

104TH CONGRESS
1ST SESSION

S. 411

To amend the Internal Revenue Code of 1986 to provide for the treatment of long-term care insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14 (legislative day, JANUARY 30), 1995

Ms. SNOWE 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 provide for the treatment of long-term care insurance, and for other purposes.

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. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

Section 1. Short title; table of contents.

TITLE I—TAX TREATMENT OF LONG-TERM CARE INSURANCE

Sec. 101. Treatment of long-term care insurance or plans.

Sec. 102. Exclusion for benefits provided under long-term care insurance; inclusion of employer-provided coverage.

Sec. 103. Credit for qualified long-term care premiums.

Sec. 104. Qualified long-term services treated as medical care.

Sec. 105. Tax reserve treatment of long-term care insurance contracts.

Sec. 106. Exclusion from gross income for amounts withdrawn from individual retirement plans or 401(k) plans for long-term care insurance.

- Sec. 107. Tax treatment of accelerated death benefits under life insurance contracts.
- Sec. 108. Tax treatment of companies issuing qualified accelerated death benefit riders.
- Sec. 109. Qualified long-term care insurance contracts permitted to be offered in cafeteria plans.
- Sec. 110. Effective date.

TITLE II—ESTABLISHMENT OF FEDERAL STANDARDS FOR LONG-TERM CARE INSURANCE

- Sec. 201. Establishment of Federal standards for long-term care insurance.

TITLE III—DEDUCTION FOR CERTAIN EXPENSES FOR DEPENDENTS WITH ALZHEIMER'S DISEASE OR RELATED ORGANIC BRAIN DISORDERS

- Sec. 301. Deduction allowance for home health care and adult day and respite care expenses of individuals for dependents with Alzheimer's disease or related organic brain disorders.

TITLE IV—DEPENDENT CARE CREDIT EXPANDED AND MADE REFUNDABLE

- Sec. 401. Dependent care tax credit expanded and made refundable.

1 **TITLE I—TAX TREATMENT OF**
 2 **LONG-TERM CARE INSURANCE**
 3 **SEC. 101. TREATMENT OF LONG-TERM CARE INSURANCE**
 4 **OR PLANS.**

5 (a) GENERAL RULE.—Subpart E of part I of sub-
 6 chapter L of chapter 1 of the Internal Revenue Code of
 7 1986 is amended by inserting after section 818 the follow-
 8 ing new section:

9 **“SEC. 818A. TREATMENT OF LONG-TERM CARE INSURANCE**
 10 **OR PLANS.**

11 “(a) GENERAL RULE.—For purposes of this title—
 12 “(1) a long-term care insurance contract shall
 13 be treated as an accident or health insurance con-
 14 tract,

1 “(2) amounts received under such a contract
2 with respect to qualified long-term care services shall
3 be treated as amounts received for personal injuries
4 or sickness, and

5 “(3) any plan of an employer providing quali-
6 fied long-term care services shall be treated as an
7 accident or health plan.

8 “(b) LONG-TERM CARE INSURANCE CONTRACT.—

9 “(1) IN GENERAL.—For purposes of this part,
10 the term ‘long-term care insurance contract’ means
11 any insurance contract issued if—

12 “(A) the only insurance protection pro-
13 vided under such contract is coverage of quali-
14 fied long-term care services and benefits inci-
15 dental to such coverage,

16 “(B) the maximum benefit under the pol-
17 icy (or certificate for a group long-term care in-
18 surance policy) for expenses incurred for any
19 day does not exceed \$200,

20 “(C) such contract does not cover expenses
21 incurred for services or items to the extent that
22 such expenses are reimbursable under title
23 XVIII of the Social Security Act or would be so
24 reimbursable but for the application of a de-
25 ductible or coinsurance amount,

1 “(D) such contract is guaranteed renew-
2 able,

3 “(E) such contract does not have any cash
4 surrender value, and

5 “(F) all refunds of premiums, and all pol-
6 icyholder dividends or similar amounts, under
7 such contract are to be applied as a reduction
8 in future premiums or to increase future bene-
9 fits.

10 “(2) SPECIAL RULES.—

11 “(A) CONTRACT MAY COVER MEDICARE
12 REIMBURSABLE EXPENSES WHERE MEDICARE
13 IS SECONDARY PAYOR.—Paragraph (1)(C) shall
14 not apply to expenses which are reimbursable
15 under title XVIII of the Social Security Act
16 only as a secondary payor.

17 “(B) REFUNDS OF PREMIUMS.—Para-
18 graph (1)(F) shall not apply to any refund of
19 premiums on surrender or cancellation of the
20 contract.

21 “(C) PER DIEM, ETC. PAYMENTS PER-
22 MITTED.—A contract shall not fail to be treated
23 as described in paragraph (1)(A) by reason of
24 payments being made on a per diem or other
25 periodic basis without regard to the expenses

1 incurred or services rendered during the period
2 to which the payments relate.

3 “(c) QUALIFIED LONG-TERM CARE SERVICES.—For
4 purposes of this section:

5 “(1) IN GENERAL.—The term ‘qualified long-
6 term care services’ means—

7 “(A) necessary diagnostic, preventive,
8 therapeutic, and rehabilitative services, and
9 maintenance or personal care services, which—

10 “(i) are required by a chronically ill
11 individual in a qualified facility, and

12 “(ii) are provided pursuant to a plan
13 of care prescribed by a licensed health care
14 practitioner; or

15 “(B) payments made on a per diem or
16 other periodic basis without regard to the ex-
17 penses incurred or services rendered during the
18 period to which the payments relate and which
19 are payable to a chronically ill individual in a
20 qualified facility who is receiving treatment pur-
21 suant to a plan of care prescribed by a licensed
22 health care practitioner.

23 “(2) CHRONICALLY ILL INDIVIDUAL.—

24 “(A) IN GENERAL.—The term ‘chronically
25 ill individual’ means any individual who has

1 been certified by a licensed health care practi-
2 tioner as—

3 “(i)(I) being unable to perform (with-
4 out substantial assistance from another in-
5 dividual) at least 2 activities of daily living
6 (as defined in subparagraph (B)) for a pe-
7 riod of at least 90 days due to a loss of
8 functional capacity, or

9 “(II) having a level of disability simi-
10 lar (as determined by the Secretary in con-
11 sultation with the Secretary of Health and
12 Human Services) to the level of disability
13 described in subclause (I), or

14 “(ii) having a similar level of disabil-
15 ity due to cognitive impairment.

16 “(B) ACTIVITIES OF DAILY LIVING.—For
17 purposes of subparagraph (A), each of the fol-
18 lowing is an activity of daily living:

19 “(i) MOBILITY.—The process of walk-
20 ing or wheeling on a level surface which
21 may include the use of an assistive device
22 such as a cane, walker, wheelchair, or
23 brace.

1 “(ii) DRESSING.—The overall complex
2 behavior of getting clothes from closets
3 and drawers and then getting dressed.

4 “(iii) TOILETING.—The act of going
5 to the toilet room for bowel and bladder
6 function, transferring on and off the toilet,
7 cleaning after elimination, and arranging
8 clothes or the ability to voluntarily control
9 bowel and bladder function, or in the event
10 of incontinence, the ability to maintain a
11 reasonable level of personal hygiene.

12 “(iv) TRANSFER.—The process of get-
13 ting in and out of bed or in and out of a
14 chair or wheelchair.

15 “(v) EATING.—The process of getting
16 food from a plate or its equivalent into the
17 mouth.

18 “(3) QUALIFIED FACILITY.—The term ‘quali-
19 fied facility’ means—

20 “(A) a nursing, rehabilitative, hospice, or
21 adult day care facility (including a hospital, re-
22 tirement home, nursing home, skilled nursing
23 facility, intermediate care facility, or similar in-
24 stitution)—

1 “(i) which is licensed under State law,
2 or

3 “(ii) which is a certified facility for
4 purposes of title XVIII or XIX of the So-
5 cial Security Act, or

6 “(B) an individual’s home if a licensed
7 health care practitioner certifies that without
8 home care the individual would have to be cared
9 for in a facility described in subparagraph (A).

10 “(4) MAINTENANCE OR PERSONAL CARE SERV-
11 ICES.—The term ‘maintenance or personal care serv-
12 ices’ means any care the primary purpose of which
13 is to provide needed assistance with any of the ac-
14 tivities of daily living described in paragraph (2)(B).

15 “(5) LICENSED HEALTH CARE PRACTI-
16 TIONER.—The term ‘licensed health care practi-
17 tioner’ means any physician (as defined in section
18 1861(r) of the Social Security Act) and any reg-
19 istered professional nurse, licensed social worker, or
20 other individual who meets such requirements as
21 may be prescribed by the Secretary.

22 “(d) CONTINUATION COVERAGE EXCISE TAX NOT
23 TO APPLY.—This section shall not apply in determining
24 whether section 4980B (relating to failure to satisfy con-

1 continuation coverage requirements of group health plans) ap-
2 plies.

3 “(e) INFLATION ADJUSTMENT OF \$200 BENEFIT
4 LIMIT.—

5 “(1) IN GENERAL.—In the case of a calendar
6 year after 1996, the \$200 amount contained in sub-
7 section (b)(1)(B) shall be increased for such cal-
8 endar year by the medical care cost adjustment for
9 such calendar year or 5 percent per year, whichever
10 is greater. If any increase determined under the pre-
11 ceding sentence is not a multiple of \$10, such in-
12 crease shall be rounded to the nearest multiple of
13 \$10.

14 “(2) MEDICAL CARE COST ADJUSTMENT.—For
15 purposes of paragraph (1), the medical care cost ad-
16 justment for any calendar year is the percentage (if
17 any) by which—

18 “(A) the medical care component of the
19 Consumer Price Index (as defined in section
20 1(f)(5)) for August of the preceding calendar
21 year, exceeds

22 “(B) such component for August of
23 1995.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for such subpart E is amended by inserting after the item
 3 relating to section 818 the following new item:

“Sec. 818A. Treatment of long-term care insurance or plans.”.

4 **SEC. 102. EXCLUSION FOR BENEFITS PROVIDED UNDER**
 5 **LONG-TERM CARE INSURANCE; INCLUSION**
 6 **OF EMPLOYER-PROVIDED COVERAGE.**

7 (a) IN GENERAL.—Subsection (a) of section 104 of
 8 the Internal Revenue Code of 1986 (relating to compensa-
 9 tion for injuries or sickness) is amended by striking “and”
 10 at the end of paragraph (4), by striking the period at the
 11 end of paragraph (5) and inserting “, and”, and by insert-
 12 ing after paragraph (4) the following new paragraph:

13 “(6) benefits under a long-term care insurance
 14 contract (as defined in section 818A(b)).”.

15 (b) INCLUSION OF EMPLOYER-PROVIDED COV-
 16 ERAGE.—Section 106 of such Code (relating to contribu-
 17 tions by employer to accident and health plans) is amend-
 18 ed by adding at the end thereof the following sentence:
 19 “The preceding sentence shall not apply to any plan pro-
 20 viding coverage for qualified long-term care services.”.

21 **SEC. 103. CREDIT FOR QUALIFIED LONG-TERM CARE PRE-**
 22 **MIUMS.**

23 (a) GENERAL RULE.—Subpart C of part IV of sub-
 24 chapter A of chapter 1 of the Internal Revenue Code of
 25 1986 (relating to refundable credits) is amended by redess-

1 ignating section 35 as section 36 and by inserting after
2 section 34 the following new section:

3 **“SEC. 35. LONG-TERM CARE INSURANCE CREDIT.**

4 “(a) GENERAL RULE.—In the case of an individual,
5 there shall be allowed as a credit against the tax imposed
6 by this subtitle for the taxable year an amount equal to
7 the applicable percentage of the eligible long-term care
8 premiums paid during such taxable year for such individ-
9 ual or the spouse of such individual.

10 “(b) APPLICABLE PERCENTAGE.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, the term ‘applicable percentage’ means 31 per-
13 cent reduced (but not below zero) by 1 percentage
14 point for each \$1,000 (or fraction thereof) by which
15 the taxpayer’s adjusted gross income for the taxable
16 year exceeds the base amount.

17 “(2) BASE AMOUNT.—For purposes of para-
18 graph (1), the term ‘base amount’ means—

19 “(A) except as otherwise provided in this
20 paragraph, \$25,000,

21 “(B) \$40,000 in the case of joint return,
22 and

23 “(C) zero in the case of a taxpayer who—

24 “(i) is married at the close of the tax-
25 able year (within the meaning of section

1 7703) but does not file a joint return for
 2 such taxable year, and

3 “(ii) does not live apart from his or
 4 her spouse at all times during the taxable
 5 year.

