

109TH CONGRESS
2^D SESSION

S. 3815

To improve the quality of, and access to, long-term care.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2006

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

A BILL

To improve the quality of, and access to, long-term care.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Long-term Care Quality and Modernization Act of
6 2006”.

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

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE AND MEDICAID MODERNIZATION

Sec. 101. Joint training of surveyors and providers.

Sec. 102. Facility-based training for new surveyors.

Sec. 103. Resumption of nurse aide training program after correction of defi-
ciencies.

★(Star Print)

- Sec. 104. Clarifying and eliminating the distinction between physician supervision requirements for skilled nursing facilities and nursing facilities.
- Sec. 105. Permitting split or shared billing by physicians and nurse practitioners in skilled nursing facilities.
- Sec. 106. Permitting nurse practitioners employed by skilled nursing facilities to certify skilled care.
- Sec. 107. Modernization of therapy caps.
- Sec. 108. Establishment of a Medicare skilled nursing facility specific wage index.
- Sec. 109. Update of the Medicare skilled nursing facility market basket index.
- Sec. 110. Authority to exclude high cost and low probability drugs used in the treatment of cancer from the Medicare prospective payment system for skilled nursing facilities.
- Sec. 111. Exclusion of all ambulance services from the Medicare prospective payment system for skilled nursing facilities.
- Sec. 112. Authority to exclude additional items and services from the Medicare prospective payment system for skilled nursing facilities.

TITLE II—WORKFORCE SUPPORT

- Sec. 201. Nursing loan repayment program.
- Sec. 202. National nursing database.
- Sec. 203. Reports on nursing levels.

TITLE III—TAX INCENTIVES

- Sec. 301. 10-year recovery period for qualified long-term care improvement property.
- Sec. 302. Investment tax credit for long-term care facility information technology.
- Sec. 303. Long-Term Care Trust Accounts.
- Sec. 304. Refundable credit for contributions to Long-Term Care Trust Accounts.

TITLE IV—DISASTER PREPAREDNESS AND RESPONSE

- Sec. 401. Disaster preparedness and response.

1 **TITLE I—MEDICARE AND**
 2 **MEDICAID MODERNIZATION**
 3 **SEC. 101. JOINT TRAINING OF SURVEYORS AND PRO-**
 4 **VIDERS.**

5 (a) **MEDICARE PROGRAM.**—Section 1819(e) of the
 6 Social Security Act (42 U.S.C. 1395i–3(e)) is amended by
 7 adding at the end the following new paragraph:

1 “(7) FACILITY-BASED TRAINING FOR NEW SUR-
2 VEYORS.—The Secretary shall require the State to
3 establish a process for assuring that—

4 “(A) each individual newly hired as a nurs-
5 ing home surveyor, as part of the individual’s
6 basic training, is assigned full-time to a partici-
7 pating nursing facility for at least 5 days within
8 a 7-day period to observe actual operations out-
9 side of the survey process before the individual
10 begins oversight responsibilities;

11 “(B) such individual shall not assume
12 oversight responsibility during this training pe-
13 riod and such observations may not be the sole
14 basis of a deficiency citation against the facility;
15 and

16 “(C) such individual shall not be assigned
17 as a member of a survey team for the facility
18 in which the individual received training for two
19 standard surveys following the training period
20 in the facility.”.

21 (b) MEDICAID PROGRAM.—Section 1919(e) of the
22 Social Security Act (42 U.S.C. 1396r(e)), as amended by
23 section 101(b), is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(9) FACILITY-BASED TRAINING FOR NEW SUR-
2 VEYORS.—The State shall establish a process for as-
3 suring that—

4 “(A) each individual newly hired as a nurs-
5 ing home surveyor, as part of the individual’s
6 basic training, is assigned full-time to a partici-
7 pating nursing facility for at least 5 days within
8 a 7-day period to observe actual operations out-
9 side of the survey process before the individual
10 begins oversight responsibilities;

11 “(B) such individual shall not assume
12 oversight responsibility during this training pe-
13 riod and such observations may not be the sole
14 basis of a deficiency citation against the facility;
15 and

16 “(C) such individual shall not be assigned
17 as a member of a survey team for the facility
18 in which the individual received training for two
19 standard surveys following the training period
20 in the facility.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on January 1, 2007.

1 **SEC. 103. RESUMPTION OF NURSE AIDE TRAINING PRO-**
 2 **GRAM AFTER CORRECTION OF DEFI-**
 3 **CIENCIES.**

4 (a) RESUMPTION OF NURSE AIDE TRAINING PRO-
 5 GRAM FOR SKILLED NURSING FACILITIES.—Section
 6 1819(f)(2) of the Social Security Act (42 U.S.C. 1395i-
 7 3(f)(2)) is amended—

8 (1) in paragraph (B)(iii), in the matter pre-
 9 ceding subclause (I), by striking “(C) and (D)” and
 10 inserting “(C), (D), and (E)”; and

11 (2) by adding at the end the following new sub-
 12 paragraph:

13 “(E) RESUMPTION OF NURSE AIDE TRAIN-
 14 ING PROGRAM AFTER CORRECTION OF DEFI-
 15 CIENCIES.—Clause (iii)(I) of subparagraph (B)
 16 shall not apply to a program offered by or in
 17 a skilled nursing facility if the facility has—

18 “(i) corrected any deficiencies that re-
 19 sulted in the prohibition of approval of
 20 such program; and

21 “(ii) demonstrated compliance with
 22 the requirements of subsections (b), (c),
 23 and (d) of this section.”.

