

103^D CONGRESS
1ST SESSION

H. R. 438

To amend title XIX of the Social Security Act to establish Federal standards for long-term care insurance policies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. WYDEN introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 3, 1993

Additional sponsor: Ms. SLAUGHTER

A BILL

To amend title XIX of the Social Security Act to establish Federal standards for long-term care insurance policies.

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 In-
5 surance Consumer Protection Act of 1993”.

1 **SEC. 2. ESTABLISHMENT OF FEDERAL STANDARDS FOR**
2 **LONG-TERM CARE INSURANCE POLICIES.**

3 (a) IN GENERAL.—Title XIX of the Social Security
4 Act is amended by adding at the end the following new
5 section:

6 “LONG-TERM CARE INSURANCE STANDARDS

7 “SEC. 1931. (a) IMPLEMENTATION OF POLICY
8 STANDARDS.—

9 “(1) IN GENERAL.—

10 “(A) NEW ISSUES.—No long-term care in-
11 surance policy (as defined in subsection (i))
12 may be issued, sold, or offered for sale in a
13 State on or after the date specified in para-
14 graph (4) unless—

15 “(i) the Secretary determines that the
16 State has established a regulatory program
17 that—

18 “(I) provides for the application
19 and enforcement of the standards es-
20 tablished under paragraph (3), and

21 “(II) complies with the require-
22 ments of paragraph (5),

23 by the date specified in paragraph (4), and
24 the policy has been approved by the State
25 commissioner or superintendent of insur-
26 ance under such program; or

1 “(ii) if the State has not established
2 such a program, the policy has been cer-
3 tified by the Secretary (in accordance with
4 such procedures as the Secretary estab-
5 lishes) as meeting the standards estab-
6 lished under paragraph (3).

7 For purposes of this paragraph, the advertising
8 or soliciting with respect to a policy, directly or
9 indirectly, shall be deemed the offering for sale
10 of the policy.

11 “(B) REVIEW OF STATE REGULATORY
12 PROGRAMS.—The Secretary periodically shall
13 review regulatory programs described in sub-
14 paragraph (A)(i) to determine if they continue
15 to provide for the application and enforcement
16 of the standards established under paragraph
17 (3).

18 “(2) SANCTIONS.—Any person who issues or re-
19 news a policy, on or after the date specified in para-
20 graph (4), in violation of paragraph (1), is subject
21 to a civil money penalty of not to exceed \$25,000 for
22 each such violation. The provisions of section 1128A
23 (other than the first sentence of subsection (a) and
24 other than subsection (b)) shall apply to a civil
25 money penalty under this paragraph in the same

1 manner as such provisions apply to a penalty or pro-
2 ceeding under section 1128A(a).

3 “(3) PROMULGATION OF STANDARDS.—

4 “(A) IN GENERAL.—If, within 12 months
5 after the date of the enactment of this section,
6 the National Association of Insurance Commis-
7 sioners (in this section referred to as the
8 ‘NAIC’) promulgates model standards that in-
9 corporate the requirements of subsections (d)
10 through (h), such standards shall apply under
11 paragraph (1).

12 “(B) DEFAULT.—If the NAIC does not
13 promulgate the model standards under subpara-
14 graph (A) by the deadline established in that
15 paragraph, the Secretary shall promulgate,
16 within 12 months after such deadline, a regula-
17 tion that provides standards that incorporate
18 the requirements of subsections (d) through (h)
19 and such standards shall be applied under para-
20 graph (1).

21 “(C) CONSULTATION.—In establishing
22 standards under this paragraph, the NAIC or
23 Secretary shall consult with a working group
24 composed of representatives of issuers of long-
25 term care insurance policies, consumer groups,

1 and other qualified individuals. Such represent-
2 atives shall be selected in a manner so as to as-
3 sure balanced representation among the inter-
4 ested groups.

5 “(D) RELATION TO STATE LAW.—Nothing
6 in this section shall be construed as preventing
7 a State from applying standards that provide
8 greater protection to policyholders of long-term
9 care insurance policies.

10 “(4) DEADLINE FOR APPLICATION OF STAND-
11 ARDS.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), the date specified in this paragraph
14 for a State is—

15 “(i) the date the State adopts the
16 standards established under paragraph (3),
17 or

18 “(ii) 1 year after the date such stand-
19 ards are first established,
20 whichever is earlier.