6 “(c) ELIGIBLE LONG-TERM CARE PREMIUMS.—

7 “(1) IN GENERAL.—For purposes of this sec-
 8 tion, the term ‘eligible long-term care premiums’
 9 means the amount paid during a taxable year for
 10 any long-term care insurance contract (as defined in
 11 section 818A) covering an individual, to the extent
 12 such amount does not exceed the limitation deter-
 13 mined under the following table:

“In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	\$200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	1,600
More than 70	2,000.

14 “(2) INDEXING.—

15 “(A) IN GENERAL.—In the case of any
 16 taxable year beginning in a calendar year after
 17 1996, each dollar amount contained in para-
 18 graph (1) shall be increased by the medical care
 19 cost adjustment of such amount for such cal-
 20 endar year. If any increase determined under
 21 the preceding sentence is not a multiple of \$10,

1 such increase shall be rounded to the nearest
2 multiple of \$10.

3 “(B) MEDICAL CARE COST ADJUST-
4 MENT.—For purposes of subparagraph (A), the
5 medical care cost adjustment for any calendar
6 year is the percentage (if any) by which—

7 “(i) the medical care component of
8 the Consumer Price Index (as defined in
9 section 1(f)(5)) for August of the preced-
10 ing calendar year, exceeds

11 “(ii) such component for August of
12 1995.

13 “(d) COORDINATION WITH MEDICAL EXPENSE DE-
14 DUCTION.—Any amount allowed as a credit under this
15 section shall not be taken into account under section
16 213.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for subpart C of part IV of subchapter A of chapter 1
19 of such Code is amended by striking the item relating to
20 section 35 and inserting the following:

“Sec. 35. Long-term care insurance credit.
“Sec. 36. Overpayments of tax.”.

21 **SEC. 104. QUALIFIED LONG-TERM SERVICES TREATED AS**
22 **MEDICAL CARE.**

23 (a) GENERAL RULE.—Paragraph (1) of section
24 213(d) of the Internal Revenue Code of 1986 (defining

1 medical care) is amended by striking “or” at the end of
2 subparagraph (B), by redesignating subparagraph (C) as
3 subparagraph (D), and by inserting after subparagraph
4 (B) the following new subparagraph:

5 “(C) for qualified long-term care services
6 (as defined in section 818A(c)), or”.

7 (b) DEDUCTION FOR LONG-TERM CARE EXPENSES
8 FOR PARENT OR GRANDPARENT.—Section 213 of such
9 Code (relating to deduction for medical expenses) is
10 amended by adding at the end the following new sub-
11 section:

12 “(f) SPECIAL RULE FOR CERTAIN LONG-TERM CARE
13 EXPENSES.—For purposes of subsection (a), the term ‘de-
14 pendent’ shall include any parent or grandparent of the
15 taxpayer for whom the taxpayer has expenses for long-
16 term care services described in section 818A(c), but only
17 to the extent of such expenses.”.

18 (c) TECHNICAL AMENDMENTS.—

19 (1) Subparagraph (D) of section 213(d)(1) of
20 such Code (as redesignated by subsection (a)) is
21 amended by striking “subparagraphs (A) and (B)”
22 and inserting “subparagraphs (A), (B), and (C)”.

23 (2) Paragraph (1) of section 213(d) of such
24 Code is amended by adding at the end the following
25 new flush sentence:

1 “In the case of a long-term care insurance contract
2 (as defined in section 818A), only eligible long-term
3 care premiums (as defined in section 35(c)) shall be
4 taken into account under subparagraph (D).”.

5 (3) Paragraph (6) of section 213(d) of such
6 Code is amended—

7 (A) by striking “subparagraphs (A) and
8 (B)” and inserting “subparagraphs (A), (B),
9 and (C)”, and

10 (B) by striking “paragraph (1)(C)” in sub-
11 paragraph (A) and inserting “paragraph
12 (1)(D)”.

13 (4) Paragraph (7) of section 213(d) of such
14 Code is amended by striking “subparagraphs (A)
15 and (B)” and inserting “subparagraphs (A), (B),
16 and (C)”.

17 **SEC. 105. TAX RESERVE TREATMENT OF LONG-TERM CARE**
18 **INSURANCE CONTRACTS.**

19 (a) IN GENERAL.—Subparagraph (A) of section
20 807(d)(3) of the Internal Revenue Code of 1986 (relating
21 to tax reserve method) is amended—

22 (1) by redesignating clause (iv) as clause (v),

23 (2) by striking “or (iii)” each place it appears
24 in clause (v) (as so redesignated) and inserting
25 “(iii), or (iv), and

1 (3) by inserting after clause (iii) the following
2 new clause:

3 “(iv) LONG-TERM CARE INSURANCE
4 CONTRACTS.—In the case of any long-term
5 care insurance contract, a one-year full
6 preliminary term method.”.

7 (b) TECHNICAL AMENDMENT.—Clause (iii) of section
8 807(d)(3)(A) of such Code is amended by inserting “other
9 than a long-term care insurance contract,” after “con-
10 tract,”.

11 **SEC. 106. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
12 **WITHDRAWN FROM INDIVIDUAL RETIRE-**
13 **MENT PLANS OR 401(k) PLANS FOR LONG-**
14 **TERM CARE INSURANCE.**

15 (a) IN GENERAL.—Part III of subchapter B of chap-
16 ter 1 of the Internal Revenue Code of 1986 (relating to
17 items specifically excluded from gross income) is amended
18 by redesignating section 137 as section 138 and by insert-
19 ing after section 136 the following new section:

20 **“SEC. 137. DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT**
21 **ACCOUNTS AND SECTION 401(k) PLANS FOR**
22 **LONG-TERM CARE INSURANCE.**

23 “(a) GENERAL RULE.—The amount includible in the
24 gross income of an individual for the taxable year by rea-

1 son of qualified distributions during such taxable year
2 shall not exceed the excess of—

3 “(1) the amount which would (but for this sec-
4 tion) be so includible by reason of such distributions,
5 over

6 “(2) the aggregate premiums paid by such indi-
7 vidual during such taxable year for any long-term
8 care insurance contract (as defined in section 818A)
9 for the benefit of such individual or the spouse of
10 such individual.

11 “(b) QUALIFIED DISTRIBUTION.—For purposes of
12 this section, the term ‘qualified distribution’ means any
13 distribution to an individual from an individual retirement
14 account or a section 401(k) plan if such individual has
15 attained age 59½ on or before the date of the distribution
16 (and, in the case of a distribution used to pay premiums
17 for the benefit of the spouse of such individual, such
18 spouse has attained age 59½ on or before the date of the
19 distribution).

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

21 “(1) INDIVIDUAL RETIREMENT ACCOUNT.—The
22 term ‘individual retirement account’ has the mean-
23 ing given such term by section 408(a).

24 “(2) SECTION 401(k) PLAN.—The term ‘section
25 401(k) plan’ means any employer plan which meets

1 the requirements of section 401(a) and which in-
2 cludes a qualified cash or deferred arrangement (as
3 defined in section 401(k)).

4 “(d) SPECIAL RULES FOR SECTION 401(k) PLANS.—

5 “(1) WITHDRAWALS CANNOT EXCEED ELEC-
6 TIVE CONTRIBUTIONS UNDER QUALIFIED CASH OR
7 DEFERRED ARRANGEMENT.—This section shall not
8 apply to any distribution from a section 401(k) plan
9 to the extent the aggregate amount of such distribu-
10 tions for the use described in subsection (a) exceeds
11 the aggregate employer contributions made pursuant
12 to the employee’s election under section 401(k)(2).

13 “(2) WITHDRAWALS NOT TO CAUSE DISQUALI-
14 FICATION.—A plan shall not be treated as failing to
15 satisfy the requirements of section 401, and an ar-
16 rangement shall not be treated as failing to be a
17 qualified cash or deferred arrangement (as defined
18 in section 401(k)(2)), merely because under the plan
19 or arrangement distributions are permitted which
20 are excludable from gross income by reason of this
21 section.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 401(k) of such Code is amended by
24 adding at the end the following new paragraph:

1 “(11) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals for payment of long-term care premiums, see section 137.”.

2 (2) Section 408(d) of such Code is amended by
3 adding at the end the following new paragraph:

4 “(8) CROSS REFERENCE.—

“For provision permitting tax-free withdrawals from individual retirement accounts for payment of long-term care premiums, see section 137.”.

5 (3) The table of sections for such part III is
6 amended by striking the last item and inserting the
7 following new items:

“Sec. 137. Distributions from individual retirement accounts and section 401(k) plans for long-term care insurance.
“Sec. 138. Cross references to other Acts.”.

8 **SEC. 107. TAX TREATMENT OF ACCELERATED DEATH BENE-**
9 **FITS UNDER LIFE INSURANCE CONTRACTS.**

10 Section 101 of the Internal Revenue Code of 1986
11 (relating to certain death benefits) is amended by adding
12 at the end the following new subsection:

13 “(g) TREATMENT OF CERTAIN ACCELERATED
14 DEATH BENEFITS.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, any amount paid or advanced to an individual
17 under a life insurance contract on the life of an in-
18 sured—

19 “(A) who is a terminally ill individual, or

1 “(B) who is a chronically ill individual (as
2 defined in section 818A(c)(2)) who is confined
3 to a qualified facility (as defined in section
4 818A(c)(3)(A)),
5 shall be treated as an amount paid by reason of the
6 death of such insured.

7 “(2) TERMINALLY ILL INDIVIDUAL.—For pur-
8 poses of this subsection, the term ‘terminally ill indi-
9 vidual’ means an individual who has been certified
10 by a physician as having an illness or physical condi-
11 tion which can reasonably be expected to result in
12 death in 12 months or fewer.

13 “(3) PHYSICIAN.—For purposes of this sub-
14 section, the term ‘physician’ has the meaning given
15 to such term by section 213(d)(4).”.

16 **SEC. 108. TAX TREATMENT OF COMPANIES ISSUING QUALI-**
17 **FIED ACCELERATED DEATH BENEFIT RID-**
18 **ERS.**

19 (a) QUALIFIED ACCELERATED DEATH BENEFIT RID-
20 ERS TREATED AS LIFE INSURANCE.—Section 818 of the
21 Internal Revenue Code of 1986 (relating to other defini-
22 tions and special rules) is amended by adding at the end
23 the following new subsection:

1 “(g) QUALIFIED ACCELERATED DEATH BENEFIT
2 RIDERS TREATED AS LIFE INSURANCE.—For purposes of
3 this part:

4 “(1) IN GENERAL.—Any reference to a life in-
5 surance contract shall be treated as including a ref-
6 erence to a qualified accelerated death benefit rider
7 on such contract.

8 “(2) QUALIFIED ACCELERATED DEATH BENE-
9 FIT RIDERS.—For purposes of this subsection, the
10 term ‘qualified accelerated death benefit rider’
11 means any rider or addendum on, or other provision
12 of a life insurance contract which provides for pay-
13 ments to an individual on the life of an insured upon
14 such insured—

15 “(A) becoming a terminally ill individual
16 (as defined in section 101(g)(2)), or

17 “(B) becoming a chronically ill individual
18 (as defined in section 818A(c)(2)) who is con-
19 fined to a qualified facility (as defined in sec-
20 tion 818A(c)(3)(A)).”.

21 (b) DEFINITIONS OF LIFE INSURANCE AND MODI-
22 FIED ENDOWMENT CONTRACTS.—

23 (1) RIDER TREATED AS QUALIFIED ADDI-
24 TIONAL BENEFIT.—Paragraph (5)(A) of section
25 7702(f) of such Code is amended by striking “or”

1 at the end of clause (iv), by redesignating clause (v)
2 as clause (vi), and by inserting after clause (iv) the
3 following new clause:

4 “(v) any qualified accelerated death
5 benefit rider (as defined in section
6 818(g)(2)) or any long-term care insurance
7 contract rider which reduces the death
8 benefit, or”.

9 (2) TRANSITIONAL RULE.—For purposes of ap-
10 plying section 7702 or 7702A of the Internal Reve-
11 nue Code of 1986 to any contract (or determining
12 whether either such section applies to such con-
13 tract), the issuance of a rider or addendum on, or
14 other provision of, a life insurance contract permit-
15 ting the acceleration of death benefits (as described
16 in section 101(g) of such Code) or payments for
17 qualified long-term care services (as defined in sec-
18 tion 818A of such Code) shall not be treated as a
19 modification or material change of such contract.

