

111TH CONGRESS  
1ST SESSION

# H. R. 2096

To amend the Internal Revenue Code of 1986 to allow long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2009

Mr. POMEROY (for himself, Mr. BOUSTANY, Ms. SCHWARTZ, and Ms. GINNY BROWN-WAITE of Florida) 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 long-term care insurance to be offered under cafeteria plans and flexible spending arrangements and to provide additional consumer protections for long-term care insurance.

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 Af-  
5 fordability and Security Act of 2009”.

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

3 (a) IN GENERAL.—

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

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) and redesign-  
18 ating subsection (d) as subsection (c).

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 6041 of such Code is amended by  
21 adding at the end the following new subsection:

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



1 (B) of section 7702B(g)(2) of the Internal Revenue Code  
2 of 1986 (relating to requirements of model regulation and  
3 Act) are amended to read as follows:

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

7                   “(i) MODEL REGULATION.—The fol-  
8                   lowing requirements of the model regula-  
9                   tion:

10                           “(I) Section 6A (relating to guar-  
11                           anteed renewal or noncancellability),  
12                           other than paragraph (5) thereof, and  
13                           the requirements of section 6B of the  
14                           model Act relating to such section 6A.

15                           “(II) Section 6B (relating to pro-  
16                           hibitions on limitations and exclu-  
17                           sions) other than paragraph (7) there-  
18                           of.

19                           “(III) Section 6C (relating to ex-  
20                           tension of benefits).

21                           “(IV) Section 6D (relating to  
22                           continuation or conversion of cov-  
23                           erage).

1                   “(V) Section 6E (relating to dis-  
2                   continuance and replacement of poli-  
3                   cies).

4                   “(VI) Section 7 (relating to unin-  
5                   tentional lapse).

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

9                   “(VIII) Section 11 (relating to  
10                  prohibitions against post-claims un-  
11                  derwriting).

12                  “(IX) Section 12 (relating to  
13                  minimum standards).

14                  “(X) Section 13 (relating to re-  
15                  quirement to offer inflation protec-  
16                  tion).

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

21                  “(XII) The provisions of section  
22                  28 relating to contingent nonforfeiture  
23                  benefits, if the policyholder declines  
24                  the offer of a nonforfeiture provision

1 described in paragraph (4) of this  
2 subsection.

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) of this  
14 subsection.

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

17 “(i) MODEL REGULATION.—The term  
18 ‘model regulation’ means the long-term  
19 care insurance model regulation promul-  
20 gated by the National Association of Insur-  
21 ance Commissioners (as adopted as of De-  
22 cember 2006).

23 “(ii) MODEL ACT.—The term ‘model  
24 Act’ means the long-term care insurance  
25 model Act promulgated by the National

1 Association of Insurance Commissioners  
2 (as adopted as of December 2006).

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

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

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

19 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

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

23 “(i) Section 9 (relating to required  
24 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 27 (relating to the right  
15          to reduce coverage and lower premiums).

16          “(viii) Section 31 (relating to stand-  
17          ard format outline of coverage).

18          “(ix) Section 32 (relating to require-  
19          ment to deliver shopper’s guide).

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

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

3                   “(i) Section 6F (relating to right to  
4                   return).

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

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

9                   “(iv) Section 6J (relating to policy  
10                  summary).

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

13                  “(vi) Section 7 (relating to incontest-  
14                  ability period).

15                  “(vii) Section 9 (relating to producer  
16                  training requirements).

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

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

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