long-term care insur-  
16 ance policies, and such other stakeholders as the Secretary  
17 or the NAIC determine appropriate, to conduct the market  
18 reviews requested under this section.

19          (e) DEFINITIONS.—In this section and section 102:

20           (1) LONG-TERM CARE INSURANCE POLICY.—

21           The term “long-term care insurance policy”—

22           (A) means—

23           (i) a qualified long-term care insur-  
24           ance contract (as defined in section

1 7702B(b) of the Internal Revenue Code of  
2 1986); and

3 (ii) a qualified long-term care insur-  
4 ance contract that covers an insured who is  
5 a resident of a State with a qualified State  
6 long-term care insurance partnership  
7 under clause (iii) of section 1917(b)(1)(C)  
8 of the Social Security Act (42 U.S.C.  
9 1396p(b)(1)(C)) or a long-term care insur-  
10 ance policy offered in connection with a  
11 State plan amendment described in clause  
12 (iv) of such section; and

13 (B) includes any other insurance policy or  
14 rider described in the definition of “long-term  
15 care insurance” in section 4 of the model Act  
16 promulgated by the National Association of In-  
17 surance Commissioners (as adopted December  
18 2006).

19 (2) NAIC.—The term “NAIC” means the Na-  
20 tional Association of Insurance Commissioners.

21 (3) SECRETARY.—The term “Secretary” means  
22 the Secretary of Health and Human Services.

23 **SEC. 102. MODEL DISCLOSURES AND DEFINITIONS.**

24 (a) IN GENERAL.—The Secretary shall request the  
25 NAIC, in consultation with State health agencies as ap-

1 appropriate, to carry out the activities described in sub-  
2 section (b).

3 (b) ACTIVITIES DESCRIBED.—The activities de-  
4 scribed in this subsection are the following:

5 (1) DEVELOP MODEL DISCLOSURES AND DEFINI-  
6 TIONS FOR MARKETING OF POLICIES.—To develop  
7 model language for marketing of long-term care in-  
8 surance policies (including, as appropriate, language  
9 specific to qualified long-term care insurance con-  
10 tracts, partnership long-term care insurance policies,  
11 and such other contracts for coverage of long-term  
12 care services or benefits as the NAIC determines ap-  
13 propriate), that includes the following:

14 (A) CONSISTENT DEFINITIONS.—Con-  
15 sistent definitions for coverage of the various  
16 types of services and benefits provided under  
17 such policies, including institutional services,  
18 residential services with varying levels of assist-  
19 ance, such as assisted living, home care serv-  
20 ices, adult day services, and other types of  
21 home and community-based care (as appro-  
22 priate to describe the range of services and ben-  
23 efits offered under such policies in various  
24 States).

1 (B) CONSISTENT EXPLANATORY LAN-  
2 GUAGE.—Consistent language for use by issuers  
3 of such policies, and for agents selling such  
4 policies, in explaining the services and benefits  
5 covered under the policies and restrictions on  
6 the services and benefits.

7 (C) INFLATION PROTECTION OPTIONS.—A  
8 form that describes different inflation level op-  
9 tions offered for long-term care insurance poli-  
10 cies, including how policies with various levels  
11 of inflation protection compare in premium  
12 costs and benefits within 5-year time incre-  
13 ments from 5 years through 30 years post-pur-  
14 chase.

15 (D) STANDARDIZED METHODOLOGY FOR  
16 CALCULATING INFLATION PROTECTION.—  
17 Standardized methodology for use by issuers to  
18 use to calculate inflation protection under such  
19 policies.

20 (2) ENFORCE.—To develop recommendations  
21 for enforcement of the model marketing disclosures  
22 and definitions, including standardized language for  
23 States to adopt to prohibit carriers from marketing  
24 policies within the State that do not meet the model  
25 marketing disclosures and definitions or the rate

1 stability provisions under section 20 of the long-term  
2 care insurance model Act promulgated by the Na-  
3 tional Association of Insurance Commissioners (as  
4 adopted as of October 2000 and as of December  
5 2006) and any provisions of such section adopted  
6 after December 2006.

7 (c) PUBLIC COMMENT.—The Secretary shall request  
8 the NAIC to allow for public comment on the work of the  
9 NAIC in carrying out the activities described in subsection  
10 (b).