20 **SEC. 109. QUALIFIED LONG-TERM CARE INSURANCE CON-**
21 **TRACTS PERMITTED TO BE OFFERED IN CAF-**
22 **ETERIA PLANS.**

23 (a) IN GENERAL.—Paragraph (2) of section 125(d)
24 of the Internal Revenue Code of 1986 (relating to exclu-

1 sion of deferred compensation) is amended by adding at
2 the end the following new subparagraph:

3 “(D) EXCEPTION FOR LONG-TERM CARE
4 INSURANCE CONTRACTS.—For purposes of sub-
5 paragraph (A), a plan shall not be treated as
6 providing deferred compensation by reason of
7 providing any long-term care insurance contract
8 (as defined in section 818A(b)) if—

9 “(i) the employee may elect to con-
10 tinue the insurance upon cessation of par-
11 ticipation in the plan, and

12 “(ii) the amount paid or incurred dur-
13 ing any taxable year for such insurance
14 does not exceed the premium which would
15 have been payable for such year under a
16 level premium structure.”.

17 **SEC. 110. EFFECTIVE DATE.**

18 The amendments made by this title shall apply to tax-
19 able years beginning after December 31, 1995.

1 **TITLE II—ESTABLISHMENT OF**
 2 **FEDERAL STANDARDS FOR**
 3 **LONG-TERM CARE INSUR-**
 4 **ANCE**

5 **SEC. 201. ESTABLISHMENT OF FEDERAL STANDARDS FOR**
 6 **LONG-TERM CARE INSURANCE.**

7 The Public Health Service Act (42 U.S.C. 201 et
 8 seq.) is amended by adding at the end the following new
 9 title:

10 **“TITLE XXVII—LONG-TERM CARE**
 11 **INSURANCE STANDARDS**

12 **“PART A—PROMULGATION OF STANDARDS AND MODEL**
 13 **BENEFITS**

14 **“SEC. 2701. STANDARDS.**

15 **“(a) APPLICATION OF STANDARDS.—**

16 **“(1) NAIC.—**The Secretary shall request that
 17 the National Association of Insurance Commis-
 18 sioners (hereafter in this title referred to as the
 19 ‘NAIC’)—

20 **“(A) develop specific standards that incor-**
 21 **porate the requirements of this title; and**

22 **“(B) report to the Secretary on such**
 23 **standards,**

24 **by not later than 12 months after the date of enact-**
 25 **ment of this title. If the NAIC develops such stand-**

1 ards that incorporate the requirements of this title
2 within such period and the Secretary finds that such
3 standards implement the requirements of this title,
4 such standards shall be the standards applied under
5 this title.

6 “(2) DEFAULT.—If the NAIC does not promul-
7 gate the standards under paragraph (1) by the dead-
8 line established in that paragraph, the Secretary
9 shall promulgate, within 12 months after such dead-
10 line, a regulation that provides standards that incor-
11 porate the requirements of this title and such stand-
12 ards shall apply as provided for in this title.

13 “(3) RELATION TO STATE LAW.—Nothing in
14 this title shall be construed as preventing a State
15 from applying standards that provide greater protec-
16 tion to policyholders of long-term care insurance
17 policies than the standards promulgated under this
18 title, except that such State standards may not be
19 inconsistent or in conflict with any of the require-
20 ments of this title.

21 “(b) DEADLINE FOR APPLICATION OF STAND-
22 ARDS.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 the date specified in this subsection for a State is—

1 “(A) the date the State adopts the stand-
2 ards established under subsection (a)(1); or

3 “(B) the date that is 1 year after the first
4 day of the first regular legislative session that
5 begins after the date such standards are first
6 established under subsection (a)(2);

7 whichever is earlier.

8 “(2) STATE REQUIRING LEGISLATION.—In the
9 case of a State which the Secretary identifies, in
10 consultation with the NAIC, as—

11 “(A) requiring State legislation (other than
12 legislation appropriating funds) in order for the
13 standards established under subsection (a) to be
14 applied; but

15 “(B) having a legislature which is not
16 scheduled to meet within 1 year following the
17 beginning of the next regular legislative session
18 in which such legislation may be considered;

19 the date specified in this subsection is the first day
20 of the first calendar quarter beginning after the
21 close of the first legislative session of the State legis-
22 lature that begins on or after January 1, 1995. For
23 purposes of the previous sentence, in the case of a
24 State that has a 2-year legislative session, each year

1 of such session shall be deemed to be a separate reg-
2 ular session of the State legislature.

3 “(c) ITEMS INCLUDED IN STANDARDS.—The stand-
4 ards promulgated under subsection (a) shall include—

5 “(1) minimum Federal standards for long-term
6 care insurance consistent with the provisions of this
7 title;

8 “(2) standards for the enhanced protection of
9 consumers with long-term care insurance;

10 “(3) procedures for the modification of the
11 standards established under paragraph (1) in a
12 manner consistent with future laws to expand exist-
13 ing Federal or State long-term care benefits or es-
14 tablish a comprehensive Federal or State long-term
15 care benefit program; and

16 “(4) other activities determined appropriate by
17 Congress.

18 “(d) CONSULTATION.—In establishing standards and
19 models of benefits under this section, the Secretary shall
20 provide for and consult with an advisory committee to be
21 chosen by the Secretary, and composed of—

22 “(1) three individuals who are representatives
23 of carriers;

24 “(2) three individuals who are representatives
25 of consumer groups;

1 “(3) three individuals who are representatives
2 of providers of long-term care services;

3 “(4) three other individuals who are not rep-
4 resentatives of carriers or of providers of long-term
5 care services and who have expertise in the delivery
6 and financing of such services; and

7 “(5) the Secretary of Veterans Affairs.

8 “(e) DUTIES.—The advisory committee established
9 under subsection (d) shall—

10 “(1) recommend the appropriate inflationary
11 index to be used with respect to the inflation protec-
12 tion benefit portion of the standards;

13 “(2) recommend the uniform needs assessment
14 mechanism to be used in determining the eligibility
15 of individuals for benefits under a policy;

16 “(3) recommend appropriate standards for ben-
17 efits under section 2715(c); and

18 “(4) perform such other activities as deter-
19 mined appropriate by the Secretary.

20 “(f) ADMINISTRATIVE PROVISIONS.—The following
21 provisions of section 1886(e)(6) of the Social Security Act
22 shall apply to the advisory committee chosen under sub-
23 section (d) in the same manner as such provisions apply
24 under such section:

1 “(1) Subparagraph (C) (relating to staffing and
2 administration).

3 “(2) Subparagraph (D) (relating to compensa-
4 tion of members).

5 “(3) Subparagraph (F) (relating to access to
6 information).

7 “(4) Subparagraph (G) (relating to use of
8 funds).

9 “(5) Subparagraph (H) (relating to periodic
10 GAO audits).

11 “(6) Subparagraph (J) (relating to requests for
12 appropriations).

13 “PART B—ESTABLISHMENT AND IMPLEMENTATION OF
14 LONG-TERM CARE INSURANCE POLICY STANDARDS

15 “**SEC. 2711. IMPLEMENTATION OF POLICY STANDARDS.**

16 “(a) IN GENERAL.—

17 “(1) REGULATORY PROGRAM.—No long-term
18 care policy (as defined in section 2721) may be is-
19 sued, sold, or offered for sale as a long-term care in-
20 surance policy in a State on or after the date speci-
21 fied in section 2701(b) unless—

22 “(A) the Secretary determines that the
23 State has established a regulatory program
24 that—

1 “(i) provides for the application and
2 enforcement of the standards established
3 under section 2701(a); and

4 “(ii) complies with the requirements
5 of subsection (b);

6 by the date specified in section 2701(b), and
7 the policy has been approved by the State com-
8 missioner or superintendent of insurance under
9 such program; or

10 “(B) in the case of a State that has not es-
11 tablished such a program, or a State whose reg-
12 ulatory program has been decertified, the policy
13 has been certified by the Secretary (in accord-
14 ance with such procedures as the Secretary may
15 establish) as meeting the standards established
16 under section 2701(a) by the date specified in
17 section 2701(b).

18 For purposes of this subsection, the advertising or
19 soliciting with respect to a policy, directly or indi-
20 rectly, shall be deemed the offering for sale of the
21 policy.

22 “(2) REVIEW OF STATE REGULATORY PRO-
23 GRAMS.—The Secretary periodically shall review reg-
24 ulatory programs described in paragraph (1)(A) to
25 determine if they continue to provide for the applica-

1 tion and enforcement of the standards and proce-
2 dures established under subsections (a) and (b) of
3 section 2701. If the Secretary determines that a
4 State regulatory program no longer meets such
5 standards and requirements, before making a final
6 determination, the Secretary shall provide the State
7 an opportunity to adopt such a plan of correction as
8 would permit the program to continue to meet such
9 standards and requirements. If the Secretary makes
10 a final determination that the State regulatory pro-
11 gram, after such an opportunity, fails to meet such
12 standards and requirements, the Secretary shall as-
13 sume responsibility under paragraph (1)(B) with re-
14 spect to certifying policies in the State and shall ex-
15 ercise full authority under section 2701 for carriers,
16 agents, or associations or its subsidiary in the State
17 plans in the State.

18 “(b) ADDITIONAL REQUIREMENTS FOR APPROVAL
19 OF STATE REGULATORY PROGRAMS.—For purposes of
20 subsection (a)(1)(A)(ii), the requirements of this sub-
21 section for a State regulatory program are as follows:

22 “(1) ENFORCEMENT.—The enforcement under
23 the program—

24 “(A) shall be designed in a manner so as
25 to secure compliance with the standards within

1 30 days after the date of a finding of non-
2 compliance with such standards; and

3 “(B) shall provide for notice in the annual
4 report required under paragraph (5) to the Sec-
5 retary of cases where such compliance is not se-
6 cured within such 30-day period.

7 “(2) PROCESS.—The enforcement process
8 under each State regulatory program shall provide
9 for—

10 “(A) procedures for individuals and enti-
11 ties to file written, signed complaints respecting
12 alleged violations of the standards;

13 “(B) responding on a timely basis to such
14 complaints;

15 “(C) the investigation of—

16 “(i) those complaints which have a
17 reasonable probability of validity, and

18 “(ii) such other alleged violations of
19 the standards as the program finds appro-
20 priate; and

21 “(D) the imposition of appropriate sanc-
22 tions (which include, in appropriate cases, the
23 imposition of a civil money penalty as provided
24 for in section 2718) in the case of a carrier,

1 agent, or association or its subsidiary deter-
2 mined to have violated the standards.

3 “(3) CONSUMER ACCESS TO COMPLIANCE IN-
4 FORMATION.—

5 “(A) IN GENERAL.—A State regulatory
6 program must provide for consumer access to
7 complaints filed with the State commissioner or
8 superintendent of insurance with respect to
9 long-term care insurance policies.

10 “(B) CONFIDENTIALITY.—The access pro-
11 vided under subparagraph (A) shall be limited
12 to the extent required to protect the confiden-
13 tiality of the identity of individual policyholders.

14 “(4) PROCESS FOR APPROVAL OF PREMIUMS.—

15 “(A) IN GENERAL.—Each State regulatory
16 program shall—

17 “(i) provide for a process for approv-
18 ing or disapproving proposed premium in-
19 creases or decreases with respect to long-
20 term care insurance policies; and

21 “(ii) establish a policy for receipt and
22 consideration of public comments before
23 approving such a premium increase or de-
24 crease.

1 “(B) CONDITIONS FOR APPROVAL.—No
2 premium increase shall be approved (or deemed
3 approved) under subparagraph (A) unless the
4 proposed increase is accompanied by an actuarial
5 memorandum which—

6 “(i) includes a description of the as-
7 sumptions that justify the increase;

8 “(ii) contains such information as
9 may be required under the Standards; and

10 “(iii) is made available to the public.

11 “(C) APPLICATION.—Except as provided in
12 subparagraph (D), this paragraph shall not
13 apply to a group long-term care insurance pol-
14 icy issued to a group described in section
15 4(E)(1) of the NAIC Long Term Care Insur-
16 ance Model Act (effective January 1991), ex-
17 cept that such group policy shall, pursuant to
18 guidelines developed by the NAIC, provide no-
19 tice to policyholders and certificate holders of
20 any premium change under such group policy.

21 “(D) EXCEPTION.—Subparagraph (C)
22 shall not apply to—

23 “(i) group conversion policies;

24 “(ii) the group continuation feature of
25 a group policy if the insurer separately

1 rates employee and continuation coverages;
2 and

3 “(iii) group policies where the func-
4 tion of the employer is limited solely to col-
5 lecting premiums (through payroll deduc-
6 tions or dues checkoff) and remitting them
7 to the insurer.

8 “(E) CONSTRUCTION.—Nothing in this
9 paragraph shall be construed as preventing the
10 NAIC from promulgating standards, or a State
11 from enacting and enforcing laws, with respect
12 to premium rates or loss ratios for all, including
13 group, long-term care insurance policies.

