

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4946

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IN THE SENATE OF THE UNITED STATES

JULY 25, 2002

Received; read twice and referred to the Committee on Finance

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## AN ACT

To amend the Internal Revenue Code of 1986 to provide  
health care incentives.

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

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Improving Access to Long-Term Care Act of 2002”.

4 (b) AMENDMENT OF 1986 CODE.—Except as other-  
5 wise expressly provided, whenever in this Act an amend-  
6 ment or repeal is expressed in terms of an amendment  
7 to, or repeal of, a section or other provision, the reference  
8 shall be considered to be made to a section or other provi-  
9 sion of the Internal Revenue Code of 1986.

10 **SEC. 2. DEDUCTION FOR PREMIUMS ON QUALIFIED LONG-**  
11 **TERM CARE INSURANCE CONTRACTS.**

12 (a) IN GENERAL.—Part VII of subchapter B of chap-  
13 ter 1 (relating to additional itemized deductions) is  
14 amended by redesignating section 223 as section 224 and  
15 by inserting after section 222 the following new sub-  
16 section:

17 **“SEC. 223. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-**  
18 **SURANCE CONTRACTS.**

19 “(a) IN GENERAL.—In the case of an individual,  
20 there shall be allowed as a deduction an amount equal to  
21 the applicable percentage of eligible long-term care pre-  
22 miums (as defined in section 213(d)(10)) paid during the  
23 taxable year by the taxpayer for coverage for the taxpayer  
24 and the spouse and dependents of the taxpayer.

1       “(b) APPLICABLE PERCENTAGE.—For purposes of  
 2 subsection (a), the applicable percentage shall be deter-  
 3 mined in accordance with the following table:

<b>“For taxable years beginning in calendar year—</b>	<b>The applicable percentage is—</b>
2003, 2004, and 2005 .....	25
2006 and 2007 .....	30
2008 and 2009 .....	35
2010 and 2011 .....	40
2012 and thereafter .....	50.

4       “(c) LIMITATION BASED ON MODIFIED ADJUSTED  
 5 GROSS INCOME.—

6           “(1) IN GENERAL.—If the modified adjusted  
 7 gross income of the taxpayer for the taxable year ex-  
 8 ceeds \$20,000 (twice the preceding dollar amount,  
 9 as adjusted under paragraph (2), in the case of a  
 10 joint return) the amount which would (but for this  
 11 subsection) be allowed as a deduction under sub-  
 12 section (a) shall be reduced (but not below zero) by  
 13 the amount which bears the same ratio to the  
 14 amount which would be so allowed as such excess  
 15 bears to \$20,000 (\$40,000 in the case of a joint re-  
 16 turn).

17           “(2) ADJUSTMENTS FOR INFLATION.—

18           “(A) IN GENERAL.—In the case of a tax-  
 19 able year beginning after December 31, 2003,  
 20 the first \$20,000 amount contained in para-  
 21 graph (1) shall be increased by an amount  
 22 equal to—

1 “(i) such dollar amount, multiplied by

2 “(ii) the cost-of-living adjustment de-  
3 termined under section 1(f)(3) for the cal-  
4 endar year in which the taxable year be-  
5 gins, determined by substituting ‘calendar  
6 year 2002’ for ‘calendar year 1992’ in sub-  
7 paragraph (B) thereof.

8 “(B) ROUNDING.—If any amount as ad-  
9 justed under subparagraph (A) is not a multiple  
10 of \$1,000, such amount shall be rounded to the  
11 nearest multiple of \$1,000 (or if such amount  
12 is a multiple of \$500, such amount shall be  
13 rounded to the next highest multiple of \$500).

14 “(3) MODIFIED ADJUSTED GROSS INCOME.—  
15 For purposes of paragraph (1), the term ‘modified  
16 adjusted gross income’ means adjusted gross income  
17 determined—

18 “(A) without regard to this section and  
19 sections 911, 931, and 933, and

20 “(B) after application of sections 86, 135,  
21 137, 219, 221, 222, and 469.