11 **SEC. 103. LTC INSURANCE COMPARE.**

12 (a) IN GENERAL.—Section 6021(d) of the Deficit Re-  
13 duction Act of 2005 (42 U.S.C. 1396p note) is amended—

14 (1) in paragraph (2)—

15 (A) in subparagraph (A)—

16 (i) in clause (ii), by striking “and” at  
17 the end;

18 (ii) in clause (iii), by striking the pe-  
19 riod at the end and inserting “; and”; and

20 (iii) by adding at the end the fol-  
21 lowing:

22 “(iv) establish an Internet directory of  
23 information regarding long-term care in-  
24 surance, to be known as ‘LTC Insurance  
25 Compare’, that shall include the following:



1           “(I) Comparison tools to assist  
2 consumers in evaluating long-term  
3 care insurance policies (as defined in  
4 subparagraph (D)) with different ben-  
5 efits and features.

6           “(II) State-specific information  
7 about the long-term care insurance  
8 policies marketed in a State, including  
9 the following:

10           “(aa) Whether a State has  
11 promulgated rate stability provi-  
12 sions for all issuers of long-term  
13 care insurance policies and how  
14 the rate stability standards work.

15           “(bb) The rating history for  
16 issuers selling long-term care in-  
17 surance policies in the State for  
18 at least the most recent pre-  
19 ceding 5 years.

20           “(cc) The policy documents  
21 for each such policy marketed in  
22 the State.

23           “(III) Links to State information  
24 regarding long-term care under State  
25 Medicaid programs (which may be

1 provided, as appropriate, through  
2 Internet linkages to the websites of  
3 State Medicaid programs) that in-  
4 cludes the following:

5 “(aa) The medical assistance  
6 provided under each State’s Med-  
7 icaid program for nursing facility  
8 services and other long-term care  
9 services (including any functional  
10 criteria imposed for receipt of  
11 such services, as reported in ac-  
12 cordance with section  
13 1902(a)(28)(D) of the Social Se-  
14 curity Act) and any differences  
15 from benefits and services offered  
16 under long-term care insurance  
17 policies in the State and the cri-  
18 teria for triggering receipt of  
19 such benefits and services.

20 “(bb) If the State has a  
21 qualified State long-term care in-  
22 surance partnership under sec-  
23 tion 1917(b)(1)(C)(iii) of the So-  
24 cial Security Act, information re-  
25 garding how and when an indi-

1 individual with a partnership long-  
2 term care insurance policy who is  
3 receiving benefits under the pol-  
4 icy should apply for medical as-  
5 sistance for nursing facility serv-  
6 ices or other long-term care serv-  
7 ices under the State Medicaid  
8 program and information regard-  
9 ing about how Medicaid asset  
10 protection is accumulated over  
11 time under such policies.”; and

12 (B) by adding at the end the following:

13 “(C) CURRENT INFORMATION.—The Sec-  
14 retary of Health and Human Services shall en-  
15 sure that, to the greatest extent practicable, the  
16 information maintained in the National Clear-  
17 ighthouse for Long-Term Care Information, in-  
18 cluding the information required for LTC In-  
19 surance Compare, is the most recent informa-  
20 tion available.

21 “(D) LONG-TERM CARE INSURANCE POL-  
22 ICY DEFINED.—In subparagraph (A)(iv), the  
23 term ‘long-term care insurance policy’ means a  
24 qualified long-term care insurance contract (as  
25 defined in section 7702B(b) of the Internal

1 Revenue Code of 1986), a qualified long-term  
2 care insurance contract that covers an insured  
3 who is a resident of a State with a qualified  
4 State long-term care insurance partnership  
5 under clause (iii) of section 1917(b)(1)(C) of  
6 the Social Security Act (42 U.S.C.  
7 1396p(b)(1)(C)) or a long-term care insurance  
8 policy offered in connection with a State plan  
9 amendment described in clause (iv) of such sec-  
10 tion, and includes any other insurance policy or  
11 rider described in the definition of ‘long-term  
12 care insurance’ in section 4 of the model Act  
13 promulgated by the National Association of In-  
14 surance Commissioners (as adopted December  
15 2006).”;

16 (2) by redesignating paragraph (3) as para-  
17 graph (4);