14 “(5) ANNUAL REPORTS.—Each State regu-
15 latory program shall provide for annual reports to be
16 submitted to the Secretary on the implementation
17 and enforcement of the standards in the State, in-
18 cluding information concerning violations in excess
19 of 30 days.

20 “(6) ACCESS TO OTHER INFORMATION.—The
21 State regulatory program must provide for consumer
22 access to actuarial memoranda provided under para-
23 graph (4).

24 “(7) DEFAULT.—In the case of a State without
25 a regulatory program approved under subsection (a),

1 the Secretary shall provide for the enforcement ac-
2 tivities described in subsection (c).

3 “(c) SECRETARIAL ENFORCEMENT AUTHORITY.—

4 “(1) IN GENERAL.—The Secretary shall exer-
5 cise authority under this section in the case of a
6 State that does not have a regulatory program ap-
7 proved under this section.

8 “(2) COMPLAINTS AND INVESTIGATIONS.—The
9 Secretary shall establish procedures—

10 “(A) for individuals and entities to file
11 written, signed complaints respecting alleged
12 violations of the requirements of this title;

13 “(B) for responding on a timely basis to
14 such complaints; and

15 “(C) for the investigation of—

16 “(i) those complaints that have a rea-
17 sonable probability of validity; and

18 “(ii) such other alleged violations of
19 the requirements of this title as the Sec-
20 retary determines to be appropriate.

21 In conducting investigations under this subsection,
22 agents of the Secretary shall have reasonable access
23 necessary to enable such agents to examine evidence
24 of any carrier, agent, or association or its subsidiary
25 being investigated.

1 “(3) HEARINGS.—

2 “(A) IN GENERAL.—Prior to imposing an
3 order described in paragraph (4) against a car-
4 rier, agent, or association or its subsidiary
5 under this section for a violation of the require-
6 ments of this title, the Secretary shall provide
7 the carrier, agent, association or subsidiary
8 with notice and, upon request made within a
9 reasonable time (of not less than 30 days, as
10 established by the Secretary by regulation) of
11 the date of the notice, a hearing respecting the
12 violation.

13 “(B) CONDUCT OF HEARING.—Any hear-
14 ing requested under subparagraph (A) shall be
15 conducted before an administrative law judge.
16 If no hearing is so requested, the Secretary’s
17 imposition of the order shall constitute a final
18 and unappealable order.

19 “(C) AUTHORITY IN HEARINGS.—In con-
20 ducting hearings under this paragraph—

21 “(i) agents of the Secretary and ad-
22 ministrative law judges shall have reason-
23 able access necessary to enable such agents
24 and judges to examine evidence of any car-

1 rier, agent, or association or its subsidiary
2 being investigated; and

3 “(ii) administrative law judges may, if
4 necessary, compel by subpoena the attend-
5 ance of witnesses and the production of
6 evidence at any designated place or hear-
7 ing.

8 In case of contumacy or refusal to obey a sub-
9 poena lawfully issued under this subparagraph
10 and upon application of the Secretary, an ap-
11 propriate district court of the United States
12 may issue an order requiring compliance with
13 such subpoena and any failure to obey such
14 order may be punished by such court as a con-
15 tempt thereof.

16 “(D) ISSUANCE OF ORDERS.—If an admin-
17 istrative law judge determines in a hearing
18 under this paragraph, upon the preponderance
19 of the evidence received, that a carrier, agent,
20 or association or its subsidiary named in the
21 complaint has violated the requirements of this
22 title, the administrative law judge shall state
23 the findings of fact and issue and cause to be
24 served on such carrier, agent, association, or
25 subsidiary an order described in paragraph (4).

1 “(4) CEASE AND DESIST ORDER WITH CIVIL
2 MONEY PENALTY.—

3 “(A) IN GENERAL.—Subject to the provi-
4 sions of subparagraphs (B) through (F), an
5 order under this paragraph—

6 “(i) shall require the agent, associa-
7 tion or its subsidiary, or a carrier—

8 “(I) to cease and desist from
9 such violations; and

10 “(II) to pay a civil penalty in an
11 amount not to exceed \$15,000 in the
12 case of each agent, and not to exceed
13 \$25,000 for each association or its
14 subsidiary or a carrier for each such
15 violation; and

16 “(ii) may require the agent, associa-
17 tion or its subsidiary, or a carrier to take
18 such other remedial action as is appro-
19 priate.

20 “(B) CORRECTIONS WITHIN 30 DAYS.—No
21 order shall be imposed under this paragraph by
22 reason of any violation if the carrier, agent, or
23 association or its subsidiary establishes to the
24 satisfaction of the Secretary that—

1 “(i) such violation was due to reason-
2 able cause and was not intentional and was
3 not due to willful neglect; and

4 “(ii) such violation is corrected within
5 the 30-day period beginning on the earliest
6 date the carrier, agent, association, or sub-
7 sidiary knew, or exercising reasonable dili-
8 gence could have known, that such a viola-
9 tion was occurring.

10 “(C) WAIVER BY SECRETARY.—In the case
11 of a violation under this title that is due to rea-
12 sonable cause and not to willful neglect, the
13 Secretary may waive part or all of the civil
14 money penalty imposed under subparagraph
15 (A)(i)(II) to the extent that payment of such
16 penalty would be grossly excessive relative to
17 the violation involved and to the need for deter-
18 rence of violations.

19 “(D) ADMINISTRATIVE APPELLATE RE-
20 VIEW.—The decision and order of an adminis-
21 trative law judge under this paragraph shall be-
22 come the final agency decision and order of the
23 Secretary unless, within 30 days, the Secretary
24 modifies or vacates the decision and order, in
25 which case the decision and order of the Sec-

1 retary shall become a final order under this
2 paragraph.

3 “(E) JUDICIAL REVIEW.—A carrier, agent,
4 or association or its subsidiary or any other in-
5 dividual adversely affected by a final order is-
6 sued under this paragraph may, within 45 days
7 after the date the final order is issued, file a pe-
8 tition in the Court of Appeals for the appro-
9 priate circuit for review of the order.

10 “(F) ENFORCEMENT OF ORDERS.—If a
11 carrier, agent, or association or its subsidiary
12 fails to comply with a final order issued under
13 this paragraph against the carrier, agent, asso-
14 ciation or subsidiary after opportunity for judi-
15 cial review under subparagraph (E), the Sec-
16 retary shall file a suit to seek compliance with
17 the order in any appropriate district court of
18 the United States. In any such suit, the validity
19 and appropriateness of the final order shall not
20 be subject to review.

21 “(d) DEMONSTRATION GRANT PROGRAM.—

22 “(1) IN GENERAL.—The Secretary may award
23 grants to States for the establishment of demonstra-
24 tion programs to improve the enforcement within

1 such States of long-term care insurance standards
2 applicable under this title.

3 “(2) APPLICATION.—To be eligible to receive a
4 grant under paragraph (1), a State shall prepare
5 and submit to the Secretary an application at such
6 time, in such manner, and containing such informa-
7 tion as the Secretary may require, including a de-
8 scription of the program for which the State intends
9 to use the amounts provided under the grant.

10 “(3) MINIMUM AMOUNT OF GRANTS.—The
11 amount of a grant awarded under this subsection
12 shall not be less than \$100,000.

13 “(4) EVALUATION.—A State that receives a
14 grant under this subsection shall comply with such
15 evaluation procedures as the Secretary shall by regu-
16 lation establish. The Secretary shall utilize such
17 evaluations to conduct an overall evaluation of the
18 results of the demonstration programs established
19 under this section.

20 “(5) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated to carry out
22 this subsection, \$5,000,000 for each of the fiscal
23 years 1993 through 1997.

24 **“SEC. 2712. REGULATION OF SALES PRACTICES.**

25 “(a) DUTY OF GOOD FAITH AND FAIR DEALING.—

1 “(1) IN GENERAL.—Each agent (as defined in
2 section 2733) or association that is selling or offer-
3 ing for sale a long-term care insurance policy has
4 the duty of good faith and fair dealing to the pur-
5 chaser or potential purchaser of such a policy.

6 “(2) PROHIBITED PRACTICES.—An agent or as-
7 sociation is considered to have violated paragraph
8 (1) if the agent or association engages in any of the
9 following practices:

10 “(A) TWISTING.—

11 “(i) IN GENERAL.—Knowingly making
12 any misleading representation (including
13 the inaccurate completion of medical his-
14 tories) or incomplete or fraudulent com-
15 parison of any long-term care insurance
16 policy or insurers for the purpose of induc-
17 ing, or tending to induce, any person to re-
18 tain or effect a change with respect to a
19 long-term care insurance policy.

20 “(ii) POLICY REPLACEMENT FORM.—
21 With respect to any person who elects to
22 replace or effect a change in a long-term
23 care insurance policy, the individual that is
24 selling such policy shall ensure that such
25 person completes a policy replacement

1 form developed by the NAIC. A copy of
2 such form shall be provided to such person
3 and additional copies shall be delivered by
4 the selling individual to the old policy is-
5 suer and the new issuer and kept on file
6 for inspection by the State regulatory
7 agency.

8 “(B) HIGH PRESSURE TACTICS.—Employ-
9 ing any method of marketing having the effect
10 of, or intending to, induce the purchase of long-
11 term care insurance policy through force, fright,
12 threat or undue pressure, whether explicit or
13 implicit.

14 “(C) COLD LEAD ADVERTISING.—Making
15 use directly or indirectly of any method of mar-
16 keting which fails to disclose in a conspicuous
17 manner that a purpose of the method of mar-
18 keting is solicitation of insurance and that con-
19 tact will be made by an insurance agent or in-
20 surance company.

21 “(D) OTHERS.—Engaging in such other
22 practices determined inappropriate under guide-
23 lines issued by the NAIC.

24 “(b) FINANCIAL STANDARDS.—The NAIC shall de-
25 velop recommended financial minimum standards (includ-

1 ing both income and asset criteria) for the purpose of ad-
2 viding individuals considering the purchase of a long-term
3 care insurance policy.

4 “(c) PROHIBITION OF SALE OR ISSUANCE TO MEDIC-
5 AID BENEFICIARIES.—An agent, an association, or a car-
6 rier may not knowingly sell or issue a long-term care in-
7 surance policy to an individual who is eligible for medical
8 assistance under title XIX of the Social Security Act.

9 “(d) PROHIBITION OF SALE OR ISSUANCE OF DUPLI-
10 CATE SERVICE BENEFIT POLICIES.—An agent, associa-
11 tion or its subsidiary, or a carrier may not sell or issue
12 a service-benefit long-term care insurance policy to an in-
13 dividual—

14 “(1) knowing that the policy provides for cov-
15 erage that duplicates coverage already provided in
16 another service-benefit long-term care insurance pol-
17 icy held by such individual (unless the policy is in-
18 tended to replace such other policy); or

19 “(2) for the benefit of an individual unless the
20 individual (or a representative of the individual) pro-
21 vides a written statement to the effect that the cov-
22 erage—

23 “(A) does not duplicate other coverage in
24 effect under a service-benefit long-term care in-
25 surance policy; or

1 “(B) will replace another service-benefit
2 long-term care insurance policy.

3 In this subsection, the term ‘service-benefit long-term care
4 insurance policy’ means a long-term care insurance policy
5 which provides for benefits based on the type and amount
6 of services furnished.

7 “(e) PROHIBITION BASED ON ELIGIBILITY FOR
8 OTHER BENEFITS.—A carrier may not sell or issue a
9 long-term care insurance policy that reduces, limits or co-
10 ordinates the benefits provided under the policy on the
11 basis that the policyholder has or is eligible for other long-
12 term care insurance coverage or benefits.

13 “(f) PROVISION OF OUTLINE OF COVERAGE.—No
14 agent, association or its subsidiary, or carrier may sell or
15 offer for a sale a long-term care insurance policy (or for
16 a certificate under a group long-term care insurance pol-
17 icy) without providing to the purchaser or potential pur-
18 chaser (or representative) an outline of coverage that com-
19 plies with the standards established under section
20 2701(a).

21 “(g) PENALTIES.—Any agent who sells, offers for
22 sale, or issues a long-term care insurance policy in viola-
23 tion of this section may be imprisoned not more than 5
24 years, or fined in accordance with title 18, United States
25 Code, and, in addition, is subject to a civil money penalty

1 of not to exceed \$15,000 for each such violation. Any asso-
2 ciation or its subsidiary or carrier that sells, offers for
3 sale, or issues a long-term care insurance policy in viola-
4 tion of this section may be fined in accordance with title
5 18, United States Code, and in addition, is subject to a
6 civil money penalty of not to exceed \$25,000 for each vio-
7 lation.

