

111TH CONGRESS
2D SESSION

H. R. 5890

To amend the Internal Revenue Code of 1986 and title XIX of the Social Security Act to reform the provision of long-term care insurance.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2010

Mr. DOGGETT (for himself, Ms. SCHAKOWSKY, Mr. BLUMENAUER, Mr. McDERMOTT, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 and title XIX of the Social Security Act to reform the provision of long-term care insurance.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Long-Term Care Insurance Reform Act of 2010”.

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

Sec. 1. Short title; table of contents.

**TITLE I—NATIONAL MARKET SURVEY; MODEL DISCLOSURES AND
DEFINITIONS; LTC INSURANCE COMPARE**

Sec. 101. NAIC National Market Survey.

Sec. 102. Model disclosure form.

Sec. 103. LTC Insurance Compare.

**TITLE II—IMPROVED STATE CONSUMER PROTECTIONS FOR
QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS AND
MEDICAID PARTNERSHIP POLICIES**

Sec. 201. Application of Medicaid partnership required model provisions to all tax-qualified long-term care insurance contracts.

Sec. 202. Streamlined process for applying new or updated model provisions.

**TITLE III—IMPROVED CONSUMER PROTECTIONS FOR MEDICAID
PARTNERSHIP POLICIES**

Sec. 301. Biennial reports on impact of Medicaid long-term care insurance partnerships.

Sec. 302. Additional consumer protections for Medicaid partnerships.

Sec. 303. Report to Congress regarding need for minimum annual compound inflation protection.

TITLE IV—PRESERVATION OF STATE AUTHORITY

Sec. 401. Preservation of State authority.

**1 TITLE I—NATIONAL MARKET
2 SURVEY; MODEL DISCLO-
3 SURES AND DEFINITIONS;
4 LTC INSURANCE COMPARE**

5 SEC. 101. NAIC NATIONAL MARKET SURVEY.

6 (a) IN GENERAL.—The Secretary shall request the
7 NAIC to conduct reviews of the national and State-specific
8 markets for long-term care insurance policies and to sub-
9 mit reports to the Secretary on the results of such reviews
10 every 5 years.

11 (b) CONTENT.—The Secretary shall request that the
12 reviews include, with respect to the period occurring since
13 any prior review, analysis of the following:

1 (1) Information on key market parameters, in-
2 cluding the number of carriers offering long-term
3 care insurance, and the scope of coverage offered
4 under those policies (such as policies offering nurs-
5 ing-home only benefits, policies offering comprehen-
6 sive coverage, cash plans, and reimbursement plans,
7 and hybrid products in which long-term care benefits
8 are present).

9 (2) The number of complaints received and re-
10 solved, including benefit denials.

11 (3) The number of policies that have lapsed.

12 (4) The number of agents trained and whether
13 the training included competency tests.

14 (5) The number of policyholders exhausting
15 benefits.

16 (6) The number of premium rate increases filed
17 by carriers on a policy basis with the States, includ-
18 ing the ranges of the increases approved for or fi-
19 nally used.

20 (7) The number of policyholders affected by any
21 premium rate increases.

22 (8) Requests for exceptions to State permitted
23 accounting practices, as defined by the NAIC.

24 (c) TIMING FOR REVIEWS AND REPORTS.—The Sec-
25 retary shall request the NAIC to—

1 (1) complete the initial market review under
2 this section not later than 2 years after the date of
3 enactment of this Act;

4 (2) submit a report to the Secretary on the re-
5 sults of the initial review not later than December
6 31, 2011; and

7 (3) complete each subsequent review and sub-
8 mit each subsequent report not later than December
9 31 of the fifth succeeding year.

10 The Secretary shall make available to the public the re-
11 ports submitted by the NAIC under this subsection.

12 (d) CONSULTATION REQUIRED.—The Secretary shall
13 request the NAIC to consult with State insurance commis-
14 sioners, appropriate Federal agencies, issuers of long-term
15 care insurance, States with experience in long-term care
16 insurance partnership plans, other States, representatives
17 of consumer groups, consumers of long-term care insur-
18 ance policies, and such other stakeholders as the Secretary
19 or the NAIC determine appropriate, to conduct the market
20 reviews requested under this section.