18 (3) in paragraph (4) (as so redesignated), by  
19 inserting “, and \$5,000,000 for each of fiscal years  
20 2011 through 2013” after “2010”; and

21 (4) by inserting after paragraph (2) the fol-  
22 lowing:

23 “(3) CONSULTATION ON LTC INSURANCE COM-  
24 PARE.—The Secretary of Health and Human Serv-  
25 ices shall consult with the National Association of

1 Insurance Commissioners and the entities and stake-  
2 holders specified in section 101(d) of the Confidence  
3 in Long-Term Care Insurance Act of 2009 in de-  
4 signing and implementing the LTC Insurance Com-  
5 pare required under paragraph (2)(A)(iv).”.

6 (b) MEDICAID STATE PLAN REQUIREMENT TO SUB-  
7 MIT NURSING FACILITY SERVICES FUNCTIONAL CRI-  
8 TERIA DATA.—Section 1902(a)(28) of the Social Security  
9 Act (42 U.S.C. 1396a(a)(28)) is amended—

10 (1) in subparagraph (C), by striking “and”  
11 after the semicolon;

12 (2) in subparagraph (D)(iii), by adding “and”  
13 after the semicolon; and

14 (3) by inserting after subparagraph (D)(iii), the  
15 following new subparagraph:

16 “(E) for the annual submission of data re-  
17 lating to functional criteria for the receipt of  
18 nursing facility services under the plan (in such  
19 form and manner as the Secretary shall speci-  
20 fy);”.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-  
23 graph (2), the amendments made by this section  
24 take effect on the date of enactment of this Act.

1           (2) EXTENSION OF EFFECTIVE DATE FOR  
2 STATE LAW AMENDMENT.—In the case of a State  
3 plan under title XIX of the Social Security Act (42  
4 U.S.C. 1396 et seq.) which the Secretary of Health  
5 and Human Services determines requires State legis-  
6 lation or State regulation in order for the plan to  
7 meet the additional requirements imposed by the  
8 amendments made by subsection (b), the State plan  
9 shall not be regarded as failing to comply with the  
10 requirements of such title solely on the basis of its  
11 failure to meet these additional requirements before  
12 the first day of the first calendar quarter beginning  
13 after the close of the first regular session of the  
14 State legislature that begins after the date of enact-  
15 ment of this Act. For purposes of the previous sen-  
16 tence, in the case of a State that has a 2-year legis-  
17 lative session, each year of the session is considered  
18 to be a separate regular session of the State legisla-  
19 ture.

1 **TITLE II—IMPROVED STATE**  
 2 **CONSUMER PROTECTIONS**  
 3 **FOR QUALIFIED LONG-TERM**  
 4 **CARE INSURANCE CON-**  
 5 **TRACTS AND MEDICAID PART-**  
 6 **nership Policies**

7 **SEC. 201. APPLICATION OF MEDICAID PARTNERSHIP RE-**  
 8 **QUIRED MODEL PROVISIONS TO ALL TAX-**  
 9 **QUALIFIED LONG-TERM CARE INSURANCE**  
 10 **CONTRACTS.**

11 (a) IN GENERAL.—Section 7702B(g)(1) of the Inter-  
 12 nal Revenue Code of 1986 (relating to consumer protec-  
 13 tion provisions) is amended—

14 (1) in subparagraph (A), by inserting “(but  
 15 only to the extent such requirements do not conflict  
 16 with requirements applicable under subparagraph  
 17 (B)),” after “paragraph (2)”,

18 (2) by redesignating subparagraphs (B) and  
 19 (C) as subparagraphs (C) and (D), respectively, and

20 (3) by inserting after subparagraph (A), the fol-  
 21 lowing new subparagraph:

22 “(B) the requirements of the model regula-  
 23 tion and model Act described in section  
 24 1917(b)(5) of the Social Security Act,”.