8 “(h) AGENT TRAINING AND CERTIFICATION RE-
9 QUIREMENTS.—The NAIC shall establish requirements
10 for long-term care insurance agent training and certifi-
11 cation that—

12 “(1) specify requirements for training insurance
13 agents who desire to sell or offer for sale long-term
14 care insurance policies; and

15 “(2) specify procedures for certifying agents
16 who have completed such training and who are as
17 qualified to sell or offer for sale long-term care in-
18 surance policies.

19 **“SEC. 2713. ADDITIONAL RESPONSIBILITIES FOR CAR-**
20 **RIERS.**

21 “(a) REFUND OF PREMIUMS.—If an application for
22 a long-term care insurance policy (or for a certificate
23 under a group long-term care insurance policy) is denied
24 or an applicant returns a policy or certificate within 30
25 days of the date of its issuance pursuant to subsection

1 2717, the carrier shall refund directly to the applicant,
2 or in the case of an employer to whomever remits the pre-
3 mium, and not by delivery by the agent, not later than
4 30 days after the date of the denial or return, any pre-
5 miums paid with respect to such a policy (or certificate).

6 “(b) MAILING OF POLICY.—If an application for a
7 long-term care insurance policy (or for a certificate under
8 a group long-term care insurance policy) is approved, the
9 carrier shall provide the applicant, or in the case of a
10 group plan the employer, the policy (or certificate) of in-
11 surance not later than 30 days after the date of the ap-
12 proval.

13 “(c) INFORMATION ON DENIALS OF CLAIMS.—If a
14 claim under a long-term care insurance policy is denied,
15 the carrier shall, within 30 days of the date of a written
16 request by the policyholder or certificate holder (or rep-
17 resentative)—

18 “(1) provide a written explanation of the rea-
19 sons for the denial; and

20 “(2) make available all medical and patient
21 records directly relating to such denial.

22 Except as provided in subsection (e) of section 2715, no
23 claim under such a policy may be denied on the basis of
24 a failure to disclose a condition at the time of issuance

1 of the policy if the application for the policy failed to re-
2 quest information respecting the condition.

3 “(d) REPORTING OF INFORMATION.—A carrier that
4 issues one or more long-term care insurance policies shall
5 periodically (not less often than annually) report, in a
6 form and in a manner determined by the NAIC, to the
7 Commissioner, superintendent or director of insurance of
8 each State in which the policy is delivered, and shall make
9 available to the Secretary, upon request, information in
10 a form and manner determined by the NAIC concerning—

11 “(1) the long-term care insurance policies of the
12 carrier that are in force;

13 “(2) the most recent premiums for such policies
14 and the premiums imposed for such policies since
15 their initial issuance;

16 “(3) the lapse rate, replacement rate, and re-
17 scission rates by policy;

18 “(4) the names of that 10 percent of its agents
19 that—

20 “(A) have the greatest lapse and replace-
21 ment rate; and

22 “(B) have produced at least \$50,000 of
23 long-term care insurance sales in the previous
24 year; and

1 continuation of coverage if the policy maintains cov-
2 erage under the existing group policy when such cov-
3 erage would otherwise terminate and which is sub-
4 ject only to the continued timely payment of pre-
5 mium when due. A group policy which restricts pro-
6 vision of benefits and services to or contains incen-
7 tives to use certain providers or facility, may provide
8 continuation benefits which are substantially equiva-
9 lent to the benefits of the existing group policy.

10 “(3) BASIS FOR CONVERSION.—For purposes of
11 paragraph (1), a policy provides a basis for conver-
12 sion of coverage if the policy entitles each individ-
13 ual—

14 “(A) whose coverage under the group pol-
15 icy would otherwise be terminated for any rea-
16 son; and

17 “(B) who has been continuously insured
18 under the policy (or group policy which was re-
19 placed) for at least 6 months before the date of
20 the termination;

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

1 “(4) TREATMENT OF SUBSTANTIAL EQUIVA-
2 LENCE.—In determining under this subsection
3 whether benefits are substantially equivalent, consid-
4 eration should be given to the difference between
5 managed care and non-managed care plans.

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

15 “(c) STANDARDS FOR ISSUANCE.—

16 “(1) IN GENERAL.—

17 “(A) GUARANTEE.—An agent, association
18 or carrier that sells or issues long-term care in-
19 surance policies shall guarantee that such poli-
20 cies shall be sold or issued to an individual, or
21 eligible individual in the case of a group plan,
22 if such individual meets the minimum medical
23 underwriting requirements of such policy.

24 “(B) PREMIUM FOR CONVERTED POL-
25 ICY.—If a group policy from which conversion

1 is made is a replacement for a previous group
2 policy, the premium for the converted policy
3 shall be calculated on the basis of the insured's
4 age at the inception of coverage under the
5 group policy from which conversion is made.
6 Where the group policy from which conversion
7 is made replaced previous group coverage, the
8 premium for the converted policy shall be cal-
9 culated on the basis of the insured's age at in-
10 ception of coverage under the group policy re-
11 placed.

12 “(2) UPGRADE FOR CURRENT POLICIES.—The
13 NAIC shall establish standards, including those pro-
14 viding guidance on medical underwriting and age
15 rating, with respect to the access of individuals to
16 policies offering upgraded benefits.

17 “(d) EFFECT OF INCAPACITATION.—

18 “(1) IN GENERAL.—

19 “(A) PROHIBITION.—Except as provided
20 in paragraph (2), a long-term care insurance
21 policy in effect as of the effective date of the
22 standards established under section 2701(a)
23 may not be canceled for nonpayment if the pol-
24 icy holder is determined by a long-term care
25 provider, physician or other health care pro-

1 vider, independent of the issuer of the policy, to
2 be cognitively or mentally incapacitated so as to
3 not make payments in a timely manner.

4 “(B) REINSTATEMENT.—A long-term care
5 policy shall include a provision that provides for
6 the reinstatement of such coverage, in the event
7 of lapse, if the insurer is provided with proof of
8 cognitive or mental incapacitation. Such rein-
9 statement option shall remain available for a
10 period of not less than 5 months after termi-
11 nation and shall allow for the collection of past
12 due premium.

13 “(2) PERMITTED CANCELLATION.—A long-term
14 care insurance policy may be canceled under para-
15 graph (1) for nonpayment if—

16 “(A) the period of such nonpayment is in
17 excess of 30 days; and

18 “(B) notice of intent to cancel is provided
19 to the policyholder or designated representative
20 of the policy holder not less than 30 days prior
21 to such cancellation, except that notice may not
22 be provided until the expiration of 30 days after
23 a premium is due and unpaid.

24 Notice under this paragraph shall be deemed to have
25 been given as of 5 days after the mailing date.

1 **“SEC. 2715. BENEFIT STANDARDS.**

2 “(a) USE OF STANDARD DEFINITIONS AND TERMI-
3 NOLOGY, UNIFORM FORMAT, AND STANDARD BENE-
4 FITS.—Each long-term care insurance policy shall, with
5 respect to services, providers or facilities, pursuant to
6 standards established under section 2701(a)—

7 “(1) use uniform language and definitions, ex-
8 cept that such language and definitions may take
9 into account the differences between States with re-
10 spect to definitions and terminology used for long-
11 term care services and providers;

12 “(2) use a uniform format for presenting the
13 outline of coverage under such a policy; and

14 “(3) provide coverage for at least one standard
15 benefits package (of those developed by the NAIC)
16 that shall include the limitations on the amount of
17 payments per day and the lengths of covered stays
18 for nursing facility and home health care services;

19 as prescribed under guidelines issued by the NAIC and
20 periodically updated.

21 “(b) DISCLOSURE.—

22 “(1) OUTLINE OF COVERAGE.—

23 “(A) REQUIREMENT.—Each carrier that
24 sells or offers for sale a long-term care insur-
25 ance policy shall provide an outline of coverage
26 under such policy that meets the applicable

1 standards established pursuant to section
2 2701(a), complies with the requirements of sub-
3 paragraph (B), and is in a uniform format as
4 prescribed in guidelines issued by the NAIC
5 and periodically updated.

6 “(B) CONTENTS.—The outline of coverage
7 for each long-term care insurance policy shall
8 include at least the following:

9 “(i) A description of the principal
10 benefits and coverage under the policy.

11 “(ii) A statement of the principal ex-
12 clusions, reductions, and limitations con-
13 tained in the policy.

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

20 “(iv) A statement, in bold face type
21 on the face of the document in language
22 that is understandable to an average indi-
23 vidual, that the outline of coverage is a
24 summary only, not a contract of insurance,
25 and that the policy (or master policy) con-

1 tains the contractual provisions that gov-
2 ern, except that such summary shall sub-
3 stantially and accurately reflect the con-
4 tents of the policy or the master policy.

5 “(v) A description of the terms, speci-
6 fied in section 2717, under which a policy
7 or certificate may be returned and pre-
8 mium refunded.

9 “(vi) Information on national average
10 costs for nursing facility and home health
11 care and information (in graphic form) on
12 the relationship of the value of the benefits
13 provided under the policy to such national
14 average costs and State average costs,
15 where available.

16 “(vii) A statement of the percentage
17 limit on annual premium increases that is
18 provided under the policy pursuant to this
19 section.

20 “(2) CERTIFICATES.—A certificate issued pur-
21 suant to a group long-term care insurance policy
22 shall include—

23 “(A) a description of the principal benefits
24 and coverage provided in the policy;

1 “(B) a statement of the principal exclu-
2 sions, reductions, and limitations contained in
3 the policy; and

4 “(C) a statement that the group master
5 policy determines governing contractual provi-
6 sions.

7 “(3) LONG-TERM CARE AS PART OF LIFE IN-
8 SURANCE.—In the case of a long-term care insur-
9 ance policy issued as a part of, or a rider on, a life
10 insurance policy, at the time of policy delivery there
11 shall be provided a policy summary that includes—

12 “(A) an explanation of how the long-term
13 care benefits interact with other components of
14 the policy (including deductions from death
15 benefits);

16 “(B) an illustration of the amount of bene-
17 fits, the length of benefit, and the guaranteed
18 lifetime benefits (if any) for each covered per-
19 son; and

20 “(C) any exclusions, reductions, and limi-
21 tations on benefits of long-term care.

22 “(4) ADDITIONAL INFORMATION.—The NAIC
23 shall develop recommendations with respect to in-
24 forming consumers of the long-term economic viabil-

1 ity of carriers issuing long-term care insurance poli-
2 cies.

3 “(c) LIMITING CONDITIONS ON BENEFITS; MINIMUM
4 BENEFITS.—

5 “(1) IN GENERAL.—A long-term care insurance
6 policy may not condition or limit eligibility—

7 “(A) for benefits for a type of services to
8 the need for or receipt of any other services;

9 “(B) for any benefit on the medical neces-
10 sity for such benefit;

11 “(C) for benefits furnished by licensed or
12 certified providers in compliance with conditions
13 which are in addition to those required for li-
14 censure or certification under State law, except
15 that if no State licensure or certification laws
16 exists, in compliance with qualifications devel-
17 oped by the NAIC; or

18 “(D) for residential care (if covered under
19 the policy) only—

20 “(i) to care provided in facilities
21 which provide a higher level of care; or

22 “(ii) to care provided in facilities
23 which provide for 24-hour or other nursing
24 care not required in order to be licensed by
25 the State.

1 “(2) HOME HEALTH CARE OR COMMUNITY-
2 BASED SERVICES.—If a long-term care insurance
3 policy provides benefits for the payment of specified
4 home health care or community-based services, the
5 policy—

6 “(A) may not limit such benefits to serv-
7 ices provided by registered nurses or licensed
8 practical nurses;

9 “(B) may not require benefits for such
10 services to be provided by a nurse or therapist
11 that can be provided by a home health aide or
12 licensed or certified home care worker, except
13 that if no State licensure or certification laws
14 exists, in compliance with qualifications devel-
15 oped by the NAIC;

16 “(C) may not limit such benefits to serv-
17 ices provided by agencies or providers certified
18 under title XVIII of the Social Security Act;
19 and

20 “(D) must provide, at a minimum, benefits
21 for personal care services (including home
22 health aide and home care worker services as
23 defined by the NAIC) home health services,
24 adult day care, and respite care in an individ-
25 ual’s home or in another setting in the commu-

1 nity, or any of these benefits on a respite care
2 basis.

3 “(3) NURSING FACILITY SERVICES.—If a long-
4 term care insurance policy provides benefits for the
5 payment of specified nursing facility services, the
6 policy must provide such benefits with respect to all
7 nursing facilities (as defined in section 1919(a) of
8 the Social Security Act or until such time as subse-
9 quently provided for by the NAIC in establishing
10 uniform language and definitions under section
11 2715(a)(1)) in the State.