24 (b) RESUMPTION OF NURSE AIDE TRAINING PRO-
 25 GRAM FOR NURSING FACILITIES.—Section 1919(f)(2) of

1 the Social Security Act (42 U.S.C. 1396r(f)(2)) is amend-
2 ed—

3 (1) in paragraph (B)(iii), in the matter pre-
4 ceding subclause (I), by striking “(C) and (D)” and
5 inserting “(C), (D), and (E)”; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(E) RESUMPTION OF NURSE AIDE TRAIN-
9 ING PROGRAM AFTER CORRECTION OF DEFICI-
10 CIENCIES.—Clause (iii)(I) of subparagraph (B)
11 shall not apply to a program offered by or in
12 a nursing facility if the facility has—

13 “(i) corrected any deficiencies that re-
14 sulted in the prohibition of approval of
15 such program; and

16 “(ii) been determined to be in compli-
17 ance with the requirements of subsections
18 (b), (c), and (d) of this section.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on January 1, 2007.

1 **SEC. 104. CLARIFYING AND ELIMINATING THE DISTINC-**
2 **TION BETWEEN PHYSICIAN SUPERVISION RE-**
3 **QUIREMENTS FOR SKILLED NURSING FACILI-**
4 **TIES AND NURSING FACILITIES.**

5 (a) **PHYSICIAN SUPERVISION REQUIREMENTS FOR**
6 **SKILLED NURSING FACILITIES.**—Section 1819(b)(6)(A)
7 of the Social Security Act (42 U.S.C. 1395i–3(b)(6)(A))
8 is amended by inserting “(or, at the option of a State,
9 under the supervision of a nurse practitioner, clinical
10 nurse specialist, or physician assistant who is working in
11 collaboration with a physician)” before the semicolon at
12 the end.

13 (b) **CLARIFYING PHYSICIAN SUPERVISION REQUIRE-**
14 **MENTS FOR NURSING FACILITIES.**—Section
15 1919(b)(6)(A) of the Social Security Act (42 U.S.C.
16 1396r(b)(6)(A)) is amended by striking “who is not an
17 employee of the facility but”.

18 (c) **EFFECTIVE DATE.**—The amendments made by
19 this section shall take effect on January 1, 2007.

20 **SEC. 105. PERMITTING SPLIT OR SHARED BILLING BY PHY-**
21 **SICIANS AND NURSE PRACTITIONERS IN**
22 **SKILLED NURSING FACILITIES.**

23 (a) **IN GENERAL.**—Section 1888(e) of the Social Se-
24 curity Act (42 U.S.C. 1395yy(e)) is amended by adding
25 at the end the following new paragraph:

1 (1) in paragraph (4)—

2 (A) by striking “This subsection” and in-
3 serting “Except as provided in paragraph (6),
4 this subsection”; and

5 (B) by inserting “and with respect to serv-
6 ices furnished on or after January 1, 2009” be-
7 fore the period at the end; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(6) In the case of services described in para-
11 graph (1), with respect to such services furnished on
12 or after January 1, 2009, the Secretary shall estab-
13 lish and implement a condition-based system based
14 on medical necessity for necessary and clinically ap-
15 propriate services. Such system shall utilize a stand-
16 ardized patient assessment tool to evaluate the level
17 of such services that are needed by an individual and
18 impose a limitation on coverage of such services
19 under this part based on such tool.”.

20 **SEC. 108. ESTABLISHMENT OF A MEDICARE SKILLED NURS-**
21 **ING FACILITY SPECIFIC WAGE INDEX.**

22 Section 1888(e)(4)(G)(ii) of the Social Security Act
23 (42 U.S.C. 1395yy(e)(4)(G)(ii)) is amended by inserting
24 after the first sentence the following new sentence: “For
25 services furnished on or after October 1, 2008, in making

1 the adjustment under the preceding sentence, the Sec-
 2 retary shall utilize an area wage index for skilled nursing
 3 facilities based on wage data from such facilities and not
 4 from hospitals.”

5 **SEC. 109. UPDATE OF THE MEDICARE SKILLED NURSING**
 6 **FACILITY MARKET BASKET INDEX .**

7 Section 1888(e) of the Social Security Act (42 U.S.C.
 8 1395yy(e)) is amended by adding at the end the following
 9 new paragraph:

10 “(13) UPDATE OF THE SKILLED NURSING FA-
 11 CILITY MARKET BASKET INDEX.—

12 “(A) IN GENERAL.—Not later than Octo-
 13 ber 1, 2007, the Secretary shall develop and im-
 14 plement a process for updating the calculation
 15 of the skilled nursing facility market basket
 16 index under paragraph (5)(A), including the
 17 weights used in such index.