21 “(B) STATE REQUIRING LEGISLATION.—In
22 the case of a State which the Secretary identi-
23 fies, in consultation with the NAIC, as—

24 “(i) requiring State legislation (other
25 than legislation appropriating funds) in

1 order for the standards established under
2 paragraph (3) to be applied, but

3 “(ii) having a legislature which is not
4 scheduled to meet in 1995 in a legislative
5 session in which such legislation may be
6 considered,

7 the date specified in this paragraph is the first
8 day of the first calendar quarter beginning after
9 the close of the first legislative session of the
10 State legislature that begins on or after Janu-
11 ary 1, 1995. For purposes of the previous sen-
12 tence, in the case of a State that has a 2-year
13 legislative session, each year of such session
14 shall be deemed to be a separate regular session
15 of the State legislature.

16 “(5) ADDITIONAL REQUIREMENTS FOR AP-
17 PROVAL OF STATE REGULATORY PROGRAMS.—For
18 purposes of paragraph (1)(A)(i)(II), the require-
19 ments of this paragraph for a State regulatory pro-
20 gram are as follows:

21 “(A) CONSUMER ACCESS TO COMPLIANCE
22 INFORMATION.—

23 “(i) IN GENERAL.—The program
24 must provide for consumer access to com-
25 plaints filed with the State commissioner

1 or superintendent of insurance with respect
2 to long-term care insurance policies.

3 “(ii) CONFIDENTIALITY.—The access
4 provided under clause (i) shall be limited
5 to the extent required to protect the con-
6 fidentiality of the identity of individual pol-
7 icyholders.

8 “(B) ACCESS TO OTHER INFORMATION.—
9 The program must provide for consumer access
10 to information reported under subsection (c)(4).

11 “(C) PROCESS FOR APPROVAL OF PRE-
12 MIUMS.—The program must provide for a proc-
13 ess for approving or disapproving proposed pre-
14 mium increases with respect to long-term care
15 insurance policies and must establish a policy
16 for the holding of public hearings prior to ap-
17 proval of such a premium increase. No such
18 premium increase shall be approved (or deemed
19 approved) unless the proposed increase is ac-
20 companied by an actuarial memorandum which
21 supports the increase and which contains such
22 information as may be required under the
23 standards under subsection (a)(3).

24 “(b) REGULATION OF SALES PRACTICES.—

1 “(1) DUTY OF GOOD FAITH AND FAIR DEAL-
2 ING.—

3 “(A) IN GENERAL.—Each individual who
4 is selling or offering for sale a long-term care
5 insurance policy has the duty of good faith and
6 fair dealing to the purchaser or potential pur-
7 chaser of such a policy.

8 “(B) PROHIBITED PRACTICES.—An indi-
9 vidual is considered to have violated subpara-
10 graph (A) if the individual engages in any of
11 the following practices:

12 “(i) TWISTING.—Knowingly making
13 any misleading representation or incom-
14 plete or fraudulent comparison of any
15 health care insurance policy or insurers for
16 the purpose of inducing, or tending to in-
17 duce, any person to retain or effect a
18 change with respect to a long-term care in-
19 surance policy.

20 “(ii) HIGH PRESSURE TACTICS.—Em-
21 ploying any method of marketing having
22 the effect of, or intending to, induce the
23 purchase of long-term care insurance pol-
24 icy through undue pressure.

1 “(iii) COLD LEAD ADVERTISING.—
2 Making use directly or indirectly of any
3 method of marketing which fails to disclose
4 in a conspicuous manner that a purpose of
5 the method of marketing is solicitation of
6 insurance and that contact will be made by
7 an insurance agent or insurance company.

8 “(2) COMPLETION OF MEDICAL HISTORIES PRO-
9 HIBITED.—A person who is selling or offering for
10 sale a long-term care insurance policy may not com-
11 plete the medical history portion of an application.

12 “(3) PROHIBITION OF SALE OR ISSUANCE TO
13 MEDICAID BENEFICIARIES.—A person may not
14 knowingly sell or issue a long-term care insurance
15 policy to an individual who is eligible for medical as-
16 sistance (other than only as a qualified medicare
17 beneficiary) under this title.

18 “(4) PROHIBITION OF SALE OR ISSUANCE OF
19 DUPLICATE SERVICE BENEFIT POLICIES.—A person
20 may not sell or issue a service-benefit long-term care
21 insurance policy—

22 “(A) knowing that the policy provides for
23 coverage that duplicates coverage already pro-
24 vided in another service-benefit long-term care

1 insurance policy (unless the policy is intended
2 to replace such other policy), or

3 “(B) for the benefit of an individual unless
4 the individual (or a representative of the indi-
5 vidual) provides a written statement to the ef-
6 fect that the coverage (i) does not duplicate
7 other coverage in effect under a service-benefit
8 long-term care insurance policy or (ii) will re-
9 place another service-benefit long-term care in-
10 surance policy.

