

104TH CONGRESS
1ST SESSION

H. R. 2571

To establish a program to provide Federal payment to States for the operation of programs for long-term care services for needy individuals with disabilities, to amend the Internal Revenue Code of 1986 to revise the tax treatment of expenses for long-term care insurance and services, to reform standards for the long-term care insurance market, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 1995

Mr. PETERSON of Florida (for himself, Mrs. MEEK of Florida, Mr. DELLUMS, Mr. JOHNSTON of Florida, and Mr. JEFFERSON) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, and Economic and Educational Opportunities, 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

A BILL

To establish a program to provide Federal payment to States for the operation of programs for long-term care services for needy individuals with disabilities, to amend the Internal Revenue Code of 1986 to revise the tax treatment of expenses for long-term care insurance and services, to reform standards for the long-term care insurance market, 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Comprehensive Long-Term Care Reform Act of 1995”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STATE PROGRAMS FOR LONG-TERM CARE SERVICES
FOR NEEDY INDIVIDUALS WITH DISABILITIES

Subtitle A—State Long-Term Care Programs

Sec. 101. State programs for long-term care services for needy individuals with
disabilities.

Sec. 102. State plans.

Sec. 103. Individuals with disabilities and needy individual defined.

Sec. 104. Long-term care services covered under State plan.

Sec. 105. Cost sharing.

Sec. 106. Quality assurance and safeguards.

Sec. 107. Advisory groups.

Sec. 108. Payments to States.

Sec. 109. Total Federal budget; allotments to States.

Subtitle B—Increase in SSI Personal Needs Allowance

Sec. 111. Increase in SSI personal needs allowance.

Subtitle C—Repeal of Coverage Under the Medicaid Program of Long-Term
Care Services

Sec. 121. Repeal of coverage under the medicaid program of long-term care
services covered under State plan.

TITLE II—TAX TREATMENT OF LONG-TERM CARE INSURANCE
AND SERVICES

Sec. 201. Amendment of 1986 code.

Sec. 202. Qualified long-term care services treated as medical care.

Sec. 203. Treatment of long-term care insurance.

Sec. 204. Tax treatment of accelerated death benefits under life insurance con-
tracts.

Sec. 205. Tax treatment of companies issuing qualified accelerated death bene-
fit riders.

Sec. 206. Exclusion from gross income for amounts withdrawn from certain
plans to pay qualified long-term care insurance premiums.

Sec. 207. Nonrecognition of gain on sale of principal residence to extent pro-
ceeds used for entrance into continuing care retirement com-
munity.

TITLE III—LONG-TERM CARE INSURANCE REFORM

Subtitle A—General Provisions

- Sec. 301. Federal regulations; prior application or certain requirements.
 Sec. 302. Definitions.

Subtitle B—Federal Standards and Requirements

- Sec. 321. Requirements to facilitate understanding and comparison of benefits.
 Sec. 322. Requirements relating to coverage.
 Sec. 323. Requirements relating to premiums.
 Sec. 324. Requirements relating to sales practices.
 Sec. 325. Continuation, renewal, replacement, conversion, and cancellation of policies.
 Sec. 326. Requirements relating to payment of benefits.

Subtitle C—Enforcement

- Sec. 341. State programs for enforcement of standards.
 Sec. 342. Authorization of appropriations for State programs.
 Sec. 343. Allotments to States.
 Sec. 344. Payments to States.
 Sec. 345. Federal oversight of State enforcement.

Subtitle D—Recommendations for Consumer Education Program

- Sec. 361. Recommendations for consumer education program.

TITLE IV—FINANCING

- Sec. 401. Phase in of 24-cent/pack increase in excise taxes on cigarettes.

1 **TITLE I—STATE PROGRAMS FOR**
 2 **LONG-TERM CARE SERVICES**
 3 **FOR NEEDY INDIVIDUALS**
 4 **WITH DISABILITIES**

5 **Subtitle A—State Long-Term Care**
 6 **Programs**

7 **SEC. 101. STATE PROGRAMS FOR LONG-TERM CARE SERV-**
 8 **ICES FOR NEEDY INDIVIDUALS WITH DIS-**
 9 **ABILITIES.**

10 (a) IN GENERAL.—Each State that has a plan for
 11 the long-term care services to needy individuals with dis-
 12 abilities submitted to and approved by the Secretary under

1 section 102(b) is entitled to payment in accordance with
2 section 108.

3 (b) NO INDIVIDUAL ENTITLEMENT ESTABLISHED.—
4 Nothing in this subtitle shall be construed to create an
5 entitlement for individuals or a requirement that a State
6 with such an approved plan expend the entire amount of
7 funds to which it is entitled in any year.

8 (c) STATE DEFINED.—In this Act, the term “State”
9 includes the District of Columbia, Puerto Rico, the Virgin
10 Islands, Guam, American Samoa, and the Northern Mari-
11 ana Islands.

12 **SEC. 102. STATE PLANS.**

13 (a) PLAN REQUIREMENTS.—In order to be approved
14 under subsection (b), a State plan for long-term care serv-
15 ices for needy individuals with disabilities must meet the
16 following requirements:

17 (1) ELIGIBILITY.—

18 (A) IN GENERAL.—Within the amounts
19 provided by the State (and under section 108)
20 for such plan, the plan shall provide that serv-
21 ices under the plan will be available to needy in-
22 dividuals with disabilities (as defined in section
23 103(a)) in the State.

24 (B) INITIAL SCREENING.—The plan shall
25 provide a process for the initial screening of in-

1 dividuals who appear to have some reasonable
2 likelihood of being an individual with disabil-
3 ities.

4 (C) RESTRICTIONS.—The plan may not
5 limit the eligibility of needy individuals with dis-
6 abilities based on—

7 (i) age,

8 (ii) geography,

9 (iii) nature, severity, or category of
10 disability,

11 (iv) residential setting (other than an
12 institutional setting), or

13 (v) other grounds specified by the
14 Secretary.

15 (D) MAINTENANCE OF EFFORT.—The plan
16 must provide assurances that, in the case of an
17 individual receiving medical assistance for home
18 and community-based services under the State
19 medicaid plan as of the date of the enactment
20 of this Act, the State will continue to make
21 available (either under this plan or otherwise)
22 to such individual an appropriate level of assist-
23 ance for home and community-based services,
24 taking into account the level of assistance pro-

1 vided as of such date and the individual's need
2 for home and community-based services.

3 (2) SERVICES.—

4 (A) SPECIFICATION.—Consistent with sec-
5 tion 104, the plan shall specify—

6 (i) the services made available under
7 the plan,

8 (ii) the extent and manner in which
9 such services are allocated and made avail-
10 able to individuals with disabilities, and

11 (iii) the manner in which services
12 under the plan are coordinated with each
13 other and with health and long-term care
14 services available outside the plan for indi-
15 viduals with disabilities.

16 (B) ALLOCATION.—The State plan—

17 (i) shall specify how it will allocate
18 services under the plan, during and after
19 the 4-fiscal-year phase-in period beginning
20 with fiscal year 1998, among covered indi-
21 viduals with disabilities, and

22 (ii) may not allocate such services
23 based on the income or other financial re-
24 sources of such individuals.

1 (C) LIMITATION ON LICENSURE OR CER-
2 TIFICATION.—The State may not subject
3 consumer-directed providers of personal assist-
4 ance services to licensure, certification, or other
5 requirements which the Secretary finds not to
6 be necessary for the health and safety of indi-
7 viduals with disabilities.

8 (D) CONSUMER CHOICE.—To the extent
9 possible, the choice of an individual with dis-
10 abilities (and that individual’s family) regarding
11 which covered services to receive and the pro-
12 viders who will provide such services shall be
13 followed.

14 (3) COST SHARING.—The plan shall impose cost
15 sharing with respect to covered services only in ac-
16 cordance with section 105.

17 (4) TYPES OF PROVIDERS AND REQUIREMENTS
18 FOR PARTICIPATION.—The plan shall specify—

19 (A) the types of service providers eligible
20 to participate in the program under the plan,
21 which shall include consumer-directed providers
22 for home and community-based services, and

23 (B) any requirements for participation ap-
24 plicable to each type of service provider.

1 (5) BUDGET.—The plan shall specify how the
2 State will manage Federal and State funds available
3 under the plan for each fiscal year during the period
4 beginning with fiscal year 1998 and ending with fis-
5 cal year 2002 and for each 5-fiscal-year periods
6 thereafter to serve all categories of individuals with
7 disabilities and meet the requirements of this sub-
8 section. If the Secretary makes an adjustment under
9 section 109(a)(5)(C) for a year, each State shall up-
10 date the specifications under this paragraph to re-
11 flect the impact of such an adjustment.

12 (6) PROVIDER REIMBURSEMENT.—

13 (A) PAYMENT METHODS.—The plan shall
14 specify the payment methods to be used to re-
15 imburse providers for services furnished under
16 the plan. Such methods may include retrospec-
17 tive reimbursement on a fee-for-service basis,
18 prepayment on a capitation basis, payment by
19 cash or vouchers to individuals with disabilities,
20 or any combination of these methods. In the
21 case of the use of cash or vouchers, the plan
22 shall specify how the plan will assure compli-
23 ance with applicable employment tax provisions.

24 (B) PAYMENT RATES.—The plan shall
25 specify the methods and criteria to be used to

1 set payment rates for services furnished under
2 the plan (including rates for cash payments or
3 vouchers to individuals with disabilities).

4 (C) PLAN PAYMENT AS PAYMENT IN
5 FULL.—The plan shall restrict payment under
6 the plan for covered services to those providers
7 that agree to accept the payment under the
8 plan (at the rates established pursuant to sub-
9 paragraph (B)) and any cost sharing permitted
10 or provided for under section 105 as payment
11 in full for services furnished under the plan.

12 (7) QUALITY ASSURANCE AND SAFEGUARDS.—
13 The State plan shall provide for quality assurance
14 and safeguards for applicants and beneficiaries in
15 accordance with section 106.

16 (8) ADVISORY GROUP.—The State plan shall—
17 (A) assure the establishment and mainte-
18 nance of an advisory group under section
19 107(b), and

20 (B) include the documentation prepared by
21 the group under section 107(b)(4).

22 (9) ADMINISTRATION.—

23 (A) STATE AGENCY.—The plan shall des-
24 ignate a State agency or agencies to administer
25 (or to supervise the administration of) the plan.

1 (B) ADMINISTRATIVE EXPENDITURES.—
2 Effective beginning with fiscal year 2003, the
3 plan shall contain assurances that not more
4 than 10 percent of expenditures under the plan
5 for all quarters in any fiscal year shall be for
6 administrative costs.

7 (C) COORDINATION.—The plan shall speci-
8 fy how the plan—

9 (i) will be integrated with the State
10 medicaid plan, titles V and XX of the So-
11 cial Security Act, programs under the
12 Older Americans Act of 1965, programs
13 under the Developmental Disabilities As-
14 sistance and Bill of Rights Act, the Indi-
15 viduals with Disabilities Education Act, the
16 Rehabilitation Act of 1973, and any other
17 Federal or State programs that provide
18 services or assistance targeted to individ-
19 uals with disabilities, and

20 (ii) will be coordinated with health
21 plans.

22 (10) REPORTS AND INFORMATION TO SEC-
23 RETARY; AUDITS.—The plan shall provide that the
24 State will furnish to the Secretary—

1 (A) such reports, and will cooperate with
2 such audits, as the Secretary determines are
3 needed concerning the State's administration of
4 its plan under this subtitle, including the proc-
5 essing of claims under the plan, and

6 (B) such data and information as the Sec-
7 retary may require in order to carry out the
8 Secretary's responsibilities.

9 (11) USE OF STATE FUNDS FOR MATCHING.—

10 The plan shall provide assurances that Federal
11 funds will not be used to provide for the State share
12 of expenditures under this subtitle.

13 (b) APPROVAL OF PLANS.—The Secretary shall ap-
14 prove a plan submitted by a State if the Secretary deter-
15 mines that the plan—

16 (1) was developed by the State after consulta-
17 tion with individuals with disabilities and representa-
18 tives of groups of such individuals, and

19 (2) meets the requirements of subsection (a).

20 The approval of such a plan shall take effect as of the
21 first day of the first fiscal year beginning after the date
22 of such approval (except that any approval made before
23 January 1, 1998, shall be effective as of January 1, 1998).

24 In order to budget funds allotted under this subtitle, the
25 Secretary may establish a deadline for the submission of

1 such a plan before the beginning of a fiscal year as a con-
 2 dition of its approval effective with that fiscal year.

3 (c) MONITORING.—The Secretary shall monitor the
 4 compliance of State plans with the eligibility requirements
 5 of section 103 and may monitor the compliance of such
 6 plans with other requirements of this subtitle.

7 (d) REGULATIONS.—The Secretary shall issue such
 8 regulations as may be appropriate to carry out this sub-
 9 title on a timely basis.

10 **SEC. 103. INDIVIDUALS WITH DISABILITIES AND NEEDY IN-**
 11 **DIVIDUAL DEFINED.**

12 (a) IN GENERAL.—In this subtitle, for purposes of
 13 both home and community-based services and institutional
 14 services, the term “individual with disabilities” means any
 15 individual within one or more of the following 4 categories
 16 of individuals:

17 (1) INDIVIDUALS REQUIRING HELP WITH AC-
 18 TIVITIES OF DAILY LIVING.—An individual of any
 19 age who—

20 (A) requires hands-on or standby assist-
 21 ance, supervision, or cueing (as defined in regu-
 22 lations) to perform—

23 (i) with respect to home and commu-
 24 nity-based services, two or more activities

1 of daily living (as defined in subsection
2 (c)), or

3 (ii) with respect to institutional serv-
4 ices, three or more activities of daily living;
5 and

6 (B) is expected to require such assistance,
7 supervision, or cueing over a period of at least
8 120 days.

9 (2) INDIVIDUALS WITH SEVERE COGNITIVE OR
10 MENTAL IMPAIRMENT.—An individual of any age—

11 (A) whose score, on a standard mental sta-
12 tus protocol (or protocols) appropriate for
13 measuring the individual’s particular condition
14 specified by the Secretary, indicates either se-
15 vere cognitive impairment or severe mental im-
16 pairment, or both;

17 (B) who—

18 (i) requires hands-on or standby as-
19 sistance, supervision, or cueing with one or
20 more activities of daily living,

21 (ii) requires hands-on or standby as-
22 sistance, supervision, or cueing with at
23 least such instrumental activity (or activi-
24 ties) of daily living related to cognitive or

1 mental impairment as the Secretary speci-
2 fies, or

3 (iii) displays symptoms of one or more
4 serious behavioral problems (that is on a
5 list of such problems specified by the Sec-
6 retary) which create a need for supervision
7 to prevent harm to self or others; and

8 (C) is expected to meet the requirements of
9 subparagraphs (A) and (B) over a period of at
10 least 100 days.

11 (3) INDIVIDUALS WITH SEVERE OR PROFOUND
12 MENTAL RETARDATION.—An individual of any age
13 who has severe or profound mental retardation (as
14 determined according to a protocol specified by the
15 Secretary).

16 (4) SEVERELY DISABLED CHILDREN.—An indi-
17 vidual under 6 years of age who—

18 (A) has a severe disability or chronic medi-
19 cal condition,

20 (B) but for receiving personal assistance
21 services or any of the services described in sec-
22 tion 104(d)(1), would require institutionaliza-
23 tion in a hospital, nursing facility, or intermedi-
24 ate care facility for the mentally retarded, and

1 (C) is expected to have such disability or
2 condition and require such services over a pe-
3 riod of at least 100 days.

4 (b) DETERMINATION OF DISABILITY.—

5 (1) IN GENERAL.—The determination of wheth-
6 er an individual is an individual with disabilities
7 shall be made, by persons or entities specified under
8 the State plan, using a uniform protocol consisting
9 of an initial screening and assessment specified by
10 the Secretary. A State may collect additional infor-
11 mation, at the time of obtaining information to
12 make such determination, in order to provide for the
13 assessment and plan described in section 104(b) or
14 for other purposes. The State shall establish a fair
15 hearing process for appeals of such determinations.

16 (2) PERIODIC REASSESSMENT.—The determina-
17 tion that an individual is an individual with disabil-
18 ities shall be considered to be effective under the
19 State plan for a period of not more than 12 months
20 (or for such longer period in such cases as a signifi-
21 cant change in an individual's condition that may af-
22 fect such determination is unlikely). A reassessment
23 shall be made if there is a significant change in an
24 individual's condition that may affect such deter-
25 mination.

1 (c) ACTIVITY OF DAILY LIVING DEFINED.—In this
2 subtitle, the term “activity of daily living” means any of
3 the following: eating, toileting, dressing, bathing, and
4 transferring.