18 “(B) REQUIREMENT.—Such process shall
 19 ensure that such index—

20 “(i) includes a separate weight for
 21 professional liability costs;

22 “(ii) is updated at least as frequently
 23 as the hospital market basket is updated
 24 under section 1886(b)(3)(B)(iii); and

1 “(iii) reflects the most current data
2 available.

3 “(C) CONSIDERATION.—In developing and
4 implementing the process under subparagraph
5 (A), the Secretary shall consider methodologies
6 for measuring changes in the price of wages
7 and salaries other than the methodologies being
8 used by the Secretary as of the date of enact-
9 ment of this paragraph.

10 “(D) STUDY.—The Secretary shall conduct
11 a study to determine the appropriate frequency
12 for updating the skilled nursing facility market
13 basket index under the process developed and
14 implemented under subparagraph (A).”.

15 **SEC. 110. AUTHORITY TO EXCLUDE HIGH COST AND LOW**
16 **PROBABILITY DRUGS USED IN THE TREAT-**
17 **MENT OF CANCER FROM THE MEDICARE**
18 **PROSPECTIVE PAYMENT SYSTEM FOR**
19 **SKILLED NURSING FACILITIES.**

20 (a) IN GENERAL.—Section 1888(e)(2)(A)(iii) of the
21 Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(iii)) is
22 amended—

23 (1) by redesignating subclauses (IV) and (V) as
24 subclauses (V) and (VI), respectively; and

1 (2) by inserting after subclause (III) the fol-
 2 lowing new subclause:

3 “(IV) Any drugs (not otherwise
 4 described in subclause (II)) used in
 5 the treatment of cancer, including
 6 antineoplastic drugs, antiemetics, and
 7 supportive medications, that the Sec-
 8 retary determines to be appropriate.”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 subsection (a) shall apply to drugs furnished on or after
 11 October 1, 2007.

12 **SEC. 111. EXCLUSION OF ALL AMBULANCE SERVICES FROM**
 13 **THE MEDICARE PROSPECTIVE PAYMENT SYS-**
 14 **TEM FOR SKILLED NURSING FACILITIES.**

15 (a) IN GENERAL.—Section 1888(e)(2)(A)(iii)(I) of
 16 the Social Security Act (42 U.S.C.
 17 1395yy(e)(2)(A)(iii)(I)) is amended by striking “furnished
 18 to” and all that follows before the period.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 subsection (a) shall apply to services furnished on or after
 21 October 1, 2007.

1 **SEC. 112. AUTHORITY TO EXCLUDE ADDITIONAL ITEMS**
 2 **AND SERVICES FROM THE MEDICARE PRO-**
 3 **SPECTIVE PAYMENT SYSTEM FOR SKILLED**
 4 **NURSING FACILITIES.**

5 (a) **AUTHORITY.**—Section 1888(e)(2)(A) of the So-
 6 cial Security Act (42 U.S.C. 1395yy(e)(2)(A)) is amend-
 7 ed—

8 (1) in clause (i)(II), by striking “and (iv)” and
 9 inserting “(iv), and (v)(I)”; and

10 (2) by adding at the end the following new
 11 clause:

12 “(v) **EXCLUSION OF ADDITIONAL**
 13 **ITEMS AND SERVICES DETERMINED APPRO-**
 14 **PRIATE BY THE SECRETARY.**—

15 “(I) **IN GENERAL.**—Items and
 16 services described in this clause are
 17 any items and services not otherwise
 18 described in clauses (ii), (iii), or (iv),
 19 that the Secretary determines to be
 20 appropriate.

21 “(II) **ANNUAL UPDATE.**—The
 22 Secretary shall annually update the
 23 items and services described in sub-
 24 clause (I) to take into account
 25 changes in the practice of medicine.”.

1 (b) CLARIFICATION.—Items and services described in
2 section 1888(e)(2)(A)(v)(I) of the Social Security Act (42
3 U.S.C. 1395yy(e)(2)(A)(v)(I)), as added by subsection (a),
4 may include items and services furnished in a freestanding
5 clinic to an individual who is a resident of a skilled nursing
6 facility.

7 (c) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on October 1, 2007.

9 **TITLE II—WORKFORCE SUPPORT**

10 **SEC. 201. NURSING LOAN REPAYMENT PROGRAM.**

11 Section 846(a) of the Public Health Service Act (42
12 U.S.C. 297n(a)) is amended by striking the last sentence.

13 **SEC. 202. NATIONAL NURSING DATABASE.**

14 (a) IN GENERAL.—The Secretary of Health and
15 Human Services shall provide for the establishment of a
16 national nursing database to be used to predict future
17 nursing shortages.