21 (e) DEFINITIONS.—In this section and section 102:

22 (1) LONG-TERM CARE INSURANCE POLICY.—

23 The term “long-term care insurance policy”—

24 (A) means—

1 (i) a qualified long-term care insur-
2 ance contract (as defined in section
3 7702B(b) of the Internal Revenue Code of
4 1986); and

5 (ii) a qualified long-term care insur-
6 ance contract that covers an insured who is
7 a resident of a State with a qualified State
8 long-term care insurance partnership
9 under clause (iii) of section 1917(b)(1)(C)
10 of the Social Security Act (42 U.S.C.
11 1396p(b)(1)(C)) or a long-term care insur-
12 ance policy offered in connection with a
13 State plan amendment described in clause
14 (iv) of such section; and

15 (B) includes any other insurance policy or
16 rider described in the definition of “long-term
17 care insurance” in section 4 of the model Act
18 promulgated by the National Association of In-
19 surance Commissioners (as adopted December
20 2006).

21 (2) NAIC.—The term “NAIC” means the Na-
22 tional Association of Insurance Commissioners.

23 (3) SECRETARY.—The term “Secretary” means
24 the Secretary of Health and Human Services.

1 **SEC. 102. MODEL DISCLOSURE FORM.**

2 (a) NAIC STUDY AND REPORT ON STATE DISCLO-
3 SURE REQUIREMENTS FOR LONG-TERM CARE INSUR-
4 ANCE.—

5 (1) IN GENERAL.—The Secretary shall request
6 the NAIC to carry out the activities described in
7 paragraph (2) and issue the report described in
8 paragraph (3).

9 (2) REVIEW AND DEVELOPMENT OF PROPOSED
10 MODEL DISCLOSURE REQUIREMENTS.—The activities
11 described in this paragraph are the following:

12 (A) MODEL ACT AND REGULATION DISCLO-
13 SURE REQUIREMENTS.—Review and describe
14 disclosure requirements for long-term care in-
15 surance policies under the Model Act and regu-
16 lation.

17 (B) STATE LAW DISCLOSURE REQUIRE-
18 MENTS.—Review and describe disclosure re-
19 quirements for long-term care insurance policies
20 under State laws, including as part of such de-
21 scription an analysis of the effectiveness of the
22 various existing disclosures.

23 (C) LONG-TERM CARE SERVICES.—Review
24 and describe differences in long-term care serv-
25 ices, including with respect to providers of such
26 services and the settings in which such services

1 are provided among States and develop stand-
2 ardized definitions for long-term care services.

3 (D) IDENTIFICATION OF KEY ISSUES FOR
4 DEVELOPMENT OF MODEL DISCLOSURE MAR-
5 KETING FORM.—Identify and describe key
6 issues to consider in the development of a pro-
7 posed form for marketing long-term care insur-
8 ance policies.

9 (3) REPORT.—The report described in this
10 paragraph is an NAIC White Paper that is issued
11 not later than 12 months after the date of enact-
12 ment of this Act and contains the results of the re-
13 views conducted under paragraph (2) and the de-
14 scriptions required under that paragraph.

15 (b) NAIC WORKING GROUP TO DEVELOP MODEL
16 DISCLOSURE FORM FOR LONG-TERM CARE INSUR-
17 ANCE.—

18 (1) IN GENERAL.—The Secretary shall request
19 the NAIC to establish, not later than 60 days after
20 the date on which the NAIC White Paper described
21 in subsection (a)(3) is issued and in consultation
22 with the Secretary and the Secretary of the Treas-
23 ury, a Working Group to develop a model disclosure
24 form for marketing long-term care insurance poli-
25 cies.

1 (2) WORKING GROUP MEMBERS.—The Working
2 Group established under paragraph (1) shall be com-
3 posed of the following:

4 (A) Representatives from State Depart-
5 ments of Health (or the most appropriate State
6 agencies with responsibility for oversight of the
7 provision of long-term care).

8 (B) Representatives of long-term care pro-
9 viders and facilities.

10 (C) Consumer advocates.

11 (D) Representatives of issuers of long-term
12 care insurance policies.

13 (E) Representatives of the NAIC or State
14 insurance commissioners.

15 (F) Other experts in long-term care and
16 long-term care insurance policies selected by the
17 Secretary and Secretary of the Treasury or the
18 NAIC.

