

108TH CONGRESS  
2D SESSION

# H. R. 4432

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2004

Mrs. DAVIS of California (for herself and Mr. PAUL) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care Sup-  
5 port and Incentive Act of 2004”.

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

3 (a) IN GENERAL.—Part VII of subchapter B of chap-  
4 ter 1 of the Internal Revenue Code of 1986 (relating to  
5 additional itemized deductions) is amended by redesi-  
6 gnating section 224 as section 225 and by inserting after  
7 section 223 the following new section:

8 **“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-**  
9 **SURANCE CONTRACTS.**

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

18 “(b) APPLICABLE PERCENTAGE.—For purposes of  
19 subsection (a)—

20 “(1) AGE 65 OR OLDER.—In the case of an in-  
21 dividual who has attained age 65 as of the close of  
22 the taxable year, the applicable percentage shall be  
23 75 percent.

24 “(2) UNDER AGE 65.—In the case of an indi-  
25 vidual who has not attained age 65 as of the close

1 of the taxable year, the applicable percentage shall  
2 be 50 percent.

3 “(c) COORDINATION WITH OTHER PROVISIONS.—  
4 Any amount paid by a taxpayer for any qualified long-  
5 term care insurance contract to which subsection (a) ap-  
6 plies shall not be taken into account in computing the  
7 amount allowable to the taxpayer as a deduction under  
8 section 162(l) or 213(a). Premiums paid by the taxpayer  
9 shall not be taken into account under subsection (a) to  
10 the extent that an amount is not includible in gross income  
11 under section 220(f) or 223(f) with respect to such pay-  
12 ment.”.

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

16 (1) CAFETERIA PLANS.—Section 125(f) of the  
17 Internal Revenue Code of 1986 (defining qualified  
18 benefits) is amended by inserting before the period  
19 at the end “; except that such term shall include the  
20 payment of premiums for any qualified long-term  
21 care insurance contract (as defined in section  
22 7702B) to the extent the amount of such payment  
23 does not exceed the eligible long-term care premiums  
24 (as defined in section 213(d)(10)) for such con-  
25 tract”.

1           (2) FLEXIBLE SPENDING ARRANGEMENTS.—  
2           Section 106 of such Code (relating to contributions  
3           by an employer to accident and health plans) is  
4           amended by striking subsection (c).

5           (c) CONFORMING AMENDMENTS.—

6           (1) Section 62(a) of the Internal Revenue Code  
7           of 1986 is amended by inserting after paragraph  
8           (19) the following new item:

9           “(20) PREMIUMS ON QUALIFIED LONG-TERM  
10          CARE INSURANCE CONTRACTS.—The deduction al-  
11          lowed by section 224.”.

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

“224. Premiums on qualified long-term care insurance contracts.

“225. Cross reference.”.

16          (d) EFFECTIVE DATE.—The amendments made by  
17          this section shall apply to taxable years beginning after  
18          the date of the enactment of this Act.

19       **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**  
20                               **NEEDS.**

21          (a) IN GENERAL.—Subpart A of part IV of sub-  
22          chapter A of chapter 1 of the Internal Revenue Code of  
23          1986 (relating to nonrefundable personal credits) is

1 amended by inserting after section 25B the following new  
2 section:

3 **“SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM**  
4 **CARE NEEDS.**

5 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
6 lowed as a credit against the tax imposed by this chapter  
7 for the taxable year an amount equal to \$4,000 multiplied  
8 by the number of applicable individuals with respect to  
9 whom the taxpayer is an eligible caregiver for the taxable  
10 year.

11 “(b) LIMITATIONS AND ADJUSTMENTS.—

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

21 “(2) THRESHOLD AMOUNT.—For purposes of  
22 paragraph (1), the term ‘threshold amount’ means—

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

25 “(B) \$75,000 in any other case.

1           “(3) INDEXING.—In the case of any taxable  
2 year beginning in a calendar year after 2004, each  
3 dollar amount contained in paragraph (2) shall be  
4 increased by an amount equal to the product of—

5                   “(A) such dollar amount, and

6                   “(B) the medical care cost adjustment de-  
7 termined under section 213(d)(10)(B)(ii) for  
8 the calendar year in which the taxable year be-  
9 gins, determined by substituting ‘August of  
10 2003’ for ‘August of 1996’ in subclause (II)  
11 thereof.

