

109TH CONGRESS
1ST SESSION

S. 1244

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.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2005

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

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 2005”.

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 redesign-
 6 nating 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 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), the applicable percentage shall be deter-
 20 mined in accordance with the following table:

For taxable years beginning in calendar year—	The ap- plicable percent- age is—
2005, 2006, or 2007	25
2008	35
2009	65
2010 or thereafter	100.

21 “(c) COORDINATION WITH OTHER DEDUCTIONS.—
 22 Any amount paid by a taxpayer for any qualified long-

1 term care insurance contract to which subsection (a) ap-
 2 plies shall not be taken into account in computing the
 3 amount allowable to the taxpayer as a deduction under
 4 section 162(l) or 213(a).”.

5 (b) LONG-TERM CARE INSURANCE PERMITTED TO
 6 BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE
 7 SPENDING ARRANGEMENTS.—

8 (1) CAFETERIA PLANS.—The last sentence of
 9 section 125(f) of such Code (defining qualified bene-
 10 fits) is amended by inserting before the period at the
 11 end “; except that such term shall include the pay-
 12 ment of premiums for any qualified long-term care
 13 insurance contract (as defined in section 7702B) to
 14 the extent the amount of such payment does not ex-
 15 ceed the eligible long-term care premiums (as de-
 16 fined in section 213(d)(10)) for such contract”.

17 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
 18 Section 106 of such Code (relating to contributions
 19 by an employer to accident and health plans) is
 20 amended by striking subsection (c) and redesign-
 21 ating subsection (d) as subsection (c).

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 62(a) of such Code is amended by
 24 inserting before the last sentence at the end the fol-
 25 lowing new paragraph:

1 “(21) PREMIUMS ON QUALIFIED LONG-TERM
2 CARE INSURANCE CONTRACTS.—The deduction al-
3 lowed by section 224.”.

4 (2) Sections 223(b)(4)(B), 223(d)(4)(C),
5 223(f)(3)(B), 3231(e)(11), 3306(b)(18),
6 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of
7 such Code are each amended by striking “section
8 106(d)” and inserting “section 106(c)”.

9 (3) Section 6041 of such Code is amended—

10 (A) in subsection (f)(1) by striking “(as
11 defined in section 106(c)(2))”, and

12 (B) by adding at the end the following new
13 subsection:

14 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-
15 FINED.—For purposes of this section, a flexible spending
16 arrangement is a benefit program which provides employ-
17 ees with coverage under which—

18 “(1) specified incurred expenses may be reim-
19 bursed (subject to reimbursement maximums and
20 other reasonable conditions), and

21 “(2) the maximum amount of reimbursement
22 which is reasonably available to a participant for
23 such coverage is less than 500 percent of the value
24 of such coverage.

1 In the case of an insured plan, the maximum amount rea-
 2 sonably available shall be determined on the basis of the
 3 underlying coverage.”.

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

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

“Sec. 225. Cross reference.”.

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the amendments made by this section
 11 shall apply to taxable years beginning after Decem-
 12 ber 31, 2004.

13 (2) CAFETERIA PLANS AND FLEXIBLE SPEND-
 14 ING ARRANGEMENTS.—The amendments made by
 15 subsection (b) shall apply to taxable years beginning
 16 after December 31, 2006.

17 **SEC. 3. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**
 18 **NEEDS.**

19 (a) IN GENERAL.—Subpart A of part IV of sub-
 20 chapter A of chapter 1 of the Internal Revenue Code of
 21 1986 (relating to nonrefundable personal credits) is
 22 amended by inserting after section 25B the following new
 23 section:

1 **“SEC. 25C. CREDIT FOR TAXPAYERS WITH LONG-TERM**
 2 **CARE NEEDS.**

3 “(a) ALLOWANCE OF CREDIT.—

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

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

For taxable years beginning in calendar year—	The ap- plicable credit amount is—
2005	\$1,000
2006	1,500
2007	2,000
2008	2,500
2009 or thereafter	3,000.