12 “(4) PER DIEM POLICIES.—

13 “(A) DEFINITION.—For purposes of this
14 title, the term ‘per diem long-term care insur-
15 ance policy’ means a long-term care insurance
16 policy (or certificate under a group long-term
17 care insurance policy) that provides for benefit
18 payments on a periodic basis due to cognitive
19 impairment or loss of functional capacity with-
20 out regard to the expenses incurred or services
21 rendered during the period to which the pay-
22 ments relate.

23 “(B) LIMITATION.—No per diem long-term
24 care insurance policy (or certificate) may condi-
25 tion or otherwise exclude benefit payments

1 based on the receipt of any type of nursing fa-
2 cility, home health care or community-based
3 services.

4 “(d) PROHIBITION OF DISCRIMINATION.—A long-
5 term care insurance policy may not treat benefits under
6 the policy in the case of an individual with Alzheimer’s
7 disease, with any related progressive degenerative demen-
8 tia of an organic origin, with any organic or inorganic
9 mental illness, or with mental retardation or any other
10 cognitive or mental impairment differently from an indi-
11 vidual having another medical condition for which benefits
12 may be made available.

13 “(e) LIMITATION ON USE OF PREEXISTING CONDI-
14 TION LIMITS.—

15 “(1) INITIAL ISSUANCE.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), a long-term care insurance policy
18 may not exclude or condition benefits based on
19 a medical condition for which the policyholder
20 received treatment or was otherwise diagnosed
21 before the issuance of the policy.

22 “(B) 6-MONTH LIMIT.—

23 “(i) IN GENERAL.—No long-term care
24 insurance policy or certificate issued under
25 this title shall utilize a definition of ‘pre-

1 existing condition' that is more restrictive
2 than the following: The term 'preexisting
3 condition' means a condition for which
4 medical advice or treatment was rec-
5 ommended by, or received from a provider
6 of health care services, within 6 months
7 preceding the effective date of coverage of
8 an insured individual.

9 “(ii) PROHIBITION ON EXCLUSION OF
10 COVERAGE.—No long-term care insurance
11 policy or certificate may exclude coverage
12 for a loss or confinement that is the result
13 of a preexisting condition unless such loss
14 or confinement begins within 6 months fol-
15 lowing the effective date of the coverage of
16 the insured individual.

17 “(2) REPLACEMENT POLICIES.—If a long-term
18 care insurance policy replaces another long-term
19 care insurance policy, the issuer of the replacing pol-
20 icy shall waive any time periods applicable to pre-
21 existing conditions, waiting period, elimination peri-
22 ods and probationary periods in the new policy for
23 similar benefits to the extent such time was spent
24 under the original policy.

25 “(f) ELIGIBILITY FOR BENEFITS.—

1 “(1) LONG-TERM CARE POLICIES.—Each long-
2 term care insurance policy shall—

3 “(A) describe the level of benefits available
4 under the policy; and

5 “(B) specify in clear, understandable
6 terms, the level (or levels) of physical, cognitive,
7 or mental impairment required in order to re-
8 ceive benefits under the policy.

9 “(2) FUNCTIONAL ASSESSMENT.—In order to
10 submit a claim under any long-term care insurance
11 policy, each claimant shall have a professional func-
12 tional assessment of his or her physical, cognitive,
13 and mental abilities. Such initial assessment shall be
14 conducted by an individual or entity, meeting the
15 qualifications established by the NAIC to assure the
16 professional competence and credibility of such indi-
17 vidual or entity and that such individual meets any
18 applicable State licensure and certification require-
19 ments. The individual or entity conducting such as-
20 sessment may not control, or be controlled by, the
21 issuer of the policy. For purposes of this paragraph
22 and paragraph (4), the term ‘control’ means the di-
23 rect or indirect possession of the power to direct the
24 management and policies of a person. Control is pre-
25 sumed to exist, if any person directly or indirectly,

1 owns, controls, holds with the power to vote, or
2 holds proxies representing 10 percent of the voting
3 securities of another person.

4 “(3) CLAIMS REVIEW.—Except as provided in
5 paragraph (4), each long-term care insurance policy
6 shall be subject to final claims review by the carrier
7 pursuant to the terms of the long-term care insur-
8 ance policy.

9 “(4) APPEALS PROCESS.—

10 “(A) IN GENERAL.—Each long-term care
11 insurance policy shall provide for a timely and
12 independent appeals process, meeting standards
13 established by the NAIC, for individuals who
14 dispute the results of the claims review, con-
15 ducted under paragraph (3), of the claimant’s
16 functional assessment, conducted under para-
17 graph (2).

18 “(B) INDEPENDENT ASSESSMENT.—An
19 appeals process under this paragraph shall in-
20 clude, at the request of the claimant, an inde-
21 pendent assessment of the claimant’s physical,
22 cognitive or mental abilities.

23 “(C) CONDUCT.—An independent assess-
24 ment under subparagraph (B) shall be con-
25 ducted by an individual or entity meeting the

1 qualifications established by the NAIC to as-
2 sure the professional competence and credibility
3 of such individual or entity and any applicable
4 State licensure and certification requirements
5 and may not be conducted—

6 “(i) by an individual who has a direct
7 or indirect significant or controlling inter-
8 est in, or direct affiliation or relationship
9 with, the issuer of the policy;

10 “(ii) by an entity that provides serv-
11 ices to the policyholder or certificateholder
12 for which benefits are available under the
13 long-term care insurance policy; or

14 “(iii) by an individual or entity in con-
15 trol of, or controlled by, the issuer of the
16 policy.

17 “(5) STANDARD ASSESSMENTS.—Not later than
18 2 years after the date of enactment of this title, the
19 advisory committee established under section
20 2701(d) shall recommend uniform needs assessment
21 mechanisms for the determination of eligibility for
22 benefits under such assessments.

23 “(g) INFLATION PROTECTION.—

24 “(1) OPTION TO PURCHASE.—A carrier may
25 not offer a long-term care insurance policy unless

1 the carrier also offers to the proposed policyholder,
2 including each group policyholder, the option to pur-
3 chase a policy that provides for increases in benefit
4 levels, with benefit maximums or reasonable dura-
5 tions that are meaningful, to account for reasonably
6 anticipated increases in the costs of long-term care
7 services covered by the policy. A carrier may not
8 offer to a policyholder an inflation protection feature
9 that is less favorable to the policyholder than one of
10 the following:

11 “(A) With respect to policies that provide
12 for automatic periodic increases in benefits, the
13 policy provides for an annual increase in bene-
14 fits in a manner so that such increases are
15 computed annually at a rate of not less than 5
16 percent.

17 “(B) With respect to policies that provide
18 for periodic opportunities to elect an increase in
19 benefits, the policy guarantees that the insured
20 individual will have the right to periodically in-
21 crease the benefit levels under the policy with-
22 out providing evidence of insurability or health
23 status so long as the option for the previous pe-
24 riod was not declined. The amount of any such

1 additional benefit may not be less than the dif-
2 ference between—

3 “(i) the existing policy benefit; and

4 “(ii) such existing benefit compounded
5 annually at a rate of at least 5 percent for
6 the period beginning on the date on which
7 the existing benefit is purchased and ex-
8 tending until the year in which the offer of
9 increase is made.

10 “(C) With respect to service benefit poli-
11 cies, the policy covers a specified percentage of
12 the actual or reasonable charges and does not
13 include a maximum specified indemnity amount
14 or limit.

15 “(2) EXCEPTION.—The requirements of para-
16 graph (1) shall not apply to life insurance policies or
17 riders containing accelerated long-term care benefits.

18 “(3) REQUIRED INFORMATION.—Carriers shall
19 include the following information in or together with
20 the outline of coverage provided under this title:

21 “(A) A graphic comparison of the benefit
22 levels of a policy that increases benefits over the
23 policy period with a policy that does not in-
24 crease benefits. Such comparison shall show

1 benefit levels over not less than a 20-year pe-
2 riod.

3 “(B) Any expected premium increases or
4 additional premiums required to pay for any
5 automatic or optional benefit increases, whether
6 the individual who purchases the policy obtains
7 the inflation protection initially or whether such
8 individual delays purchasing such protection
9 until a future time.

10 “(4) CONTINUATION OF PROTECTION.—Infla-
11 tion protection benefit increases under this sub-
12 section under a policy that contains such protection
13 shall continue without regard to an insured’s age,
14 claim status or claim history, or the length of time
15 the individual has been insured under the policy.

16 “(5) CONSTANT PREMIUM.—An offer of infla-
17 tion protection under this subsection that provides
18 for automatic benefit increases shall include an offer
19 of a premium that the carrier expects to remain con-
20 stant. Such offer shall disclose in a conspicuous
21 manner that the premium may change in the future
22 unless the premium is guaranteed to remain con-
23 stant.

24 “(6) REJECTION.—Inflation protection under
25 this subsection shall be included in a long-term care

1 insurance policy unless a carrier obtains a written
2 rejection of such protection signed by the policy-
3 holder.

4 **“SEC. 2716. NONFORFEITURE.**

5 “(a) IN GENERAL.—Each long-term care insurance
6 policy (or certificate) may provide that if the policy lapses
7 after the policy has been in effect for a minimum period
8 (specified under the standards under section 2701(a)), the
9 policy will provide, without payment of any additional pre-
10 miums, nonforfeiture benefits as determined appropriate
11 by the NAIC.

12 “(b) ESTABLISHMENT OF STANDARDS.—The stand-
13 ards under section 2701(a) shall provide that the percent-
14 age or amount of benefits under subsection (a) must in-
15 crease based upon the policyholder’s equity in the policy.
16 Such standards shall apply only to policies which provide
17 nonforfeiture benefits.

18 **“SEC. 2717. LIMIT OF PERIOD OF CONTESTABILITY AND**
19 **RIGHT TO RETURN.**

20 “(a) CONTESTABILITY.—A carrier may not cancel or
21 renew a long-term care insurance policy or deny a claim
22 under the policy based on fraud or material misrepresenta-
23 tion relating to the issuance of the policy unless notice
24 of such fraud or material misrepresentation is provided
25 within a time period to be determined by the NAIC.

1 “(b) RIGHT TO RETURN.—Each applicant for a long-
2 term care insurance policy shall have the right to return
3 the policy (or certificates) within 30 days of the date of
4 its delivery (and to have the premium refunded) if, after
5 examination of the policy or certificate, the applicant is
6 not satisfied for any reason.

7 **“SEC. 2718. CIVIL MONEY PENALTY.**

8 “(a) CARRIER.—Any carrier, association or its sub-
9 sidiary that sells or offers for sale a long-term care insur-
10 ance policy and that—

11 “(1) fails to make a refund in accordance with
12 section 2713(a);

13 “(2) fails to transmit a policy in accordance
14 with section 2713(b);

15 “(3) fails to provide, make available, or report
16 information in accordance with subsections (c) or (d)
17 of section 2713;

18 “(4) provides a commission or compensation in
19 violation of section 2713(e);

20 “(5) fails to provide an outline of coverage in
21 violation of section 2715(b)(1); or

22 “(6) issues a policy without obtaining certain
23 information in violation of section 2715(f);

24 is subject to a civil money penalty of not to exceed \$25,000
25 for each such violation.

1 “(b) AGENTS.—Any agent that sells or offers for sale
2 a long-term care insurance policy and that—

3 “(1) fails to make a refund in accordance with
4 section 2713(a);

5 “(2) fails to transmit a policy in accordance
6 with section 2713(b);

7 “(3) fails to provide, make available, or report
8 information in accordance with subsections (c) or (d)
9 of section 2713;

10 “(4) fails to provide an outline of coverage in
11 violation of section 2715(b)(1); or

12 “(5) issues a policy without obtaining certain
13 information in violation of section 2715(f);

14 is subject to a civil money penalty of not to exceed \$15,000
15 for each such violation.

16 “PART C—LONG-TERM CARE INSURANCE POLICIES,
17 DEFINITION AND ENDORSEMENTS

18 “**SEC. 2721. LONG-TERM CARE INSURANCE POLICY DE-**
19 **FINED.**

20 “(a) IN GENERAL.—As used in this section, the term
21 ‘long-term care insurance policy’ means any insurance pol-
22 icy, rider or certificate advertised, marketed, offered or de-
23 signed to provide coverage for not less than 12 consecutive
24 months for each covered person on an expense incurred,
25 indemnity prepaid or other basis, for one or more nec-

1 essary diagnostic, preventive, therapeutic, rehabilitative,
2 maintenance or personal care services, provided in a set-
3 ting other than an acute care unit of a hospital. Such term
4 includes—

5 “(1) group and individual annuities and life in-
6 surance policies, riders or certificates that provide
7 directly, or that supplement long-term care insur-
8 ance; and

9 “(2) a policy, rider or certificates that provides
10 for payment of benefits based on cognitive impair-
11 ment or the loss of functional capacity.