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

15           “(4) APPLICATION WITH OTHER CREDITS.—

16           The credit allowed by subsection (a) for any taxable  
17 year shall not exceed the excess of—

18                   “(A) the sum of the regular tax liability  
19 (as defined in section 26(b)) plus the tax im-  
20 posed by section 55, over

21                   “(B) the sum of the credits allowable  
22 under this subpart (other than this section) and  
23 section 27 for the taxable year.

24           “(c) DEFINITIONS.—For purposes of this section—

25                   “(1) APPLICABLE INDIVIDUAL.—

1           “(A) IN GENERAL.—The term ‘applicable  
2 individual’ means, with respect to any taxable  
3 year, any individual—

4                   “(i) who has attained age 65, and

5                   “(ii) who has been certified, before the  
6 due date for filing the return of tax for the  
7 taxable year (without extensions), by a  
8 physician (as defined in section 1861(r)(1)  
9 of the Social Security Act) as being an in-  
10 dividual with long-term care needs de-  
11 scribed in subparagraph (B) for a period—

12                           “(I) which is at least 180 con-  
13 secutive days, and

14                           “(II) a portion of which occurs  
15 within the taxable year.

16           Such term shall not include any individual oth-  
17 erwise meeting the requirements of the pre-  
18 ceding sentence unless within the 39½ month  
19 period ending on such due date (or such other  
20 period as the Secretary prescribes) a physician  
21 (as so defined) has certified that such indi-  
22 vidual meets such requirements.

23           “(B) INDIVIDUALS WITH LONG-TERM CARE  
24 NEEDS.—An individual is described in this sub-  
25 paragraph if the individual is unable to perform

1 (without substantial assistance from another in-  
2 dividual) at least 2 activities of daily living (as  
3 defined in section 7702B(c)(2)(B)) due to a  
4 loss of functional capacity.

5 “(2) ELIGIBLE CAREGIVER.—

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

9 “(i) The taxpayer.

10 “(ii) The taxpayer’s spouse.

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

14 “(iv) An individual who would be de-  
15 scribed in clause (iii) for the taxable year  
16 if section 151(c)(1)(A) were applied by  
17 substituting for the exemption amount an  
18 amount equal to the sum of the exemption  
19 amount, the standard deduction under sec-  
20 tion 63(c)(2)(C), and any additional stand-  
21 ard deduction under section 63(c)(3) which  
22 would be applicable to the individual if  
23 clause (iii) applied.

1           “(v) An individual who would be de-  
2           scribed in clause (iii) for the taxable year  
3           if—

4                   “(I) the requirements of clause  
5                   (iv) are met with respect to the indi-  
6                   vidual, and

7                   “(II) the requirements of sub-  
8                   paragraph (B) are met with respect to  
9                   the individual in lieu of the support  
10                  test of section 152(a).

11           “(B) RESIDENCY TEST.—The require-  
12           ments of this subparagraph are met if an indi-  
13           vidual has as his principal place of abode the  
14           home of the taxpayer and—

15                   “(i) in the case of an individual who  
16                   is an ancestor or descendant of the tax-  
17                   payer or the taxpayer’s spouse, is a mem-  
18                   ber of the taxpayer’s household for over  
19                   half the taxable year, or

20                   “(ii) in the case of any other indi-  
21                   vidual, is a member of the taxpayer’s  
22                   household for the entire taxable year.

23           “(C) SPECIAL RULES WHERE MORE THAN  
24           1 ELIGIBLE CAREGIVER.—

1           “(i) IN GENERAL.—If more than 1 in-  
2           dividual is an eligible caregiver with re-  
3           spect to the same applicable individual for  
4           taxable years ending with or within the  
5           same calendar year, a taxpayer shall be  
6           treated as the eligible caregiver if each  
7           such individual (other than the taxpayer)  
8           files a written declaration (in such form  
9           and manner as the Secretary may pre-  
10          scribe) that such individual will not claim  
11          such applicable individual for the credit  
12          under this section.