14 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
 15 COME.—

16 “(1) IN GENERAL.—The amount of the credit
 17 allowable under subsection (a) shall be reduced (but
 18 not below zero) by \$100 for each \$1,000 (or fraction
 19 thereof) by which the taxpayer’s modified adjusted
 20 gross income exceeds the threshold amount. For
 21 purposes of the preceding sentence, the term ‘modi-

1 fied adjusted gross income’ means adjusted gross in-
 2 come increased by any amount excluded from gross
 3 income under section 911, 931, or 933.

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

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

8 “(B) \$75,000 in any other case.

9 “(3) INDEXING.—In the case of any taxable
 10 year beginning in a calendar year after 2005, each
 11 dollar amount contained in paragraph (2) shall be
 12 increased by an amount equal to the product of—

13 “(A) such dollar amount, and

14 “(B) the medical care cost adjustment de-
 15 termined under section 213(d)(10)(B)(ii) for
 16 the calendar year in which the taxable year be-
 17 gins, determined by substituting ‘August 2004’
 18 for ‘August 1996’ in subclause (II) thereof.

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

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

23 “(1) APPLICABLE INDIVIDUAL.—

24 “(A) IN GENERAL.—The term ‘applicable
 25 individual’ means, with respect to any taxable

year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

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

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

Notwithstanding the preceding sentence, a certification shall not be treated as valid unless it is made within the 39½ month period ending on such due date (or such other period as the Secretary prescribes).

“(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this subparagraph if the individual meets any of the following requirements:

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

“(I) is unable to perform (without substantial assistance from another individual) at least 3 activities

1 of daily living (as defined in section
2 7702B(c)(2)(B)) due to a loss of
3 functional capacity, or

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

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

22 “(iii) The individual is under 2 years
23 of age and requires specific durable med-
24 ical equipment by reason of a severe health
25 condition or requires a skilled practitioner

1 trained to address the individual's condi-
2 tion to be available if the individual's par-
3 ents or guardians are absent.

4 “(2) ELIGIBLE CAREGIVER.—

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

8 “(i) The taxpayer.

9 “(ii) The taxpayer's spouse.

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

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

23 “(v) An individual who would be de-
24 scribed in clause (iii) for the taxable year
25 if—

1 “(I) the requirements of clause
2 (iv) are met with respect to the indi-
3 vidual, and

4 “(II) the requirements of sub-
5 paragraph (B) are met with respect to
6 the individual in lieu of the support
7 test under subsection (c)(1)(D) or
8 (d)(1)(C) of section 152.

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

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

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

21 “(C) SPECIAL RULES WHERE MORE THAN
22 1 ELIGIBLE CAREGIVER.—

23 “(i) IN GENERAL.—If more than 1 in-
24 dividual is an eligible caregiver with re-
25 spect to the same applicable individual for

1 taxable years ending with or within the
 2 same calendar year, a taxpayer shall be
 3 treated as the eligible caregiver if each
 4 such individual (other than the taxpayer)
 5 files a written declaration (in such form
 6 and manner as the Secretary may pre-
 7 scribe) that such individual will not claim
 8 such applicable individual for the credit
 9 under this section.

10 “(ii) NO AGREEMENT.—If each indi-
 11 vidual required under clause (i) to file a
 12 written declaration under clause (i) does
 13 not do so, the individual with the highest
 14 adjusted gross income shall be treated as
 15 the eligible caregiver.

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

24 “(d) IDENTIFICATION REQUIREMENT.—No credit
 25 shall be allowed under this section to a taxpayer with re-

1 spect to any applicable individual unless the taxpayer in-
 2 cludes the name and taxpayer identification number of
 3 such individual, and the identification number of the phy-
 4 sician certifying such individual, on the return of tax for
 5 the taxable year.

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

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 6213(g)(2) of such Code is amend-
 13 ed by striking “and” at the end of subparagraph
 14 (L), by striking the period at the end of subpara-
 15 graph (M) and inserting “, and”, and by inserting
 16 after subparagraph (M) the following new subpara-
 17 graph:

18 “(N) an omission of a correct TIN or phy-
 19 sician identification required under section
 20 25C(d) (relating to credit for taxpayers with
 21 long-term care needs) to be included on a re-
 22 turn.”.

23 (2) The table of sections for subpart A of part
 24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
 2 tion 25B the following new item:

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

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 December 31, 2004.