5 (d) NEEDY INDIVIDUAL DEFINED; DETERMINATION
6 OF INCOME AND RESOURCES.—

7 (1) NEEDY INDIVIDUAL DEFINED.—In this
8 title, the term “needy individual” means an individ-
9 ual—

10 (A) whose income (as determined under
11 paragraph (2)) is less than 100 percent of the
12 official poverty line (as defined by the Office of
13 Management and Budget, and revised annually
14 in accordance with section 673(2) of the Omni-
15 bus Budget Reconciliation Act of 1981) applica-
16 ble to a family of the size involved, and

17 (B) whose resources (as determined under
18 paragraph (3)(A)) are less than the amount
19 specified by the State consistent with paragraph
20 (3)(B).

21 (2) DETERMINATION OF INCOME.—

22 (A) IN GENERAL.—The State plan shall
23 specify the methodology to be used to determine
24 the income of an individual with disabilities for

1 purposes of paragraph (1) and section 105 (re-
2 relating to cost sharing).

3 (B) STANDARDS.—Such methodology shall
4 be consistent with standards specified by the
5 Secretary. Such standards shall be consistent
6 with the methodology generally used by States
7 as of the date of the enactment of this Act and
8 shall—

9 (i) provide for taking into account ex-
10 penses incurred for medical care or other
11 types of remedial care recognized under
12 State law, and

13 (ii) be consistent with the provisions
14 of section 105(a) and the rules provided
15 under section 1924 of the Social Security
16 Act (with respect to institutionalized
17 spouses).

18 (3) DETERMINATION OF RESOURCES.—

19 (A) METHODOLOGY.—

20 (i) IN GENERAL.—The State plan
21 shall specify the methodology to be used to
22 determine the resources of an individual
23 with disabilities for purposes of paragraph
24 (1) and section 105 (relating to cost shar-
25 ing).

1 (ii) STANDARDS.—Such methodology
2 shall be consistent with standards and
3 methodology specified by the Secretary.
4 Such standards and methodology shall—

5 (I) be based on the methodology
6 used under the supplemental security
7 income program, and

8 (II) take into account the provi-
9 sions of section 105(a) and the rules
10 provided under section 1924 of the
11 Social Security Act (with respect to
12 institutionalized spouses).

13 (B) RESOURCE LEVEL.—

14 (i) IN GENERAL.—The resource level
15 specified in this subparagraph is—

16 (I) \$3,500 for an individual who
17 has no spouse with whom the individ-
18 ual is living, and

19 (II) \$7,500 for an individual who
20 has a spouse with whom the individual
21 is living.

22 (ii) ADJUSTMENT.—A State may in-
23 crease either or both of the levels specified
24 under clause (i) to up to \$12,000.

1 (4) SPECIAL RULE FOR CURRENT MEDICAID
2 BENEFICIARIES.—In the case of an individual who
3 as of January 1, 1998, was receiving medical assist-
4 ance for long-term care services under a State plan
5 under title XIX of the Social Security Act, the indi-
6 vidual shall be deemed to be a needy individual so
7 long as the individual would have been eligible to re-
8 ceive such assistance under such plan (as in effect
9 on such date), but for section 1931 of such Act (as
10 added by section 121(a)).

11 (5) APPLICATION OF TRANSFER OF ASSET
12 RULES.—Except as specifically provided, the State
13 shall apply rules similar to the rules described in
14 sections 1917(c) and 1917(d) of the Social Security
15 Act with respect to the disposal of assets for less
16 than fair market value.

17 **SEC. 104. LONG-TERM CARE SERVICES COVERED UNDER**
18 **STATE PLAN.**

19 (a) SPECIFICATION.—

20 (1) IN GENERAL.—Subject to the succeeding
21 provisions of this section, the State plan under this
22 subtitle shall specify—

23 (A) the long-term care services available
24 under the plan to individuals with disabilities
25 (or to such categories of such individuals), and

1 (B) any limits with respect to such serv-
2 ices.

3 (2) FLEXIBILITY IN MEETING INDIVIDUAL
4 NEEDS.—The services shall be specified in a manner
5 that permits sufficient flexibility for providers to
6 meet the needs of individuals with disabilities in a
7 cost effective manner consistent with the individual-
8 ized plan of care. Subject to subsection (e)(1)(B),
9 such services may be delivered in an individual’s
10 home, a range of community residential arrange-
11 ments, or outside the home.

12 (b) REQUIREMENT FOR NEEDS ASSESSMENT AND
13 PLAN OF CARE.—

14 (1) IN GENERAL.—The State plan shall provide
15 for long-term care services to an individual with dis-
16 abilities only if—

17 (A) a comprehensive assessment of the in-
18 dividual’s need for long-term care services (re-
19 gardless of whether all needed services are
20 available under the plan) has been made by a
21 care manager (who meets qualifications speci-
22 fied in the State plan),

23 (B) an individualized plan of care based on
24 such assessment is developed by such manager,
25 and

1 (C) such services are provided consistent
2 with such plan of care.

3 (2) INVOLVEMENT OF INDIVIDUALS.—The indi-
4 vidualized plan of care under paragraph (1)(B) for
5 an individual with disabilities shall—

6 (A) be developed by the care manager who
7 performed the comprehensive assessment,

8 (B) be developed and implemented in close
9 consultation with the individual and the individ-
10 ual's family,

11 (C) be approved by the individual (or the
12 individual's representative), and

13 (D) be reviewed and updated not less often
14 than every 6 months.

15 (3) PLAN OF CARE.—The plan of care under
16 paragraph (1)(B) shall—

17 (A) specify which services specified under
18 the individual plan will be provided under the
19 State plan under this subtitle,

20 (B) identify (to the extent possible) how
21 the individual will be provided any services
22 specified under the plan of care and not pro-
23 vided under the State plan, and

24 (C) specify how the provision of services to
25 the individual under the plan will be coordi-

1 nated with the provision of other health care
2 services to the individual.

3 The State shall make reasonable efforts to identify
4 and arrange for services described in subparagraph
5 (B). Nothing in this subsection shall be construed as
6 requiring a State (under the State plan or other-
7 wise) to provide all the services specified in such a
8 plan.

9 (c) LONG-TERM CARE SERVICES DEFINED.—

10 (1) IN GENERAL.—In this title, the term “long-
11 term care services” means—

12 (A) home and community-based services
13 (as defined in subsection (d)), and

14 (B) institutional services (as defined in
15 section (e)).

16 (2) SECONDARY PAYER TO MEDICARE AND
17 OTHER HEALTH PLANS.—A State plan may not pro-
18 vide for coverage of any items and services to the ex-
19 tent coverage is provided for the individual under a
20 health plan or the medicare program.

21 (d) HOME AND COMMUNITY-BASED SERVICES.—

22 (1) IN GENERAL.—In this subtitle, the term
23 “home and community-based services”—

24 (A) includes, for all categories of individ-
25 uals with disabilities, both agency-administered

1 and consumer-directed personal assistance serv-
2 ices (as defined in paragraph (3)); and

3 (B) subject to paragraph (4), includes any
4 (or all) of the following:

5 (i) Case management.

6 (ii) Homemaker and chore assistance.

7 (iii) Home modifications.

8 (iv) Respite services.

9 (v) Assistive devices.

10 (vi) Adult day services.

11 (vii) Habilitation and rehabilitation.

12 (viii) Supported employment.

13 (ix) Home health services.

14 (x) Hospice services.

15 (xi) Care or assisted services provided
16 in an assisted living facility, continuing
17 care retirement community or other resi-
18 dential care facility, excluding room and
19 board.

20 (xii) Any other care or assistive serv-
21 ices (approved by the Secretary) that the
22 State determines will help individuals with
23 disabilities to remain in their homes and
24 communities.

1 (2) CRITERIA FOR SELECTION OF SERVICES.—

2 The State plan shall specify—

3 (A) the methods and standards used to se-
4 lect the types, and the amount, duration, and
5 scope, of home and community-based services
6 described in paragraph (1)(B) to be covered
7 under the plan and to be available to each cat-
8 egory of individuals with disabilities, and

9 (B) how the types, and the amount, dura-
10 tion, and scope, of such services specified meet
11 the needs of individuals within each of the 4
12 categories of individuals with disabilities.

13 (3) PERSONAL ASSISTANCE SERVICES.—

14 (A) IN GENERAL.—In this section, the
15 term “personal assistance services” means
16 those services specified under the State plan as
17 personal assistance services and shall include at
18 least hands-on and standby assistance, super-
19 vision, and cueing with activities of daily living,
20 whether agency-administered or consumer-di-
21 rected (as defined in subparagraph (B)).

22 (B) CONSUMER-DIRECTED; AGENCY-AD-
23 MINISTERED.—In this subtitle:

24 (i) The term “consumer-directed”
25 means, with reference to personal assist-

1 ance services or the provider of such serv-
2 ices, services that are provided by an indi-
3 vidual who is selected and managed (and,
4 at the individual's option, trained) by the
5 individual receiving the services.

6 (ii) The term "agency-administered"
7 means, with respect to such services, serv-
8 ices that are not consumer-directed.

9 (4) EXCLUSIONS AND LIMITATIONS.—

10 (A) IN GENERAL.—A State plan may not
11 provide for coverage as home and community-
12 based services of—

13 (i) room and board, or

14 (ii) services furnished in a hospital,
15 nursing facility, intermediate care facility
16 for the mentally retarded, or other institu-
17 tional setting specified by the Secretary.

18 (B) TAKING INTO ACCOUNT INFORMAL
19 CARE.—A State plan may take into account, in
20 determining the amount and array of home and
21 community-based services made available to
22 covered individuals with disabilities, the avail-
23 ability of informal care.

24 (e) INSTITUTIONAL SERVICES DEFINED.—In this
25 subtitle, the term "institutional services" means services

1 furnished in a nursing facility, intermediate care facility
2 for the mentally retarded, or any other institutional facil-
3 ity (at the approval of the Secretary) that the State deter-
4 mines will assist individuals with disabilities.

5 (f) PAYMENT FOR SERVICES.—A State plan may pro-
6 vide for the use of—

7 (1) vouchers,

8 (2) capitation payments to health plans, and

9 (3) payment to providers,

10 to pay for covered services.

11 **SEC. 105. COST SHARING.**

12 (a) HOME AND COMMUNITY-BASED SERVICES.—
13 With respect to home and community-based services pro-
14 vided under the State plan, the State plan may impose
15 nominal cost sharing.

16 (b) INSTITUTIONAL SERVICES.—

17 (1) IN GENERAL.—With respect to institutional
18 services provided under the State plan, the cost
19 sharing shall be the amount of income, other than
20 the allowances provided under paragraph (2).

21 (2) ALLOWANCES.—The allowances under this
22 paragraph are as follows:

23 (A) PERSONAL NEEDS ALLOWANCE.—A
24 personal needs allowance of \$66 per month for
25 an institutionalized individual and \$125 per

1 month for an institutionalized couple (if both
2 are aged, blind, or disabled, and their incomes
3 are considered available to each other in deter-
4 mining eligibility).

5 (B) COMMUNITY SPOUSE ALLOWANCE.—In
6 the case of an individual with a community
7 spouse (as defined in section 1924 of the Social
8 Security Act), an amount of income equivalent
9 to the amount of income that would be pro-
10 tected under section 1924 of the Social Security
11 Act (determined without regard to subsection
12 (d)(1)(A) thereof).

13 (3) RULES FOR DETERMINATION OF INCOME OF
14 INSTITUTIONALIZED SPOUSES.—In determining in-
15 come of an institutionalized spouse for purposes of
16 this subsection, the State shall apply rules similar to
17 the rules described in section 1924 of the Social Se-
18 curity Act consistent with paragraph (2).

19 (4) INSTITUTIONALIZED AND COMMUNITY
20 SPOUSE DEFINED.—In this subsection, the terms
21 “institutionalized spouse” and “community spouse”
22 have the meanings given such terms in section
23 1924(h) of the Social Security Act.

1 **SEC. 106. QUALITY ASSURANCE AND SAFEGUARDS.**

2 (a) **QUALITY ASSURANCE.**—The State plan shall
3 specify how the State will ensure and monitor the quality
4 of services (including both home and community-based
5 services and institutional services), including—

6 (1) safeguarding the health and safety of indi-
7 viduals with disabilities,

8 (2) the minimum standards for agency provid-
9 ers and how such standards will be enforced,

10 (3) the minimum competency requirements for
11 agency provider employees who provide direct serv-
12 ices under this subtitle and how the competency of
13 such employees will be enforced,

14 (4) obtaining meaningful consumer input, in-
15 cluding consumer surveys that measure the extent to
16 which participants receive the services described in
17 the plan of care and participant satisfaction with
18 such services,

19 (5) participation in quality assurance activities,
20 and

21 (6) specifying the role of the long-term care om-
22 budsman (under the Older Americans Act of 1965),
23 the Protection and Advocacy Agency (under the De-
24 velopmental Disabilities Assistance and Bill of
25 Rights Act), and the State advocacy agency for the
26 mentally ill (under the Protection and Advocacy for

1 Mentally Ill Individuals Act of 1986) in assuring
2 quality of services and protecting the rights of indi-
3 viduals with disabilities.

4 (b) SAFEGUARDS.—

5 (1) CONFIDENTIALITY.—The State plan shall
6 provide safeguards which restrict the use or diselo-
7 sure of information concerning applicants and bene-
8 ficiaries to purposes directly connected with the ad-
9 ministration of the plan (including performance re-
10 views under section 2602).

11 (2) SAFEGUARDS AGAINST ABUSE.—The State
12 plans shall provide safeguards against physical, emo-
13 tional, or financial abuse or exploitation (specifically
14 including appropriate safeguards in cases where pay-
15 ment for program benefits is made by cash pay-
16 ments or vouchers given directly to individuals with
17 disabilities).

18 **SEC. 107. ADVISORY GROUPS.**

19 (a) FEDERAL ADVISORY GROUP.—

20 (1) ESTABLISHMENT.—The Secretary shall es-
21 tablish an advisory group, to advise the Secretary
22 and States on all aspects of the program under this
23 subtitle.

24 (2) COMPOSITION.—The group shall be com-
25 posed of individuals with disabilities and their rep-

1 representatives, providers, Federal and State officials,
2 and local community implementing agencies. A ma-
3 jority of its members shall be individuals with dis-
4 abilities and their representatives.

5 (b) STATE ADVISORY GROUPS.—

6 (1) IN GENERAL.—Each State plan shall pro-
7 vide for the establishment and maintenance of an
8 advisory group to advise the State on all aspects of
9 the State plan under this subtitle.

10 (2) COMPOSITION.—Members of each advisory
11 group shall be appointed by the Governor (or other
12 chief executive officer of the State) and shall include
13 individuals with disabilities and their representa-
14 tives, providers, State officials, and local community
15 implementing agencies. A majority of its members
16 shall be individuals with disabilities and their rep-
17 resentatives.

18 (3) SELECTION OF MEMBERS.—Each State
19 shall establish a process whereby all residents of the
20 State, including individuals with disabilities and
21 their representatives, shall be given the opportunity
22 to nominate members to the advisory group.

23 (4) PARTICULAR CONCERNS.—Each advisory
24 group shall—

1 (A) before the State plan is developed, ad-
2 vise the State on guiding principles and values,
3 policy directions, and specific components of the
4 plan,

5 (B) meet regularly with State officials in-
6 volved in developing the plan, during the devel-
7 opment phase, to review and comment on all as-
8 pects of the plan,

9 (C) participate in the public hearings to
10 help assure that public comments are addressed
11 to the extent practicable,

12 (D) document any differences between the
13 group's recommendations and the plan,

14 (E) document specifically the degree to
15 which the plan is consumer-directed, and

16 (F) meet regularly with officials of the des-
17 ignated State agency (or agencies) to provide
18 advice on all aspects of implementation and
19 evaluation of the plan.

20 **SEC. 108. PAYMENTS TO STATES.**

21 (a) IN GENERAL.—Subject to section 102(a)(9)(B)
22 (relating to limitation on payment for administrative
23 costs), the Secretary, in accordance with the Cash Man-
24 agement Improvement Act, shall authorize payment to
25 each State with a plan approved under this subtitle, for

1 each quarter (beginning on or after January 1, 1998),
2 from its allotment under section 109(b), an amount equal
3 to—

4 (1) the Federal matching percentage (as de-
5 fined in subsection (b)) of the amount demonstrated
6 by State claims to have been expended during the
7 quarter for long-term care services under the plan
8 for individuals with disabilities; plus

9 (2) an amount equal to 90 percent of the
10 amount expended during the quarter under the plan
11 for activities (including preliminary screening) relat-
12 ing to determination of eligibility and performance
13 of needs assessment; plus

14 (3) an amount equal to 90 percent (or, begin-
15 ning with quarters in fiscal year 2003, 75 percent)
16 of the amount expended during the quarter for the
17 design, development, and installation of mechanical
18 claims processing systems and for information re-
19 trieval; plus

20 (4) an amount equal to 50 percent of the re-
21 mainder of the amounts expended during the quar-
22 ter as found necessary by the Secretary for the prop-
23 er and efficient administration of the State plan.