13           “(ii) NO AGREEMENT.—If each indi-  
14          vidual required under clause (i) to file a  
15          written declaration under clause (i) does  
16          not do so, the individual with the highest  
17          modified adjusted gross income (as defined  
18          in section 32(c)(5)) shall be treated as the  
19          eligible caregiver.

20           “(iii) MARRIED INDIVIDUALS FILING  
21          SEPARATELY.—In the case of married indi-  
22          viduals filing separately, the determination  
23          under this subparagraph as to whether the  
24          husband or wife is the eligible caregiver  
25          shall be made under the rules of clause (ii)

1 (whether or not one of them has filed a  
2 written declaration under clause (i)).

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

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

15 “(f) CARRYFORWARD OF UNUSED CREDIT.—If the  
16 credit allowable under subsection (a) exceeds the limita-  
17 tion imposed by subsection (b)(4) for the taxable year,  
18 such excess shall be carried to the succeeding taxable year  
19 and added to the credit allowable under subsection (a) for  
20 such taxable year.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 6213(g)(2) of the Internal Revenue  
23 Code of 1986 is amended by striking “and” at the  
24 end of subparagraph (L), by striking the period at  
25 the end of subparagraph (M) and inserting “, and”,

1 and by inserting after subparagraph (M) the fol-  
2 lowing new subparagraph:

3 “(N) an omission of a correct TIN or phy-  
4 sician identification required under section  
5 25C(d) (relating to credit for taxpayers with  
6 long-term care needs) to be included on a re-  
7 turn.”.

8 (2) Section 23(b)(4) is amended by striking  
9 “this section” and inserting “this section and section  
10 25C”.

11 (3) Section 24(b)(3)(B) is amended by striking  
12 “23 and 25B” and inserting “23, 25B, and 25C”.

13 (4) Section 25(e)(1)(C) is amended by inserting  
14 “25C,” after “25B,”.

15 (5) Section 26(a)(1) is amended by striking  
16 “and 25B” and inserting “, 25B, and 25C”.

17 (6) Section 904(h) is amended by striking “and  
18 25B” and inserting “, 25B, and 25C”.

19 (7) Section 1400C(d) is amended by striking  
20 “and 25B” and inserting “, 25B, and 25C”.

21 (8) The table of sections for subpart A of part  
22 IV of subchapter A of chapter 1 of such Code is  
23 amended by inserting after the item relating to sec-  
24 tion 25B the following new item:

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

1           (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

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

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

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

14                               “(i) MODEL REGULATION.—The fol-  
15 lowing requirements of the model regula-  
16 tion:

17                                       “(I) Section 6A (relating to guar-  
18 anteed renewal or noncancellability),  
19 and the requirements of section 6B of  
20 the model Act relating to such section  
21 6A.

22                                       “(II) Section 6B (relating to pro-  
23 hibitions on limitations and exclu-  
24 sions).

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

3 “(IV) Section 6D (relating to  
4 continuation or conversion of cov-  
5 erage).

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

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

11 “(VII) Section 8 (relating to dis-  
12 closure), other than section 8F there-  
13 of.

14 “(VIII) Section 11 (relating to  
15 prohibitions against post-claims un-  
16 derwriting).

17 “(IX) Section 12 (relating to  
18 minimum standards).

19 “(X) Section 25 (relating to pro-  
20 hibition against preexisting conditions  
21 and probationary periods in replace-  
22 ment policies or certificates).

23 “(XI) The provisions of section  
24 26 relating to contingent nonforfeiture  
25 benefits, if the policyholder declines

1 the offer of a nonforfeiture provision  
2 described in paragraph (4).

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

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

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

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

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

16 “(i) MODEL PROVISIONS.—The terms  
17 ‘model regulation’ and ‘model Act’ mean  
18 the long-term care insurance model regula-  
19 tion, and the long-term care insurance  
20 model Act, respectively, promulgated by  
21 the National Association of Insurance  
22 Commissioners (as adopted as of October  
23 2000).