19 (3) REQUIREMENTS FOR DEVELOPMENT OF
20 FORM.—

21 (A) CONSIDERATIONS.—In developing the
22 model form, the Working Group shall consider
23 the following:

1 (i) Variations among providers, serv-
2 ices, and facilities in the long-term care
3 and long-term care insurance markets.

4 (ii) The results of the reviews and the
5 descriptions included in the NAIC White
6 Paper issued under subsection (a)(3).

7 (iii) Such other information and fac-
8 tors as the Working Group determines ap-
9 propriate.

10 (B) MINIMUM STANDARDS.—The Working
11 Group shall ensure that the model has—

12 (i) minimum standard definitions for
13 coverage of the various types of services
14 and benefits provided under long-term care
15 insurance policies;

16 (ii) minimum standard language for
17 use by issuers of such policies, and for
18 agents selling such policies, in explaining
19 the services and benefits covered under the
20 policies and restrictions on the services and
21 benefits;

22 (iii) minimum standard format, color
23 and type size for disclosure documents;
24 and

1 (iv) such other minimum standards as
2 the Working Group determines appro-
3 priate.

4 (4) DEADLINE FOR DEVELOPMENT.—The
5 Working Group shall issue a proposed model disclo-
6 sure form for marketing long-term care insurance
7 policies not later than 1 year after the date on which
8 the Working Group is established.

9 (5) ADOPTION AND INCORPORATION INTO
10 MODEL ACT AND REGULATION.—The Secretary shall
11 request the NAIC to amend the Model Act and regu-
12 lation to incorporate the use of the proposed model
13 disclosure form issued by the Working Group, not
14 later than 1 year after the date on which the Work-
15 ing Group issues the form.

16 (c) REQUIRED USE OF MODEL DISCLOSURE FORM
17 IN MARKETING LONG-TERM CARE INSURANCE POLI-
18 CIES.—

19 (1) APPLICATION TO TAX-QUALIFIED AND MED-
20 ICAID PARTNERSHIP POLICIES.—Not later than 1
21 year after the date on which the Working Group
22 issues the proposed model disclosure form for mar-
23 keting long-term care insurance policies under sub-
24 section (b):

1 (A) TAX-QUALIFIED POLICIES.—The Sec-
2 retary of the Treasury shall promulgate a regu-
3 lation requiring, not later than 1 year after the
4 date on which the regulation is final, any issuer
5 of a qualified long-term care insurance contract
6 (as defined in section 7702B(b) of the Internal
7 Revenue Code of 1986) to use the proposed
8 model disclosure form for marketing such con-
9 tracts, to the extent such disclosure is not in-
10 consistent with State law.

11 (B) MEDICAID PARTNERSHIP POLICIES.—
12 The Secretary shall promulgate a regulation re-
13 quiring, not later than 1 year after the date on
14 which the regulation is final, any issuer that
15 markets a qualified long-term care insurance
16 contract intended to cover an insured who is a
17 resident of a State with a qualified State long-
18 term care insurance partnership under clause
19 (iii) of section 1917(b)(1)(C) of the Social Se-
20 curity Act (42 U.S.C. 1396p(b)(1)(C)) or a
21 long-term care insurance policy offered in con-
22 nection with a State plan amendment described
23 in clause (iv) of such section to use the pro-
24 posed model disclosure form for marketing such
25 contracts.

1 (2) APPLICATION TO ALL OTHER LONG-TERM
2 CARE INSURANCE POLICIES.—Not later than 18
3 months, or the earliest date on which an amendment
4 could be enacted for those States with legislatures
5 which meet only every other year, after the date on
6 which the NAIC adopts an amended Model Act and
7 regulation to require the use of the proposed model
8 disclosure form issued by the Working Group under
9 subsection (b), each State shall require by statute or
10 regulation any issuer of a long-term care insurance
11 policy to use the proposed model disclosure form
12 when marketing such a policy in the State.