12 “(b) ISSUANCE.—Long-term care insurance policies
13 may be issued by—

14 “(1) carriers;

15 “(2) fraternal benefit societies;

16 “(3) nonprofit health, hospital, and medical
17 service corporations;

18 “(4) prepaid health plans;

19 “(5) health maintenance organizations; or

20 “(6) any similar organization to the extent they
21 are otherwise authorized to issue life or health insur-
22 ance.

23 “(c) POLICIES EXCLUDED.—The term ‘long-term
24 care insurance policy’ shall not include any insurance pol-
25 icy, rider or certificate that is offered primarily to provide

1 basic Medicare supplement coverage, basic hospital ex-
2 pense coverage, basic medical-surgical expense coverage,
3 hospital confinement indemnity coverage, major medical
4 expense coverage, disability income or related asset-protec-
5 tion coverage, accident only coverage, specified disease or
6 specified accident coverage, or limited benefit health cov-
7 erage. With respect to life insurance, such term shall not
8 include life insurance policies, riders or certificates that
9 accelerate the death benefit specifically for one or more
10 of the qualifying events of terminal illness, medical condi-
11 tions requiring extraordinary medical intervention, or per-
12 manent institutional confinement, and that provide the op-
13 tion of a lump-sum payment for those benefits and in
14 which neither the benefits nor the eligibility for the bene-
15 fits is conditioned upon the receipt of long-term care.

16 “(d) APPLICATIONS.—Notwithstanding any other
17 provision of this title, this title shall apply to any product
18 advertised, marketed or offered as a long-term insurance
19 policy, rider or certificate.

20 **“SEC. 2722. CODE OF CONDUCT WITH RESPECT TO EN-**
21 **DORSEMENTS.**

22 “Not later than 1 year after the date of enactment
23 of this title the NAIC shall issue guidelines that shall
24 apply to organizations and associations, other than em-
25 ployers and labor organizations that do not accept com-

1 pensionation, and their subsidiaries that provide endorse-
2 ments of long-term care insurance policies, or that permit
3 such policies to be offered for sale through the organiza-
4 tion or association. Such guidelines shall include at mini-
5 mum the following:

6 “(1) In endorsing or selling long-term care in-
7 surance policies, the primary responsibility of an or-
8 ganization or association shall be to educate their
9 members concerning such policies and assist such
10 members in making informed decisions. Such organi-
11 zations and associations may not function primarily
12 as sales agents for insurance companies.

13 “(2) Organizations and associations shall pro-
14 vide objective information regarding long-term care
15 insurance policies sold or endorsed by such organiza-
16 tions and associations to ensure that members of
17 such organizations and associations have a balanced
18 and complete understanding of both the strengths
19 and weaknesses of the policies that are being en-
20 dorsed or sold.

21 “(3) Organizations and associations selling or
22 endorsing long-term care insurance policies shall dis-
23 close in marketing literature provided to their mem-
24 bers concerning such policies the manner in which
25 such policies and the insurance company issuing

1 such policies were selected. If the organization or as-
2 sociation and the insurance company have interlock-
3 ing directorates, the organization or association shall
4 disclose such fact to their members.

5 “(4) Organizations and associations selling or
6 endorsing long-term care insurance policies shall dis-
7 close in marketing literature provided to their mem-
8 bers concerning such policies the nature and amount
9 of the compensation arrangements (including all
10 fees, commissions, administrative fees and other
11 forms of financial support that the organization or
12 association receives) from the endorsement or sale of
13 the policy to its members.

14 “(5) The Boards of Directors of organizations
15 and associations selling or endorsing long-term care
16 insurance policies, if such organizations and associa-
17 tions have a Board of Directors, shall review and ap-
18 prove such insurance policies, the compensation ar-
19 rangements and the marketing materials used to
20 promote sales of such policies.

1 “PART D—MISCELLANEOUS PROVISIONS

2 **“SEC. 2731. FUNDING FOR LONG-TERM CARE INSURANCE**
3 **INFORMATION, COUNSELING, AND ASSIST-**
4 **ANCE.**

5 “(a) IN GENERAL.—The Secretary, acting through
6 the Public Health Service, may award grants to States,
7 and national organizations with demonstrated experience
8 in long-term care insurance, for the establishment of pro-
9 grams to provide information, counseling, and assistance
10 relating to the procurement of adequate and appropriate
11 long-term care insurance.

12 “(b) APPLICATION.—To be eligible to receive a grant
13 under subsection (a), a State or national organization
14 shall prepare and submit to the Secretary an application
15 at such time, in such manner, and containing such infor-
16 mation as the Secretary may require, including a descrip-
17 tion of the program for which the State or organization
18 intends to use the amounts provided under the grant.

19 “(c) AUTHORIZATION OF APPROPRIATIONS.—

20 “(1) IN GENERAL.—There are authorized to be
21 appropriate for grants to States under subsection
22 (a), \$10,000,000 for each of the fiscal years 1994
23 through 1996.

24 “(2) NATIONAL ORGANIZATIONS.—There are
25 authorized to be appropriate for grants to national

1 organizations under subsection (a), \$1,000,000 for
2 each of the fiscal years 1994 through 1996.

3 **“SEC. 2732. DEFINITIONS.**

4 “As used in this title:

5 “(1) AGENT.—The term ‘agent’ means—

6 “(A) prior to 2 years after the date of en-
7 actment of this Act, an individual who sells or
8 offers for sale a long-term care insurance policy
9 subject to the requirements of this title and is
10 licensed or required to be licensed under State
11 law for such purpose; and

12 “(B) after the date referred to in subpara-
13 graph (A), an individual who meets the training
14 and certification requirements established under
15 section 2712(f).

16 “(2) ASSOCIATION.—The term ‘association’ in-
17 cludes the association and its subsidiaries.

18 “(3) CARRIER.—The term ‘carrier’ means any
19 person that offers a health benefit plan, whether
20 through insurance or otherwise, including a licensed
21 insurance company, a prepaid hospital or medical
22 service plan, a health maintenance organization, a
23 self-insured carrier, a reinsurance carrier, and a
24 multiple employer welfare arrangement (a combina-
25 tion of employers associated for the purpose of pro-

1 viding health benefit plan coverage for their employ-
2 ees).”.

3 **TITLE III—DEDUCTION FOR CER-**
4 **TAIN EXPENSES FOR DE-**
5 **PENDENTS WITH ALZ-**
6 **HEIMER’S DISEASE OR RE-**
7 **LATED ORGANIC BRAIN DIS-**
8 **ORDERS**

9 **SEC. 301. DEDUCTION ALLOWANCE FOR HOME HEALTH**
10 **CARE AND ADULT DAY AND RESPITE CARE**
11 **EXPENSES OF INDIVIDUALS FOR DEPEND-**
12 **ENTS WITH ALZHEIMER’S DISEASE OR RELAT-**
13 **ED ORGANIC BRAIN DISORDERS.**

14 (a) IN GENERAL.—Part VII of subchapter B of chap-
15 ter 1 of the Internal Revenue Code of 1986 (relating to
16 additional itemized deductions for individuals) is amended
17 by redesignating section 220 as section 221 and by insert-
18 ing after section 219 the following new section:

19 **“SEC. 220. HOME HEALTH CARE AND ADULT DAY AND RES-**
20 **PITE CARE EXPENSES FOR DEPENDENTS**
21 **WITH ALZHEIMER’S DISEASE OR RELATED**
22 **ORGANIC BRAIN DISORDERS.**

23 “(a) DEDUCTION ALLOWED.—In the case of an indi-
24 vidual who maintains a household which includes a quali-
25 fied dependent of such individual, there shall be allowed

1 as a deduction the qualified home health care and adult
2 day respite care expenses of such individual with respect
3 to such dependent.

4 “(b) DEFINITIONS.—For purposes of this section:

5 “(1) QUALIFIED DEPENDENT.—The term
6 ‘qualified dependent’ means any individual (includ-
7 ing the spouse of the taxpayer but not including the
8 taxpayer) who—

9 “(A) has as his principal place of abode
10 the principal residence of the taxpayer, and is
11 a member of the taxpayer’s household, for more
12 than 180 days of the calendar year during
13 which the taxable year of the taxpayer begins,

14 “(B) is a dependent of the taxpayer (with-
15 in the meaning given to such term by sub-
16 section (a) of section 152 other than paragraph
17 (9) of such subsection) for such calendar year,
18 and

19 “(C) at the close of such calendar year,
20 suffers from Alzheimer’s disease (or a related
21 organic brain disorder) and is physically or
22 mentally incapable of caring for himself, as de-
23 termined by a physician.

24 “(2) QUALIFIED HOME HEALTH CARE AND
25 ADULT DAY AND RESPITE CARE EXPENSES.—The

1 term ‘qualified home health care and adult day and
2 respite care expenses’ means the excess of—

3 “(A) the reasonable and necessary ex-
4 penses paid or incurred by the taxpayer for—

5 “(i) household services for a qualified
6 dependent, and

7 “(ii) the care (including respite care)
8 of such dependent in the home or in an
9 adult day care center, over

10 “(B) the reasonable and necessary ex-
11 penses such taxpayer would have paid or in-
12 curred for household services for, and the care
13 of, such qualified dependent if such dependent
14 had been capable of caring for himself.

15 “(3) PHYSICIAN.—The term ‘physician’ has the
16 meaning given to such term by section 1861(r) of
17 the Social Security Act (42 U.S.C. 1395x(r)).

18 “(c) SPECIAL RULES.—For purposes of this
19 section:

20 “(1) MAINTAINING A HOUSEHOLD.—An individ-
21 ual shall be treated as maintaining a household for
22 any period only if over half the cost of maintaining
23 the household for such period is furnished by such
24 individual (or, if the individual is married, by the in-
25 dividual and his spouse).

1 “(2) MARRIED COUPLE MUST FILE JOINT RE-
2 TURN.—If the taxpayer is married at the close of
3 the taxable year, the deduction shall be allowed
4 under subsection (a) only if the taxpayer and his
5 spouse file a joint return under section 6013 for the
6 taxable year.

7 “(d) CERTIFICATION OF DIAGNOSIS BY PHYSI-
8 CIAN.—Any determination by a physician that—

9 “(1) an individual suffers from Alzheimer’s dis-
10 ease or a related organic brain disorder, and

11 “(2) such individual is mentally or physically
12 incapable of caring for himself,

13 shall be certified by the physician to the Secretary at such
14 time and in such manner as the Secretary shall by regula-
15 tion prescribe.

16 “(e) COORDINATION WITH SECTIONS 36 AND 213.—
17 If any amount allowable as a deduction under this section
18 would (but for this subsection) also be taken into account
19 for purposes of determining the amount of any credit al-
20 lowable under section 36 (relating to expenses for house-
21 hold and dependent care services necessary for gainful em-
22 ployment) or any deduction allowable under section 213
23 (relating to medical, dental, etc. expenses), this section
24 shall apply only if the taxpayer elects its application. If
25 this section is elected with respect to any amount, such

1 amount shall not be taken into account under section 36
2 or 213. Such election shall be made at such time and in
3 such manner as the Secretary shall by regulation pre-
4 scribe.”.

5 (b) DEDUCTION ALLOWED IN ARRIVING AT AD-
6 JUSTED GROSS INCOME.—Section 62(a) of such Code (de-
7 fining adjusted gross income) is amended by inserting
8 after paragraph (15) the following new paragraph:

9 “(16) QUALIFIED HOME HEALTH CARE AND
10 ADULT DAY AND RESPITE CARE EXPENSES.—The
11 deduction allowed by section 220.”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for part VII of subchapter B of chapter 1 of such Code
14 is amended by striking the last item and inserting the fol-
15 lowing new items:

“Sec. 220. Home health care and adult day and respite care ex-
penses for dependents with Alzheimer’s disease or
related organic brain disorders.

“Sec. 221. Cross reference.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 1995.