11 In this paragraph, the term ‘service-benefit long-
12 term care insurance policy’ means a long-term care
13 insurance policy which provides for benefits based on
14 the amount of expenses incurred, rather than on an
15 indemnity basis.

16 “(5) PROVISION OF OUTLINE OF COVERAGE.—
17 No person may sell or offer for a sale a long-term
18 care insurance policy without providing to the pur-
19 chaser or potential purchaser (or representative) an
20 outline of coverage that complies with the standards
21 established under subsection (a)(3).

22 “(6) INFORMATION ON FINANCIAL ARRANGE-
23 MENTS WITH GROUPS.—No person may sell or offer
24 for sale a long-term care insurance policy with re-
25 spect to a member of an organization with which the

1 person (or the issuer of the policy) has a financial
2 arrangement of any type unless the person discloses
3 (in accordance with standards established under sub-
4 section (a)(3)) the nature of the financial arrange-
5 ment.

6 “(7) PENALTIES.—Any person who sells, offers
7 for sale, or issues a long-term care insurance policy
8 in violation of this subsection may be imprisoned not
9 more than 5 years, or fined in accordance with title
10 18, United States Code, and, in addition, is subject
11 to a civil money penalty of not to exceed \$25,000 for
12 each such violation. The provisions of section 1128A
13 (other than the first sentence of subsection (a) and
14 other than subsection (b)) shall apply to a civil
15 money penalty under this paragraph in the same
16 manner as such provisions apply to a penalty or pro-
17 ceeding under section 1128A(a).

18 “(c) ADDITIONAL RESPONSIBILITIES OF ISSUERS.—

19 “(1) REFUND OF PREMIUMS.—If an application
20 for a long-term care insurance policy (or for a cer-
21 tificate under a group long-term care insurance pol-
22 icy) is denied or an applicant returns a policy or cer-
23 tificate within 30 days of the date of its issuance
24 pursuant to subsection (h), the issuer shall refund to
25 the applicant, not later than 30 days after the date

1 of the denial or return, any premiums paid with re-
2 spect to such a policy.

3 “(2) MAILING OF POLICY.—If an application
4 for a long-term care insurance policy (or for a cer-
5 tificate under a group long-term care insurance pol-
6 icy) is approved, the issuer shall transmit to the ap-
7 plicant the policy (or certificate) of insurance not
8 later than 30 days after the date of the approval.

9 “(3) INFORMATION ON DENIALS OF CLAIMS.—
10 If a claim under a long-term care insurance policy
11 is denied, the issuer shall, within 60 days of the date
12 of a written request by the policyholder or
13 certificateholder (or representative)—

14 “(A) provide a written explanation of the
15 reasons for the denial, and

16 “(B) make available all information di-
17 rectly relating to such denial.

18 No claim under such a policy may be denied on the
19 basis of a failure to disclose a condition at the time
20 of issuance of the policy if the application for the
21 policy failed to request information respecting the
22 condition.

23 “(4) REPORTING OF INFORMATION.—The is-
24 suer of a long-term care insurance policy shall peri-
25 odically (not less often than annually) report to the

1 Commissioner or superintendent of insurance of
2 each State in which the policy is sold, and shall
3 make available to the Secretary, upon request, infor-
4 mation respecting—

5 “(A) the long-term care insurance policies
6 of the issuer that are in force,

7 “(B) the most recent premiums for such
8 policies and the premiums imposed for such
9 policies during the previous 5-year period,

10 “(C) the lapse rates, replacement rates,
11 and rescission rates for policies (by agent), and

12 “(D) the claims denied (as a percentage of
13 claims submitted) for such policies.

14 Information under this paragraph shall be reported
15 in a format specified in the standards established
16 under subsection (a)(3) to carry out this subsection.
17 For purposes of subparagraph (C), there shall not
18 be included as a lapse of policy such a lapse due to
19 the death of the policyholder. For purposes of sub-
20 paragraph (D), there shall not be included as a de-
21 nied claim that is denied solely because of the failure
22 to meet a deductible, waiting period, or exclusionary
23 period.