24 (b) FEDERAL MATCHING PERCENTAGE.—

1 (1) STATES AND THE DISTRICT OF COLUM-
2 BIA.—

3 (A) IN GENERAL.—In subsection (a), ex-
4 cept as provided in paragraph (3), the term
5 “Federal matching percentage” means, for each
6 of the 50 States and the District of Columbia,
7 100 percent reduced by the product of the
8 budget neutrality percentage (as defined in sub-
9 paragraph (B)) and the ratio of—

10 (i)(I) for each of the 50 States, the
11 total taxable resources ratio (as defined in
12 subparagraph (C)) of the State, or

13 (II) for the District of Columbia, the
14 per capita income ratio (as defined in sub-
15 paragraph (D)), to—

16 (ii) the disabled population in poverty
17 ratio (as defined in subparagraph (E)) of
18 the State or District.

19 (B) BUDGET NEUTRALITY PERCENTAGE
20 DEFINED.—For purposes of this subsection, the
21 term “budget neutrality percentage” means a
22 percentage estimated by the Secretary with the
23 advice of the General Accounting Office that,
24 when applied under subparagraph (A), would
25 result (taking into account paragraph (2)) in an

1 amount of aggregate payments under this title
2 for the fiscal year involved equal to the total
3 Federal budget amount under section 109(a).

4 (C) TOTAL TAXABLE RESOURCES RATIO
5 DEFINED.—For purposes of this subsection, the
6 term “total taxable resources ratio” means—

7 (i) an amount equal to the most re-
8 cent 3-year average of the total taxable re-
9 sources of the State, as determined by the
10 Secretary of the Treasury, divided by

11 (ii) an amount equal to the sum of the
12 3-year averages determined under clause
13 (i) for each of the 50 States.

14 (D) PER CAPITA INCOME RATIO DE-
15 FINED.—For purposes of this subsection, the
16 term “per capita income ratio” means—

17 (i) an amount equal to the most re-
18 cent 3-year average of the total personal
19 income of the District of Columbia, as de-
20 termined in accordance with the provisions
21 of section 1101(a)(8)(B) of the Social Se-
22 curity Act, divided by

23 (ii) an amount equal to the total per-
24 sonal income of the continental United
25 States (including Alaska) and Hawaii, as

1 determined under section 1101(a)(8)(B) of
2 such Act.

3 (E) DISABLED POPULATION IN POVERTY
4 RATIO DEFINED.—For purposes of this sub-
5 section, the term “disabled population in pov-
6 erty ratio” means—

7 (i) an amount equal to the 3-year-av-
8 erage of the number of individuals with
9 disabilities in the State (or the District of
10 Columbia) whose family income is below
11 100 percent of the income official poverty
12 line (as defined by the Office of Manage-
13 ment and Budget and revised annually in
14 accordance with section 673(2) of the Om-
15 nibus Budget Reconciliation Act of 1981),
16 divided by

17 (ii) an amount equal to the sum of the
18 averages determined under clause (i) for
19 the 50 States.

20 (2) TERRITORIES.—The Federal matching per-
21 centage for Puerto Rico, the Virgin Islands, Guam,
22 the Northern Mariana Islands, and American Samoa
23 shall be 40 percent.

1 (3) PERMISSIBLE RANGE.—The Federal match-
2 ing percentage shall in no case be less than 50 per-
3 cent or more than 75 percent.

4 (c) PAYMENTS ON ESTIMATES WITH RETROSPEC-
5 TIVE ADJUSTMENTS.—The method of computing and
6 making payments under this section shall be as follows:

7 (1) The Secretary shall, prior to the beginning
8 of each quarter, estimate the amount to be paid to
9 the State under subsection (a) for such quarter,
10 based on a report filed by the State containing its
11 estimate of the total sum to be expended in such
12 quarter, and such other information as the Secretary
13 may find necessary.

14 (2) From the allotment available therefore, the
15 Secretary shall provide for payment of the amount
16 so estimated, reduced or increased, as the case may
17 be, by any sum (not previously adjusted under this
18 section) by which the Secretary finds that the esti-
19 mate of the amount to be paid the State for any
20 prior period under this section was greater or less
21 than the amount which should have been paid.

22 (d) APPLICATION OF RULES REGARDING LIMITA-
23 TIONS ON PROVIDER-RELATED DONATIONS AND HEALTH
24 CARE RELATED TAXES.—The provisions of section
25 1903(w) of the Social Security Act shall apply to pay-

1 ments to States under this section in the same manner
2 as they apply to payments to States under section 1903(a)
3 of such Act .

4 **SEC. 109. TOTAL FEDERAL BUDGET; ALLOTMENTS TO**
5 **STATES.**

6 (a) TOTAL FEDERAL BUDGET.—

7 (1) FISCAL YEAR 1998—

8 (A) GAO STUDY AND REPORT.—The
9 Comptroller General shall conduct a study of
10 the estimated need for Federal payments to
11 States under this title for fiscal year 1998,
12 based on the eligibility requirements and fund-
13 ing formula under this title. The Comptroller
14 General shall submit to Congress a report on
15 such study by not later than February 1, 1997.

16 (B) ESTABLISHMENT OF BUDGET LEVEL
17 THROUGH AUTHORIZATION AND APPROPRIA-
18 TIONS PROCESS.—Subject to paragraph (5)(C),
19 for purposes of this subtitle, the total Federal
20 budget for State plans under this subtitle for
21 fiscal year 1998 is such amount as the Con-
22 gress authorizes and appropriates to carry out
23 this title for such fiscal year.

24 (2) SUBSEQUENT FISCAL YEARS.—For pur-
25 poses of this subtitle, the total Federal budget for

1 State plans under this subtitle for each fiscal year
2 after fiscal year 1998 is the total Federal budget
3 under this subsection for the preceding fiscal year
4 multiplied by—

5 (A) a factor (described in paragraph (3))
6 reflecting the change in the CPI for the fiscal
7 year, and

8 (B) a factor (described in paragraph (4))
9 reflecting the change in the number of individ-
10 uals with disabilities for the fiscal year.

11 (3) CPI INCREASE FACTOR.—For purposes of
12 paragraph (2)(A), the factor described in this para-
13 graph for a fiscal year is the ratio of—

14 (A) the annual average index of the
15 consumer price index for the preceding fiscal
16 year, to—

17 (B) such index, as so measured, for the
18 second preceding fiscal year.

19 (4) DISABLED POPULATION FACTOR.—For pur-
20 poses of paragraph (2)(B), the factor described in
21 this paragraph for a fiscal year is 100 percent plus
22 (or minus) the percentage increase (or decrease)
23 change in the disabled population of the United
24 States (as determined for purposes of the most re-
25 cent update under subsection (b)(3)(D)).

1 (5) ADDITIONAL FUNDS DUE TO MEDICAID
2 OFFSETS.—

3 (A) IN GENERAL.—Each participating
4 State must provide the Secretary with informa-
5 tion concerning offsets and reductions in the
6 medicaid program resulting from long-term care
7 services provided individuals with disabilities
8 under this subtitle, that would have been paid
9 for such individuals under the State medicaid
10 plan but for the provision of similar services
11 under the program under this subtitle. At the
12 time a State first submits its plan under this
13 title and before each subsequent fiscal year
14 (through fiscal year 2003), the State also must
15 provide the Secretary with such budgetary in-
16 formation (for each fiscal year through fiscal
17 year 2003), as the Secretary determines to be
18 necessary to carry out this paragraph.

19 (B) REPORTS.—Each State with a pro-
20 gram under this subtitle shall submit such re-
21 ports to the Secretary as the Secretary may re-
22 quire in order to monitor compliance with sub-
23 paragraph (A).

24 (C) ADJUSTMENTS TO FEDERAL BUDG-
25 ET.—

1 (i) IN GENERAL.—For each fiscal year
2 (beginning with fiscal year 1998 and end-
3 ing with fiscal year 2003) and based on a
4 review of information submitted under sub-
5 paragraph (A), the Secretary shall deter-
6 mine the amount by which the total Fed-
7 eral budget under subsection (a) will in-
8 crease. The amount of such increase for a
9 fiscal year shall be limited to the reduction
10 in Federal expenditures of medical assist-
11 ance (as determined by Secretary) that
12 would have been made under title XIX of
13 the Social Security Act for home and com-
14 munity based services for disabled individ-
15 uals but for the provision of similar serv-
16 ices under the program under this subtitle.

17 (ii) ANNUAL PUBLICATION.—The Sec-
18 retary shall publish before the beginning of
19 such fiscal year, the revised total Federal
20 budget under this subsection for such fis-
21 cal year (and succeeding fiscal years before
22 fiscal year 2003).

23 (D) NO DUPLICATE PAYMENT.—No pay-
24 ment may be made to a State under this section
25 for any services to the extent that the State re-

1 ceived payment for such services under section
2 1903(a) of the Social Security Act.

3 (E) CONSTRUCTION.—Nothing in this sub-
4 section shall be construed as requiring States to
5 determine eligibility for medical assistance
6 under the State medicaid plan on behalf of indi-
7 viduals receiving assistance under this subtitle.

8 (b) ALLOTMENTS TO STATES.—

9 (1) IN GENERAL.—The Secretary shall allot to
10 each State for each fiscal year an amount that bears
11 the same ratio to the total Federal budget for the
12 fiscal year (specified under paragraph (1) or (2) of
13 subsection (a)) as the State allotment factor (under
14 paragraph (2) for the State for the fiscal year) bears
15 to the sum of such factors for all States for that fis-
16 cal year.

17 (2) STATE ALLOTMENT FACTOR.—

18 (A) IN GENERAL.—For each State for each
19 fiscal year, the Secretary shall compute a State
20 allotment factor equal to the sum of—

21 (i) the base allotment factor (specified
22 in subparagraph (B)), and

23 (ii) the low income allotment factor
24 (specified in subparagraph (C)),

25 for the State for the fiscal year.

1 (B) BASE ALLOTMENT FACTOR.—The base
2 allotment factor, specified in this subparagraph,
3 for a State for a fiscal year is equal to the
4 product of the following:

5 (i) NUMBER OF INDIVIDUALS WITH
6 DISABILITIES.—The number of individuals
7 with disabilities in the State (determined
8 under paragraph (3)) for the fiscal year.

9 (ii) 80 PERCENT OF THE NATIONAL
10 PER CAPITA BUDGET.—80 percent of the
11 national average per capita budget amount
12 (determined under paragraph (4)) for the
13 fiscal year.

14 (iii) WAGE ADJUSTMENT FACTOR.—
15 The wage adjustment factor (determined
16 under paragraph (5)) for the State for the
17 fiscal year.

18 (iv) FEDERAL MATCHING RATE.—The
19 Federal matching rate (determined under
20 section 108(b)) for the fiscal year.

21 (C) LOW INCOME ALLOTMENT FACTOR.—
22 The low income allotment factor, specified in
23 this subparagraph, for a State for a fiscal year
24 is equal to the product of the following:

1 (i) NUMBER OF INDIVIDUALS WITH
2 DISABILITIES.—The number of individuals
3 with disabilities in the State (determined
4 under paragraph (3)) for the fiscal year.

5 (ii) 10 PERCENT OF THE NATIONAL
6 PER CAPITA BUDGET.—10 percent of the
7 national average per capita budget amount
8 (determined under paragraph (4)) for the
9 fiscal year.

10 (iii) WAGE ADJUSTMENT FACTOR.—
11 The wage adjustment factor (determined
12 under paragraph (5)) for the State for the
13 fiscal year.

14 (iv) FEDERAL MATCHING RATE.—The
15 Federal matching rate (determined under
16 section 108(b)) for the fiscal year.

17 (v) LOW INCOME INDEX.—The low in-
18 come index (determined under paragraph
19 (6)) for the State for the preceding fiscal
20 year.

21 (3) NUMBER OF INDIVIDUALS WITH DISABIL-
22 ITIES.—The number of individuals with disabilities
23 in a State for a fiscal year shall be determined as
24 follows:

1 (A) BASE.—The Secretary shall determine
2 the number of individuals in the State by age,
3 sex, and income category, based on the 1990
4 decennial census, adjusted (as appropriate) by
5 the March 1994 current population survey.

6 (B) DISABILITY PREVALENCE LEVEL BY
7 POPULATION CATEGORY.—The Secretary shall
8 determine, for each such age, sex, and income
9 category, the national average proportion of the
10 population of such category that represents in-
11 dividuals with disabilities. The Secretary may
12 conduct periodic surveys in order to determine
13 such proportions.

14 (C) BASE DISABLED POPULATION IN A
15 STATE.—The number of individuals with dis-
16 abilities in a State in 1996 is equal to the sum
17 of the products, for such each age, sex, and in-
18 come category, of—

19 (i) the population of individuals in the
20 State in the category (determined under
21 subparagraph (A)), and

22 (ii) the national average proportion
23 for such category (determined under sub-
24 paragraph (B)).

1 (D) UPDATE.—The Secretary shall deter-
2 mine the number of individuals with disabilities
3 in a State in a fiscal year equal to the number
4 determined under subparagraph (C) for the
5 State increased (or decreased) by the percent-
6 age increase (or decrease) in the disabled popu-
7 lation of the State as determined under the cur-
8 rent population survey from 1994 to the year
9 before the fiscal year involved.

10 (4) NATIONAL PER CAPITA BUDGET AMOUNT.—
11 The national average per capita budget amount, for
12 a fiscal year, is—

13 (A) the total Federal budget specified
14 under subsection (a) for the fiscal year; divided
15 by

16 (B) the sum, for the fiscal year, of the
17 numbers of individuals with disabilities (deter-
18 mined under paragraph (3)) for all the States
19 for the fiscal year.

20 (5) WAGE ADJUSTMENT FACTOR.—The wage
21 adjustment factor, for a State for a fiscal year, is
22 equal to the ratio of—

23 (A) the average hourly wages for service
24 workers (other than household or protective
25 services) in the State, to

1 (B) the national average hourly wages for
2 service workers (other than household or protec-
3 tive services).

4 The hourly wages shall be determined under this
5 paragraph based on data from the most recent de-
6 cennial census for which such data are available.

7 (6) LOW INCOME INDEX.—The low income
8 index for each State for a fiscal year is the ratio, de-
9 termined for the preceding fiscal year, of—

10 (A) the percentage of the State's popu-
11 lation that has income below 150 percent of the
12 poverty level, to

13 (B) the percentage of the population of the
14 United States that has income below 150 per-
15 cent of the poverty level.

16 Such percentages shall be based on data from the
17 most recent decennial census for which such data
18 are available, adjusted by data from the most recent
19 current population survey as determined appropriate
20 by the Secretary.

21 (c) STATE ENTITLEMENT.—This subtitle constitutes
22 budget authority in advance of appropriations Acts, and
23 represents the obligation of the Federal Government to
24 provide for the payment to States of amounts described
25 in subsection (a).

1 **Subtitle B—Increase in SSI**
2 **Personal Needs Allowance**

3 **SEC. 111. INCREASE IN SSI PERSONAL NEEDS ALLOWANCE.**

4 (a) IN GENERAL.—Section 1611(e)(1)(B) of the So-
5 cial Security Act (42 U.S.C. 1382(e)(1)(B)) is amended—

6 (1) in clauses (i) and (ii)(I), by striking “\$360”
7 and inserting “\$600”; and

8 (2) in clause (iii), by striking “\$720” and in-
9 serting “\$1,000”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall apply with respect to months begin-
12 ning with January 1998.

13 **Subtitle C—Repeal of Coverage**
14 **Under the Medicaid Program of**
15 **Long-Term Care Services**

16 **SEC. 121. REPEAL OF COVERAGE UNDER THE MEDICAID**
17 **PROGRAM OF LONG-TERM CARE SERVICES**
18 **COVERED UNDER STATE PLAN.**

19 (a) IN GENERAL.—Title XIX of the Social Security
20 Act is amended by redesignating section 1931 as section
21 1932 and by inserting after section 1930 the following new
22 section:

1 “TREATMENT OF LONG-TERM CARE SERVICES COVERED
2 UNDER STATE PROGRAMS FOR NEEDY INDIVIDUALS
3 WITH DISABILITIES

4 “SEC. 1931. (a) NO COVERAGE OF SERVICES RE-
5 QUIRED.—Notwithstanding any other provision of this
6 title, the State plan under this title is not required to pro-
7 vide medical assistance consisting of payment for any
8 long-term care services for needy individuals with disabil-
9 ities for which coverage is provided under a State plan
10 under subtitle A of title I of the Comprehensive Long-
11 Term Care Act of 1995.