1 **TITLE IV—DEPENDENT CARE**
 2 **CREDIT EXPANDED AND**
 3 **MADE REFUNDABLE**

4 **SEC. 401. DEPENDENT CARE TAX CREDIT EXPANDED AND**
 5 **MADE REFUNDABLE.**

6 (a) DEPENDENT CARE SERVICES.—Subpart C of
 7 part IV of subchapter A of chapter 1 of the Internal Reve-
 8 nue Code of 1986 (relating to refundable credits) is
 9 amended by redesignating section 36 as section 37 and
 10 by inserting after section 35 the following new section:

11 **“SEC. 36. DEPENDENT CARE SERVICES.**

12 “(a) ALLOWANCE OF CREDIT.—

13 “(1) IN GENERAL.—In the case of an individual
 14 who maintains a household which includes as a
 15 member 1 or more qualifying individuals, there shall
 16 be allowed as a credit against the tax imposed by
 17 this subtitle for the taxable year an amount equal to
 18 the applicable percentage of the sum of—

19 “(A) the employment-related expenses paid
 20 by such individual during the taxable year, plus

21 “(B) the respite care expenses paid by
 22 such individual during the taxable year.

23 “(2) APPLICABLE PERCENTAGE DEFINED.—

24 “(A) IN GENERAL.—For purposes of para-
 25 graph (1), the term ‘applicable percentage’

1 means 50 percent reduced (but not below 20
2 percent) by 1 percentage point for each full
3 \$1,000 amount by which the taxpayer's ad-
4 justed gross income for the taxable year exceeds
5 \$15,000.

6 “(B) COST-OF-LIVING ADJUSTMENT.—

7 “(i) IN GENERAL.—In the case of a
8 taxable year beginning in a calendar year
9 after 1996, subparagraph (A) shall be ap-
10 plied by increasing the \$15,000 amount
11 contained therein by the cost-of-living ad-
12 justment (as defined in section 1(f)(3)) for
13 such calendar year determined by sub-
14 stituting “1995” for “1992” in subpara-
15 graph (B) of section 1(f)(3).

16 “(ii) ROUNDING.—If any increase de-
17 termined under clause (i) is not a multiple
18 of \$10, such increase shall be rounded to
19 the nearest multiple of \$10 (or if such in-
20 crease is a multiple of \$5, such increase
21 shall be increased to the next highest mul-
22 tiple of \$10).

23 “(b) EMPLOYMENT-RELATED EXPENSES.—For pur-
24 poses of this section—

1 “(1) DETERMINATION OF ELIGIBLE EX-
2 PENSES.—

3 “(A) IN GENERAL.—The term ‘employ-
4 ment-related expenses’ means amounts paid for
5 the following expenses, but only if such ex-
6 penses are incurred to enable the taxpayer to be
7 gainfully employed for any period for which
8 there are 1 or more qualifying individuals with
9 respect to the taxpayer:

10 “(i) expenses for household services,
11 and

12 “(ii) expenses for the care of a quali-
13 fying individual.

14 Such term shall not include any amount paid
15 for services outside the taxpayer’s household at
16 a camp where the qualifying individual stays
17 overnight and shall not include any respite care
18 expense taken into account under subsection
19 (a).

20 “(B) EXCEPTION.—Employment-related
21 expenses described in subparagraph (A) which
22 are incurred for services outside the taxpayer’s
23 household shall be taken into account only if in-
24 curred for the care of—

1 “(i) a qualifying individual described
2 in subsection (d)(1), or

3 “(ii) a qualifying individual (not de-
4 scribed in subsection (d)(1)) who regularly
5 spends at least 8 hours each day in the
6 taxpayer’s household.

7 “(C) DEPENDENT CARE CENTERS.—Em-
8 ployment-related expenses described in subpara-
9 graph (A) which are incurred for services pro-
10 vided outside the taxpayer’s household by a de-
11 pendent care center (as defined in subpara-
12 graph (D)) shall be taken into account only if—

13 “(i) such center complies with all ap-
14 plicable laws and regulations of a State or
15 unit of local government, and

16 “(ii) the requirements of subpara-
17 graph (B) are met.

18 “(D) DEPENDENT CARE CENTER DE-
19 FINED.—For purposes of this paragraph, the
20 term ‘dependent care center’ means any facility
21 which—

22 “(i) provides care for more than 6 in-
23 dividuals (other than individuals who re-
24 side at the facility), and

1 “(ii) receives a fee, payment, or grant
2 for providing services for any of the indi-
3 viduals (regardless of whether such facility
4 is operated for profit).

5 “(2) DOLLAR LIMIT ON AMOUNT CRED-
6 ITABLE.—

7 “(A) IN GENERAL.—The amount of the
8 employment-related expenses incurred during
9 any taxable year which may be taken into ac-
10 count under subsection (a) shall not exceed—

11 “(i) \$2,400 if there is 1 qualifying in-
12 dividual with respect to the taxpayer for
13 such taxable year, or

14 “(ii) \$4,800 if there are 2 or more
15 qualifying individuals with respect to the
16 taxpayer for such taxable year.

17 The amount determined under clause (i) or (ii)
18 (whichever is applicable) shall be reduced by the
19 aggregate amount excludable from gross income
20 under section 129 for the taxable year.

21 “(B) REDUCTION IN LIMIT FOR AMOUNT
22 OF RESPITE CARE EXPENSES.—The limitation
23 of subparagraph (A) shall be reduced by the
24 amount of the respite care expenses taken into

1 account by the taxpayer under subsection (a)
2 for the taxable year.

3 “(3) EARNED INCOME LIMITATION.—

4 “(A) IN GENERAL.—Except as otherwise
5 provided in this paragraph, the amount of the
6 employment-related expenses incurred during
7 any taxable year which may be taken into ac-
8 count under subsection (a) shall not exceed—

9 “(i) in the case of an individual who
10 is not married at the close of such year,
11 such individual’s earned income for such
12 year, or

13 “(ii) in the case of an individual who
14 is married at the close of such year, the
15 lesser of such individual’s earned income or
16 the earned income of his spouse for such
17 year.

18 “(B) SPECIAL RULE FOR SPOUSE WHO IS
19 A STUDENT OR INCAPABLE OF CARING FOR
20 HIMSELF.—In the case of a spouse who is a
21 student or a qualified individual described in
22 subsection (d)(3), for purposes of subparagraph
23 (A), such spouse shall be deemed for each
24 month during which such spouse is a full-time
25 student at an educational institution, or is such

1 a qualifying individual, to be gainfully employed
2 and to have earned income of not less than—

3 “(i) \$200 if paragraph (2)(A)(i) ap-
4 plies for the taxable year, or

5 “(ii) \$400 if paragraph (2)(A)(ii) ap-
6 plies for the taxable year.

7 In the case of any husband and wife, this sub-
8 paragraph shall apply with respect to only one
9 spouse for any one month.

10 “(c) RESPITE CARE EXPENSES.—For purposes of
11 this section:

12 “(1) IN GENERAL.—The term ‘respite care ex-
13 penses’ means expenses paid (whether or not to en-
14 able the taxpayer to be gainfully employed) for—

15 “(A) the care of a qualifying individual—

16 “(i) who has attained the age of 13,
17 or

18 “(ii) who is under the age of 13 but
19 has a physical or mental impairment which
20 results in the individual being incapable of
21 caring for himself,

22 during any period when such individual regu-
23 larly spends at least 8 hours each day in the
24 taxpayer’s household, or

1 “(B) care (for not more than 14 days dur-
2 ing the calendar year) of a qualifying individual
3 described in subparagraph (A) during any pe-
4 riod during which the individual does not regu-
5 larly spend at least 8 hours each day in the tax-
6 payer’s household.

7 “(2) DOLLAR LIMIT.—The amount of the res-
8 pite care expenses incurred during any taxable year
9 which may be taken into account under subsection
10 (a) shall not exceed—

11 “(A) \$1,200 if such expenses are incurred
12 with respect to only 1 qualifying individual for
13 the taxable year, or

14 “(B) \$2,400 if such expenses are incurred
15 for 2 or more qualifying individuals for such
16 taxable year.

17 “(d) QUALIFYING INDIVIDUAL.—For purposes of this
18 section, the term ‘qualifying individual’ means—

19 “(1) a dependent of the taxpayer who is under
20 the age of 13 and with respect to whom the taxpayer
21 is entitled to a deduction under section 151(e),

22 “(2) a dependent of the taxpayer who is phys-
23 ically or mentally incapable of caring for himself, or

24 “(3) the spouse of the taxpayer, if he is phys-
25 ically or mentally incapable of caring for himself.

1 “(e) SPECIAL RULES.—For purposes of this section:

2 “(1) MAINTAINING HOUSEHOLD.—An individ-
3 ual shall be treated as maintaining a household for
4 any period only if over half the cost of maintaining
5 the household for such period is furnished by such
6 individual (or, if such individual is married during
7 such period, is furnished by such individual and his
8 spouse).

9 “(2) MARRIED COUPLES MUST FILE JOINT RE-
10 TURN.—If the taxpayer is married at the close of
11 the taxable year, the credit shall be allowed under
12 subsection (a) only if the taxpayer and his spouse
13 file a joint return for the taxable year.

14 “(3) MARITAL STATUS.—An individual legally
15 separated from his spouse under a decree of divorce
16 or of separate maintenance shall not be considered
17 as married.

18 “(4) CERTAIN MARRIED INDIVIDUALS LIVING
19 APART.—If—

20 “(A) an individual who is married and who
21 files a separate return—

22 “(i) maintains as his home a house-
23 hold which constitutes for more than one-
24 half of the taxable year the principal place
25 of abode of a qualifying individual, and

1 “(ii) furnishes over half the cost of
2 maintaining such household during the
3 taxable year, and

4 “(B) during the last 6 months of such tax-
5 able year such individual’s spouse is not a mem-
6 ber of such household,

7 such individual shall not be considered as married.

8 “(5) SPECIAL DEPENDENCY TEST IN CASE OF
9 DIVORCED PARENTS, ETC.—If—

10 “(A) paragraph (2) or (4) of section
11 152(e) applies to any child with respect to any
12 calendar year, and

13 “(B) such child is under the age of 13 or
14 is physically or mentally incapable of caring for
15 himself,

16 in the case of any taxable year beginning in such
17 calendar year, such child shall be treated as a quali-
18 fying individual with respect to the custodial parent
19 (within the meaning of section 152(e)(1)), and shall
20 not be treated as a qualifying individual with respect
21 to the noncustodial parent.

22 “(6) PAYMENTS TO RELATED INDIVIDUALS.—
23 No credit shall be allowed under subsection (a) for
24 any amount paid by the taxpayer to an individual—

1 “(A) with respect to whom, for the taxable
2 year, a deduction under section 151(e) (relating
3 to deduction for personal exemptions for de-
4 pendents) is allowable either to the taxpayer or
5 his spouse, or

6 “(B) who is a child of the taxpayer (within
7 the meaning of section 151(e)(3)) who has not
8 attained the age of 19 at the close of the tax-
9 able year.

10 For purposes of this paragraph, the term ‘taxable
11 year’ means the taxable year of the taxpayer in
12 which the service is performed.

13 “(7) STUDENT.—The term ‘student’ means an
14 individual who during each of 5 calendar months
15 during the taxable year is a full-time student at an
16 educational organization.

17 “(8) EDUCATIONAL ORGANIZATION.—The term
18 ‘educational organization’ means an educational or-
19 ganization described in section 170(b)(1)(A)(ii).

20 “(9) IDENTIFYING INFORMATION REQUIRED
21 WITH RESPECT TO SERVICE PROVIDER.—No credit
22 shall be allowed under subsection (a) for any amount
23 paid to any person unless—

1 “(A) the name, address, and taxpayer
2 identification number of such person are in-
3 cluded on the return claiming the credit, or

4 “(B) if such person is an organization de-
5 scribed in section 501(c)(3) and exempt from
6 tax under section 501(a), the name and address
7 of such person are included on the return
8 claiming the credit.

9 In the case of a failure to provide the information
10 required under the preceding sentence, the preceding
11 sentence shall not apply if it is shown that the tax-
12 payer exercised due diligence in attempting to pro-
13 vide the information so required.

14 “(f) REGULATIONS.—The Secretary shall prescribe
15 such regulations as may be necessary to carry out the pur-
16 poses of this section.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 21 of such Code is hereby repealed.

19 (2) Paragraph (2) of section 129(b) of such
20 Code is amended by striking out “section 21(d)(2)”
21 and inserting “section 36(b)(3)(B)”.

22 (3) Subsection (e) of section 213 of such Code
23 is amended by striking out “section 21” and insert-
24 ing “section 36”.

25 (c) TECHNICAL AMENDMENTS.—

1 (1) The table of sections for subpart C of part
2 IV of subchapter A of chapter 1 of such Code is
3 amended by striking out the item relating to section
4 35 and inserting in lieu thereof the following:

“Sec. 36. Dependent care services.
“Sec. 37. Overpayments of tax.”.

5 (2) The table of sections for subpart A of such
6 part IV is amended by striking out the item relating
7 to section 21.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1995.



S 411 IS—2

S 411 IS—3

S 411 IS—4

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