24 “(5) ACCESS TO INFORMATION.—Each such is-
25 suer shall provide the Secretary and the Commis-

1 sioner or superintendent of insurance of each State
2 in which the policy is sold such information as the
3 Secretary, Commissioner, or superintendent, may re-
4 quest.

5 “(6) PROVISION OF OUTLINE OF COVERAGE
6 FOR RENEWALS.—Each issuer of a long-term care
7 insurance policy shall provide, at the time of renewal
8 of such a policy, an outline of coverage that meets
9 the applicable standards established pursuant to this
10 section.

11 “(7) MEDICAL ASSESSMENTS FOR THE ELDER-
12 LY.—Before issuing a long-term care insurance pol-
13 icy to an applicant who is 75 years of age or older,
14 if the policy is not guaranteed issue the issuer shall
15 obtain one of the following:

16 “(A) A report of a physical examination.

17 “(B) An assessment of functional capacity.

18 “(C) Copies of medical records.

19 “(8) LIMITS ON COMPENSATION FOR SALE OF
20 POLICIES.—

21 “(A) IN GENERAL.—The issuer of a long-
22 term care insurance policy may not provide a
23 commission or other compensation to an agent
24 or other representative for the sale of such a
25 policy in an amount that exceeds 200 percent of

1 the commission or other compensation paid for
2 selling or servicing such a policy in the second
3 or subsequent year.

4 “(B) COMPENSATION DEFINED.—In sub-
5 paragraph (A), the term ‘compensation’ in-
6 cludes pecuniary or nonpecuniary remuneration
7 of any kind relating to the sale or renewal of
8 the policy or certification, including deferred
9 compensation, bonuses, gifts, prizes, awards,
10 and finders fees.

11 “(9) CIVIL MONEY PENALTY.—Any issuer of a
12 long-term care insurance policy who—

13 “(A) fails to make a refund in accordance
14 with paragraph (1),

15 “(B) fails to transmit a policy in accord-
16 ance with paragraph (2),

17 “(C) fails to provide, make available, or re-
18 port information in accordance with paragraph
19 (3), (4), or (5),

20 “(D) fails to provide an outline of coverage
21 in violation of paragraph (6), or

22 “(E) issues a policy without obtaining cer-
23 tain information in violation of paragraph (7),
24 or

1 “(F) provides a commission or compensa-
2 tion in violation of paragraph (8),
3 is subject to a civil money penalty of not to exceed
4 \$25,000 for each such violation. The provisions of
5 section 1128A (other than the first sentence of sub-
6 section (a) and other than subsection (b)) shall
7 apply to a civil money penalty under this paragraph
8 in the same manner as such provisions apply to a
9 penalty or proceeding under section 1128A(a).

10 “(d) REQUIREMENTS RELATING TO RENEWABIL-
11 ITY.—

12 “(1) IN GENERAL.—No long-term care insur-
13 ance policy may be canceled or nonrenewed for any
14 reason other than nonpayment of premium or mate-
15 rial misrepresentation.

16 “(2) CONTINUATION AND CONVERSION RIGHTS
17 FOR GROUP POLICIES.—

18 “(A) IN GENERAL.—Each group long-term
19 care insurance policy shall provide covered indi-
20 viduals with a basis for continuation or conver-
21 sion in accordance with this paragraph.

22 “(B) BASIS FOR CONTINUATION.—For
23 purposes of subparagraph (A), a policy provides
24 a basis for continuation of coverage if the policy
25 maintains coverage under the existing group

1 policy when such coverage would otherwise ter-
2minate and which is subject only to the contin-
3ued timely payment of premium when due. A
4group policy which restricts provision of bene-
5fits and services to or contains incentives to use
6certain providers or facility, may provide con-
7tinuation benefits which are substantially equiv-
8alent to the benefits of the existing group pol-
9icy.

10 “(C) BASIS FOR CONVERSION.—For pur-
11poses of subparagraph (A), a policy provides a
12basis for conversion of coverage if the policy en-
13titles each individual—

14 “(i) whose coverage under the group
15policy would otherwise be terminated for
16any reason, and

17 “(ii) who has been continuously in-
18sured under the policy (or group policy
19which was replaced) for at least 6 months
20before the date of the termination,

21to issuance of a policy providing benefits iden-
22tical to, substantially equivalent to, or in excess
23of, those of the policy being terminated, without
24evidence of insurability.

1 “(D) TREATMENT OF SUBSTANTIAL
2 EQUIVALENCE.—In determining under this
3 paragraph whether benefits are substantially
4 equivalent, there shall be taken into consider-
5 ation the difference between managed care and
6 non-managed care plans.