12 “(b) DEFINITIONS.—In this section—

13 “(1) the term ‘needy individual with a disabil-
14 ity’ means an individual with a disability (as defined
15 in section 103(a) of the Comprehensive Long-Term
16 Care Act of 1995) who is a needy individual (as de-
17 fined in section 103(d) of such Act); and

18 “(2) the term ‘long-term care services’ has the
19 meaning given such term in section 104(c) of the
20 Comprehensive Long-Term Care Act of 1995.”.

21 (b) NO FEDERAL FINANCIAL PARTICIPATION.—Sec-
22 tion 1903(i) of the Social Security Act (42 U.S.C.
23 1396b(i)) is amended—

24 (1) by striking “or” at the end of paragraph
25 (14),

1 (2) by striking the period at the end of para-
2 graph (15) and inserting “; or”, and

3 (3) by inserting after paragraph (15) the fol-
4 lowing new paragraph:

5 “(16) with respect to long-term care services
6 (as defined in section 1931(b)(2)) for needy individ-
7 uals with disabilities (as defined in section
8 1931(b)(1)) for which coverage is provided under a
9 State plan under subtitle A of title I of the Com-
10 prehensive Long-Term Care Act of 1995.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to services furnished
13 in a State on or after January 1, 1998.

14 **TITLE II—TAX TREATMENT OF**
15 **LONG-TERM CARE INSUR-**
16 **ANCE AND SERVICES**

17 **SEC. 201. AMENDMENT OF 1986 CODE.**

18 Except as otherwise expressly provided, whenever in
19 this title an amendment or repeal is expressed in terms
20 of an amendment to, or repeal of, a section or other provi-
21 sion, the reference shall be considered to be made to a
22 section or other provision of the Internal Revenue Code
23 of 1986.

1 **SEC. 202. QUALIFIED LONG-TERM CARE SERVICES TREAT-**
2 **ED AS MEDICAL CARE.**

3 (a) GENERAL RULE.—Paragraph (1) of section
4 213(d) (defining medical care) is amended by striking
5 “or” at the end of subparagraph (B), by redesignating
6 subparagraph (C) as subparagraph (D), and by inserting
7 after subparagraph (B) the following new subparagraph:

8 “(C) for qualified long-term care services
9 (as defined in subsection (g)), or”.

10 (b) ADJUSTED GROSS INCOME THRESHOLD NOT TO
11 APPLY TO AMOUNTS PAID FOR LONG-TERM CARE.—Sub-
12 section (a) of section 213 (relating to medical, dental, etc.,
13 expenses) is amended to read as follows:

14 “(a) ALLOWANCE OF DEDUCTION.—There shall be
15 allowed as a deduction the following amounts, not com-
16 pensated for by insurance or otherwise—

17 “(1) the amount by which the amount of the
18 expenses paid during the taxable year (reduced by
19 any amount deductible under paragraph (2)) for
20 medical care of the taxpayer, his spouse, or a de-
21 pendent exceeds 7.5 percent of adjusted gross in-
22 come, and

23 “(2) the amounts paid during the taxable year
24 for—

1 “(A) a qualified long-term care insurance
2 policy which constitutes medical care for the
3 taxpayer, his spouse, or a dependent, and

4 “(B) for qualified long-term care services
5 for the taxpayer, his spouse, or a dependent.

6 For purposes of this subsection, the term ‘dependent’ has
7 the meaning given such term by section 152.”

8 (c) QUALIFIED LONG-TERM CARE SERVICES DE-
9 FINED.—Section 213 (relating to the deduction for medi-
10 cal, dental, etc., expenses) is amended by adding at the
11 end thereof the following new subsection:

12 “(g) QUALIFIED LONG-TERM CARE SERVICES.—For
13 purposes of this section—

14 “(1) IN GENERAL.—The term ‘qualified long-
15 term care services’ means necessary diagnostic, cur-
16 ing, mitigating, treating, preventive, therapeutic, and
17 rehabilitative services, and maintenance and per-
18 sonal care services (whether performed in a residen-
19 tial or nonresidential setting) which—

20 “(A) are required by an individual during
21 any period the individual is an incapacitated in-
22 dividual (as defined in paragraph (2)),

23 “(B) have as their primary purpose—

1 “(i) the provision of needed assistance
2 with 1 or more activities of daily living (as
3 defined in paragraph (3)), or

4 “(ii) protection from threats to health
5 and safety due to severe cognitive impair-
6 ment, and

7 “(C) are provided pursuant to a continuing
8 plan of care prescribed by a licensed profes-
9 sional (as defined in paragraph (4)).

10 “(2) INCAPACITATED INDIVIDUAL.—The term
11 ‘incapacitated individual’ means any individual
12 who—

13 “(A) is unable to perform, without sub-
14 stantial assistance from another individual (in-
15 cluding assistance involving cueing or substan-
16 tial supervision), at least 2 activities of daily
17 living selected under paragraph (3)(B), or

18 “(B) has severe cognitive impairment as
19 defined by the Secretary in consultation with
20 the Secretary of Health and Human Services.

21 Such term shall not include any individual otherwise
22 meeting the requirements of the preceding sentence
23 unless a licensed professional within the preceding
24 12-month period has certified that such individual
25 meets such requirements.

1 “(3) ACTIVITIES OF DAILY LIVING.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), each of the following is an activity
4 of daily living:

5 “(i) Eating.

6 “(ii) Toileting.

7 “(iii) Transferring.

8 “(iv) Bathing.

9 “(v) Dressing.

10 “(vi) Continence.

11 “(B) SELECTION OF 5 ACTIVITIES OF
12 DAILY LIVING.—The insurance company issuing
13 a long-term care insurance policy shall select 5
14 of the 6 activities of daily living which shall be
15 included within the policy.

16 “(4) LICENSED PROFESSIONAL.—The term ‘li-
17 censed professional’ means—

18 “(A) a physician or registered professional
19 nurse, or

20 “(B) any other individual who meets such
21 requirements as may be prescribed by the Sec-
22 retary after consultation with the Secretary of
23 Health and Human Services.

1 “(5) CERTAIN SERVICES NOT INCLUDED.—The
2 term ‘qualified long-term care services’ shall not in-
3 clude any services provided to an individual—

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

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

11 For purposes of this paragraph, the term ‘relative’
12 means an individual bearing a relationship to the in-
13 dividual which is described in paragraphs (1)
14 through (8) of section 152(a).”

15 (d) TECHNICAL AMENDMENTS.—

16 (1) Subparagraph (D) of section 213(d)(1) (as
17 redesignated by subsection (a)) is amended to read
18 as follows:

19 “(D) for insurance (including amounts
20 paid as premiums under part B of title XVIII
21 of the Social Security Act, relating to supple-
22 mentary medical insurance for the aged) cover-
23 ing medical care referred to in—

24 “(i) subparagraphs (A) and (B), or

1 “(ii) subparagraph (C), but only if
 2 such insurance is provided under a quali-
 3 fied long-term care insurance policy (as de-
 4 fined in section 7702B(b)) and the amount
 5 paid for such insurance is not disallowed
 6 under section 7702B(d)(4).”

7 (2) Paragraph (6) of section 213(d) is amend-
 8 ed—

9 (A) by striking “subparagraphs (A) and
 10 (B)” and inserting “subparagraph (A), (B),
 11 and (C)”, and

12 (B) by striking “paragraph (1)(C)” in sub-
 13 paragraph (A) and inserting “paragraph
 14 (1)(D)”.

15 (e) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 December 31, 1996.

18 **SEC. 203. TREATMENT OF LONG-TERM CARE INSURANCE.**

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

22 **“SEC. 7702B. TREATMENT OF LONG-TERM CARE INSUR-**
 23 **ANCE.**

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

1 “(1) a qualified long-term care insurance policy
2 (as defined in subsection (b)) shall be treated as an
3 accident and health insurance contract,

4 “(2) amounts (other than policyholder dividends
5 (as defined in section 808) or premium refunds) re-
6 ceived under a qualified long-term care insurance
7 policy shall be treated as amounts received for per-
8 sonal injuries and sickness and shall be treated as
9 reimbursement for expenses actually incurred for
10 medical care (as defined in section 213(d)),

11 “(3) any plan of an employer providing cov-
12 erage under a qualified long-term care insurance pol-
13 icy shall be treated as an accident and health plan
14 with respect to such coverage,

15 “(4) amounts paid for a qualified long-term
16 care insurance policy providing the benefits de-
17 scribed in subsection (b)(6)(B) shall be treated as
18 payments made for insurance for purposes of section
19 213(d)(1)(D), and

20 “(5) a qualified long-term care insurance policy
21 shall be treated as a guaranteed renewable contract
22 subject to the rules of section 816(e).

23 “(b) QUALIFIED LONG-TERM CARE INSURANCE POL-
24 ICY.—For purposes of this title—

1 “(1) IN GENERAL.—The term ‘qualified long-
2 term care insurance policy’ means any long-term
3 care insurance policy (as defined in section 302(9)
4 of the Comprehensive Long-Term Care Reform Act
5 of 1995) that—

6 “(A) satisfies the requirements of title III
7 of such Act,

8 “(B) limits benefits under such policy to
9 individuals who are certified by a licensed pro-
10 fessional (as defined in section 213(g)(4)) with-
11 in the preceding 12-month period as being un-
12 able to perform, without substantial assistance
13 from another individual (including assistance
14 involving cueing or substantial supervision), 2
15 or more activities of daily living (of those se-
16 lected under section 213(g)(3)(B)), or who have
17 a severe cognitive impairment (as defined in
18 section 213(g)(2)(B)), and

19 “(C) satisfies the requirements of para-
20 graphs (2), (3), (4), (5), and (6).

21 “(2) PREMIUM REQUIREMENTS.—The require-
22 ments of this paragraph are met with respect to a
23 policy if such policy provides that premium pay-
24 ments may not be made earlier than the date such
25 payments would have been made if the contract pro-

1 vided for level annual payments over the life expect-
2 ancy of the insured. A policy shall not be treated as
3 failing to meet the requirements of the preceding
4 sentence solely by reason of a provision in the policy
5 providing for a waiver of premiums if the insured
6 becomes an individual certified in accordance with
7 paragraph (1)(B).

8 “(3) PROHIBITION OF CASH VALUE.—The re-
9 quirements of this paragraph are met if the policy
10 does not provide for a cash value or other money
11 that can be paid, assigned, pledged as collateral for
12 a loan, or borrowed, other than as provided in para-
13 graph (4).

14 “(4) REFUNDS OF PREMIUMS AND DIVI-
15 DENDS.—The requirements of this paragraph are
16 met with respect to a policy if such policy provides
17 that—

18 “(A) policyholder dividends are required to
19 be applied as a reduction in future premiums
20 or, to the extent permitted under paragraph
21 (6), to increase benefits described in subsection
22 (a)(2), and

23 “(B) refunds of premiums upon a partial
24 surrender or a partial cancellation are required

1 to be applied as a reduction in future pre-
2 miums, and

3 “(C) any refund on the death of the in-
4 sured, or on a complete surrender or cancella-
5 tion of the policy, cannot exceed the aggregate
6 premiums paid under the contract.

7 Any refund on a complete surrender or cancellation
8 of the policy shall be includible in gross income to
9 the extent that any deduction or exclusion was allow-
10 able with respect to the premiums.

11 “(5) COORDINATION WITH OTHER ENTITLED-
12 MENTS.—The requirements of this paragraph are
13 met with respect to a policy if such policy does not
14 cover expenses incurred to the extent that such ex-
15 penses are covered under the health coverage de-
16 scribed in section 322 of the Comprehensive Long-
17 Term Care Reform Act of 1995.

18 “(6) MAXIMUM BENEFIT.—

19 “(A) IN GENERAL.—The requirements of
20 this paragraph are met if the benefits payable
21 under the policy for any period (whether on a
22 periodic basis or otherwise) shall not exceed the
23 dollar amount in effect for such period.

24 “(B) NONREIMBURSEMENT PAYMENTS
25 PERMITTED.—Benefits shall include all pay-

1 ments described in subsection (a)(2) to or on
2 behalf of an insured individual without regard
3 to the expenses incurred during the period to
4 which the payments relate. For purposes of sec-
5 tion 213(a), such payments shall be treated as
6 compensation for expenses paid for medical
7 care.

8 “(C) DOLLAR AMOUNT.—The dollar
9 amount in effect under this paragraph shall be
10 \$150 per day (or the equivalent amount within
11 the calendar year in the case of payments on
12 other than a per diem basis).

13 “(D) ADJUSTMENTS FOR INCREASED
14 COSTS.—

15 “(i) IN GENERAL.—In the case of any
16 calendar year after 1998, the dollar
17 amount in effect under subparagraph (C)
18 for any period or portion thereof occurring
19 during such calendar year shall be equal to
20 the sum of—

21 “(I) the amount in effect under
22 subparagraph (C) for the preceding
23 calendar year (after application of this
24 subparagraph), plus

1 “(II) the product of the amount
2 referred to in subclause (I) multiplied
3 by the cost-of-living adjustment for
4 the calendar year of the amount
5 under subclause (I).

6 “(ii) COST-OF-LIVING ADJUSTMENT.—
7 For purposes of clause (i), the cost-of-liv-
8 ing adjustment for any calendar year is the
9 percentage (if any) by which the cost index
10 under clause (iii) for the preceding cal-
11 endar year exceeds such index for the sec-
12 ond preceding calendar year.

13 “(iii) COST INDEX.—The Secretary, in
14 consultation with the Secretary of Health
15 and Human Services, shall before July 1,
16 1997, establish a cost index to measure in-
17 creases in costs of nursing home and simi-
18 lar facilities. The Secretary may from time
19 to time revise such index to the extent nec-
20 essary to accurately measure increases or
21 decreases in such costs.

22 “(iv) SPECIAL RULE FOR CALENDAR
23 YEAR 1999.—Notwithstanding clause (ii),
24 for purposes of clause (i), the cost-of-living
25 adjustment for calendar year 1999 is the

1 sum of 1½ percent plus the percentage by
2 which the CPI for calendar year 1998 (as
3 defined in section 1(f)(4)) exceeds the CPI
4 for calendar year 1997 (as so defined).

5 “(E) PERIOD.—For purposes of this para-
6 graph, a period begins on the date that an indi-
7 vidual has a condition which would qualify for
8 certification under subsection (b)(1)(B) and
9 ends on the earlier of the date upon which—

10 “(i) such individual has not been so
11 certified within the preceding 12-months,
12 or

13 “(ii) the individual’s condition ceases
14 to be such as to qualify for certification
15 under subsection (b)(1)(B).

16 “(F) AGGREGATION RULE.—For purposes
17 of this paragraph, all policies issued with re-
18 spect to the same insured shall be treated as
19 one policy.

20 “(c) TREATMENT OF LONG-TERM CARE INSURANCE
21 POLICIES.—For purposes of this title, any amount re-
22 ceived or coverage provided under a long-term care insur-
23 ance policy that is not a qualified long-term care insurance
24 policy shall not be treated as an amount received for per-
25 sonal injuries or sickness or provided under an accident

1 and health plan and shall not be treated as excludible from
2 gross income under any provision of this title.

3 “(d) TREATMENT OF COVERAGE PROVIDED AS PART
4 OF A LIFE INSURANCE CONTRACT.—Except as otherwise
5 provided in regulations prescribed by the Secretary, in the
6 case of any long-term care insurance coverage (whether
7 or not qualified) provided by rider on a life insurance con-
8 tract—

9 “(1) IN GENERAL.—This section shall apply as
10 if the portion of the contract providing such cov-
11 erage is a separate contract or policy.

12 “(2) PREMIUMS AND CHARGES FOR LONG-TERM
13 CARE COVERAGE.—Premium payments for coverage
14 under a long-term care insurance policy and charges
15 against the life insurance contract’s cash surrender
16 value (within the meaning of section 7702(f)(2)(A))
17 for such coverage shall be treated as premiums for
18 purposes of subsection (b)(2).

19 “(3) APPLICATION OF 7702.—Section
20 7702(e)(2) (relating to the guideline premium limi-
21 tation) shall be applied by increasing the guideline
22 premium limitation with respect to a life insurance
23 contract, as of any date—

1 “(A) by the sum of any charges (but not
2 premium payments) described in paragraph (2)
3 made to that date under the contract, less

4 “(B) any such charges the imposition of
5 which reduces the premiums paid for the con-
6 tract (within the meaning of section
7 7702(f)(1)).

8 “(4) APPLICATION OF SECTION 213.—No deduc-
9 tion shall be allowed under section 213(a) for
10 charges against the life insurance contract’s cash
11 surrender value described in paragraph (2), unless
12 such charges are includible in income as a result of
13 the application of section 72(e)(10) and the coverage
14 provided by the rider is a qualified long-term care
15 insurance policy under subsection (b).

16 For purposes of this subsection, the term ‘portion’ means
17 only the terms and benefits under a life insurance contract
18 that are in addition to the terms and benefits under the
19 contract without regard to the coverage under a long-term
20 care insurance policy.