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

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

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

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

19 “(I) Section 6A (relating to guar-
 20 anteed renewal or noncancellability),
 21 other than paragraph (5) thereof, and
 22 the requirements of section 6B of the
 23 model Act relating to such section 6A.

24 “(II) Section 6B (relating to pro-
 25 hibitions on limitations and exclu-

1 sions) other than paragraph (7) there-
2 of.

3 “(III) Section 6C (relating to ex-
4 tension of benefits).

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

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

11 “(VI) Section 7 (relating to unin-
12 tentional lapse).

13 “(VII) Section 8 (relating to dis-
14 closure), other than sections 8F, 8G,
15 8H, and 8I thereof.

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

19 “(IX) Section 12 (relating to
20 minimum standards).

21 “(X) Section 13 (relating to re-
22 quirement to offer inflation protec-
23 tion).

24 “(XI) Section 25 (relating to pro-
25 hibition against preexisting conditions

1 and probationary periods in replace-
2 ment policies or certificates).

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

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

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

12 “(II) Section 6D (relating to
13 prior hospitalization).

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

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

21 “(i) MODEL PROVISIONS.—The terms
22 ‘model regulation’ and ‘model Act’ mean
23 the long-term care insurance model regula-
24 tion, and the long-term care insurance
25 model Act, respectively, promulgated by

1 the National Association of Insurance
 2 Commissioners (as adopted as of October
 3 2000).

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

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

16 (b) EXCISE TAX.—Paragraph (1) of section
 17 4980C(c) of the Internal Revenue Code of 1986 (relating
 18 to requirements of model provisions) is amended to read
 19 as follows:

20 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

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

24 “(i) Section 9 (relating to required
 25 disclosure of rating practices to consumer).

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

3 “(iii) Section 15 (relating to reporting
4 requirements).

5 “(iv) Section 22 (relating to filing re-
6 quirements for marketing).

7 “(v) Section 23 (relating to standards
8 for marketing), including inaccurate com-
9 pletion of medical histories, other than
10 paragraphs (1), (6), and (9) of section
11 23C.

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

14 “(vii) Section 29 (relating to standard
15 format outline of coverage).

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

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

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

1 “(i) Section 6F (relating to right to
2 return).

3 “(ii) Section 6G (relating to outline of
4 coverage).

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

7 “(iv) Section 6J (relating to policy
8 summary).

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

11 “(vi) Section 7 (relating to incontest-
12 ability period).

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

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

20 **SEC. 5. TREATMENT OF EXCHANGES OF LONG-TERM CARE**
21 **INSURANCE CONTRACTS.**

22 (a) IN GENERAL.—Subsection (a) of section 1035 of
23 the Internal Revenue Code of 1986 (relating to exchanges
24 of insurance policies) is amended by striking the period

1 at the end of paragraph (3) and inserting “; or” and by
 2 adding at the end the following new paragraph:

3 “(4) a qualified long-term care insurance con-
 4 tract for another qualified long-term care insurance
 5 contract.”.

6 (b) QUALIFIED LONG-TERM CARE INSURANCE CON-
 7 TRACT.—Subsection (b) of section 1035 of such Code (re-
 8 lating to definitions) is amended by adding at the end the
 9 following new paragraph:

10 “(4) QUALIFIED LONG-TERM CARE INSURANCE
 11 CONTRACT.—The term ‘qualified long-term care in-
 12 surance contract’ means—

13 “(A) any qualified long-term care insur-
 14 ance contract (as defined in section 7702B),
 15 and

16 “(B) any contract which is treated as such
 17 by section 321(f)(2) of the Health Insurance
 18 Portability and Accountability Act of 1996.”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
 21 this section shall apply to exchanges after December
 22 31, 1997.

23 (2) WAIVER OF LIMITATIONS.—If the credit or
 24 refund of any overpayment of tax with respect to a
 25 taxable year ending before the date of the enactment

1 of this Act resulting from the application of section
2 1035(a)(4) of the Internal Revenue Code of 1986, as
3 added by this section, is prevented at any time by
4 the operation of any law or rule of law (including res
5 judicata), such credit or refund may nevertheless be
6 allowed or made if the claim therefor is filed before
7 the close of the 1-year period beginning on the date
8 of the enactment of this Act.

○