

108TH CONGRESS  
1ST SESSION

# S. 1335

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 SENATE OF THE UNITED STATES

JUNE 25, 2003

Mr. GRASSLEY (for himself, Mr. GRAHAM of Florida, Ms. MIKULSKI, and Mr. BREAUX) introduced the following bill; which was read twice and referred to the Committee on Finance

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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 and  
5 Retirement Security Act of 2003”.

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 223 as section 224 and by inserting after  
 7 section 222 the following new section:

8 **“SEC. 223. 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 taxpayer’s spouse and dependents under a quali-  
 16 fied long-term care insurance contract (as defined in sec-  
 17 tion 7702B(b)).

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

20 “(1) IN GENERAL.—Except as otherwise pro-  
 21 vided in this subsection, the applicable percentage  
 22 shall be determined in accordance with the following  
 23 table based on the number of years of continuous  
 24 coverage (as of the close of the taxable year) of the  
 25 individual under any qualified long-term care insur-  
 26 ance contracts (as defined in section 7702B(b)):

<b>“If the number of years of continuous coverage is—</b>	<b>The applicable percentage is—</b>
Less than 1 .....	60
At least 1 but less than 2 .....	70
At least 2 but less than 3 .....	80
At least 3 but less than 4 .....	90
At least 4 .....	100.

1           “(2) SPECIAL RULES FOR INDIVIDUALS WHO  
2           HAVE ATTAINED AGE 55.—In the case of an indi-  
3           vidual who has attained age 55 as of the close of the  
4           taxable year, the following table shall be substituted  
5           for the table in paragraph (1):

<b>“If the number of years of continuous coverage is—</b>	<b>The applicable percentage is—</b>
Less than 1 .....	70
At least 1 but less than 2 .....	85
At least 2 .....	100.

6           “(3) ONLY COVERAGE AFTER 2003 TAKEN INTO  
7           ACCOUNT.—Only coverage for periods after Decem-  
8           ber 31, 2003, shall be taken into account under this  
9           subsection.

10           “(4) CONTINUOUS COVERAGE.—An individual  
11           shall not fail to be treated as having continuous cov-  
12           erage if the aggregate breaks in coverage during any  
13           1-year period are less than 60 days.

14           “(c) COORDINATION WITH OTHER DEDUCTIONS.—  
15           Any amount paid by a taxpayer for any qualified long-  
16           term care insurance contract to which subsection (a) ap-  
17           plies shall not be taken into account in computing the  
18           amount allowable to the taxpayer as a deduction under  
19           section 162(l) or 213(a).”.

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

4 (1) CAFETERIA PLANS.—Section 125(f) of the  
5 Internal Revenue Code of 1986 (defining qualified  
6 benefits) is amended by inserting before the period  
7 at the end “, except that such term shall include the  
8 payment of premiums for any qualified long-term  
9 care insurance contract (as defined in section  
10 7702B) to the extent the amount of such payment  
11 does not exceed the eligible long-term care premiums  
12 (as defined in section 213(d)(10)) for such con-  
13 tract”.

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

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 62(a) of the Internal Revenue Code  
20 of 1986 is amended by inserting after paragraph  
21 (18) the following new paragraph:

22 “(19) PREMIUMS ON QUALIFIED LONG-TERM  
23 CARE INSURANCE CONTRACTS.—The deduction al-  
24 lowed by section 223.”.

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

“Sec. 223. Premiums on qualified long-term care insurance con-  
 tracts.  
 “Sec. 224. Cross reference.”.

5 (d) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-  
 7 graph (2), the amendments made by this section  
 8 shall apply to taxable years beginning after Decem-  
 9 ber 31, 2003.

10 (2) CAFETERIA PLANS AND FLEXIBLE SPEND-  
 11 ING ARRANGEMENTS.—The amendments made by  
 12 subsection (b) shall apply to taxable years beginning  
 13 after December 31, 2004.

14 **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**  
 15 **NEEDS.**

16 (a) IN GENERAL.—Subpart A of part IV of sub-  
 17 chapter A of chapter 1 of the Internal Revenue Code of  
 18 1986 (relating to nonrefundable personal credits) is  
 19 amended by inserting after section 25B the following new  
 20 section:

21 **“SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM**  
 22 **CARE NEEDS.**

23 **“(a) ALLOWANCE OF CREDIT.—**

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

7           “(2) APPLICABLE CREDIT AMOUNT.—For pur-  
 8           poses of paragraph (1), the applicable credit amount  
 9           shall be determined in accordance with the following  
 10          table:

<b>“For taxable years beginning in calendar year—</b>	<b>The applicable credit amount is—</b>
2004 .....	\$1,000
2005 .....	1,500
2006 .....	2,000
2007 .....	2,500
2008 or thereafter .....	3,000.