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

4 **SEC. 202. STREAMLINED PROCESS FOR APPLYING NEW OR**  
5 **UPDATED MODEL PROVISIONS.**

6 (a) SECRETARIAL REVIEW.—

7 (1) TAX-QUALIFIED POLICIES.—

8 (A) 2000 AND 2006 MODEL PROVISIONS.—

9 Not later than 3 months after the date of en-  
10 actment of this Act, the Secretary of the Treas-  
11 ury, in consultation with the Secretary of  
12 Health and Human Services, shall review the  
13 model provisions specified in subsection (c)(1)  
14 for purposes of determining whether updating  
15 any such provisions for a provision specified in  
16 section 7702B(g)(2) of the Internal Revenue  
17 Code of 1986, or the inclusion of any such pro-  
18 visions in such section, for purposes of an in-  
19 surance contract qualifying for treatment as a  
20 qualified long-term care insurance contract  
21 under such Code, would improve consumer pro-  
22 tections for insured individuals under such con-  
23 tracts.

24 (B) SUBSEQUENT MODEL PROVISIONS.—

25 Not later than 3 months after model provisions



1 described in paragraph (2) or (3) of subsection  
2 (c) are adopted by the National Association of  
3 Insurance Commissioners, the Secretary of the  
4 Treasury, in consultation with the Secretary of  
5 Health and Human Services, shall review the  
6 model provisions to determine whether the ap-  
7 plication of such provisions to an insurance con-  
8 tract for purposes of qualifying for treatment as  
9 a qualified long-term care insurance contract  
10 under section 7702B(g)(2) of the Internal Rev-  
11 enue Code of 1986, would improve consumer  
12 protections for insured individuals under such  
13 contracts.

14 (2) MEDICAID PARTNERSHIP POLICIES.—

15 (A) SUBSEQUENT MODEL PROVISIONS.—

16 Not later than 3 months after model provisions  
17 described in paragraph (2) or (3) of subsection  
18 (c) are adopted by the National Association of  
19 Insurance Commissioners, the Secretary of  
20 Health and Human Services, in consultation  
21 with the Secretary of the Treasury, shall review  
22 the model provisions to determine whether the  
23 application of such provisions to an insurance  
24 contract for purposes of satisfying the require-  
25 ments for participation in a qualified State

1 long-term care insurance partnership under sec-  
2 tion 1917(b)(1)(C)(iii) of such Act (42 U.S.C.  
3 1396p(b)(1)(C)(iii)) would improve consumer  
4 protections for insured individuals under such  
5 contracts.

6 (B) REVIEW OF OTHER PARTNERSHIP RE-  
7 QUIREMENTS.—The Secretary of Health and  
8 Human Services, in consultation with the Sec-  
9 retary of the Treasury, shall review clauses (iii)  
10 and (iv) of section 1917(b)(1)(C) for purposes  
11 of determining whether the requirements speci-  
12 fied in such clauses should be modified to pro-  
13 vide improved consumer protections or, as ap-  
14 propriate, to resolve any conflicts with the ap-  
15 plication of the 2006 model provisions under  
16 paragraph (5) of section 1917(b) (as amended  
17 by section 302(a)) or with the application of  
18 any model provisions that the Secretary deter-  
19 mines should apply to an insurance contract as  
20 a result of a review required under subpara-  
21 graph (A).

22 (b) EXPEDITED RULEMAKING.—

23 (1) TAX-QUALIFIED POLICIES.—Subject to  
24 paragraph (3), if the Secretary of the Treasury de-  
25 termines that any model provisions reviewed under

1 subsection (a)(1) should apply for purposes of an in-  
2 surance contract qualifying for treatment as a quali-  
3 fied long-term care insurance contract under the In-  
4 ternal Revenue Code of 1986, the Secretary, shall  
5 promulgate an interim final rule applying such pro-  
6 visions for such purposes not later than 3 months  
7 after making such determination.

8 (2) MEDICAID PARTNERSHIP POLICIES.—Sub-  
9 ject to paragraph (3), if the Secretary of Health and  
10 Human Services determines that any model provi-  
11 sions or requirements reviewed under subsection  
12 (a)(2) should apply for purposes of an insurance  
13 contract satisfying the requirements for participation  
14 in a qualified State long-term care insurance part-  
15 nership under section 1917(b)(1)(C)(iii) of such Act  
16 (42 U.S.C. 1396p(b)(1)(C)(iii)), the Secretary, shall  
17 promulgate an interim final rule applying such pro-  
18 visions for such purposes not later than 3 months  
19 after making such determination.