18 (b) INFORMATION IN DATABASE.—The database es-
19 tablished under subsection (a) shall be designed to include
20 nursing workforce data across all healthcare provider set-
21 tings, including nursing educators, as determined by the
22 Secretary of Health and Human Services to be appro-
23 priate for use in the analysis of trends in the supply and
24 demand of nurses and to create an educational model to
25 predict future nursing workforce needs.

1 (c) FUNDING.—The Secretary of Health and Human
2 Services may transfer, from amounts appropriated for the
3 National Center for Health Workforce Analysis, such
4 sums as may be necessary to carry out this section.

5 **SEC. 203. REPORTS ON NURSING LEVELS.**

6 Section 806 of the Public Health Service Act (42
7 U.S.C. 296e), as amended by section 202, is further
8 amended by adding at the end the following:

9 “(j) REPORTS CONCERNING NURSING LEVELS.—

10 “(1) IN GENERAL.—The entities described in
11 paragraph (2) shall annually submit to the Secretary
12 a report concerning how assistance under this title
13 is being used by such entities to increase the number
14 of nurses, nursing educators, and nurse education
15 enrollment slots.

16 “(2) ENTITIES DESCRIBED.—An entity is de-
17 scribed in this paragraph if such entity is—

18 “(A) an entity that receives a grant or con-
19 tract under this title;

20 “(B) a school of nursing that receives stu-
21 dent loan funds under this title;

22 “(C) a school of nursing that receives
23 nurse faculty student loan funds under this
24 title; and

1 “(D) any other entity that receives assist-
2 ance under this title.”.

3 **TITLE III—TAX INCENTIVES**

4 **SEC. 301. 10-YEAR RECOVERY PERIOD FOR QUALIFIED** 5 **LONG-TERM CARE IMPROVEMENT PROP-** 6 **ERTY.**

7 (a) IN GENERAL.—Subparagraph (D) of section
8 168(e)(3) of the Internal Revenue Code of 1986 (relating
9 to 10-year property) is amended by striking “and” at the
10 end of clause (i), by striking the period at the end of
11 clause (ii) and inserting “, and”, and by adding at the
12 end the following new clause:

13 “(iii) any qualified long-term care im-
14 provement property.”.

15 (b) QUALIFIED LONG-TERM CARE IMPROVEMENT
16 PROPERTY.—Section 168(e) of the Internal Revenue Code
17 of 1986 (relating to classification of property) is amended
18 by adding at the end the following new paragraph:

19 “(8) QUALIFIED LONG-TERM CARE IMPROVE-
20 MENT PROPERTY.—The term ‘qualified long-term
21 care improvement property’ means any section 1250
22 property which is an improvement to a building if—

23 “(A) such improvement is placed in service
24 more than 3 years after the date such building
25 was first placed in service, and

1 “(ii) which is acquired by the taxpayer if
2 the original use of such property commences
3 with the taxpayer, and

4 “(B) with respect to which depreciation (or
5 amortization in lieu of depreciation) is allow-
6 able.

7 “(2) APPLICABLE RULES.—For purposes of this
8 section, rules similar to the rules of subsection
9 (a)(4) and (b) of section 48 shall apply.

10 “(c) QUALIFYING LONG-TERM CARE FACILITY
11 TECHNOLOGY SYSTEM.—For purposes of this section, the
12 term ‘qualifying long-term care facility technology system’
13 means any computers, related equipment, and software for
14 a healthcare information system of a nursing facility, as-
15 sisted living facility, residential care facility, intermediate
16 care facility for the mentally retarded, or similar facility
17 designed to provide housing and healthcare for the elderly
18 and disabled.

19 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
20 or other credit shall be allowed with respect to the basis
21 of any property taken into account in determining the
22 credit allowed under this section.”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) Section 49(a)(1)(C) of the Internal Revenue
25 Code of 1986 is amended by striking “and” at the

1 end of clause (iii), by striking the period at the end
 2 of clause (iv) and inserting “, and”, and by adding
 3 after clause (iv) the following new clause:

4 “(v) the basis of any property which
 5 is part of a qualifying long-term care facil-
 6 ity technology system under section 48C.”.

7 (2) The table of sections for subpart E of part
 8 IV of subchapter A of chapter 1 of such Code is
 9 amended by inserting after the item relating to sec-
 10 tion 48B the following new item:

“48C. Qualifying long-term care facility technology credit.”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to periods after the date of the
 13 enactment of this Act, under rules similar to the rules of
 14 section 48(m) of the Internal Revenue Code of 1986 (as
 15 in effect on the day before the date of the enactment of
 16 the Revenue Reconciliation Act of 1990).