21 “(e) PROHIBITION OF DISCRIMINATION.—

22 “(1) IN GENERAL.—Notwithstanding subsection
23 (a)(3), any plan of an employer providing coverage
24 under a qualified long-term care insurance policy

1 shall qualify as an accident and health plan with re-
2 spect to such coverage only if—

3 “(A) the plan allows all employees, except
4 as provided in paragraph (2), to participate,
5 and

6 “(B) the benefits provided under the plan
7 are identical for all employees that choose to
8 participate.

9 “(2) EXCLUSION OF CERTAIN EMPLOYEES.—
10 For purposes of paragraph (1), there may be ex-
11 cluded from consideration—

12 “(A) employees who have not completed 3
13 years of service;

14 “(B) employees who have not attained age
15 25;

16 “(C) part-time or seasonal employees; and

17 “(D) employees who are nonresident aliens
18 and who receive no earned income (within the
19 meaning of section 911(d)(2)) from the em-
20 ployer which constitutes income from sources
21 within the United States (within the meaning of
22 section 861(a)(3)).

23 “(f) REGULATIONS.—The Secretary shall prescribe
24 such regulations as may be necessary to carry out the re-
25 quirements of this section, including regulations to prevent

1 the avoidance of this section by providing long-term care
2 insurance coverage under a life insurance contract and to
3 provide for the proper allocation of amounts between the
4 long-term care and life insurance portions of a contract.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for chapter 79 is amended by inserting after the item re-
7 lating to section 7702A the following new item:

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

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 this section shall apply to policies issued after De-
11 cember 31, 1997. Solely for purposes of the preced-
12 ing sentence, a policy issued prior to January 1,
13 1998, that satisfies the requirements of a qualified
14 long-term care insurance policy as set forth in sec-
15 tion 7702B(b) or the requirements of model laws
16 and regulations of the National Association of Insur-
17 ance Commissioners (relating to long-term care in-
18 surance policies) as of the date the policy was is-
19 sued, shall, on and after January 1, 1998, be treat-
20 ed as being issued after December 31, 1997.

21 (2) TRANSITION RULE.—If, after the date of
22 enactment of this Act and before January 1, 1998,
23 a policy providing for long-term care insurance cov-
24 erage is exchanged solely for a qualified long-term
25 care insurance policy (as defined in section

1 7702B(b)), no gain or loss shall be recognized on
2 the exchange. If, in addition to a qualified long-term
3 care insurance policy, money or other property is re-
4 ceived in the exchange, then any gain shall be recog-
5 nized to the extent of the sum of the money and the
6 fair market value of the other property received. For
7 purposes of this paragraph, the cancellation of a pol-
8 icy providing for long-term care insurance coverage
9 and reinvestment of the cancellation proceeds in a
10 qualified long-term care insurance policy within 60
11 days thereafter shall be treated as an exchange.

12 (3) ISSUANCE OF CERTAIN RIDERS PER-
13 MITTED.—For purposes of determining whether sec-
14 tion 7702 or 7702A of the Internal Revenue Code
15 of 1986 applies to any contract, the issuance, wheth-
16 er before, on, or after December 31, 1997, of a rider
17 on a life insurance contract providing long-term care
18 insurance coverage shall not be treated as a modi-
19 fication or material change of such contract.

20 **SEC. 204. TAX TREATMENT OF ACCELERATED DEATH BENE-**
21 **FITS UNDER LIFE INSURANCE CONTRACTS.**

22 (a) GENERAL RULE.—Section 101 (relating to cer-
23 tain death benefits) is amended by adding at the end
24 thereof the following new subsection:

1 “(g) TREATMENT OF CERTAIN ACCELERATED
2 DEATH BENEFITS.—

3 “(1) IN GENERAL.—For purposes of this sec-
4 tion, any amount distributed to an individual under
5 a life insurance contract on the life of an insured
6 who is a terminally ill individual (as defined in para-
7 graph (3)) shall be treated as an amount paid by
8 reason of the death of such insured.

9 “(2) NECESSARY CONDITIONS.—

10 “(A) Paragraph (1) shall not apply to any
11 distribution unless—

12 “(i) the distribution is not less than
13 the present value (determined under sub-
14 paragraph (B)) of the reduction in the
15 death benefit otherwise payable in the
16 event of the death of the insured, and

17 “(ii) the percentage derived from di-
18 viding the cash surrender value of the con-
19 tract, if any, immediately after the dis-
20 tribution by the cash surrender value of
21 the contract immediately before the dis-
22 tribution is equal to or greater than the
23 percentage derived by dividing the death
24 benefit immediately after the distribution

1 by the death benefit immediately before the
2 distribution.

3 “(B) The present value of the reduction in
4 the death benefit occurring on the distribution
5 must be determined by—

6 “(i) using as the discount rate a rate
7 not to exceed the highest rate set forth in
8 subparagraph (C), and

9 “(ii) assuming that the death benefit
10 (or the portion thereof) would have been
11 paid at the end of a period that is no more
12 than the insured’s life expectancy from the
13 date of the distribution or 12 months,
14 whichever is shorter.

15 “(C) RATES.—The rates set forth in this
16 subparagraph are the following:

17 “(i) the 90-day Treasury bill yield,

18 “(ii) the rate described as Moody’s
19 Corporate Bond Yield Average-Monthly
20 Average Corporates as published by
21 Moody’s Investors Service, Inc., or any
22 successor thereto for the calendar month
23 ending 2 months before the date on which
24 the rate is determined,

1 “(iii) the rate used to compute the
2 cash surrender values under the contract
3 during the applicable period plus 1 percent
4 per annum, and

5 “(iv) the maximum permissible inter-
6 est rate applicable to policy loans under
7 the contract.

8 “(3) TERMINALLY ILL INDIVIDUAL.—For pur-
9 poses of this subsection, the term ‘terminally ill indi-
10 vidual’ means an individual who the insurer has de-
11 termined, after receipt of an acceptable certification
12 by a licensed physician, has an illness or physical
13 condition which can reasonably be expected to result
14 in death within 12 months of the date of certifi-
15 cation.

16 “(4) APPLICATION OF SECTION 72(e)(10).—For
17 purposes of section 72(e)(10) (relating to the treat-
18 ment of modified endowment contracts), section
19 72(e)(4)(A)(i) shall not apply to distributions de-
20 scribed in paragraph (1).”

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to taxable years beginning after
23 December 31, 1996.

1 **SEC. 205. TAX TREATMENT OF COMPANIES ISSUING QUALI-**
2 **FIED ACCELERATED DEATH BENEFIT RID-**
3 **ERS.**

4 (a) QUALIFIED ACCELERATED DEATH BENEFIT RID-
5 ERS TREATED AS LIFE INSURANCE.—Section 818 (relat-
6 ing to other definitions and special rules) is amended by
7 adding at the end thereof the following new subsection:

8 “(g) QUALIFIED ACCELERATED DEATH BENEFIT
9 RIDERS TREATED AS LIFE INSURANCE.—For purposes of
10 this part—

11 “(1) IN GENERAL.—Any reference to a life in-
12 surance contract shall be treated as including a ref-
13 erence to a qualified accelerated death benefit rider
14 on such contract.

15 “(2) QUALIFIED ACCELERATED DEATH BENE-
16 FIT RIDERS.—For purposes of this subsection, the
17 term ‘qualified accelerated death benefit rider’
18 means any rider on a life insurance contract which
19 provides for a distribution to an individual upon the
20 insured becoming a terminally ill individual (as de-
21 fined in section 101(g)(3)).”

22 (b) DEFINITIONS OF LIFE INSURANCE AND MODI-
23 FIED ENDOWMENT CONTRACTS.—Paragraph (5)(A) of
24 section 7702(f) is amended by striking “or” at the end
25 of clause (iv), by redesignating clause (v) as clause (vi),
26 and by inserting after clause (iv) the following new clause:

1 “(v) any qualified accelerated death
 2 benefit rider (as defined in section 818(g)),
 3 or”.

4 (c) EFFECTIVE DATE.—

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

8 (2) TRANSITIONAL RULE.—For purposes of de-
 9 termining whether section 7702 or 7702A of the In-
 10 ternal Revenue Code of 1986 applies to any con-
 11 tract, the issuance, whether before, on, or after De-
 12 cember 31, 1996, of a rider on a life insurance con-
 13 tract permitting the acceleration of death benefits
 14 (as described in section 101(g) of such Code) shall
 15 not be treated as a modification or material change
 16 of such contract.

17 **SEC. 206. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
 18 **WITHDRAWN FROM CERTAIN PLANS TO PAY**
 19 **QUALIFIED LONG-TERM CARE INSURANCE**
 20 **PREMIUMS.**

21 (a) IN GENERAL.—Part III of subchapter B of chap-
 22 ter 1 of the Internal Revenue Code of 1986 (relating to
 23 items specifically excluded from gross income) is amended
 24 by redesignating section 137 as section 138 and by insert-
 25 ing after section 136 the following new section:

1 **“SEC. 137. AMOUNTS WITHDRAWN FROM CERTAIN PLANS**
 2 **TO PAY QUALIFIED LONG-TERM CARE INSUR-**
 3 **ANCE PREMIUMS.**

4 “The gross income of an individual shall not include
 5 any distribution from an individual retirement plan, or
 6 from amounts attributable to employer contributions made
 7 pursuant to elective deferrals described in subparagraph
 8 (A) or (C) of section 402(g)(3) or section
 9 501(c)(18)(D)(iii), if—

10 “(1) such individual has attained age 59½ be-
 11 fore the date of such distribution, and

12 “(2) such distribution is used by such individual
 13 (before the close of the 60th day after the day on
 14 which such distribution is received) to pay premiums
 15 on any qualified long-term care insurance policy (as
 16 defined in section 7702B) covering such individual
 17 or the spouse of such individual.”

18 (b) CLERICAL AMENDMENT.—The table of sections
 19 for such part III is amended by striking the last item and
 20 inserting the following new items:

“Sec. 137. Amounts withdrawn from certain plans to pay quali-
 fied long-term care insurance premiums.

“Sec. 138. Cross references to other Acts.”

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to distributions after December 31,
 23 1996, in taxable years ending after such date.

1 **SEC. 207. NONRECOGNITION OF GAIN ON SALE OF PRIN-**
2 **CIPAL RESIDENCE TO EXTENT PROCEEDS**
3 **USED FOR ENTRANCE INTO CONTINUING**
4 **CARE RETIREMENT COMMUNITY.**

5 (a) IN GENERAL.—Section 1034 of the Internal Rev-
6 enue Code of 1986 (relating to rollover of gain of sale of
7 principal residence) is amended by redesignating sub-
8 section (l) as subsection (m) and by inserting after sub-
9 section (k) the following new subsection:

10 “(l) NONRECOGNITION OF GAIN IF NEW RESIDENCE
11 IS QUALIFIED CONTINUING CARE RETIREMENT COMMU-
12 NITY.—

13 “(1) IN GENERAL.—Gross income shall not in-
14 clude gain from the sale of the principal residence
15 of the taxpayer if—

16 “(A) the taxpayer attained age 55 before
17 the date of such sale, and

18 “(B) within the 2-year period beginning on
19 such date, the taxpayer has as his principal res-
20 idence a qualified continuing care retirement
21 community.

22 “(2) LIMITATION.—The amount excluded from
23 gross income under paragraph (1) shall not exceed
24 the amount paid by the taxpayer during such 2-year
25 period to such retirement community as an entrance

1 fee in order for the taxpayer or his spouse (or both)
2 to reside in such community.

3 “(3) RECAPTURE IN CERTAIN CASES.—If the
4 taxpayer ceases to have as his principal residence
5 (other than by reason of death) a qualified continu-
6 ing care retirement community at any time during
7 the 2-year period beginning on the date such com-
8 munity began being the taxpayer’s principal resi-
9 dence, the amount excluded from gross income
10 under paragraph (1) shall be included in the tax-
11 payer’s gross income (as long-term capital gain) for
12 the taxable year in which such cessation occurs.

13 “(4) SPECIAL RULES FOR MARRIED INDIVID-
14 UALS.—In the case of a husband and wife who file
15 a joint return for the taxable year which includes the
16 date of the sale of the old residence—

17 “(A) the age requirement of paragraph
18 (1)(A) shall be treated as met if either spouse
19 meets such requirement, and

20 “(B) paragraph (3) shall be applied by
21 taking into account one-half of the gain with re-
22 spect to each spouse if such spouses do not file
23 a joint return for the taxable year in which the
24 cessation referred to in paragraph (3) occurs.

1 “(5) QUALIFIED CONTINUING CARE RETIRE-
 2 MENT COMMUNITY.—For purposes of this sub-
 3 section, the term ‘qualified continuing care retire-
 4 ment community’ has the meaning given such term
 5 by section 7872(g).”

6 (b) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to old residences sold after Decem-
 8 ber 31, 1996.

9 **TITLE III—LONG-TERM CARE**
 10 **INSURANCE REFORM**

11 **Subtitle A—General Provisions**

12 **SEC. 301. FEDERAL REGULATIONS; PRIOR APPLICATION OR**
 13 **CERTAIN REQUIREMENTS.**

14 (a) IN GENERAL.—The Secretary, with the advice
 15 and assistance of the National Association of Insurance
 16 Commissioners, as appropriate, shall promulgate regula-
 17 tions as necessary to implement the provisions of this title,
 18 in accordance with the timetable specified in subsection
 19 (b).

20 (b) TIMETABLE FOR PUBLICATION OF REGULA-
 21 TIONS.—

22 (1) FEDERAL REGISTER NOTICE.—Within 120
 23 days after the date of the enactment of this Act, the
 24 Secretary shall publish in the Federal Register a no-
 25 tice setting forth the projected timetable for promul-

1 gation of regulations required under this title. Such
2 timetable shall indicate which regulations are pro-
3 posed to be published by the end of the first, second,
4 and third years after the date of the enactment of
5 this Act.

6 (2) FINAL DEADLINE.—All regulations required
7 under this title shall be published by the end of the
8 third year after the date of the enactment of this
9 Act.

10 (3) REVISION OF REGULATIONS.—The Sec-
11 retary may periodically revise and update the regula-
12 tions published under this title. However, any such
13 revisions shall not become effective until States have
14 been provided an adequate period of time in which
15 to implement such revisions.

16 (4) CONGRESSIONAL DISAPPROVAL.—A regula-
17 tion, or revision or update of a regulation, under this
18 section shall take effect unless—

19 (A) the regulation, revision, or update is
20 submitted to Congress, and

21 (B) a joint resolution or Act disapproving
22 such regulation, revision, or update is enacted
23 before the end of the 60-day period beginning
24 on the date on which such regulation, revision,
25 or update is submitted.

1 (c) PROVISIONS EFFECTIVE WITHOUT REGARD TO
2 PROMULGATION OF REGULATIONS.—

3 (1) IN GENERAL.—Notwithstanding any other
4 provision of this title, insurers shall be required, not
5 later than 6 months after the enactment of this Act,
6 regardless of whether final implementing regulations
7 have been promulgated by the Secretary, to comply
8 with the following provisions of this title:

9 (A) Section 321(c) (standard outline of
10 coverage).

11 (B) Section 321(d) (reporting to State in-
12 surance commissioners).

13 (C) Section 322(b) (preexisting condition
14 exclusions).

15 (D) Section 322(c) (limiting conditions on
16 benefits).

17 (E) Section 322(d) (inflation protection).

18 (F) Section 324 (sales practices).

19 (G) Section 325 (continuation, renewal, re-
20 placement, conversion, and cancellation of poli-
21 cies).

22 (H) Section 326 (payment of benefits).

23 (2) INTERIM REQUIREMENTS.—Before the ef-
24 fective date of applicable regulations promulgated by
25 the Secretary implementing requirements of this title

1 as specified below, such requirements will be consid-
2 ered to be met—

3 (A) in the case of section 321(c) (requiring
4 a standard outline of coverage), if the long-term
5 care insurance policy meets the requirements of
6 section 6.G.(2) of the NAIC Model Act and of
7 section 24 of the NAIC Model Regulation;

8 (B) in the case of section 321(d) (requiring
9 reporting to the State insurance commissioner),
10 if the insurer meets the requirements of section
11 14 of the NAIC Model Regulation;

12 (C) in the case of section 322(c)(1) (gen-
13 eral requirements concerning limiting conditions
14 on benefits), if such policy meets the require-
15 ments of section 6.D. of the NAIC Model Act;

16 (D) in the case of section 322(c)(2) (limit-
17 ing conditions on home health care or commu-
18 nity-based services) if such policy meets the re-
19 quirements of section 11 of the NAIC Model
20 Regulations;

21 (E) in the case of section 322(d) (concern-
22 ing inflation protection), if the insurer meets
23 the requirements of section 12 of the NAIC
24 Model Regulation;

1 (F) in the case of section 324(b) (concern-
2 ing applications for the purchase of insurance),
3 if the insurer meets the requirements of section
4 10 of the NAIC Model Regulation;

5 (G) in the case of section 324(g) (concern-
6 ing sales through employers or membership or-
7 ganizations), if the insurer and the membership
8 organization meet the requirements of section
9 21.C. of the NAIC Model Regulation;

10 (H) in the case of section 324(h) (concern-
11 ing interstate sales of group policies), if the in-
12 surer and the policy meet the requirements of
13 section 5 of the NAIC Model Act; and

14 (I) in the case of section 325(f) (concern-
15 ing continuation, renewal, replacement, and
16 conversion of policies), if the insurer and the
17 policy meet the requirements of section 7 of the
18 NAIC Model Regulation.