7 “(E) GROUP REPLACEMENT OF POLI-
8 CIES.—If a group long-term care insurance pol-
9 icy is replaced by another long-term care insur-
10 ance policy purchased by the same policyholder,
11 the succeeding issuer shall offer coverage to all
12 persons covered under the old group policy on
13 its date of termination. Coverage under the new
14 group policy shall not result in any exclusion
15 for preexisting conditions that would have been
16 covered under the group policy being replaced.

17 “(3) UPGRADE FOR CURRENT POLICIES.—Each
18 long-term care insurance policy in effect as of the ef-
19 fective date of the standards established under sub-
20 section (a)(3) shall permit the policyholder to pur-
21 chase a policy that meets all such standards. In of-
22 fering such a policy, the issuer may impose addi-
23 tional underwriting restrictions only for benefits not
24 held under the previously issued policy.

25 “(e) BENEFIT STANDARDS.—

1 “(1) USE OF STANDARD DEFINITIONS AND
2 TERMINOLOGY AND UNIFORM FORMAT.—Each long-
3 term care insurance policy shall, pursuant to stand-
4 ards established under subsection (a)(3)—

5 “(A) use uniform language and definitions,

6 and

7 “(B) use a uniform format for presenting
8 the outline of coverage under such a policy.

9 “(2) DISCLOSURE.—

10 “(A) OUTLINE OF COVERAGE.—The out-
11 line of coverage for each long-term care insur-
12 ance policy shall include at least the following:

13 “(i) A description of the principal
14 benefits and coverage under the policy.

15 “(ii) A statement of the principal ex-
16 clusions, reductions, and limitations con-
17 tained in the policy.

18 “(iii) A statement of the terms under
19 which the policy (or certificate) may be
20 continued in force or discontinued, the
21 terms for continuation or conversion, and
22 any reservation in the policy of a right to
23 change premiums.

24 “(iv) A statement that the outline of
25 coverage is a summary only, not a contract

1 of insurance, and that the policy (or mas-
2 ter policy) contains the contractual provi-
3 sions that govern.

4 “(v) A statement of the value of the
5 policy (determined in accordance with
6 standard established to carry out this sub-
7 paragraph).

8 “(vi) A description of the terms, speci-
9 fied in subsection (h), under which a policy
10 or certificate may be returned and pre-
11 mium refunded.

12 “(vii) Information on national average
13 costs for nursing facility and home health
14 care and information (in graphic form) on
15 the relationship of the value of the benefits
16 provided under the policy to such national
17 average costs.

18 “(viii) A statement of the percentage
19 limit on annual premium increases that is
20 provided under the policy pursuant to
21 paragraph (8).

22 “(ix) Information (in graphic form)
23 on the projected effect of inflation on the
24 value of benefits provided under the policy
25 during a period of at least 20 years.

1 “(B) CERTIFICATES.—A certificate issued
2 pursuant to a group long-term care insurance
3 policy shall include—

4 “(i) a description of the principal ben-
5 efits and coverage provided in the policy;

6 “(ii) a statement of the principal ex-
7 clusions, reductions, and limitations con-
8 tained in the policy; and

9 “(iii) A statement that the group mas-
10 ter policy determines governing contractual
11 provisions.

12 “(C) LONG-TERM CARE AS PART OF LIFE
13 INSURANCE.—In the case of a long-term care
14 insurance policy issued as a part of or a rider
15 on a life insurance policy, at the time of policy
16 delivery there shall be provided a policy sum-
17 mary that includes—

18 “(i) an explanation of how the long-
19 term care benefits interact with other com-
20 ponents of the policy (including deductions
21 from death benefits);

22 “(ii) an illustration of the amount of
23 benefits, the length of benefit, and the
24 guaranteed lifetime benefits (if any) for
25 each covered person; and

1 “(iii) any exclusions, reductions, and
2 limitations on benefits of long-term care.

3 “(3) LIMITING CONDITIONS ON BENEFITS; MIN-
4 IMUM BENEFITS.—

5 “(A) IN GENERAL.—A long-term care in-
6 surance policy may not condition or limit eligi-
7 bility—

8 “(i) for benefits for a type of services
9 to the need for or receipt of any other
10 services,

11 “(ii) for any noninstitutional benefit
12 on the medical necessity for such benefit,

13 “(iii) for benefits furnished by li-
14 censed providers on compliance with condi-
15 tions which are in addition to those re-
16 quired for licensure under State law, or

17 “(iv) for custodial care (if covered
18 under the policy) only (I) to care provided
19 in facilities which provide a higher level of
20 care or (II) to care provided in facilities
21 which provide for 24-hour or other nursing
22 care not required in order to be licensed by
23 the State.