17 **SEC. 303. LONG-TERM CARE TRUST ACCOUNTS.**

18 (a) IN GENERAL.—Subchapter F of chapter 1 of the
 19 Internal Revenue Code of 1986 (relating to exempt organi-
 20 zations) is amended by adding at the end the following
 21 new part:

22 **“PART IX—LONG-TERM CARE TRUST ACCOUNTS**

23 **“SEC. 530A. LONG-TERM CARE TRUST ACCOUNTS.**

24 “(a) GENERAL RULE.—A Long-Term Care Trust Ac-
 25 count shall be exempt from taxation under this subtitle.

1 Notwithstanding the preceding sentence, such account
2 shall be subject to the taxes imposed by section 511 (relat-
3 ing to imposition of tax on unrelated business income of
4 charitable organizations).

5 “(b) LONG-TERM CARE TRUST ACCOUNT.—For pur-
6 poses of this section, the term ‘Long-Term Care Trust Ac-
7 count’ means a trust created or organized in the United
8 States for the exclusive benefit of an individual who is the
9 designated beneficiary of the trust and which is designated
10 (in such manner as the Secretary shall prescribe) at the
11 time of the establishment of the trust as a Long-Term
12 Care Trust Account, but only if the written governing in-
13 strument creating the trust meets the following require-
14 ments:

15 “(1) Except in the case of a qualified rollover
16 contribution described in subsection (d)—

17 “(A) no contribution will be accepted un-
18 less it is in cash, and

19 “(B) contributions will not be accepted for
20 the calendar year in excess of the contribution
21 limit specified in subsection (c)(1).

22 “(2) The trustee is a bank (as defined in sec-
23 tion 408(n)), an insurance company (as defined in
24 section 816), or another person who demonstrates to
25 the satisfaction of the Secretary that the manner in

1 which that person will administer the trust will be
2 consistent with the requirements of this section or
3 who has so demonstrated with respect to any indi-
4 vidual retirement plan.

5 “(3) No part of the trust assets will be invested
6 in life insurance contracts.

7 “(4) The interest of an individual in the bal-
8 ance of his account is nonforfeitable.

9 “(5) The assets of the trust shall not be com-
10 mingled with other property except in a common
11 trust fund or common investment fund.

12 “(6) Except as provided in subsection (e)(2), no
13 distribution will be allowed if at the time of such dis-
14 tribution the designated beneficiary is not a chron-
15 ically ill individual (as defined in section
16 7702B(c)(2)).

17 “(c) TAX TREATMENT OF CONTRIBUTIONS.—

18 “(1) CONTRIBUTION LIMIT.—

19 “(A) IN GENERAL.—The aggregate
20 amount of contributions (other than qualified
21 rollover contributions described in subsection
22 (d)) for any taxable year to all Long-Term Care
23 Trust Accounts maintained for the benefit of
24 the designated beneficiary shall not exceed
25 \$5,000.

1 “(B) INFLATION ADJUSTMENT.—In the
2 case of any taxable year beginning in a calendar
3 year after 2006, the dollar amount under sub-
4 paragraph (A) shall be increased by an amount
5 equal to—

6 “(i) such dollar amount, multiplied by

7 “(ii) the medical care cost adjustment
8 determined under section 213(d)(10)(B)(ii)
9 for the calendar year in which the taxable
10 year begins, determined by substituting
11 ‘2005’ for ‘1996’ in subclause (II) thereof.

12 If any amount as adjusted under the preceding
13 sentence is not a multiple of \$10, such amount
14 shall be rounded to the next lowest multiple of
15 \$10.

16 “(2) GIFT TAX TREATMENT OF CONTRIBU-
17 TIONS.—For purposes of chapters 12 and 13—

18 “(A) IN GENERAL.—Any contribution to a
19 Long-Term Care Trust Account on behalf of
20 any designated beneficiary—

21 “(i) shall be treated as a completed
22 gift to such beneficiary which is not a fu-
23 ture interest in property, and

24 “(ii) shall not be treated as a qualified
25 transfer under section 2503(e).

1 “(B) TREATMENT OF EXCESS CONTRIBU-
2 TIONS.—If the aggregate amount of contribu-
3 tions described in subparagraph (A) during the
4 calendar year by a donor exceeds the limitation
5 for such year under section 2503(b), such ag-
6 gregate amount shall, at the election of the
7 donor, be taken into account for purposes of
8 such section ratably over the 5-year period be-
9 ginning with such calendar year.

10 “(d) QUALIFIED ROLLOVER CONTRIBUTION.—For
11 purposes of this section, the term ‘qualified rollover con-
12 tribution’ means a contribution to a Long-Term Care
13 Trust Account—

14 “(1) from another such account of the same
15 beneficiary, but only if such amount is contributed
16 not later than the 60th day after the distribution
17 from such other account, and

18 “(2) from a Long-Term Care Trust Account of
19 a spouse of the beneficiary of the account to which
20 the contribution is made, but only if such amount is
21 contributed not later than the 60th day after the
22 distribution from such other account.

23 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

24 “(1) IN GENERAL.—Any distribution from a
25 Long-Term Care Trust Account shall be includible

1 in the gross income of the distributee in the manner
2 as provided under section 72 to the extent not ex-
3 cluded from gross income under any other provision
4 of this subsection.