19 **SEC. 302. DEFINITIONS.**

20 For purposes of this title:

21 (1) **ACTIVITY OF DAILY LIVING.**—The term “ac-
22 tivity of daily living” means any of the following:
23 eating, toileting, dressing, bathing, transferring, and
24 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) CERTIFICATE.—The term “certificate”
8 means a document issued to an individual as evi-
9 dence of such individual’s coverage under a group
10 insurance policy.

11 (4) CONTINUING CARE RETIREMENT COMMU-
12 NITY.—The term “continuing care retirement com-
13 munity” means a residential community operated by
14 a private entity that enters into contractual agree-
15 ments with residents under which such entity guar-
16 antees, in consideration for residents’ purchase of or
17 periodic payment for membership in the community,
18 to provide for such residents’ future long-term care
19 needs.

20 (5) DESIGNATED REPRESENTATIVE.—The term
21 “designated representative” means the person (if
22 any) designated by an insured individual (or, if such
23 individual is incapacitated, pursuant to an appro-
24 priate administrative or judicial procedure) to com-

1 municate with the insurer on behalf of such individ-
2 ual in the event of such individual’s incapacitation.

3 (6) HOME HEALTH CARE.—The term “home
4 health care” means medical and nonmedical services
5 including such services as homemaker services, as-
6 sistance with activities of daily living, and respite
7 care provided to individuals in their residences.

8 (7) INSURED INDIVIDUAL.—The term “insured
9 individual” means, with respect to a long-term care
10 insurance policy, any individual who has coverage of
11 benefits under such policy.

12 (8) INSURER.—The term “insurer” means any
13 person that offers or sells an individual or group
14 long-term care insurance policy under which such
15 person is at risk for all or part of the cost of bene-
16 fits under the policy, and includes any agent of such
17 person.

18 (9) LONG-TERM CARE INSURANCE POLICY.—
19 The term “long-term care insurance policy” has the
20 meaning given that term in section 4 of the NAIC
21 Model Act, except that the last sentence of such sec-
22 tion shall not apply.

23 (10) NAIC.—The term “NAIC” means the Na-
24 tional Association of Insurance Commissioners.

1 (11) NAIC MODEL ACT.—The term “NAIC
2 Model Act” means the Long-Term Care Insurance
3 Model Act published by the NAIC, as amended
4 through January 1993.

5 (12) NAIC MODEL REGULATION.—The term
6 “NAIC Model Regulation” means the Long-Term
7 Care Insurance Model Regulation published by the
8 NAIC, as amended through January 1993.

9 (13) NURSING FACILITY.—The term “nursing
10 facility” means a facility licensed by the State to
11 provide to residents—

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

15 (B) rehabilitation services for the rehabili-
16 tation of injured, disabled, or sick individuals,
17 or

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

1 (14) POLICYHOLDER.—The term “policyholder”
2 means the entity which is the holder of record of a
3 group long-term care insurance policy.

4 (15) RESIDENTIAL CARE FACILITY.—The term
5 “residential care facility” means a facility (including
6 a nursing facility) that—

7 (A) provides to residents medical or per-
8 sonal care services (including at a minimum as-
9 sistance with activities of daily living) in a set-
10 ting other than an individual or single-family
11 home, and

12 (B) does not provide services of a higher
13 level than can be provided by a nursing facility.

14 (16) RESPITE CARE.—The term “respite care”
15 means the temporary provision of care (including as-
16 sistance with activities of daily living) to an individ-
17 ual, in the individual’s home or another setting in
18 the community, for the purpose of affording such in-
19 dividual’s unpaid caregiver a respite from the re-
20 sponsibilities of such care.

21 (17) STATE INSURANCE COMMISSIONER.—The
22 term “State insurance commissioner” means the
23 State official bearing such title, or, in the case of a
24 jurisdiction where such title is not used, the State

1 official with primary responsibility for the regulation
2 of insurance.

3 **Subtitle B—Federal Standards and**
4 **Requirements**

5 **SEC. 321. REQUIREMENTS TO FACILITATE UNDERSTAND-**
6 **ING AND COMPARISON OF BENEFITS.**

7 (a) IN GENERAL.—The Secretary, after considering
8 (where appropriate) recommendations of the NAIC, shall
9 promulgate regulations designed to standardize formats
10 and terminology used in long-term care insurance policies,
11 to require insurers to provide to customers and bene-
12 ficiaries information on the range of public and private
13 long-term care coverage available, and to establish such
14 other requirements as may be appropriate to promote
15 consumer understanding and facilitate comparison of ben-
16 efits, which shall include at a minimum the requirements
17 specified in this section.

18 (b) UNIFORM TERMS, DEFINITIONS, AND FOR-
19 MATS.—Insurers shall be required to use, in long-term
20 care insurance policies, uniform terminology, definitions of
21 terms, and formats, in accordance with regulations pro-
22 mulgated by the Secretary, after considering recommenda-
23 tions of the NAIC.

24 (c) STANDARD OUTLINE OF COVERAGE.—

1 (1) IN GENERAL.—Insurers shall be required to
2 develop for each long-term care insurance policy of-
3 fered or sold, to include as a part of each such pol-
4 icy, and to make available to each potential pur-
5 chaser and furnish to each insured individual and
6 policyholder, an outline of coverage under such pol-
7 icy that—

8 (A) includes the elements specified in para-
9 graph (2),

10 (B) is in a uniform format (as prescribed
11 by the Secretary on the basis of recommenda-
12 tions by the NAIC),

13 (C) accurately and clearly reflects the con-
14 tents of the policy, and

15 (D) is updated periodically on such time-
16 table as may be required by the Secretary (or
17 more frequently as necessary to reflect signifi-
18 cant changes in outlined information).

19 (2) CONTENTS OF OUTLINE.—The outline of
20 coverage for each long-term care insurance policy
21 shall include at least the following:

22 (A) BENEFITS.—A description of—

23 (i) the principal benefits covered, in-
24 cluding the extent of—

1 (I) benefits for services furnished
2 in residential care facilities, and

3 (II) other benefits,

4 (ii) the principal exclusions from and
5 limitations on coverage,

6 (iii) the terms and conditions, if any,
7 upon which the insured individual may ob-
8 tain upgraded benefits, and

9 (iv) the threshold conditions for enti-
10 tlement to receive benefits.

11 (B) CONTINUATION, RENEWAL, AND CON-
12 VERSION.—A statement of the terms under
13 which a policy may be—

14 (i) returned (and premium refunded)
15 during an initial examination period,

16 (ii) continued in force or renewed,

17 (iii) converted to an individual policy
18 (in the case of coverage under a group pol-
19 icy),

20 (C) CANCELLATION.—A statement of the
21 circumstances in which a policy may be termi-
22 nated, and the refund or nonforfeitures benefits
23 (if any) applicable in each such circumstance,
24 including—

25 (i) death of the insured individual,

- 1 (ii) nonpayment of premiums,
2 (iii) election by the insured individual
3 not to renew,
4 (iv) any other circumstance.

5 (D) PREMIUM.—A statement of—

- 6 (i) the total annual premium,
7 (ii) any reservation by the insurer of
8 a right to change premiums,
9 (iii) any expected premium increases
10 associated with automatic or optional bene-
11 fit increases (including inflation protec-
12 tion), and
13 (iv) any circumstances under which
14 payment of premium is waived.

15 (E) DECLARATION CONCERNING SUM-
16 MARY.—A statement, in bold face type on the
17 face of the document in language understand-
18 able to the average individual, that the outline
19 of coverage is a summary only, not a contract
20 of insurance, and that the policy contains the
21 contractual provisions that govern.

22 (F) COST/VALUE COMPARISON.—

- 23 (i) A comparison of benefits, over a
24 period of at least 20 years, for policies
25 with and without inflation protection.

1 (ii) A declaration as to whether the
2 amount of benefits will increase over time,
3 and, if so, a statement of the type and
4 amount of, any limitations on, and any
5 premium increases for, such benefit in-
6 creases.

7 (G) TAX TREATMENT.—A statement of the
8 Federal income tax treatment of premiums and
9 benefits under the policy, as determined by the
10 Secretary of the Treasury.

11 (H) OTHER.—Such other information as
12 the Secretary may require.

13 (d) REPORTING TO STATE INSURANCE COMMIS-
14 SIONER.—Each insurer shall be required to report at least
15 annually, to the State insurance commissioner of each
16 State in which any long-term care insurance policy of the
17 insurer is sold, such information, in such format, as the
18 Secretary may specify with respect to each such policy,
19 including—

20 (1) the standard outline of coverage required
21 pursuant to subsection (c);

22 (2) lapse rates and replacement rates for such
23 policies (including, by percentage, the reasons for
24 the lapse);

- 1 (3) the ratio of premiums collected to benefits
2 paid;
- 3 (4) reserves;
- 4 (5) written materials used in sale or promotion
5 of such policy; and
- 6 (6) any other information the Secretary may re-
7 quire.

8 **SEC. 322. REQUIREMENTS RELATING TO COVERAGE.**

9 (a) IN GENERAL.—The Secretary, after considering
10 (where appropriate) recommendations of the NAIC, shall
11 promulgate regulations establishing requirements with re-
12 spect to the terms of and benefits under long-term care
13 insurance policies, which shall include at a minimum the
14 requirements specified in this section.

15 (b) LIMITATIONS ON PREEXISTING CONDITION EX-
16 CLUSIONS.—

17 (1) INITIAL POLICIES.—A long-term care insur-
18 ance policy may not exclude or limit coverage for
19 any service or benefit, the need for which is the re-
20 sult of a medical condition or disability because an
21 insured individual received medical treatment for, or
22 was diagnosed as having, such condition before the
23 issuance of the policy, unless—

24 (A) the insurer, prior to issuance of the
25 policy, determines and documents (with evi-

1 dence including written evidence that such con-
2 dition has been treated or diagnosed by a quali-
3 fied health care professional) that the insured
4 individual had such condition during the 6-
5 month period (or such longer period as the Sec-
6 retary may specify) ending on the effective date
7 of the policy; and

8 (B) the need or such service or benefit be-
9 gins within 6 months (or such longer period as
10 the Secretary may specify) following the effec-
11 tive date of the policy.

12 (2) REPLACEMENT POLICIES.—Solely for pur-
13 poses of the requirements of paragraph (1), with re-
14 spect to an insured individual, the effective date of
15 a long-term care insurance policy issued to replace
16 a previous policy, with respect to benefits which are
17 the same as or substantially equivalent to benefits
18 under such previous policy, shall be considered to be
19 the effective date of such previous policy with re-
20 spect to such individual.

21 (c) LIMITING CONDITIONS ON BENEFITS.—

22 (1) IN GENERAL.—A long-term care insurance
23 policy may not—

24 (A) condition eligibility for benefits for a
25 type of service on the need for or receipt of any

1 other type of service (such as prior hospitaliza-
2 tion or institutionalization, or a higher level of
3 care than the care for which benefits are cov-
4 ered);

5 (B) condition eligibility for any benefit
6 (where the need for such benefit has been es-
7 tablished by an independent assessment of im-
8 pairment) on any particular medical diagnosis
9 (including any acute condition) or on one of a
10 group of diagnoses;

11 (C) condition eligibility for benefits fur-
12 nished by licensed or certified providers on com-
13 pliance by such providers with conditions not
14 required under Federal or State law; or

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

19 (2) HOME CARE OR COMMUNITY-BASED SERV-
20 ICES.—A long-term care insurance policy that pro-
21 vides benefits for any home care or community-based
22 services—

23 (A) may not limit such benefits to services
24 provided by registered nurses or licensed prac-
25 tical nurses;

1 (B) may not limit such benefits to services
2 furnished by persons or entities participating in
3 programs under titles XVIII and XIX of the
4 Social Security Act and in part 1 of this title;
5 and

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

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

13 (A) must provide benefits for such services
14 provided by all types of nursing facilities li-
15 censed by the State, and

16 (B) may provide benefits for care in other
17 residential facilities.

18 (4) PROHIBITION OF DISCRIMINATION BY DIAG-
19 NOSIS.—A long-term care insurance policy may not
20 provide for treatment of any of the following medical
21 conditions different from the treatment of any other
22 medical condition for purposes of determining
23 whether threshold conditions for the receipt of bene-
24 fits have been met, or the amount of benefits under
25 the policy:

1 (A) Alzheimer’s disease or any other pro-
2 gressive degenerative dementia of an organic or-
3 igin.

4 (B) Any organic or inorganic mental ill-
5 ness.

6 (C) Mental retardation or any other cog-
7 nitive or mental impairment.

8 (D) HIV infection or AIDS.

9 (d) INFLATION PROTECTION.—

10 (1) REQUIREMENT TO OFFER.—An insurer of-
11 fering for sale any long-term care insurance policy
12 shall be required to afford the purchaser the option
13 to obtain coverage under such policy (upon payment
14 of increased premiums) of annual increases in bene-
15 fits at rates in accordance with paragraph (2).

16 (2) RATE INCREASE IN BENEFITS.—For pur-
17 poses of paragraph (1), the benefits under a policy
18 for each year shall be increased by a percentage of
19 the full value of benefits under the policy for the
20 previous year, which shall be not less than 5 percent
21 of such value.

22 (3) REQUIREMENT OF WRITTEN REJECTION.—
23 Inflation protection in accordance with paragraph
24 (1) may be excluded from the coverage under a pol-
25 icy only if the insured individual (or, if different, the

1 person responsible for payment of premiums) has re-
2 jected in writing the option to obtain such coverage.

3 **SEC. 323. REQUIREMENTS RELATING TO PREMIUMS.**

4 (a) IN GENERAL.—The Secretary, after considering
5 (where appropriate) recommendations of the NAIC, shall
6 promulgate regulations establishing requirements applica-
7 ble to premiums for long-term care insurance policies,
8 which shall include at a minimum the requirements speci-
9 fied in this section.

10 (b) LIMITATIONS ON RATES AND INCREASES.—The
11 Secretary, after considering recommendations of the
12 NAIC, may establish by regulation such standards and re-
13 quirements as may be determined appropriate with respect
14 to—

15 (1) mandatory or optional State procedures for
16 review and approval of premium rates and rate in-
17 creases or decreases; and

18 (2) the factors to be taken into consideration by
19 an insurer in proposing, and by a State in approving
20 or disapproving, premium rates and increases.

21 **SEC. 324. REQUIREMENTS RELATING TO SALES PRACTICES.**

22 (a) IN GENERAL.—The Secretary, after considering
23 (where appropriate) recommendations of the NAIC, shall
24 promulgate regulations establishing requirements applica-
25 ble to the sale or offering for sale of long-term care insur-

1 ance policies, which shall include at a minimum the re-
2 quirements specified in this section.

3 (b) APPLICATIONS.—Any insurer that offers any
4 long-term care insurance policy (including any group pol-
5 icy) shall be required to meet such requirements with re-
6 spect to the content, format, and use of application forms
7 for long-term care insurance as the Secretary may require
8 by regulation.

9 (c) AGENT TRAINING AND CERTIFICATION.—An in-
10 surer may not sell or offer for sale a long-term care insur-
11 ance policy through an agent who does not comply with
12 minimum standards with respect to training and certifi-
13 cation established by the Secretary after consideration of
14 recommendations by the NAIC.

15 (d) PROHIBITED SALES PRACTICES.—The following
16 practices by insurers shall be prohibited with respect to
17 the sale or offer for sale of long-term care insurance poli-
18 cies:

19 (1) FALSE AND MISLEADING REPRESENTA-
20 TIONS.—Making any statement or representation—

21 (A) which the insurer knows or should
22 know is false or misleading (including the inac-
23 curate, incomplete, or misleading comparison of
24 long-term care insurance policies or insurers),
25 and

1 (B) which is intended, or would be likely,
2 to induce any person to purchase, retain, termi-
3 nate, forfeit, permit to lapse, pledge, assign,
4 borrow against, convert, or effect a change with
5 respect to, any long-term care insurance policy.