20 (3) CONSULTATION REQUIRED.—The Secretary  
21 of the Treasury and the Secretary of Health and  
22 Human Services, respectively, shall consult with the  
23 National Association of Insurance Commissioners  
24 and the entities and stakeholders specified in section  
25 101(d) regarding the extent to which it is appro-

1        appropriate to apply the model provisions described in  
2        paragraph (1) or (2) (as applicable) to insurance  
3        contracts described in such paragraphs through pro-  
4        mulgation of an interim final rule. If, after such  
5        consultation—

6                (A) the Secretary of the Treasury deter-  
7                mines it would be appropriate to promulgate an  
8                interim final rule, the Secretary of the Treasury  
9                shall use notice and comment rulemaking to  
10              promulgate a rule applying such provisions to  
11              insurance contracts described in paragraph (1);  
12              and

13              (B) the Secretary of Health and Human  
14              Services determines it would be appropriate to  
15              promulgate an interim final rule, the Secretary  
16              of Health and Human Services shall use notice  
17              and comment rulemaking to promulgate a rule  
18              applying such provisions to insurance contracts  
19              described in paragraph (2).

20              (4) RULE OF CONSTRUCTION RELATING TO AP-  
21              PPLICATION OF CONGRESSIONAL REVIEW ACT.—Noth-  
22              ing in paragraphs (1), (2), or (3) shall be construed  
23              as affecting the application of the sections 801  
24              through 808 of title 5, United States Code (com-  
25              monly known as the “Congressional Review Act”) to

1 any interim final rule issued in accordance with such  
2 paragraphs.

3 (5) TECHNICAL AMENDMENT ELIMINATING  
4 PRIOR REVIEW STANDARD MADE OBSOLETE.—Sec-  
5 tion 1917(b)(5) of the Social Security Act (42  
6 U.S.C. 1396p(b)(5)) is amended by striking sub-  
7 paragraph (C).

8 (c) MODEL PROVISIONS.—In this section, the term  
9 “model provisions” means—

10 (1) each provision of the long-term care insur-  
11 ance model regulation, and the long-term care insur-  
12 ance model Act, respectively, promulgated by the  
13 National Association of Insurance Commissioners  
14 (as adopted as of October 2000 and as of December  
15 2006);

16 (2) each provision of the model language relat-  
17 ing to marketing disclosures and definitions devel-  
18 oped under section 102(b)(1); and

19 (3) each provision of any long-term care insur-  
20 ance model regulation, or the long-term care insur-  
21 ance model Act, respectively, promulgated by the  
22 National Association of Insurance Commissioners  
23 and adopted after December 2006.

1 **TITLE III—IMPROVED CON-**  
 2 **SUMER PROTECTIONS FOR**  
 3 **MEDICAID PARTNERSHIP**  
 4 **POLICIES**

5 **SEC. 301. BIENNIAL REPORTS ON IMPACT OF MEDICAID**  
 6 **LONG-TERM CARE INSURANCE PARTNER-**  
 7 **SHIPS.**

8 Section 6021(c) of the Deficit Reduction Act of 2005  
 9 (42 U.S.C. 1396p note) is amended to read as follows:

10 “(c) BIENNIAL REPORTS.—

11 “(1) IN GENERAL.—Not later than January 1,  
 12 2010, and biennially thereafter, the Secretary of  
 13 Health and Human Services (in this subsection re-  
 14 ferred to as the ‘Secretary’) shall issue a report to  
 15 States and Congress on the long-term care insurance  
 16 partnerships established in accordance with section  
 17 1917(b)(1)(C)(ii) of the Social Security Act (42  
 18 U.S.C. 1396p(b)(1)(C)(ii)). Each report shall in-  
 19 clude (with respect to the period the report address-  
 20 es) the following information, nationally and on a  
 21 State-specific basis:

22 “(A) Analyses of the extent to which such  
 23 partnerships improve access of individuals to af-  
 24 fordable long-term care services and benefits  
 25 and the impact of such partnerships on Federal

1 and State expenditures on long-term care under  
2 the Medicare and Medicaid programs.

3 “(B) Analyses of the impact of such part-  
4 nerships on consumer decisionmaking with re-  
5 spect to purchasing, accessing, and retaining  
6 coverage under long-term care insurance poli-  
7 cies (as defined in subsection (d)(2)(D)), in-  
8 cluding a description of the benefits and serv-  
9 ices offered under such policies, the average  
10 premiums for coverage under such policies, the  
11 number of policies sold and at what ages, the  
12 number of policies retained and for how long,  
13 the number of policies for which coverage was  
14 exhausted, and the number of insured individ-  
15 uals who were determined eligible for medical  
16 assistance under the State Medicaid program.