13 **SEC. 103. LTC INSURANCE COMPARE.**

14 (a) IN GENERAL.—Section 6021(d) of the Deficit Re-
15 duction Act of 2005 (42 U.S.C. 1396p note) is amended—

16 (1) in paragraph (2)—

17 (A) in subparagraph (A)—

18 (i) in clause (ii), by striking “and” at
19 the end;

20 (ii) in clause (iii), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (iii) by adding at the end the fol-
23 lowing:

24 “(iv) establish an Internet directory of
25 information regarding long-term care in-

1 insurance, to be known as ‘LTC Insurance
2 Compare’, that shall include the following:

3 “(I) Comparison tools to assist
4 consumers in evaluating long-term
5 care insurance policies (as defined in
6 subparagraph (D)) with different ben-
7 efits and features and that allow con-
8 sumers to compare the price, long-
9 term premium stability, and carrier fi-
10 nancial strength of such policies.

11 “(II) State-specific information
12 about the long-term care insurance
13 policies marketed in a State, including
14 the following:

15 “(aa) Whether a State has
16 promulgated rate stability provi-
17 sions or has rate stability proce-
18 dures in place, and how the
19 standards or procedures work.

20 “(bb) The rating history for
21 at least the most recent pre-
22 ceding 5 years for issuers selling
23 long-term care insurance policies
24 in the State.

1 “(cc) An appropriate sam-
2 pling of the policy forms mar-
3 keted in the State.

4 “(III) Links to State information
5 regarding long-term care under State
6 Medicaid programs (which may be
7 provided, as appropriate, through
8 Internet linkages to the Web sites of
9 State Medicaid programs) that in-
10 cludes the following:

11 “(aa) The medical assistance
12 provided under each State’s Med-
13 icaid program for nursing facility
14 services and other long-term care
15 services (including any functional
16 criteria imposed for receipt of
17 such services, as reported in ac-
18 cordance with section
19 1902(a)(28)(D) of the Social Se-
20 curity Act) and any differences
21 from benefits and services offered
22 under long-term care insurance
23 policies in the State and the cri-
24 teria for triggering receipt of
25 such benefits and services.

1 “(bb) If the State has a
2 qualified State long-term care in-
3 surance partnership under clause
4 (iii) of section 1917(b)(1)(C) of
5 the Social Security Act (or is ex-
6 empt from the application of
7 clause (i) of such section because
8 of the application of clauses (ii)
9 and (iv) of such section), infor-
10 mation regarding how and when
11 an individual with a partnership
12 long-term care insurance policy
13 who is receiving benefits under
14 the policy should apply for med-
15 ical assistance for nursing facility
16 services or other long-term care
17 services under the State Medicaid
18 program and information regard-
19 ing about how Medicaid asset
20 protection is accumulated over
21 time.”; and

22 (B) by adding at the end the following:

23 “(C) CURRENT INFORMATION.—The Sec-
24 retary of Health and Human Services shall en-
25 sure that, to the greatest extent practicable, the

1 information maintained in the National Clear-
2 inghouse for Long-Term Care Information, in-
3 cluding the information required for LTC In-
4 surance Compare, is the most recent informa-
5 tion available.

6 “(D) LONG-TERM CARE INSURANCE POL-
7 ICY DEFINED.—In subparagraph (A)(iv), the
8 term ‘long-term care insurance policy’ means a
9 qualified long-term care insurance contract (as
10 defined in section 7702B(b) of the Internal
11 Revenue Code of 1986), a qualified long-term
12 care insurance contract that covers an insured
13 who is a resident of a State with a qualified
14 State long-term care insurance partnership
15 under clause (iii) of section 1917(b)(1)(C) of
16 the Social Security Act (42 U.S.C.
17 1396p(b)(1)(C)) or a long-term care insurance
18 policy offered in connection with a State plan
19 amendment described in clause (iv) of such sec-
20 tion, and includes any other insurance policy or
21 rider described in the definition of ‘long-term
22 care insurance’ in section 4 of the model Act
23 promulgated by the National Association of In-
24 surance Commissioners (as adopted December
25 2006).”;

1 (2) by redesignating paragraph (3) as para-
2 graph (4); and

3 (3) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) CONSULTATION ON LTC INSURANCE COM-
6 PARE.—The Secretary of Health and Human Serv-
7 ices shall consult with the National Association of
8 Insurance Commissioners and other entities and
9 stakeholders in designing and implementing the
10 LTC Insurance Compare required under paragraph
11 (2)(A)(iv).”.