6 (2) INACCURATE COMPLETION OF MEDICAL
7 HISTORY.—Making or causing to be made (by any
8 means including failure to inquire about or to record
9 information relating to preexisting conditions) state-
10 ments or omissions, in records detailing the medical
11 history of an applicant for insurance, which the in-
12 surer knows or should know render such records
13 false, incomplete, or misleading in any way material
14 to such applicant’s eligibility for or coverage under
15 a long-term care insurance policy.

16 (3) UNDUE PRESSURE.—Employing force,
17 fright, threat, or other undue pressure, whether ex-
18 plicit or implicit, which is intended, or would be like-
19 ly, to induce the purchase of a long-term care insur-
20 ance policy.

21 (4) COLD LEAD ADVERTISING.—Using, directly
22 or indirectly, any method of contacting consumers
23 (including any method designed to induce consumers
24 to contact the insurer or agent) for the purpose of
25 inducing the purchase of long-term care insurance

1 (regardless of whether such purpose is the sole or
2 primary purpose of the contact) without conspicu-
3 ously disclosing such purpose.

4 (e) PROHIBITION ON SALE OF DUPLICATE BENE-
5 FITS.—An insurer or agent may not sell or issue to an
6 individual a long-term care insurance policy that the in-
7 surer or agent knows or should know provides for coverage
8 that duplicates coverage already provided in another long-
9 term care insurance policy held by such individual (unless
10 the policy is intended to replace such other policy.

11 (f) SALES THROUGH EMPLOYERS OR MEMBERSHIP
12 ORGANIZATIONS.—

13 (1) REQUIREMENTS CONCERNING SUCH AR-
14 RANGEMENTS.—In any case where an employer, or-
15 ganization, association, or other entity (referred to
16 as a “membership entity”) endorses a long-term
17 care insurance policy to, or such policy is marketed
18 or sold through such membership entity to, employ-
19 ees, members, or other individuals affiliated with
20 such membership entity, the insurer offering such
21 policy shall not permit its marketing or sale through
22 such entity unless the requirements of this sub-
23 section are met.

24 (2) DISCLOSURE AND INFORMATION REQUIRE-
25 MENTS.—A membership entity that endorses a long-

1 term care insurance policy, or through which such
2 policy is sold, to individuals affiliated with such en-
3 tity, shall—

4 (A) disclose prominently, in a form and
5 manner designed to ensure that each such indi-
6 vidual who receives information concerning any
7 such policy through such entity is aware of and
8 understands such disclosure—

9 (i) the manner in which the insurer
10 and policy were selected;

11 (ii) the extent (if any) to which a per-
12 son independent of the insurer with exper-
13 tise in long-term care insurance analyzed
14 the advantages and disadvantages of such
15 policy from the standpoint of such individ-
16 uals (including such matters as the merits
17 of the policy compared to other available
18 benefit packages, and the financial stability
19 of the insurer), and the results of any such
20 analysis;

21 (iii) any organizational or financial
22 ties between the entity (or a related entity)
23 and the insurer (or a related entity);

24 (iv) the nature of compensation ar-
25 rangements (if any) and the amount of

1 compensation (including all fees, commis-
2 sions, and other forms of financial sup-
3 port) for the endorsement or sale of such
4 policy (which amount may be stated as a
5 percental of the total annual premiums
6 earned); and

7 (B) make available to such individuals, ei-
8 ther directly or through referrals, appropriate
9 counseling to assist such individuals to make
10 educated and informed decisions concerning the
11 purchase of such policies.

12 **SEC. 325. CONTINUATION, RENEWAL, REPLACEMENT, CON-**
13 **VERSION, AND CANCELLATION OF POLICIES.**

14 (a) IN GENERAL.—The Secretary, after considering
15 (where appropriate) recommendations of the NAIC, shall
16 promulgate regulations establishing requirements applica-
17 ble to the renewal, replacement, conversion, and cancella-
18 tion of long-term care insurance policies, which shall in-
19 clude at a minimum the requirements specified in this sec-
20 tion.

21 (b) INSURED'S RIGHT TO CANCEL DURING EXAM-
22 INATION PERIOD.—Each individual insured (or, if dif-
23 ferent, each individual liable for payment of premiums)
24 under a long-term care insurance policy shall have the un-
25 conditional right to return the policy within 30 days after

1 the date of its issuance and delivery, and to obtain a full
2 refund of any premium paid.

3 (c) INSURER'S RIGHT TO CANCEL (OR DENY BENE-
4 FITS) BASED ON FRAUD OR NONDISCLOSURE.—An in-
5 surer shall have the right to cancel a long-term care insur-
6 ance policy, or to refuse to pay a claim for benefits, based
7 on evidence that the insured falsely represented or failed
8 to disclose information material to the determination of
9 eligibility to purchase such insurance, but only if—

10 (1) the insurer presents written documentation,
11 developed at the time the insured applied for such
12 insurance, of the insurer's request for the informa-
13 tion thus withheld or misrepresented, and the in-
14 sured individual's response to such request;

15 (2) the insurer presents medical records or
16 other evidence showing that the insured individual
17 knew or should have known that such response was
18 false, incomplete, or misleading;

19 (3) notice of cancellation is furnished to the in-
20 sured individual before the date 3 years after the ef-
21 fective date of the policy (or such earlier date as the
22 Secretary may specify in regulations); and

23 (4) the insured individual is afforded the oppor-
24 tunity to review and refute the evidence presented by
25 the insurer pursuant to paragraphs (1) and (2).

1 (d) INSURER'S RIGHT TO CANCEL FOR
2 NONPAYMENT OF PREMIUMS.—

3 (1) IN GENERAL.—Insurers shall have the right
4 to cancel long-term care insurance policies for
5 nonpayment of premiums, subject to the provisions
6 of this subsection and subsection (e) (relating to
7 nonforfeiture).

8 (2) NOTICE AND ACKNOWLEDGEMENT.—

9 (A) IN GENERAL.—The insurer may not
10 cancel coverage of an insured individual until—

11 (i) the insurer, not earlier than the
12 date when such payment is 30 days past
13 due, has given written notice to the insured
14 individual (by registered letter or the
15 equivalent) of such intent, and

16 (ii) 30 days have elapsed since the in-
17 surer obtained written acknowledgment of
18 receipt of such notice from the insured in-
19 dividual (or the designated representative,
20 at the insured individual's option or in the
21 case of an insured individual determined to
22 be incapacitated in accordance with para-
23 graph (4)).

24 (B) ADDITIONAL REQUIREMENT FOR
25 GROUP POLICIES.—In the case of a group long-

1 term care insurance policy, the notice and ac-
2 knowledgement requirements of subparagraph
3 (A) apply with respect to the policyholder and
4 to each insured individual.

5 (3) REINSTATEMENT OF COVERAGE OF INCA-
6 PACITATED INDIVIDUALS.—In any case where the
7 coverage of an individual under a long-term care in-
8 surance policy has been canceled pursuant to para-
9 graph (2), the insurer shall be required to reinstate
10 full coverage of such individual under such policy,
11 retroactive to the effective date of cancellation, if the
12 insurer receives from such individual (or the des-
13 ignated representative of such individual), within 5
14 months after such date—

15 (A) evidence of a determination of such in-
16 dividual’s incapacitation in accordance with
17 paragraph (4) (whether made before or after
18 such date), and

19 (B) payment of all premiums due and past
20 due, and all charges for late payment.

21 (4) DETERMINATION OF INCAPACITATION.—For
22 purposes of this subsection, the term “determination
23 of incapacitation” means a determination by a quali-
24 fied health professional (in accordance with such re-
25 quirements as the Secretary may specify), that an

1 insured individual has suffered a cognitive impair-
2 ment which could reasonably be expected to render
3 the individual permanently unable to deal with busi-
4 ness or financial matters. The standard used to
5 make such determination shall not be more stringent
6 than the threshold conditions for the receipt of cov-
7 ered benefits.

8 (5) DESIGNATION OF REPRESENTATIVE.—The
9 insurer shall be required to notify the insured indi-
10 vidual, at the time of sale or issuance of a long-term
11 care insurance policy, of the individual's right to
12 designate a representative for purposes of commu-
13 nication with the insurer concerning premium pay-
14 ments in the event the insured individual cannot be
15 located or is incapacitated.

16 (e) NONFORFEITURE.—

17 (1) IN GENERAL.—The Secretary, after consid-
18 eration of recommendations by the NAIC, shall by
19 regulation require appropriate nonforfeiture benefits
20 to be offered with respect to each long-term care in-
21 surance policy that lapses for any reason (including
22 nonpayment of premiums, cancellation, or failure to
23 renew, but excluding lapses due to death) after re-
24 maining in effect beyond a specified minimum
25 period.

1 (2) NONFORFEITURE BENEFITS.—The stand-
2 ards established under this subsection shall require
3 that the amount or percentage of any such
4 nonforfeiture benefits shall increase proportionally
5 with the amount of premiums paid by a policyholder,
6 but shall not be required to exceed the asset share
7 remaining in the policy.

8 (f) CONTINUATION, RENEWAL, REPLACEMENT, AND
9 CONVERSION OF POLICIES.—

10 (1) IN GENERAL.—Insurers shall not be per-
11 mitted to cancel, or refuse to renew (or replace with
12 a substantial equivalent), any long-term care insur-
13 ance policy for any reason other than for fraud or
14 material misrepresentation (as provided in sub-
15 section (c)) or for nonpayment of premium (as pro-
16 vided in subsection (d)).

17 (2) DURATION AND RENEWAL OF POLICIES.—
18 Each long-term care insurance policy shall contain a
19 provision that clearly states—

20 (A) the duration of the policy,

21 (B) the right of the insured individual (or
22 policyholder) to renewal (or to replacement with
23 a substantial equivalent),

1 (C) the date by which, and the manner in
2 which, the option to renew must be exercised,
3 and

4 (D) any applicable restrictions or limita-
5 tions (which may not be inconsistent with the
6 requirements of this title).

7 (3) REPLACEMENT OF POLICIES.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), an insurer shall not be per-
10 mitted to sell any long-term care insurance pol-
11 icy as a replacement for another such policy un-
12 less coverage under such replacement policy is
13 available to an individual insured for benefits
14 covered under the previous policy to the same
15 extent as under such previous policy (including
16 every individual insured under a group policy)
17 on the date of termination of such previous pol-
18 icy, without exclusions or limitations that did
19 not apply under such previous policy.

20 (B) INSURED'S OPTION TO REDUCE COV-
21 ERAGE.—In any case where an insured individ-
22 ual covered under a long-term care insurance
23 policy knowingly and voluntarily elects to sub-
24 stitute for such policy a policy that provides less

1 coverage, substitute policy shall be considered a
2 replacement policy for purposes of this title.

3 (3) CONTINUATION AND CONVERSION RIGHTS
4 WITH RESPECT TO GROUP POLICIES.—

5 (A) IN GENERAL.—Insurers shall be re-
6 quired to include in each group long-term care
7 insurance policy, a provision affording to each
8 insured individual, when such policy would oth-
9 erwise terminate, the opportunity (at the insur-
10 er's option, subject to approval of the State in-
11 surance commissioner) either to continue or to
12 convert coverage under such policy in accord-
13 ance with this paragraph.

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

21 (C) CONTINUATION OF COVERAGE.—A
22 group policy shall be considered to meet the re-
23 quirements of this paragraph with respect to
24 rights of an insured individual to continuation
25 of coverage if coverage of the same (or substan-

1 tially equivalent) benefits for such individual
2 under such policy is maintained, subject only to
3 timely payment of premiums.

4 (D) CONVERSION OF COVERAGE.—A group
5 policy shall be considered to meet the require-
6 ments of this paragraph with respect to conver-
7 sion if it entitles each individual who has been
8 continuously covered under the policy for at
9 least 6 months before the date of the termi-
10 nation to issuance of a replacement policy pro-
11 viding benefits identical to, substantially equiva-
12 lent to, or in excess of, the benefits under such
13 terminated group policy—

14 (i) without requiring evidence of in-
15 surability with respect to benefits covered
16 under such previous policy, and

17 (ii) at premium rates no higher than
18 would apply if the insured individual had
19 initially obtained coverage under such re-
20 placement policy on the date such insured
21 individual initially obtained coverage under
22 such group policy.

23 (4) TREATMENT OF SUBSTANTIAL EQUIVA-
24 LENCE.—

1 (A) UNDER SECRETARY'S GUIDELINES.—
2 The Secretary, after considering recommenda-
3 tions by the NAIC, shall develop guidelines for
4 comparing long-term care insurance policies for
5 the purpose of determining whether benefits
6 under such policies are substantially equivalent.

7 (B) BEFORE EFFECTIVE DATE OF SEC-
8 RETARY'S GUIDELINES.—During the period
9 prior to the effective date of guidelines pub-
10 lished by the Secretary under this paragraph,
11 insurers shall comply with standards for deter-
12 minations of substantial equivalence established
13 by State insurance commissioners.

14 (5) ADDITIONAL REQUIREMENTS.—Insurers
15 shall comply with such other requirements relating
16 to continuation, renewal, replacement, and conver-
17 sion of long-term care insurance policies as the Sec-
18 retary may establish.

19 **SEC. 326. REQUIREMENTS RELATING TO PAYMENT OF BEN-**
20 **EFITS.**

21 (a) IN GENERAL.—The Secretary, after considering
22 (where appropriate) recommendations of the NAIC, shall
23 promulgate regulations establishing requirements with re-
24 spect to claims for and payment of benefits under long-

1 term care insurance policies, which shall include at a mini-
2 mum the requirements specified in this section.

3 (b) STANDARDS RELATING TO THRESHOLD CONDI-
4 TIONS FOR RECEIPT OF COVERED BENEFITS.—Each
5 long-term care insurance policy shall meet the following
6 requirements with respect to identification of, and deter-
7 mination of whether an insured individual meets, the
8 threshold conditions for receipt of benefits covered under
9 such policy:

10 (1) DECLARATION OF THRESHOLD CONDI-
11 TIONS.—

12 (A) IN GENERAL.—The policy shall specify
13 the level (or levels) of functional or cognitive
14 mental impairment (or combination of impair-
15 ments) required as a threshold condition of en-
16 titlement to receive benefits under the policy
17 (which threshold condition or conditions shall
18 be consistent with any regulations promulgated
19 by the Secretary pursuant to subsection (B)).

20 (B) SECRETARIAL RESPONSIBILITY.—The
21 Secretary (after considering the views of the
22 NAIC on current practices of insurers concern-
23 ing, and the appropriateness of standardizing,
24 threshold conditions) may promulgate such reg-
25 ulations as the Secretary finds appropriate es-

1 tablishing standardized thresholds to be used
2 under such policies as preconditions for varying
3 levels of benefits.

4 (2) INDEPENDENT PROFESSIONAL ASSESS-
5 MENT.—The policy shall provide for a procedure for
6 determining whether the threshold conditions speci-
7 fied under paragraph (1) have been met with respect
8 to an insured individual which—

9 (A) applies such uniform assessment
10 standards, procedures, and formats as the Sec-
11 retary may specify, after consideration of rec-
12 ommendations by the NAIC;

13 (B) permits an initial evaluation (or, if the
14 initial evaluation was performed by a qualified
15 independent assessor selected by the insurer, a
16 reevaluation) to be made by a qualified inde-
17 pendent assessor selected by the insured indi-
18 vidual (or designated representative) as to
19 whether the threshold conditions for receipt of
20 benefits have been met;

21 (C) permits the insurer the option to ob-
22 tain a reevaluation by a qualified independent
23 assessor selected and reimbursed by the insurer;

1 (D) provides that the insurer will consider
2 that the threshold conditions have been met in
3 any case where—

4 (i) the assessment under subpara-
5 graph (B) concluded that such conditions
6 had been met, and the insurer declined the
7 option under subparagraph (C), or

8 (ii) assessments under both subpara-
9 graphs (B) and (C) concluded that such
10 conditions had been met; and

11 (E) provides for final resolution of the
12 question by a State agency or other impartial
13 third party in any case where assessments
14 under subparagraphs (B) and (C) reach incon-
15 sistent conclusions.

16 (3) QUALIFIED INDEPENDENT ASSESSOR.—For
17 purposes of paragraph (2), the term “qualified inde-
18 pendent assessor” means a licensed or certified pro-
19 fessional, as appropriate, who—

20 (A) meets such standards with respect to
21 professional qualifications as may be established
22 by the Secretary, after consulting with the Sec-
23 retary of the Treasury, and

24 (B) has no significant or controlling finan-
25 cial interest in, is not an employee of, and does

1 not derive more than 5 percent of gross income
2 from, the insurer (or any provider of services
3 for which benefits are available under the policy
4 and in which the insurer has a significant or
5 controlling financial interest).