5 “(2) LONG-TERM CARE INSURANCE PRE-
6 MIUMS.—If at the time of any distribution, the des-
7 ignated beneficiary is not a chronically ill individual
8 (as defined in section 7702B(c)(2)), no amount shall
9 be includible in gross income under paragraph (1) if
10 the aggregate premiums for any qualified long-term
11 care insurance contract for such beneficiary during
12 the taxable year are not less than the aggregate dis-
13 tributions during the taxable year.

14 “(3) DISTRIBUTIONS FOR QUALIFIED LONG-
15 TERM CARE SERVICES.—For purposes of this sub-
16 section, if at the time of any distribution, the des-
17 ignated beneficiary is a chronically ill individual (as
18 so defined)—

19 “(A) IN-KIND DISTRIBUTIONS.—No
20 amount shall be includible in gross income
21 under paragraph (1) by reason of a distribution
22 which consists of providing a benefit to the dis-
23 tributee which, if paid for by the distributee,
24 would constitute expenses for any qualified

1 long-term care services (as defined in section
2 7702B(c)).

3 “(B) CASH DISTRIBUTIONS.—In the case
4 of distributions not described in subparagraph
5 (A), if—

6 “(i) such distributions do not exceed
7 the expenses for qualified long-term care
8 services (as so defined), reduced by ex-
9 penses described in subparagraph (A), no
10 amount shall be includible in gross income,
11 and

12 “(ii) in any other case, the amount
13 otherwise includible in gross income shall
14 be reduced by an amount which bears the
15 same ratio to such amount as such ex-
16 penses bear to such distributions.

17 “(4) CHANGE IN BENEFICIARIES OR AC-
18 COUNTS.—Paragraph (1) shall not apply to that
19 portion of any distribution which, within 60 days of
20 such distribution, is transferred—

21 “(A) to another Long-Term Care Trust
22 Account for the benefit of the designated bene-
23 ficiary, or

24 “(B) to the credit of another designated
25 beneficiary under a Long-Term Care Trust Ac-

1 count who is a spouse of the designated bene-
2 ficiary with respect to which the distribution
3 was made.

4 “(5) OPERATING RULES.—For purposes of ap-
5 plying section 72—

6 “(A) to the extent provided by the Sec-
7 retary, all Long-Term Care Trust Accounts of
8 which an individual is a designated beneficiary
9 shall be treated as one account,

10 “(B) except to the extent provided by the
11 Secretary, all distributions during a taxable
12 year shall be treated as one distribution, and

13 “(C) except to the extent provided by the
14 Secretary, the value of the contract, income on
15 the contract, and investment in the contract
16 shall be computed as of the close of the cal-
17 endar year in which the taxable year begins.

18 “(6) SPECIAL RULES FOR DEATH AND DI-
19 VORCE.—

20 “(A) IN GENERAL.—Rules similar to the
21 rules of paragraphs (7) and (8) of section
22 220(f) shall apply.

23 “(B) AMOUNTS INCLUDIBLE IN ESTATE OF
24 DONOR MAKING EXCESS CONTRIBUTIONS.—In
25 the case of a donor who makes the election de-

1 scribed in subsection (c)(2)(B) and who dies be-
2 fore the close of the 5-year period referred to
3 in such subsection, the gross estate of the donor
4 shall include the portion of such contributions
5 properly allocable to periods after the date of
6 death of the donor.

7 “(7) ADDITIONAL TAX.—The tax imposed by
8 this chapter for any taxable year on any taxpayer
9 who receives a payment or distribution from a Long-
10 Term Care Trust Account which is includible in
11 gross income shall be increased by 25 percent of the
12 amount which is so includible under rules similar to
13 the rules of section 530(d)(4).

14 “(8) DENIAL OF DOUBLE BENEFIT.—For pur-
15 poses of determining the amount of any deduction
16 under this chapter, any payment or distribution out
17 of a Long-Term Care Trust Account shall not be
18 treated as an expense paid for medical care.

19 “(f) DESIGNATED BENEFICIARY.—For purposes of
20 this section, the term ‘designated beneficiary’ means the
21 individual designated at the commencement of participa-
22 tion in the Long-Term Care Trust Account as the bene-
23 ficiary of amounts paid (or to be paid) to the account.

24 “(g) LOSS OF TAXATION EXEMPTION OF ACCOUNT
25 WHERE BENEFICIARY ENGAGES IN PROHIBITED TRANS-

1 ACTION.—Rules similar to the rules of paragraph (2) of
2 section 408(e) shall apply to any Long-Term Care Trust
3 Account.