17 “(2) DATA.—The reports by issuers of partner-  
18 ship long-term care insurance policies required under  
19 section 1917(b)(1)(C)(iii)(VI) of the Social Security  
20 Act shall include such data as the Secretary shall  
21 specify in order to conduct the analyses required  
22 under paragraph (1).

23 “(3) PUBLIC AVAILABILITY.—The Secretary  
24 shall make each report issued under this subsection

1 publicly available through the LTC Insurance Com-  
 2 pare website required under subsection (d).

3 “(4) RULE OF CONSTRUCTION.—Nothing in  
 4 this section shall be construed as requiring the Sec-  
 5 retary to conduct an independent review of each  
 6 long-term care insurance policy offered under or in  
 7 connection with such a partnership.

8 “(5) APPROPRIATION.—Out of any funds in the  
 9 Treasury not otherwise appropriated, there is appro-  
 10 priated to the Secretary to carry out this subsection,  
 11 \$1,000,000 for the period of fiscal years 2010  
 12 through 2012.”.

13 **SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR MED-**  
 14 **ICAID PARTNERSHIPS.**

15 (a) APPLICATION OF 2006 MODEL PROVISIONS.—

16 (1) UPDATING OF 2000 REQUIREMENTS.—

17 (A) IN GENERAL.—Section  
 18 1917(b)(5)(B)(i) of the Social Security Act (42  
 19 U.S.C. 1396p(b)(5)(B)(i)) is amended by strik-  
 20 ing “October 2000” and inserting “December  
 21 2006”.

22 (B) CONFORMING AMENDMENTS.—

23 (i) Subclause (XVII) of such section is  
 24 amended by striking “section 26” and in-  
 25 serting “section 28”.



1 (ii) Subclause (XVIII) of such section  
2 is amended by striking “section 29” and  
3 inserting “section 31”.

4 (iii) Subclause (XIX) of such section  
5 is amended by striking “section 30” and  
6 inserting “section 32”.

7 (2) APPLICATION TO GRANDFATHERED PART-  
8 NERSHIPS.—Section 1917(b)(1)(C)(iv) of such Act  
9 (42 U.S.C. 1396p(b)(1)(C)(iv)) is amended by in-  
10 serring “, and the State satisfies the requirements of  
11 paragraph (5)” after “2005”.

12 (b) APPLICATION OF PRODUCER TRAINING MODEL  
13 ACT REQUIREMENTS.—Section 1917(b)(1)(C) of such Act  
14 (42 U.S.C. 1396p(b)(1)(C)) is amended—

15 (1) in clause (iii)(V), by inserting “and satisfies  
16 the producer training requirements specified in sec-  
17 tion 9 of the model Act specified in paragraph (5)”  
18 after “coverage of long-term care”; and

19 (2) in clause (iv), as amended by subsection  
20 (a)(2), by inserting “clause (iii)(V) and” before  
21 “paragraph (5)”.

22 (c) APPLICATION OF ADDITIONAL REQUIREMENTS  
23 FOR ALL PARTNERSHIPS.—Section 1917(b) of the Social  
24 Security Act (42 U.S.C. 1396p(b)) is amended—

25 (1) in paragraph (1)(C)—

1 (A) in clause (iii)—

2 (i) by inserting after subclause (VII)

3 the following new subclause:

4 “(VIII) The State satisfies the re-  
5 quirements of paragraph (6).”; and

6 (ii) in the flush sentence at the end,

7 by striking “paragraph (5)” and inserting

8 “paragraphs (5) and (6)”; and

9 (B) in clause (iv), as amended by sub-

10 sections (a)(2) and (b)(2), by striking “para-

11 graph (5)” and inserting “paragraphs (5) and

12 (6)”; and

13 (2) by adding at the end the following new

14 paragraph:

15 “(6) For purposes of clauses (iii)(VIII) and (iv) of

16 paragraph (1)(C), the requirements of this paragraph are

17 the following:

18 “(A) The State requires issuers of long-term

19 care insurance policies to—

20 “(i) use marketing materials approved by

21 the State for purposes of the partnership ver-

22 batim in all sales and marketing activities con-

23 ducted or supported by the issuers in the State

24 with respect to any long-term care insurance

25 policies marketed by the issuer in the State;

1           “(ii) provide such materials to all agents  
2           selling long-term care insurance policies in the  
3           State;

4           “(iii) ensure that agent training and edu-  
5           cation courses conducted or supported by the  
6           issuers incorporate such materials; and

7           “(iv) make such materials available to any  
8           consumer upon request, and to make such ma-  
9           terials available to all prospective purchasers of  
10          a policy offered under a qualified State long-  
11          term care insurance partnership before submis-  
12          sion of an application for coverage under that  
13          policy.

14          “(B) The State requires issuers of long-term  
15          care insurance policies to require agents to use the  
16          inflation protection comparison form developed by  
17          the National Association of Insurance Commis-  
18          sioners in accordance with section 102(b)(1)(C) of  
19          the Confidence in Long-Term Care Insurance Act of  
20          2009 when selling the policies in the State.

21          “(C) The State requires issuers of long-term  
22          care insurance policies sold in the State to comply  
23          with the provisions of section 8 of the model Act  
24          specified in paragraph (5) relating to contingent  
25          nonforfeiture benefits.

1           “(D) The State enacts legislation, not later  
2 than January 1, 2012, that establishes rate stability  
3 standards for all issuers of long-term care insurance  
4 policies sold in the State that are no less stringent  
5 than the premium rate schedule increase standards  
6 specified in section 20 of the model regulation speci-  
7 fied in paragraph (5).

8           “(E) The State develops, updates whenever  
9 changes are made under the State plan that relate  
10 to eligibility for medical assistance for nursing facil-  
11 ity services or other long-term care services or the  
12 amount, duration, or scope of such assistance, and  
13 provides public, readily accessible materials that de-  
14 scribe in clear, simple language the terms of such  
15 eligibility, the benefits and services provided as such  
16 assistance, and rules relating to adjustment or re-  
17 covery from the estate of an individual who receives  
18 such assistance under the State plan. Such materials  
19 shall include a clear disclosure that medical assist-  
20 ance is not guaranteed to partnership policyholders  
21 who exhaust benefits under a partnership policy, and  
22 that Federal changes to the program under this title  
23 or State changes to the State plan may affect an in-  
24 dividual’s eligibility for, or receipt of, such assist-  
25 ance.

1           “(F) The State—

2                   “(i) through the State Medicaid agency  
3           under section 1902(a)(5) and in consultation  
4           with the State insurance department, develops  
5           written materials explaining how the benefits  
6           and rules of long-term care policies offered by  
7           issuers participating in the partnership interact  
8           with the benefits and rules under the State plan  
9           under this title;

10                   “(ii) requires agents to use such materials  
11           when selling or otherwise discussing how long-  
12           term care policies offered by issuers partici-  
13           pating in the partnership work with potential  
14           purchasers and to provide the materials to any  
15           such purchasers upon request;

16                   “(iii) informs holders of such policies of  
17           any changes in eligibility requirements under  
18           the State plan under this title and of any  
19           changes in estate recovery rules under the State  
20           plan as soon as practicable after such changes  
21           are made; and

22                   “(iv) agrees to honor the asset protections  
23           of any such policy that were provided under the  
24           policy when purchased, regardless of whether

1           the State subsequently terminates a partnership  
2           program under the State plan.

3           “(G) The State Medicaid agency under section  
4           1902(a)(5) and the State insurance department  
5           enter into a memorandum of understanding to—

6                   “(i) inform consumers about changes in  
7                   long-term care policies offered by issuers par-  
8                   ticipating in the partnership, changes in the  
9                   amount, duration, or scope of medical assist-  
10                  ance for nursing facility services or other long-  
11                  term care services offered under the State plan,  
12                  changes in consumer protections, and any other  
13                  issues such agency and department determine  
14                  appropriate; and

15                   “(ii) jointly maintain a nonpublic database  
16                   of partnership policyholders for purposes of fa-  
17                   cilitating coordination in eligibility determina-  
18                   tions for medical assistance under the State  
19                   plan and the provision of benefits or other serv-  
20                   ices under such policies and medical assistance  
21                   provided under the State plan that includes—

22                           “(I) the number of policyholders ap-  
23                           plying for medical assistance under the  
24                           State plan; and

1                   “(II) the number of policyholders  
2                   deemed eligible (and, if applicable, ineli-  
3                   gible) for such assistance.