12 (b) MEDICAID STATE PLAN REQUIREMENT TO SUB-
13 MIT NURSING FACILITY SERVICES FUNCTIONAL CRI-
14 TERIA DATA.—Section 1902(a)(28) of the Social Security
15 Act (42 U.S.C. 1396a(a)(28)) is amended—

16 (1) in subparagraph (C), by striking “and”
17 after the semicolon;

18 (2) in subparagraph (D)(iii), by adding “and”
19 after the semicolon; and

20 (3) by inserting after subparagraph (D)(iii), the
21 following new subparagraph:

22 “(E) for the annual submission of data re-
23 lating to functional criteria for the receipt of
24 nursing facility services under the plan (in such

1 form and manner as the Secretary shall speci-
2 fy);”.

3 (c) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 take effect on the date of enactment of this Act.

7 (2) EXTENSION OF EFFECTIVE DATE FOR
8 STATE LAW AMENDMENT.—In the case of a State
9 plan under title XIX of the Social Security Act (42
10 U.S.C. 1396 et seq.) which the Secretary of Health
11 and Human Services determines requires State legis-
12 lation or State regulation in order for the plan to
13 meet the additional requirements imposed by the
14 amendments made by subsection (b), the State plan
15 shall not be regarded as failing to comply with the
16 requirements of such title solely on the basis of its
17 failure to meet these additional requirements before
18 the first day of the first calendar quarter beginning
19 after the close of the first regular session of the
20 State legislature that begins after the date of enact-
21 ment of this Act. For purposes of the previous sen-
22 tence, in the case of a State that has a 2-year legis-
23 lative session, each year of the session is considered
24 to be a separate regular session of the State legisla-
25 ture.

1 **TITLE II—IMPROVED STATE**
2 **CONSUMER PROTECTIONS**
3 **FOR QUALIFIED LONG-TERM**
4 **CARE INSURANCE CON-**
5 **TRACTS AND MEDICAID PART-**
6 **NERSHIP POLICIES**

7 **SEC. 201. APPLICATION OF MEDICAID PARTNERSHIP RE-**
8 **QUIRED MODEL PROVISIONS TO ALL TAX-**
9 **QUALIFIED LONG-TERM CARE INSURANCE**
10 **CONTRACTS.**

11 (a) IN GENERAL.—Section 7702B(g)(1) of the Inter-
12 nal Revenue Code of 1986 (relating to consumer protec-
13 tion provisions) is amended—

14 (1) in subparagraph (A), by inserting “(but
15 only to the extent such requirements do not conflict
16 with requirements applicable under subparagraph
17 (B)),” after “paragraph (2)”,

18 (2) by redesignating subparagraphs (B) and
19 (C) as subparagraphs (C) and (D), respectively, and

20 (3) by inserting after subparagraph (A), the fol-
21 lowing new subparagraph:

22 “(B) the requirements of the model regula-
23 tion and model Act described in section
24 1917(b)(5) of the Social Security Act,”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to contracts issued on or after
3 the date that is 1 year after the date of enactment of this
4 Act.

5 **SEC. 202. STREAMLINED PROCESS FOR APPLYING NEW OR**
6 **UPDATED MODEL PROVISIONS.**

7 (a) SECRETARIAL REVIEW.—

8 (1) TAX-QUALIFIED POLICIES.—

9 (A) 2000 AND 2006 MODEL PROVISIONS.—

10 Not later than 12 months after the date of en-
11 actment of this Act, the Secretary of the Treas-
12 ury, in consultation with the Secretary of
13 Health and Human Services, shall review the
14 model provisions specified in subsection (c)(1)
15 for purposes of determining whether updating
16 any such provisions for a provision specified in
17 section 7702B(g)(2) of the Internal Revenue
18 Code of 1986, or the inclusion of any such pro-
19 visions in such section, for purposes of an in-
20 surance contract qualifying for treatment as a
21 qualified long-term care insurance contract
22 under such Code, would improve consumer pro-
23 tections for insured individuals under such con-
24 tracts.

(B) SUBSEQUENT MODEL PROVISIONS.—

1
2 Not later than 12 months after model provi-
3 sions described in paragraph (2) or (3) of sub-
4 section (c) are adopted by the National Associa-
5 tion of Insurance Commissioners, the Secretary
6 of the Treasury, in consultation with the Sec-
7 retary of Health and Human Services, shall re-
8 view the model provisions to determine whether
9 the application of such provisions to an insur-
10 ance contract for purposes of qualifying for
11 treatment as a qualified long-term care insur-
12 ance contract under section 7702B(g)(2) of the
13 Internal Revenue Code of 1986, would improve
14 consumer protections for insured individuals
15 under such contracts.