11          “(b) LIMITATION BASED ON ADJUSTED GROSS IN-  
 12          COME.—

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

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

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

5           “(B) \$75,000 in any other case.

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

10           “(A) such dollar amount, and

11           “(B) the medical care cost adjustment de-  
12 termined under section 213(d)(10)(B)(ii) for  
13 the calendar year in which the taxable year be-  
14 gins, determined by substituting ‘2003’ for  
15 ‘1996’ in subclause (II) thereof.

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

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

20           “(1) APPLICABLE INDIVIDUAL.—

21           “(A) IN GENERAL.—The term ‘applicable  
22 individual’ means, with respect to any taxable  
23 year, any individual who has been certified, be-  
24 fore the due date for filing the return of tax for  
25 the taxable year (without extensions), by a phy-

1           sician (as defined in section 1861(r)(1) of the  
2           Social Security Act) as being an individual with  
3           long-term care needs described in subparagraph  
4           (B) for a period—

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

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

9           Notwithstanding the preceding sentence, a cer-  
10          tification shall not be treated as valid unless it  
11          is made within the 39½ month period ending  
12          on such due date (or such other period as the  
13          Secretary prescribes).

14          “(B) INDIVIDUALS WITH LONG-TERM CARE  
15          NEEDS.—An individual is described in this sub-  
16          paragraph if the individual meets any of the fol-  
17          lowing requirements:

18                   “(i) The individual is at least 6 years  
19                   of age and—

20                           “(I) is unable to perform (with-  
21                           out substantial assistance from an-  
22                           other individual) at least 3 activities  
23                           of daily living (as defined in section  
24                           7702B(c)(2)(B)) due to a loss of  
25                           functional capacity, or



1                   “(II) requires substantial super-  
2 vision to protect such individual from  
3 threats to health and safety due to se-  
4 vere cognitive impairment and is un-  
5 able to perform, without reminding or  
6 cuing assistance, at least 1 activity of  
7 daily living (as so defined), or to the  
8 extent provided in regulations pre-  
9 scribed by the Secretary (in consulta-  
10 tion with the Secretary of Health and  
11 Human Services), is unable to engage  
12 in age appropriate activities.

13                   “(ii) The individual is at least 2 but  
14 not 6 years of age and is unable due to a  
15 loss of functional capacity to perform  
16 (without substantial assistance from an-  
17 other individual) at least 2 of the following  
18 activities: eating, transferring, or mobility.

19                   “(iii) The individual is under 2 years  
20 of age and requires specific durable med-  
21 ical equipment by reason of a severe health  
22 condition or requires a skilled practitioner  
23 trained to address the individual’s condi-  
24 tion to be available if the individual’s par-  
25 ents or guardians are absent.

1 “(2) ELIGIBLE CAREGIVER.—

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

5 “(i) The taxpayer.

6 “(ii) The taxpayer’s spouse.

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

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

20 “(v) An individual who would be de-  
21 scribed in clause (iii) for the taxable year  
22 if—

23 “(I) the requirements of clause  
24 (iv) are met with respect to the indi-  
25 vidual, and

1                   “(II) the requirements of sub-  
2                   paragraph (B) are met with respect to  
3                   the individual in lieu of the support  
4                   test of section 152(a).

5                   “(B) RESIDENCY TEST.—The require-  
6                   ments of this subparagraph are met if an indi-  
7                   vidual has as his principal place of abode the  
8                   home of the taxpayer and—

9                   “(i) in the case of an individual who  
10                  is an ancestor or descendant of the tax-  
11                  payer or the taxpayer’s spouse, is a mem-  
12                  ber of the taxpayer’s household for over  
13                  half the taxable year, or

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

17                  “(C) SPECIAL RULES WHERE MORE THAN  
18                  1 ELIGIBLE CAREGIVER.—

19                  “(i) IN GENERAL.—If more than 1 in-  
20                  dividual is an eligible caregiver with re-  
21                  spect to the same applicable individual for  
22                  taxable years ending with or within the  
23                  same calendar year, a taxpayer shall be  
24                  treated as the eligible caregiver if each  
25                  such individual (other than the taxpayer)

1 files a written declaration (in such form  
2 and manner as the Secretary may pre-  
3 scribe) that such individual will not claim  
4 such applicable individual for the credit  
5 under this section.

6 “(ii) NO AGREEMENT.—If each indi-  
7 vidual required under clause (i) to file a  
8 written declaration under clause (i) does  
9 not do so, the individual with the highest  
10 modified adjusted gross income (as defined  
11 in section 32(c)(5)) shall be treated as the  
12 eligible caregiver.