4                   “(H) The State does not apply any limit to the  
5                   disregard, for purposes of determining the eligibility  
6                   of a partnership policyholder for medical assistance  
7                   under the State plan and for purposes of exemption  
8                   from the estate recovery requirements under the  
9                   plan, of benefits provided under a partnership policy,  
10                  including cash benefits provided for long-term care  
11                  services, and benefits provided under the policy after  
12                  the effective date of the policyholder’s enrollment in  
13                  the State plan.

14                  “(I) The State enters into agreements with  
15                  other States that have established qualified State  
16                  long-term care insurance partnerships under which  
17                  such States agree to provide reciprocity for policy-  
18                  holders under such partnerships.

19                  “(J) The State provides guaranteed asset pro-  
20                  tection to all individuals covered under a policy of-  
21                  fered under a qualified State long-term care insur-  
22                  ance partnership who bought such a policy in the  
23                  State or in another State with such a partnership  
24                  and with which the State has a reciprocity agree-  
25                  ment at the time of purchase.

1           “(K) At the option of the State, notwith-  
2           standing any limitation that would otherwise be im-  
3           posed under subsection (f), the State disregards any  
4           amount of the equity interest in the home of an indi-  
5           vidual covered of policy offered under a qualified  
6           State long-term care insurance partnership for pur-  
7           poses of determining the individual’s eligibility for  
8           medical assistance with respect to nursing facility  
9           services or other long-term care services.”.

10       (d) EFFECTIVE DATE.—

11           (1) IN GENERAL.—Except as provided in para-  
12           graph (2), the amendments made by this section  
13           take effect on the date that is 1 year after the date  
14           of enactment of this Act.

15           (2) EXTENSION OF EFFECTIVE DATE FOR  
16           STATE LAW AMENDMENT.—In the case of a State  
17           plan under title XIX of the Social Security Act (42  
18           U.S.C. 1396 et seq.) which the Secretary of Health  
19           and Human Services determines requires State legis-  
20           lation in order for the plan to meet the additional  
21           requirements imposed by the amendments made by  
22           this section, the State plan shall not be regarded as  
23           failing to comply with the requirements of such title  
24           solely on the basis of its failure to meet these addi-  
25           tional requirements before the first day of the first



1 calendar quarter beginning after the close of the  
2 first regular session of the State legislature that be-  
3 gins after the date of enactment of this Act. For  
4 purposes of the previous sentence, in the case of a  
5 State that has a 2-year legislative session, each year  
6 of the session is considered to be a separate regular  
7 session of the State legislature.

8 **SEC. 303. REPORT TO CONGRESS REGARDING NEED FOR**  
9 **MINIMUM ANNUAL COMPOUND INFLATION**  
10 **PROTECTION.**

11 Not later than 18 months after the date of enactment  
12 of this Act, the Secretary of Health and Human Services  
13 (in this section referred to as the “Secretary”) shall sub-  
14 mit a report to Congress that includes the Secretary’s rec-  
15 ommendation regarding whether legislative or other ad-  
16 ministrative action should be taken to require all long-  
17 term care insurance policies sold after a date determined  
18 by the Secretary in connection with a qualified State long-  
19 term care insurance partnership under clause (iii) of sec-  
20 tion 1917(b)(1)(C) of the Social Security Act (42 U.S.C.  
21 1396p(b)(1)(C)) or a long-term care insurance policy of-  
22 fered in connection with a State plan amendment de-  
23 scribed in clause (iv) of such section, provide, at a min-  
24 imum, 5 percent annual compound inflation protection,  
25 and if so, whether such requirements should be imposed

1 on a basis related to the age of the policyholder at the  
2 time of purchase. The Secretary shall include in the report  
3 information on the various levels of inflation protection  
4 available under such long-term care insurance partner-  
5 ships and the methodologies used by issuers of such poli-  
6 cies to calculate and present various inflation protection  
7 options under such policies, including policies with a fu-  
8 ture purchase option feature.

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