1 “(B) HOME HEALTH CARE SERVICES.—If
2 a long-term care insurance policy provides bene-
3 fits for home health care services, the policy—

4 “(i) may not limit such benefits to
5 services provided by registered nurses or li-
6 censed practical nurses;

7 “(ii) may not require benefits for such
8 services to be provided by a nurse or thera-
9 pist that can be provided by a home health
10 aide or other licensed or certified home
11 care worker acting within the scope of the
12 worker’s licensure or certification;

13 “(iii) may not limit such benefits to
14 services provided by agencies or providers
15 certified under title XVIII; and

16 “(iv) must provide benefits for custo-
17 dial care, personal care services (including
18 home health aide and homemaker services),
19 home health services, and respite care in
20 an individual’s home.

21 “(C) NURSING FACILITY SERVICES.—If a
22 long-term care insurance policy provides bene-
23 fits for nursing facility services, the policy must
24 provide such benefits with respect to all nursing

1 facilities (as defined in section 1919(a)) in the
2 State.

3 “(D) MINIMUM PERIOD OF COVERAGE.—
4 Each long-term care insurance policy shall pro-
5 vide benefits over a period of at least 12 con-
6 secutive months.

7 “(4) PROHIBITION OF DISCRIMINATION.—A
8 long-term care insurance policy may not treat bene-
9 fits under the policy in the case of an individual with
10 Alzheimer’s disease, with any related progressive de-
11 generative dementia of an organic origin, or with
12 any organic or inorganic mental illness differently
13 from an individual having another medical condition
14 for which benefits may be made available.

15 “(5) LIMITATION ON USE OF PREEXISTING
16 CONDITION LIMITS.—

17 “(A) INITIAL ISSUANCE.—

18 “(i) IN GENERAL.—Subject to clause
19 (ii), a long-term care insurance policy may
20 not exclude or condition benefits based on
21 a medical condition for which the policy-
22 holder received treatment or was otherwise
23 diagnosed before the issuance of the policy.

24 “(ii) 6-MONTH LIMIT.—A long-term
25 care insurance policy may exclude benefits

1 under a policy, during its first 6 months,
2 based on a condition for which the policy-
3 holder received treatment or was otherwise
4 diagnosed during the 6 months before the
5 policy became effective.

6 “(B) REPLACEMENT POLICIES.—If a long-
7 term care insurance policy replaces another
8 long-term care insurance policy, the issuer of
9 the replacing policy shall waive any time periods
10 applicable to preexisting conditions, waiting pe-
11 riod, elimination periods and probationary peri-
12 ods in the new policy for similar benefits to the
13 extent such time was spent under the original
14 policy.

15 “(6) USE OF FUNCTIONAL ASSESSMENT.—

16 “(A) IN GENERAL.—Each long-term care
17 insurance policy—

18 “(i) shall determine eligibility for, and
19 level of, benefits (other than for nursing
20 facility services) available under the policy
21 based on a professional assessment of the
22 policyholder’s functional ability, and

23 “(ii) shall specify the level (or levels)
24 of functional impairment required under
25 such an assessment to obtain benefits

1 other than for nursing facility services)
2 under the policy.

3 Such assessment may not be conducted by an
4 individual who has a direct or indirect owner-
5 ship or control interest, or direct or indirect af-
6 filiation or relationship with, the issuer of the
7 policy or an entity that provides services for
8 which benefits are available under the long-term
9 care insurance policy.

10 “(B) APPEALS PROCESS.—Each long-term
11 care insurance policy shall provide for an ap-
12 peals process, meeting standards established
13 under this subsection, for individuals who dis-
14 pute the results of an assessment conducted
15 under this paragraph.

16 “(7) INFLATION PROTECTION.—Each long-term
17 care insurance policy shall provide, at the time of
18 each annual renewal, for an increase of a specified
19 percentage (but not less than 5 percent) in the dol-
20 lar payment levels and the maximum payment limit
21 on benefit coverage above the levels or limit in effect
22 during the previous policy year. In applying this
23 paragraph, the increases shall be compounded annu-
24 ally and the policy may provide for rounding such an
25 increase to the nearest multiple of \$1 (in the case

1 of dollar payment levels) or \$100 (in the case of the
2 maximum payment limit).