4 “(h) CUSTODIAL ACCOUNTS.—For purposes of this
5 section, a custodial account or an annuity contract issued
6 by an insurance company qualified to do business in a
7 State shall be treated as a trust under this section if—

8 “(1) the custodial account or annuity contract
9 would, except for the fact that it is not a trust, con-
10 stitute a trust which meets the requirements of sub-
11 section (b), and

12 “(2) in the case of a custodial account, the as-
13 sets of such account are held by a bank (as defined
14 in section 408(n)) or another person who dem-
15 onstrates, to the satisfaction of the Secretary, that
16 the manner in which he will administer the account
17 will be consistent with the requirements of this sec-
18 tion.

19 For purposes of this title, in the case of a custodial ac-
20 count or annuity contract treated as a trust by reason of
21 the preceding sentence, the person holding the assets of
22 such account or holding such annuity contract shall be
23 treated as the trustee thereof.

24 “(i) REPORTS.—The trustee of a Long-Term Care
25 Trust Account shall make such reports regarding such ac-

1 count to the Secretary and to the beneficiary of the ac-
 2 count with respect to contributions, distributions, and
 3 such other matters as the Secretary may require. The re-
 4 ports required by this subsection shall be filed at such time
 5 and in such manner and furnished to such individuals at
 6 such time and in such manner as may be required.”.

7 (b) TAX ON EXCESS CONTRIBUTIONS.—

8 (1) IN GENERAL.—Subsection (a) of section
 9 4973 of the Internal Revenue Code of 1986 (relating
 10 to tax on excess contributions to certain tax-favored
 11 accounts and annuities) is amended by striking “or”
 12 at the end of paragraph (4), by inserting “or” at the
 13 end of paragraph (5), and by inserting after para-
 14 graph (5) the following new paragraph:

15 “(6) a Long-Term Care Trust Account (as de-
 16 fined in section 530A),”.

17 (2) EXCESS CONTRIBUTION.—Section 4973 of
 18 such Code is amended by adding at the end the fol-
 19 lowing new subsection:

20 “(h) EXCESS CONTRIBUTIONS TO LONG-TERM CARE
 21 TRUST ACCOUNTS.—For purposes of this section—

22 “(1) IN GENERAL.—In the case of Long-Term
 23 Care Trust Accounts (within the meaning of section
 24 530A), the term ‘excess contributions’ means the
 25 sum of—

1 “(A) the amount by which the amount con-
2 tributed for the calendar year to such accounts
3 (other than qualified rollover contributions (as
4 defined in section 530A(d))) exceeds the con-
5 tribution limit under section 530A(c)(1), and

6 “(B) the amount determined under this
7 subsection for the preceding calendar year, re-
8 duced by the excess (if any) of the maximum
9 amount allowable as a contribution under sec-
10 tion 530A(c)(1) for the calendar year over the
11 amount contributed to the accounts for the cal-
12 endar year.

13 “(2) SPECIAL RULE.—A contribution shall not
14 be taken into account under paragraph (1) if such
15 contribution (together with the amount of net in-
16 come attributable to such contribution) is returned
17 to the beneficiary before June 1 of the year fol-
18 lowing the year in which the contribution is made.”.

19 (c) FAILURE TO PROVIDE REPORTS ON LONG-TERM
20 CARE TRUST ACCOUNTS.—Paragraph (2) of section
21 6693(a) of the Internal Revenue Code of 1986 (relating
22 to failure to provide reports on individual retirement ac-
23 counts or annuities) is amended by striking “and” at the
24 end of subparagraph (D), by striking the period at the

1 end of subparagraph (E) and inserting “, and”, and by
 2 adding at the end the following new subparagraph:

3 “(F) section 530A(i) (relating to Long-
 4 Term Care Trust Accounts).”.

5 (d) CONFORMING AMENDMENT.—The table of parts
 6 for subchapter F of chapter 1 of the Internal Revenue
 7 Code of 1986 is amended by adding at the end the fol-
 8 lowing new item:

“PART IX. LONG-TERM CARE TRUST ACCOUNTS”.

9 (e) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 2005.

12 **SEC. 304. REFUNDABLE CREDIT FOR CONTRIBUTIONS TO**
 13 **LONG-TERM CARE TRUST ACCOUNTS.**

14 (a) IN GENERAL.—Subpart C of part IV of sub-
 15 chapter A of chapter 1 of the Internal Revenue Code of
 16 1986 (relating to refundable credits) is amended by insert-
 17 ing after section 35 the following new section:

18 **“SEC. 35A. CONTRIBUTIONS TO LONG-TERM CARE TRUST**
 19 **ACCOUNTS.**

20 “(a) GENERAL RULE.—In the case of an individual,
 21 there shall be allowed as a credit against the tax imposed
 22 by this subtitle for the taxable year an amount equal to
 23 10 percent of the contributions to any Long-Term Care
 24 Trust Account allowed under section 530A for such tax-
 25 able year.

1 “(b) REDUCTION BASED ON ADJUSTED GROSS IN-
2 COME.—

3 “(1) IN GENERAL.—The percentage which
4 would (but for this subsection) be taken into account
5 under subsection (a) for the taxable year shall be re-
6 duced (but not below zero) by the percentage deter-
7 mined under paragraph (2).