22 “(d) LIMITATION BASED ON SUBSIDIZED COV-  
23 ERAGE.—

1           “(1) IN GENERAL.—Subsection (a) shall not  
2 apply to premiums paid for coverage of any indi-  
3 vidual for any calendar month if—

4           “(A) for such month such individual is cov-  
5 ered by any insurance which is advertised, mar-  
6 keted, or offered as long-term care insurance  
7 under any health plan maintained by any em-  
8 ployer of the taxpayer or of the taxpayer’s  
9 spouse, and

10           “(B) 50 percent or more of the cost of any  
11 such coverage (determined under section  
12 4980B) for such month is paid or incurred by  
13 the employer.

14           “(2) PLANS MAINTAINED BY CERTAIN EMPLOY-  
15 ERS.—A health plan which is not otherwise de-  
16 scribed in paragraph (1)(A) shall be treated as de-  
17 scribed in such paragraph if such plan would be so  
18 described if all health plans of persons treated as a  
19 single employer under subsection (b), (c), (m), or (o)  
20 of section 414 were treated as one health plan.

21           “(e) COORDINATION WITH OTHER DEDUCTIONS.—  
22 Any amount taken into account under subsection (a) shall  
23 not be taken into account in computing the amount allow-  
24 able as a deduction under section 162(l) or 213(a).

1       “(f) MARRIED COUPLES MUST FILE JOINT RE-  
2 TURN.—

3               “(1) IN GENERAL.—If the taxpayer is married  
4       at the close of the taxable year, the deduction shall  
5       be allowed under subsection (a) only if the taxpayer  
6       and the taxpayer’s spouse file a joint return for the  
7       taxable year.

8               “(2) MARITAL STATUS.—For purposes of para-  
9       graph (1), marital status shall be determined in ac-  
10      cordance with section 7703.

11      “(g) REGULATIONS.—The Secretary shall prescribe  
12      such regulations as may be appropriate to carry out this  
13      section, including regulations requiring employers to re-  
14      port to their employees and the Secretary such informa-  
15      tion as the Secretary determines to be appropriate.”.

16      (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-  
17      PAYER ITEMIZES.—Subsection (a) of section 62 is amend-  
18      ed by inserting after paragraph (18) the following new  
19      item:

20               “(19) PREMIUMS ON QUALIFIED LONG-TERM  
21      CARE INSURANCE CONTRACTS.—The deduction al-  
22      lowed by section 223.”.

23      (c) CONFORMING AMENDMENTS.—



1       “(d) ADDITIONAL EXEMPTION FOR DEPENDENTS  
2 WITH LONG-TERM CARE NEEDS IN TAXPAYER’S  
3 HOME.—

4               “(1) IN GENERAL.—Except as provided in para-  
5 graph (2), an exemption of the exemption amount  
6 for each qualified family member of the taxpayer.

7               “(2) PHASE-IN.—In the case of taxable years  
8 beginning in calendar years before 2012, the amount  
9 of the exemption provided under paragraph (1) shall  
10 not exceed the applicable limitation amount deter-  
11 mined in accordance with the following table:

<b>“For taxable years beginning in calendar year—</b>	<b>The applicable limitation amount is—</b>
2003 and 2004 .....	\$500
2005 and 2006 .....	1,000
2007 and 2008 .....	1,500
2009 and 2010 .....	2,000
2011 .....	2,500.

12               “(3) QUALIFIED FAMILY MEMBER.—For pur-  
13 poses of this subsection, the term ‘qualified family  
14 member’ means, with respect to any taxable year,  
15 any individual—

16                       “(A) who is—

17                               “(i) the spouse of the taxpayer, or

18                               “(ii) a dependent of the taxpayer with  
19 respect to whom the taxpayer is entitled to  
20 an exemption under subsection (c),

1           “(B) who is an individual with long-term  
2           care needs during any portion of the taxable  
3           year, and

4           “(C) other than an individual described in  
5           section 152(a)(9), who, for more than half of  
6           such year, has as such individual’s principal  
7           place of abode the home of the taxpayer and is  
8           a member of the taxpayer’s household.