3 “(8) SPECIFICATION OF LIMITS ON PREMIUM
4 INCREASES.—Each long-term care insurance policy
5 shall specify a limit on the percentage increase in
6 premiums for a policy that may be made in any be-
7 tween one policy year and the subsequent policy
8 year.

9 “(f) NONFORFEITURE.—

10 “(1) IN GENERAL.—Each long-term care insur-
11 ance policy shall provide that if the policy lapses
12 after the policy has been in effect for a minimum pe-
13 riod (specified under the standards under subsection
14 (a)(3)), the policy will provide without payment of
15 any additional premiums benefits equal to—

16 “(A) a percentage (specified under such
17 standards) of the benefits otherwise available at
18 term, or

19 “(B) such other type of benefits as such
20 standards may provide.

21 “(2) ESTABLISHMENT OF STANDARDS.—The
22 standards under subsection (a)(3)—

23 “(A) may not provide more than 2 addi-
24 tional types of benefits under paragraph (1)(B),
25 and

1 “(B) may provide that the percentage or
2 amount of benefits under paragraph (1) must
3 increase based upon the period of time in which
4 the policy was in effect.

5 “(g) LIMIT OF PERIOD OF CONTESTABILITY.—The
6 issuer of a long-term care insurance policy may not cancel
7 such a policy or deny a claim under the policy based on
8 fraud or misrepresentation relating to the issuance of the
9 policy unless notice of such fraud or misrepresentation is
10 provided within 6 months after the date of the issuance
11 of the policy.

12 “(h) RIGHT TO RETURN (FREE LOOK).—Each appli-
13 cant for a long-term care insurance policy shall have the
14 right to return the policy (or certificate) within 30 days
15 of the date of its delivery (and to have the premium re-
16 funded) if, after examination of the policy or certificate,
17 the applicant is not satisfied for any reason.

18 “(i) LONG-TERM CARE INSURANCE POLICY DE-
19 FINED.—

20 “(1) IN GENERAL.—In this section, except as
21 otherwise provided in this subsection, the term ‘long-
22 term care insurance policy’ means any insurance pol-
23 icy, certificate, or rider advertised, marketed, of-
24 fered, or designed to provide coverage for each cov-
25 ered person on an expense incurred, indemnity, pre-

1 paid, or other basis, for one or more diagnostic, pre-
2 ventive, therapeutic, rehabilitative, maintenance or
3 personal care services, provided in a setting other
4 than an acute care unit of a hospital. Such term in-
5 cludes a group or individual annuity or life insur-
6 ance policy or rider which provides directly (or which
7 supplements) long-term care insurance.

8 “(2) POLICIES EXCLUDED.—Except as provided
9 in paragraph (4), the term ‘long-term care insurance
10 policy’ does not include any medicare supplemental
11 policy (as defined in section 1882(g)) and any insur-
12 ance which is offered primarily to provide—

13 “(A) basic hospital expense coverage, basic
14 medical-surgical expense coverage, hospital con-
15 finement indemnity coverage, or major medical
16 expense coverage,

17 “(B) disability income or related asset-pro-
18 tection coverage,

19 “(C) accident only coverage,

20 “(D) specified disease or specified accident
21 coverage, or

22 “(E) limited benefit health coverage.

23 “(3) TREATMENT OF CERTAIN LIFE INSURANCE
24 POLICIES.—Except as provided in paragraph (4), the

1 term ‘long-term care insurance policy’ does not in-
2 clude life insurance policies—

3 “(A) which accelerate the death benefit
4 specifically for—

5 “(i) one or more of the qualifying
6 events of terminal illness,

7 “(ii) medical conditions requiring ex-
8 traordinary medical intervention, or

9 “(iii) permanent institutional confine-
10 ment;

11 “(B) which provide the option of a lump-
12 sum payment for those benefits; and

13 “(C) in which neither the benefits nor the
14 eligibility for the benefits is conditioned upon
15 the receipt of long-term care.

16 “(4) INCLUSION OF POLICIES MARKETED AS
17 LONG-TERM CARE INSURANCE.—The term ‘long-
18 term care insurance policy’ also means any product
19 which is advertised, marketed, or offered as long-
20 term care insurance.”.