6 (c) REQUIREMENTS RELATING TO CLAIMS FOR BEN-
7 EFITS.—Insurers shall be required—

8 (1) to promptly pay or deny claims for benefits
9 submitted by (or on behalf of) insured individuals
10 who have been determined pursuant to subsection
11 (b) to meet the threshold conditions for payment of
12 benefits;

13 (2) to provide an explanation in writing of the
14 reasons for payment, partial payment, or denial of
15 each such claim; and

16 (3) to provide an administrative procedure
17 under which an insured individual may appeal the
18 denial of any claim.

19 **Subtitle C—Enforcement**

20 **SEC. 341. STATE PROGRAMS FOR ENFORCEMENT OF** 21 **STANDARDS.**

22 (a) REQUIREMENT FOR STATE PROGRAMS IMPLE-
23 MENTING FEDERAL STANDARDS.—In order for a State to
24 be eligible for grants under this subtitle, the State must
25 have in effect a program (including such laws and proce-

1 dures as may be necessary) for the regulation of long-term
2 care insurance which the Secretary has determined—

3 (1) includes the elements required under this
4 title, and

5 (2) is designed to ensure the compliance of
6 long-term care insurance policies sold in the State,
7 and insurers offering such policies and their agents,
8 with the requirements established pursuant to sub-
9 title B.

10 (b) ACTIVITIES UNDER STATE PROGRAM.—A State
11 program approved under this subtitle shall provide for the
12 following procedures and activities:

13 (1) MONITORING OF INSURERS AND POLI-
14 CIES.—Procedures for ongoing monitoring of the
15 compliance of insurers doing business in the State,
16 and of long-term care insurance policies sold in the
17 State, with requirements under this subtitle, includ-
18 ing at least the following:

19 (A) POLICY REVIEW AND CERTIFI-
20 CATION.—A program for review and certifi-
21 cation (and annual recertification) of each such
22 policy sold in the State.

23 (B) REPORTING BY INSURERS.—Require-
24 ments of annual reporting by insurers selling or
25 servicing long-term care insurance policies in

1 the State, in such form and containing such in-
2 formation as the State may require to deter-
3 mine whether the insurer (and policies) are in
4 compliance with requirements under this sub-
5 title.

6 (C) DATA COLLECTION.—Procedures for
7 collection, from insurers, service providers, in-
8 sured individuals, and others, of information re-
9 quired by the State for purposes of carrying out
10 its responsibilities under this subtitle (including
11 authority to compel compliance of insurers with
12 requests for such information).

13 (D) MARKETING OVERSIGHT.—Procedures
14 for monitoring (through sampling or other ap-
15 propriate procedures) the sales practices of in-
16 surers and agents, including review of market-
17 ing literature.

18 (E) OVERSIGHT OF ADMINISTRATION OF
19 BENEFITS.—Procedures for monitoring
20 (through sampling or other appropriate proce-
21 dures) insurers' administration of benefits, in-
22 cluding monitoring of—

23 (i) determinations of insured individ-
24 uals' eligibility to receive benefits, and

25 (ii) disposition of claims for payment.

1 (2) CONSUMER COMPLAINTS AND DISPUTE RES-
2 OLUTION.—Administrative procedures for the inves-
3 tigation and resolution of complaints by consumers,
4 and disputes between consumers and insurers, with
5 respect to long-term care insurance, including—

6 (A) procedures for the filing, investigation,
7 and adjudication of consumer complaints with
8 respect to the compliance of insurers and poli-
9 cies with requirements under this subtitle, or
10 other requirements under State law; and

11 (B) procedures for resolution of disputes
12 between insured individuals and insurers con-
13 cerning eligibility for, or the amount of, benefits
14 payable under such policies, and other issues
15 with respect to the rights and responsibilities of
16 insurers and insured individuals under such
17 policies.

18 (3) TECHNICAL ASSISTANCE TO INSURERS.—
19 Provision of technical assistance to insurers to help
20 them to understand and comply with the require-
21 ments of this subtitle, and other State laws, concern-
22 ing long-term care insurance policies and business
23 practices.

24 (c) STATE ENFORCEMENT AUTHORITIES.—A State
25 program meeting the requirements of this subtitle shall

1 ensure that the State insurance commissioner (or other
2 appropriate official or agency) has the following authority
3 with respect to long-term care insurers and policies:

4 (1) PROHIBITION OF SALE.—Authority to pro-
5 hibit the sale, or offering for sale, of any long-term
6 care insurance policy that fails to comply with all
7 applicable requirements under this subtitle.

8 (2) PLANS OF CORRECTION.—Authority, in
9 cases where the business practices of an insurer are
10 determined not to comply with requirements under
11 this subtitle, to require the insurer to develop, sub-
12 mit for State approval, and implement a plan of cor-
13 rection which must be fulfilled within the shortest
14 period possible (not to exceed a year) as a condition
15 of continuing to do business in the State.

16 (3) CORRECTIVE ACTION ORDERS.—Authority,
17 in cases where an insurer is determined to have
18 failed to comply with requirements of this subtitle,
19 or with the terms of a policy, with respect to a
20 consumer or insured individual, to direct the insurer
21 (subject to appropriate due process) to eliminate
22 such noncompliance within 30 days.

23 (4) CIVIL MONEY PENALTIES.—Authority to as-
24 sess civil money penalties, in amounts for each viola-

1 tive act up to the greater of \$10,000 or three times
2 the amount of any commission involved—

3 (A) for violations of subsections (d) (con-
4 cerning prohibited sales practices) and (e) (pro-
5 hibition on sale of duplicate benefits) of section
6 324,

7 (B) for such other violative acts as the
8 Secretary may specify in regulations, and

9 (C) in such other cases as the State finds
10 appropriate.

11 (5) OTHER AUTHORITIES.—Such other authori-
12 ties as the State finds necessary or appropriate to
13 enforce requirements under this subtitle.

14 (d) RECORDS, REPORTS, AND AUDITS.—As a condi-
15 tion of approval of its program under this subtitle, a State
16 must agree to maintain such records, make such reports
17 (including expenditure reports), and cooperate with such
18 audits, as the Secretary finds necessary to determine the
19 compliance of such State program (and insurers and poli-
20 cies regulated under such program) with the requirements
21 of this subtitle.

22 (e) SECRETARIAL RESPONSIBILITY FOR APPROVAL
23 OF STATE PROGRAMS.—The Secretary shall approve a
24 State program meeting the requirements of this subtitle.

1 **SEC. 342. AUTHORIZATION OF APPROPRIATIONS FOR**
2 **STATE PROGRAMS.**

3 There are authorized to be appropriated \$10,000,000
4 for fiscal year 1998, \$10,000,000 for fiscal year 1999,
5 \$7,500,000 for fiscal year 2000, and \$5,000,000 for fiscal
6 year 2001 and each succeeding fiscal year, for grants to
7 States with programs meeting the requirements of this
8 subtitle, to remain available until expended.

9 **SEC. 343. ALLOTMENTS TO STATES.**

10 The allotment for any fiscal year to a State with a
11 program approved under this subtitle shall be an amount
12 determined by the Secretary, taking into account the num-
13 bers of long-term care insurance policies sold, and of elder-
14 ly individuals residing, in the State, and such other factors
15 as the Secretary finds appropriate.

16 **SEC. 344. PAYMENTS TO STATES.**

17 (a) IN GENERAL.—Each State with a program ap-
18 proved under this subtitle shall be entitled to payment
19 under this subtitle for each fiscal year in an amount equal
20 to its allotment for such fiscal year, for expenditure by
21 such State for up to 50 percent of the cost of activities
22 under such program.

23 (b) STATE SHARE OF PROGRAM EXPENDITURES.—
24 No Federal funds from any source may be used as any
25 part of the non-Federal share of expenditures under the
26 State program under this subtitle.

1 (c) TRANSFER AND DEPOSIT REQUIREMENTS.—The
2 Secretary shall make payments under this section in ac-
3 cordance with section 6503 of title 31, United States
4 Code.

5 **SEC. 345. FEDERAL OVERSIGHT OF STATE ENFORCEMENT.**

6 (a) IN GENERAL.—The Secretary shall periodically
7 review State regulatory programs approved under section
8 341 to determine whether they continue to comply with
9 the requirements of this subtitle.

10 (b) NOTICE OF DETERMINATION OF NONCOMPLI-
11 ANCE.—The Secretary shall promptly notify the State of
12 a determination that a State program fails to comply with
13 this subtitle, specifying the requirement or requirements
14 not met and the elements of the State program requiring
15 correction.

16 (c) OPPORTUNITY FOR CORRECTION.—

17 (1) IN GENERAL.—The Secretary shall afford a
18 State notified of noncompliance pursuant to sub-
19 section (b) a reasonable opportunity to eliminate
20 such noncompliance.

21 (2) CORRECTION PLANS.—In a case where sub-
22 stantial corrections are needed to eliminate non-
23 compliance of a State program, the Secretary may—

24 (A) permit the State a reasonable time
25 after the date of the notice pursuant to sub-

1 section (b) to develop and obtain the Sec-
2 retary's approval of a correction plan, and

3 (B) permit the State a reasonable time
4 after the date of approval of such plan to elimi-
5 nate the noncompliance.

6 (d) WITHDRAWAL OF PROGRAM APPROVAL.—In the
7 case of a State that fails to eliminate noncompliance with
8 requirements under this subtitle by the date specified by
9 the Secretary pursuant to subsection (c), the Secretary
10 shall withdraw the approval of the State program pursu-
11 ant to section 341(e).

12 **Subtitle D—Recommendations for** 13 **Consumer Education Program**

14 **SEC. 361. RECOMMENDATIONS FOR CONSUMER EDU-** 15 **CATION PROGRAM.**

16 (a) DESIGN.—

17 (1) IN GENERAL.—The Secretary shall design
18 programs for educating consumers concerning long-
19 term care and long-term care insurance.

20 (2) GOALS.—The programs shall be designed to
21 achieve the goals of increasing consumers' under-
22 standing and awareness of options available to them
23 with respect to long-term care insurance (and alter-
24 natives, such as public long-term care programs), in-
25 cluding—

1 (A) the risk of needing long-term care;

2 (B) the costs associated with long-term
3 care services;

4 (C) the lack of long-term care coverage
5 under the Medicare program, Medicare supple-
6 mental (Medigap) policies, and standard private
7 health insurance;

8 (D) the limitations on (and conditions of
9 eligibility for) long-term care coverage under
10 State programs;

11 (E) the availability, and variations in cov-
12 erage and cost, of private long-term care insur-
13 ance;

14 (F) features common to many private long-
15 term care insurance policies; and

16 (G) pitfalls to avoid when purchasing a
17 long-term care insurance policy.

18 (3) ACTIVITIES.—The program may include—

19 (A) improving coordination of the activities
20 of State agencies and private entities;

21 (B) collecting, analyzing, publishing, and
22 disseminating information,

23 (C) conducting or sponsoring of consumer
24 education, outreach, and information programs,
25 and

1 (D) providing (directly or through referral)
2 counseling and consultation services to consum-
3 ers to assist them in choosing long-term care
4 insurance coverage appropriate to their cir-
5 cumstances.

6 (b) REPORT TO CONGRESS.—The Secretary shall
7 submit to Congress a specific legislative proposal to pro-
8 vide for the authorization of appropriations of Federal
9 funds to support the program design completed under sub-
10 section (a).

11 **TITLE IV—FINANCING**

12 **SEC. 401. PHASE IN OF 24-CENT/PACK INCREASE IN EXCISE** 13 **TAXES ON CIGARETTES.**

14 (a) CIGARETTES.—Subsection (b) of section 5701 of
15 the Internal Revenue Code of 1986 is amended—

16 (1) by striking “\$12 per thousand (\$10 per
17 thousand on cigarettes removed during 1991 or
18 1992)” in paragraph (1) and inserting “\$24 per
19 thousand (\$20 per thousand on cigarettes removed
20 during 1999, \$16 per thousand on cigarettes re-
21 moved during 1998)”, and

22 (2) by striking “\$25.20 per thousand (\$21 per
23 thousand on cigarettes removed during 1991 or
24 1992)” in paragraph (2) and inserting “\$50.40 per
25 thousand (\$42 per thousand on cigarettes removed

1 during 1999, \$33.60 per thousand on cigarettes re-
2 moved during 1998)”.
3

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to cigarettes removed after De-
6 cember 31, 1997.

7 (c) FLOOR STOCKS TAXES.—

8 (1) IMPOSITION OF TAX.—On cigarettes manu-
9 factured in or imported into the United States which
10 are removed before any tax-increase date and held
11 on such date for sale by any person, there shall be
12 imposed the following taxes:

13 (A) SMALL CIGARETTES.—On cigarettes,
14 weighing not more than 3 pounds per thousand,
15 \$4 per thousand.

16 (B) LARGE CIGARETTES.—On cigarettes
17 weighing more than 3 pounds per thousand,
18 \$8.40 per thousand; except that, if more than
19 6½ inches in length, they shall be taxable at
20 the rate prescribed for cigarettes weighing not
21 more than 3 pounds per thousand, counting
22 each 2¾ inches, or fraction thereof, of the
23 length of each as one cigarette.

24 (2) EXCEPTION FOR CERTAIN AMOUNTS OF
CIGARETTES.—

1 (A) IN GENERAL.—No tax shall be im-
2 posed by paragraph (1) on cigarettes held on
3 any tax-increase date by any person if—

4 (i) the aggregate number of cigarettes
5 held by such person on such date does not
6 exceed 30,000, and

7 (ii) such person submits to the Sec-
8 retary (at the time and in the manner re-
9 quired by the Secretary) such information
10 as the Secretary shall require for purposes
11 of this subparagraph.

12 For purposes of this subparagraph, in the case
13 of cigarettes measuring more than 6½ inches
14 in length, each 2¾ inches (or fraction thereof)
15 of the length of each shall be counted as one
16 cigarette.

17 (B) AUTHORITY TO EXEMPT CIGARETTES
18 HELD IN VENDING MACHINES.—To the extent
19 provided in regulations prescribed by the Sec-
20 retary, no tax shall be imposed by paragraph
21 (1) on cigarettes held for retail sale on any tax-
22 increase date by any person in any vending ma-
23 chine. If the Secretary provides such a benefit
24 with respect to any person, the Secretary may
25 reduce the 30,000 amount in subparagraph (A)

1 and the \$60 amount in paragraph (3) with re-
2 spect to such person.

3 (3) CREDIT AGAINST TAX.—Each person shall
4 be allowed as a credit against the taxes imposed by
5 paragraph (1) an amount equal to \$60. Such credit
6 shall not exceed the amount of taxes imposed by
7 paragraph (1) for which such person is liable.

8 (4) LIABILITY FOR TAX AND METHOD OF PAY-
9 MENT.—

10 (A) LIABILITY FOR TAX.—A person hold-
11 ing cigarettes on any tax-increase date to which
12 any tax imposed by paragraph (1) applies shall
13 be liable for such tax.

14 (B) METHOD OF PAYMENT.—The tax im-
15 posed by paragraph (1) shall be paid in such
16 manner as the Secretary shall prescribe by reg-
17 ulations.

18 (C) TIME FOR PAYMENT.—The tax im-
19 posed by paragraph (1) shall be paid on or be-
20 fore the 1st June 30 following the tax-increase
21 date.

22 (5) DEFINITIONS.—For purposes of this sub-
23 section—

1 (A) TAX-INCREASE DATE.—The term “tax-
2 increase date” means January 1, 1998, Janu-
3 ary 1, 1999, and January 1, 2000.

4 (B) OTHER DEFINITIONS.—Terms used in
5 this subsection which are also used in section
6 5702 of the Internal Revenue Code of 1986
7 shall have the respective meanings such terms
8 have in such section.

9 (C) SECRETARY.—The term “Secretary”
10 means the Secretary of the Treasury or his del-
11 egate.

12 (6) CONTROLLED GROUPS.—Rules similar to
13 the rules of section 5061(e)(3) of such Code shall
14 apply for purposes of this subsection.

15 (7) ARTICLES IN FOREIGN TRADE ZONES.—
16 Notwithstanding the Act of June 18, 1934 (48 Stat.
17 998, 19 U.S.C. 81a) and any other provision of law,
18 any article which is located in a foreign trade zone
19 on a tax-increase date shall be subject to the tax im-
20 posed by paragraph (1) if—

21 (A) internal revenue taxes have been deter-
22 mined, or customs duties liquidated, with re-
23 spect to such article before such date pursuant
24 to a request made under the 1st proviso of sec-
25 tion 3(a) of such Act, or

1 (B) such article is held on such date under
 2 the supervision of a customs officer pursuant to
 3 the 2d proviso of such section 3(a).

4 (8) OTHER LAWS APPLICABLE.—All provisions
 5 of law, including penalties, applicable with respect to
 6 the taxes imposed by section 5701 of such Code
 7 shall, insofar as applicable and not inconsistent with
 8 the provisions of this subsection, apply to the floor
 9 stocks taxes imposed by paragraph (1), to the same
 10 extent as if such taxes were imposed by such section
 11 5701.

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