9           “(4) INDIVIDUALS WITH LONG-TERM CARE  
10          NEEDS.—For purposes of this subsection, the term  
11          ‘individual with long-term care needs’ means, with  
12          respect to any taxable year, an individual who has  
13          been certified, during the 39½-month period ending  
14          on the due date (without extensions) for filing the  
15          return of tax for the taxable year (or such other pe-  
16          riod as the Secretary prescribes), by a physician (as  
17          defined in section 1861(r)(1) of the Social Security  
18          Act) as being, for a period which is at least 180 con-  
19          secutive days—

20                 “(A) an individual who is unable to per-  
21                 form (without substantial assistance from an-  
22                 other individual) at least 2 activities of daily liv-  
23                 ing (as defined in section 7702B(c)(2)(B)) due  
24                 to a loss of functional capacity, or

1           “(B) an individual who requires substan-  
2           tial supervision to protect such individual from  
3           threats to health and safety due to severe cog-  
4           nitive impairment and is unable to perform,  
5           without reminding or cuing assistance, at least  
6           1 activity of daily living (as so defined) or to  
7           the extent provided in regulations prescribed by  
8           the Secretary (in consultation with the Sec-  
9           retary of Health and Human Services), is un-  
10          able to engage in age appropriate activities.

11          “(5) IDENTIFICATION REQUIREMENT.—No ex-  
12          emption shall be allowed under this subsection to a  
13          taxpayer with respect to any qualified family mem-  
14          ber unless the taxpayer includes, on the return of  
15          tax for the taxable year, the name and taxpayer  
16          identification of the physician certifying such mem-  
17          ber. In the case of a failure to provide the informa-  
18          tion required under the preceding sentence, the pre-  
19          ceding sentence shall not apply if it is shown that  
20          the taxpayer exercised due diligence in attempting to  
21          provide the information so required.

22          “(6) SPECIAL RULES.—Rules similar to the  
23          rules of paragraphs (2), (3), and (4) of section 21(e)  
24          shall apply for purposes of this subsection.”.

25          (b) CONFORMING AMENDMENTS.—

1 (1) Section 1(f)(6)(A) is amended by striking  
2 “151(d)(4)” and inserting “151(e)(4)”.

3 (2) Section 1(f)(6)(B) is amended by striking  
4 “151(d)(4)(A)” and inserting “151(e)(4)(A)”.

5 (3) Section 3402(f)(1)(A) is amended by strik-  
6 ing “151(d)(2)” and inserting “151(e)(2)”.

7 (4) Section 3402(r)(2)(B) is amended by strik-  
8 ing “151(d)” and inserting “151(e)”.

9 (5) Section 6012(a)(1)(D)(ii) is amended—

10 (A) by striking “151(d)” and inserting  
11 “151(e)”, and

12 (B) by striking “151(d)(2)” and inserting  
13 “151(e)(2)”.

14 (6) Section 6013(b)(3)(A) is amended by strik-  
15 ing “151(d)” and inserting “151(e)”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to taxable years beginning after  
18 December 31, 2002.

19 **SEC. 4. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-**  
20 **TERM CARE INSURANCE.**

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

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

4           “(i) MODEL REGULATION.—The fol-  
5 lowing requirements of the model regula-  
6 tion:

7           “(I) Section 6A (relating to guar-  
8 anteed renewal or noncancellability),  
9 and the requirements of section 6B of  
10 the model Act relating to such section  
11 6A.

12           “(II) Section 6B (relating to pro-  
13 hibitions on limitations and exclu-  
14 sions).

15           “(III) Section 6C (relating to ex-  
16 tension of benefits).