8 “(2) AMOUNT OF REDUCTION.—The percentage
9 determined under this paragraph is the percentage
10 which bears the same ratio to the percentage which
11 would be so taken into account as—

12 “(A) the excess of—

13 “(i) the taxpayer’s adjusted gross in-
14 come for such taxable year, over

15 “(ii) \$95,000 (\$190,000 in the case of
16 a joint return), bears to

17 “(B) \$10,000 (\$20,000 in the case of a
18 joint return).

19 “(3) ADJUSTED GROSS INCOME.—For purposes
20 of this subsection, adjusted gross income shall be de-
21 termined without regard to sections 911, 931, and
22 933.

23 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
24 shall be allowed under this chapter for any amount taken
25 into account in determining the credit under this section.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (2) of section 1324(b) of title
3 31, United States Code, is amended by inserting be-
4 fore the period “, or from section 35A of such
5 Code”.

6 (2) The table of sections of subpart C of part
7 IV of subchapter A of chapter 1 of the Internal Rev-
8 enue Code of 1986 is amended by inserting after the
9 item relating to section 35 the following new item:

“Sec. 35A. Contributions to Long-Term Care Trust Accounts.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to amounts paid or incurred in tax-
12 able years beginning after December 31, 2005.

13 **TITLE IV—DISASTER**

14 **PREPAREDNESS AND RESPONSE**

15 **SEC. 401. DISASTER PREPAREDNESS AND RESPONSE.**

16 (a) IN GENERAL.—Section 406(a) of the Robert T.
17 Stafford Disaster Relief and Emergency Assistance Act
18 (42 U.S.C. 5172(a)) is amended—

19 (1) in paragraph (1)—

20 (A) in subparagraph (A), by striking
21 “and” at the end;

22 (B) in subparagraph (B), by striking the
23 period and inserting “; and”; and

24 (C) by adding at the end the following:

1 “(C) subject to paragraph (5), to a person
2 that owns or operates a long-term care facility
3 damaged or destroyed by a major disaster for
4 the repair, restoration, reconstruction, or re-
5 placement of the facility and for associated ex-
6 penses incurred by the person.”; and

7 (2) by adding at the end the following:

8 “(5) CONDITIONS FOR ASSISTANCE TO LONG-
9 TERM CARE FACILITIES.—The President may make
10 contributions to a long-term care facility under para-
11 graph (1)(C) only if the owner or operator of the fa-
12 cility—

13 “(A) has applied for a disaster loan under
14 section 7(b) of the Small Business Act (15
15 U.S.C. 636(b)); and

16 “(B) either—

17 “(i) has been determined to be ineli-
18 gible for such a loan; or

19 “(ii) has obtained such a loan in the
20 maximum amount for which the Small
21 Business Administration determines the fa-
22 cility is eligible.”.

23 (b) DEFINITION.—Section 102 of the Robert T. Staf-
24 ford Disaster Relief and Emergency Assistance Act (42

1 U.S.C. 5122) is amended by adding at the end the fol-
2 lowing:

3 “(10) LONG-TERM CARE FACILITY.—The term
4 ‘long-term care facility’ means the following facilities
5 or providers which receive payment for services
6 under title XVIII or XIX of the Social Security Act:

7 “(A) A skilled nursing facility (as defined
8 in section 1819(a) of the Social Security Act
9 (42 U.S.C. 1395i–3(a))).

10 “(B) A nursing facility (as defined in sec-
11 tion 1919(a) of the Social Security Act (42
12 U.S.C. 1396r(a))).

13 “(C) A home health agency (as defined in
14 section 1861(o) of the Social Security Act (42
15 U.S.C. 1395x(o))).

16 “(D) A provider of hospice care (as defined
17 in section 1861(dd)(1) of the Social Security
18 Act (42 U.S.C. 1395x(dd)(1))).

19 “(E) A long-term care hospital (as de-
20 scribed in section 1886(d)(1)(B)(iv) of the So-
21 cial Security Act (42 U.S.C.
22 1395ww(d)(1)(B)(iv))).

23 “(F) A provider of personal care services.

1 “(G) A residential care provider that ar-
2 ranges for, or directly provides, long-term care
3 services.

4 “(H) An intermediate care facility for the
5 mentally retarded (as defined in section
6 1905(d) of the Social Security Act (42 U.S.C.
7 1396d(d))).

8 “(I) An assisted living facility or a resident
9 care program facility (as defined by the Sec-
10 retary of Health and Human Services).

11 “(J) A board and care facility (as defined
12 in section 1903(q)(4)(B) of the Social Security
13 Act (42 U.S.C. 1396b(q)(4)(B))).

14 “(K) Any other licensed facility determined
15 appropriate by the Secretary of Health and
16 Human Services, including a psychiatric health
17 facility, a mental health rehabilitation center,
18 and a mental retardation developmental dis-
19 ability facility.”.

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