21 (b) STATE MEDICAID REQUIREMENT FOR REGU-
22 LATORY PROGRAM.—Section 1902(a) of the Social Secu-
23 rity Act (42 U.S.C. 1396(a)) is amended—

24 (1) by striking “and” at the end of paragraph
25 (54);

1 (2) in the paragraph (55) inserted by section
2 4602(a)(3) of the Omnibus Budget Reconciliation
3 Act of 1990, by striking the period at the end and
4 inserting a semicolon;

5 (3) by redesignating the paragraph (55) in-
6 serted by section 4604(b)(3) of the Omnibus Budget
7 Reconciliation Act of 1990 as paragraph (56), by
8 transferring and inserting it after the paragraph
9 (55) inserted by section 4602(a)(3) of such Act, and
10 by striking the period at the end and inserting a
11 semicolon;

12 (4) by placing paragraphs (57) and (58), in-
13 serted by section 4751(a)(1)(C) of the Omnibus
14 Budget Reconciliation Act of 1990, immediately
15 after paragraph (56), as redesignated by paragraph
16 (3);

17 (5) in the paragraph (58) inserted by section
18 4751(a)(1)(C) of the Omnibus Budget Reconciliation
19 Act of 1990, by striking the period at the end and
20 inserting a semicolon;

21 (6) by redesignating the paragraph (58) in-
22 serted by section 4752(c)(1)(C) of the Omnibus
23 Budget Reconciliation Act of 1990 as paragraph
24 (59), by transferring and inserting it after the para-
25 graph (58) inserted by section 4751(a)(1)(C) of such

1 Act, and by striking the period at the end and in-
2 sserting “; and”; and

3 (7) by inserting after paragraph (59), as so re-
4 designating, the following new paragraph:

5 “(60) establish, by the date specified in section
6 1931(a)(4), a State regulatory program, that meets
7 the requirements of section 1931(a)(1)(A)(i).”.

8 (c) DENIAL OF MEDICAID FUNDS FOR FAILURE TO
9 ESTABLISH REGULATORY PROGRAM.—Section 1903(i) of
10 the Social Security Act (42 U.S.C. 1396b(i)) is amend-
11 ed—

12 (1) in paragraph (10), by striking all that fol-
13 lows “1927(g)” and inserting a semicolon;

14 (2) in paragraph (12) by striking the period at
15 the end and inserting a semicolon;

16 (3) by redesignating the paragraph (14) in-
17 sserted by section 4752(e) of the Omnibus Budget
18 Reconciliation Act of 1990 as paragraph (13), and
19 by striking the period at the end and inserting
20 “; or”; and

21 (4) by inserting after paragraph (13), as so re-
22 designating, the following new paragraph.

23 “(14) with respect to any amount expended for
24 medical assistance for nursing facility services (fur-
25 nished on and after the date specified in section

1 1931(a)(4)) during such period as the state has
2 failed to establish and maintain a regulatory pro-
3 gram that meets the requirements of section
4 1931(a)(1)(A)(i).”.

5 (d) REPORT ON ASSESSMENT METHODS FOR FUNC-
6 TIONAL ABILITY.—Within 2 years after the date of the
7 enactment of this Act, the Secretary of Health and
8 Human Services shall submit to Congress a report on the
9 different methods that may be used to conduct assess-
10 ments of functional ability described in section
11 1931(e)(6)(A) of the Social Security Act (including the
12 methods used under section 1929(c) of such Act) and the
13 relative effectiveness of each of such methods.

14 (e) REPORT ON SOLVENCY PROTECTION.—Within 2
15 years after the date of the enactment of this Act, the Sec-
16 retary of Health and Human Services shall submit to Con-
17 gress a report on standards that may be applied to assure
18 the solvency of insurers with respect to long-term care in-
19 surance policies.

20 (f) STUDY OF STANDARD MEASURE OF VALUE FOR
21 LONG-TERM CARE INSURANCE POLICIES.—The Secretary
22 of Health and Human Services shall provide for a study
23 to develop a standard measure of value for long-term care
24 insurance policies. Within 2 years after the date of the

1 enactment of this Act, the Secretary shall submit to Con-
2 gress a report on such study.

3 **SEC. 3. FUNDING FOR LONG-TERM CARE INSURANCE IN-**
4 **FORMATION, COUNSELING, AND ASSISTANCE.**

5 There are authorized to be appropriated to provide
6 information, counseling, and assistance relating to the
7 procurement of adequate and appropriate long-term care
8 insurance, \$20,000,000 for each of fiscal years 1995,
9 1996, and 1997.

○

HR 438 SC—2

HR 438 SC—3

HR 438 SC—4