17           “(IV) Section 6D (relating to  
18 continuation or conversion of cov-  
19 erage).

20           “(V) Section 6E (relating to dis-  
21 continuance and replacement of poli-  
22 cies).

23           “(VI) Section 7 (relating to unin-  
24 tentional lapse).

1           “(VII) Section 8 (relating to dis-  
2           closure), other than section 8F there-  
3           of.

4           “(VIII) Section 11 (relating to  
5           prohibitions against post-claims un-  
6           derwriting).

7           “(IX) Section 12 (relating to  
8           minimum standards).

9           “(X) Section 13 (relating to re-  
10          quirement to offer inflation protec-  
11          tion), except that any requirement for  
12          a signature on a rejection of inflation  
13          protection shall permit the signature  
14          to be on an application or on a sepa-  
15          rate form.

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

20          “(XII) The provisions of section  
21          26 relating to contingent nonforfeiture  
22          benefits, if the policyholder declines  
23          the offer of a nonforfeiture provision  
24          described in paragraph (4).

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

3                   “(I) Section 6C (relating to pre-  
4                   existing conditions).

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

7                   “(III) The provisions of section 8  
8                   relating to contingent nonforfeiture  
9                   benefits, if the policyholder declines  
10                  the offer of a nonforfeiture provision  
11                  described in paragraph (4).

12           “(B) DEFINITIONS.—For purposes of this  
13           paragraph—

14                   “(i) MODEL PROVISIONS.—The terms  
15                   ‘model regulation’ and ‘model Act’ means  
16                   the long-term care insurance model regula-  
17                   tion, and the long-term care insurance  
18                   model Act, respectively, promulgated by  
19                   the National Association of Insurance  
20                   Commissioners (as adopted as of October  
21                   2000).

22                   “(ii) COORDINATION.—Any provision  
23                   of the model regulation or model Act listed  
24                   under clause (i) or (ii) of subparagraph  
25                   (A) shall be treated as including any other

1 provision of such regulation or Act nec-  
2 essary to implement the provision.

3 “(iii) DETERMINATION.—For pur-  
4 poses of this section and section 4980C,  
5 the determination of whether any require-  
6 ment of a model regulation or the model  
7 Act has been met shall be made by the  
8 Secretary.”.

9 (b) EXCISE TAX.—Paragraph (1) of section  
10 4980C(c) of the Internal Revenue Code of 1986 (relating  
11 to requirements of model provisions) is amended to read  
12 as follows:

13 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

14 “(A) MODEL REGULATION.—The following  
15 requirements of the model regulation must be  
16 met:

17 “(i) Section 9 (relating to required  
18 disclosure of rating practices to consumer).

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

21 “(iii) Section 15 (relating to reporting  
22 requirements), except that the issuer shall  
23 also report at least annually the number of  
24 claims denied during the reporting period  
25 for each class of business (expressed as a

1 percentage of claims denied), other than  
2 claims denied for failure to meet the wait-  
3 ing period or because of any applicable  
4 preexisting condition.

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

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

12 “(I) in addition to such require-  
13 ments, no person shall, in selling or  
14 offering to sell a qualified long-term  
15 care insurance contract, misrepresent  
16 a material fact; and

17 “(II) no such requirements shall  
18 include a requirement to inquire or  
19 identify whether a prospective appli-  
20 cant or enrollee for long-term care in-  
21 surance has accident and sickness in-  
22 surance.

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

1 “(vii) Section 29 (relating to standard  
2 format outline of coverage).

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

5 The requirements referred to in clause (vi) shall  
6 not include those portions of the personal work-  
7 sheet described in Appendix B of the model reg-  
8 ulation relating to consumer protection require-  
9 ments not imposed by section 4980C or 7702B.

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

12 “(i) Section 6F (relating to right to  
13 return), except that such section shall also  
14 apply to denials of applications and any re-  
15 fund shall be made within 30 days of the  
16 return or denial.