24 “(ii) COORDINATION.—Any provision  
25 of the model regulation or model Act listed

1 under clause (i) or (ii) of subparagraph  
2 (A) shall be treated as including any other  
3 provision of such regulation or Act nec-  
4 essary to implement the provision.

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

11 (b) EXCISE TAX.—Paragraph (1) of section  
12 4980C(c) of such Code (relating to requirements of model  
13 provisions) is amended to read as follows:

14 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

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

18 “(i) Section 9 (relating to required  
19 disclosure of rating practices to con-  
20 sumer).”

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

23 “(iii) Section 15 (relating to reporting  
24 requirements), except that the issuer shall  
25 also report at least annually the number of

1 claims denied during the reporting period  
2 for each class of business (expressed as a  
3 percentage of claims denied), other than  
4 claims denied for failure to meet the wait-  
5 ing period or because of any applicable  
6 preexisting condition.

7 “(iv) Section 22 (relating to filing re-  
8 quirements for advertising).

9 “(v) Section 23 (relating to standards  
10 for marketing), including inaccurate com-  
11 pletion of medical histories, other than  
12 paragraphs (1), (6), and (9) of section  
13 23C, except that—

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

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

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

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

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

7 The requirements referred to in clause (vi) shall not in-  
8 clude those portions of the personal worksheet described  
9 in Appendix B relating to consumer protection require-  
10 ments not imposed by section 4980C or 7702B.

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

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

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

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

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

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

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

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

7                   (c) ADDITIONAL PROTECTIONS.—

8                   (1) IN GENERAL.—Paragraph (1) of section  
9                   7702B(g) of such Code (relating to consumer pro-  
10                  tection provisions) is amended by striking “and” at  
11                  the end of subparagraph (B), by striking the period  
12                  at the end of subparagraph (C) and inserting a  
13                  comma, and by adding at the end the following new  
14                  subparagraphs:

15                  “(D) the inflation protection requirement  
16                  of paragraph (5),

17                  “(E) the lifetime deductible requirement of  
18                  paragraph (6),

19                  “(F) the interchangeability requirement of  
20                  paragraph (7), and

21                  “(G) the care management/care coordina-  
22                  tion requirement of paragraph (8).”

23                  (2) REQUIREMENTS.—Subsection (g) of section  
24                  7702B of such Code is amended by redesignating

1 paragraph (5) as paragraph (9) and by inserting  
2 after paragraph (4) the following new paragraphs:

3 “(5) INFLATION PROTECTION REQUIREMENT.—

4 The requirement of this paragraph is met if the con-  
5 tract provides for benefit levels to rise at a rate  
6 which is meaningful to account for reasonably antici-  
7 pated increases in the cost of long-term care services  
8 covered by the contract.

9 “(6) LIFETIME DEDUCTIBLE REQUIREMENT.—

10 The requirement of this paragraph is met if the con-  
11 tract requires that no more than 1 deductible  
12 amount applies for all benefits provided during the  
13 entire lifetime of the covered individual.

14 “(7) INTERCHANGEABILITY REQUIREMENT.—

15 The requirement of this paragraph is met if the pol-  
16 icyholder has the sole discretion to designate how  
17 any maximum benefit amount under the contract is  
18 allocated among the benefits provided under the con-  
19 tract.

20 “(8) CARE MANAGEMENT/CARE COORDINATION  
21 REQUIREMENT.—

22 “(A) IN GENERAL.—The requirement of  
23 this paragraph is met if the contract requires  
24 that the covered individual is assigned a care  
25 manager/coordinator.

1           “(B) CARE MANAGER/COORDINATOR.—For  
2           purposes of subparagraph (A), the term ‘care  
3           manager/coordinator’ means an individual who,  
4           either alone or as part of a team, is responsible  
5           for performing assessments and reassessments,  
6           developing plans of care, coordinating the provi-  
7           sion of care, and monitoring the delivery of  
8           services.”

9           (d) EFFECTIVE DATE.—The amendments made by  
10          this section shall apply to policies issued more than 1 year  
11          after the date of the enactment of this Act.

○