13 “(iii) MARRIED INDIVIDUALS FILING  
14 SEPARATELY.—In the case of married indi-  
15 viduals filing separately, the determination  
16 under this subparagraph as to whether the  
17 husband or wife is the eligible caregiver  
18 shall be made under the rules of clause (ii)  
19 (whether or not one of them has filed a  
20 written declaration under clause (i)).

21 “(d) IDENTIFICATION REQUIREMENT.—No credit  
22 shall be allowed under this section to a taxpayer with re-  
23 spect to any applicable individual unless the taxpayer in-  
24 cludes the name and taxpayer identification number of  
25 such individual, and the identification number of the phy-

1 sician certifying such individual, on the return of tax for  
2 the taxable year.

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

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 6213(g)(2) of the Internal Revenue  
10 Code of 1986 is amended by striking “and” at the  
11 end of subparagraph (L), by striking the period at  
12 the end of subparagraph (M) and inserting “, and”,  
13 and by inserting after subparagraph (M) the fol-  
14 lowing new subparagraph:

15 “(N) an omission of a correct TIN or phy-  
16 sician identification required under section  
17 25C(d) (relating to credit for taxpayers with  
18 long-term care needs) to be included on a re-  
19 turn.”.

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

“Sec. 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 December 31, 2003.

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 13 (relating to re-  
20                  quirement to offer inflation protec-  
21                  tion), except that any requirement for  
22                  a signature on a rejection of inflation  
23                  protection shall permit the signature  
24                  to be on an application or on a sepa-  
25                  rate form.

1                   “(XI) Section 25 (relating to pro-  
2                   hibition against preexisting conditions  
3                   and probationary periods in replace-  
4                   ment policies or certificates).

5                   “(XII) The provisions of section  
6                   26 relating to contingent nonforfeiture  
7                   benefits, if the policyholder declines  
8                   the offer of a nonforfeiture provision  
9                   described in paragraph (4).

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

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

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

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

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

23                   “(i) MODEL PROVISIONS.—The terms  
24                   ‘model regulation’ and ‘model Act’ mean  
25                   the long-term care insurance model regula-



1           tion, and the long-term care insurance  
2           model Act, respectively, promulgated by  
3           the National Association of Insurance  
4           Commissioners (as adopted as of Sep-  
5           tember 2000).

6           “(ii) COORDINATION.—Any provision  
7           of the model regulation or model Act listed  
8           under clause (i) or (ii) of subparagraph  
9           (A) shall be treated as including any other  
10          provision of such regulation or Act nec-  
11          essary to implement the provision.

12          “(iii) DETERMINATION.—For pur-  
13          poses of this section and section 4980C,  
14          the determination of whether any require-  
15          ment of a model regulation or the model  
16          Act has been met shall be made by the  
17          Secretary.”.

18          (b) EXCISE TAX.—Paragraph (1) of section  
19          4980C(c) of the Internal Revenue Code of 1986 (relating  
20          to requirements of model provisions) is amended to read  
21          as follows:

22                 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

23                         “(A) MODEL REGULATION.—The following  
24                         requirements of the model regulation must be  
25                         met:

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

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

5 “(iii) Section 15 (relating to reporting  
6 requirements), except that the issuer shall  
7 also report at least annually the number of  
8 claims denied during the reporting period  
9 for each class of business (expressed as a  
10 percentage of claims denied), other than  
11 claims denied for failure to meet the wait-  
12 ing period or because of any applicable  
13 preexisting condition.

14 “(iv) Section 22 (relating to filing re-  
15 quirements for marketing).

16 “(v) Section 23 (relating to standards  
17 for marketing), including inaccurate com-  
18 pletion of medical histories, other than  
19 paragraphs (1), (6), and (9) of section  
20 23C, except that—

21 “(I) in addition to such require-  
22 ments, no person shall, in selling or  
23 offering to sell a qualified long-term  
24 care insurance contract, misrepresent  
25 a material fact; and

1                   “(II) no such requirements shall  
2                   include a requirement to inquire or  
3                   identify whether a prospective appli-  
4                   cant or enrollee for long-term care in-  
5                   surance has accident and sickness in-  
6                   surance.

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

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

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

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

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

20                  “(i) Section 6F (relating to right to  
21                  return), except that such section shall also  
22                  apply to denials of applications and any re-  
23                  fund shall be made within 30 days of the  
24                  return or denial.

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

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

5                   “(iv) Section 6I (relating to policy  
6 summary).

7                   “(v) Section 6J (relating to monthly  
8 reports on accelerated death benefits).

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

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

15                   (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to policies issued more than 1 year  
17 after the date of the enactment of this Act.

○