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

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

21 “(iv) Section 6J (relating to policy  
22 summary).

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

1                   “(vi) Section 7 (relating to incontest-  
2                   ability period).

3                   “(C) DEFINITIONS.—For purposes of this  
4                   paragraph, the terms ‘model regulation’ and  
5                   ‘model Act’ have the meanings given such term  
6                   by section 7702B(g)(2)(B).”.

7                   (c) EFFECTIVE DATE.—The amendments made by  
8                   this section shall apply to policies issued after December  
9                   31, 2002.

10 **SEC. 5. EXPANSION OF HUMAN CLINICAL TRIALS QUALI-**  
11 **FYING FOR ORPHAN DRUG CREDIT.**

12                   (a) IN GENERAL.—Paragraph (2) of section 45C(b)  
13                   of the Internal Revenue Code of 1986 is amended by add-  
14                   ing at the end the following new subparagraph:

15                   “(C) TREATMENT OF CERTAIN EXPENSES  
16                   INCURRED BEFORE DESIGNATION.—For pur-  
17                   poses of subparagraph (A)(ii)(I), if a drug is  
18                   designated under section 526 of the Federal  
19                   Food, Drug, and Cosmetic Act not later than  
20                   the due date (including extensions) for filing  
21                   the return of tax under this subtitle for the tax-  
22                   able year in which the application for such des-  
23                   ignation of such drug was filed, such drug shall  
24                   be treated as having been designated on the  
25                   date that such application was filed.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall apply to expenses incurred after the  
3 date of the enactment of this Act.

4 **SEC. 6. VACCINE TAX TO APPLY TO HEPATITIS A VACCINE.**

5 (a) IN GENERAL.—Paragraph (1) of section 4132(a)  
6 (defining taxable vaccine) is amended by redesignating  
7 subparagraphs (I), (J), (K), and (L) as subparagraphs  
8 (J), (K), (L), and (M), respectively, and by inserting after  
9 subparagraph (H) the following new subparagraph:

10 “(I) Any vaccine against hepatitis A.”.

11 (b) EFFECTIVE DATE.—

12 (1) SALES, ETC.—The amendments made by  
13 subsection (a) shall apply to sales and uses on or  
14 after the first day of the first month which begins  
15 more than 4 weeks after the date of the enactment  
16 of this Act.

17 (2) DELIVERIES.—For purposes of paragraph  
18 (1) and section 4131 of the Internal Revenue Code  
19 of 1986, in the case of sales on or before the effec-  
20 tive date described in such paragraph for which de-  
21 livery is made after such date, the delivery date shall  
22 be considered the sale date.

1 **SEC. 7. ELIGIBILITY FOR ARCHER MSA'S EXTENDED TO AC-**  
2 **COUNT HOLDERS OF MEDICARE+CHOICE**  
3 **MSA'S.**

4 (a) IN GENERAL.—Subparagraph (B) of section  
5 220(e)(2) of the Internal Revenue Code of 1986 is amend-  
6 ed by adding at the end the following new clause:

7 “(iii) MEDICARE+CHOICE MSA’S.—In  
8 the case of an individual who is covered  
9 under an MSA plan (as defined in section  
10 1859(b)(3) of the Social Security Act)  
11 which such individual elected under section  
12 1851(a)(2)(B) of such Act—

13 “(I) such plan shall be treated as  
14 a high deductible health plan for pur-  
15 poses of this section,

16 “(II) subsection (b)(2)(A) shall  
17 be applied by substituting ‘100 per-  
18 cent’ for ‘65 percent’ with respect to  
19 such individual,

20 “(III) with respect to such indi-  
21 vidual, the limitation under subsection  
22 (d)(1)(A)(ii) shall be 100 percent of  
23 the highest annual deductible limita-  
24 tion under section 1859(b)(3)(B) of  
25 the Social Security Act,