16 (2) MEDICAID PARTNERSHIP POLICIES.—

17 (A) SUBSEQUENT MODEL PROVISIONS.—

18 Not later than 12 months after model provi-
19 sions described in paragraph (2) or (3) of sub-
20 section (c) are adopted by the National Associa-
21 tion of Insurance Commissioners, the Secretary
22 of Health and Human Services, in consultation
23 with the Secretary of the Treasury, shall review
24 the model provisions to determine whether the
25 application of such provisions to an insurance

1 contract for purposes of satisfying the require-
2 ments for participation in a qualified State
3 long-term care insurance partnership under sec-
4 tion 1917(b)(1)(C)(iii) of such Act (42 U.S.C.
5 1396p(b)(1)(C)(iii)) would improve consumer
6 protections for insured individuals under such
7 contracts.

8 (B) REVIEW OF OTHER PARTNERSHIP RE-
9 QUIREMENTS.—The Secretary of Health and
10 Human Services, in consultation with the Sec-
11 retary of the Treasury, shall review clauses (iii)
12 and (iv) of section 1917(b)(1)(C) for purposes
13 of determining whether the requirements speci-
14 fied in such clauses should be modified to pro-
15 vide improved consumer protections or, as ap-
16 propriate, to resolve any conflicts with the ap-
17 plication of the 2006 model provisions under
18 paragraph (5) of section 1917(b) (as amended
19 by section 302(a)) or with the application of
20 any model provisions that the Secretary deter-
21 mines should apply to an insurance contract as
22 a result of a review required under subpara-
23 graph (A).

24 (b) EXPEDITED RULEMAKING.—

1 (1) TAX-QUALIFIED POLICIES.—Subject to
2 paragraph (3), if the Secretary of the Treasury de-
3 termines that any model provisions reviewed under
4 subsection (a)(1) should apply for purposes of an in-
5 surance contract qualifying for treatment as a quali-
6 fied long-term care insurance contract under the In-
7 ternal Revenue Code of 1986, the Secretary shall
8 promulgate an interim final rule applying such pro-
9 visions for such purposes not later than 3 months
10 after making such determination.

11 (2) MEDICAID PARTNERSHIP POLICIES.—Sub-
12 ject to paragraph (3), if the Secretary of Health and
13 Human Services determines that any model provi-
14 sions or requirements reviewed under subsection
15 (a)(2) should apply for purposes of an insurance
16 contract satisfying the requirements for participation
17 in a qualified State long-term care insurance part-
18 nership under clauses (iii) and (iv) of section
19 1917(b)(1)(C) of such Act (42 U.S.C.
20 1396p(b)(1)(C)), the Secretary shall promulgate an
21 interim final rule applying such provisions for such
22 purposes not later than 3 months after making such
23 determination.

24 (3) CONSULTATION REQUIRED.—The Secretary
25 of the Treasury and the Secretary of Health and

1 Human Services, respectively, shall consult with the
2 National Association of Insurance Commissioners
3 and the entities and stakeholders specified in section
4 101(d) regarding the extent to which it is appro-
5 priate to apply the model provisions described in
6 paragraph (1) or (2) (as applicable) to insurance
7 contracts described in such paragraphs through pro-
8 mulgation of an interim final rule. If, after such
9 consultation—

10 (A) the Secretary of the Treasury deter-
11 mines it would be appropriate to promulgate an
12 interim final rule, the Secretary of the Treasury
13 shall use notice and comment rulemaking to
14 promulgate a rule applying such provisions to
15 insurance contracts described in paragraph (1);
16 and

17 (B) the Secretary of Health and Human
18 Services determines it would be appropriate to
19 promulgate an interim final rule, the Secretary
20 of Health and Human Services shall use notice
21 and comment rulemaking to promulgate a rule
22 applying such provisions to insurance contracts
23 described in paragraph (2).

24 (4) RULE OF CONSTRUCTION RELATING TO AP-
25 PPLICATION OF CONGRESSIONAL REVIEW ACT.—Noth-

1 ing in paragraphs (1), (2), or (3) shall be construed
2 as affecting the application of the sections 801
3 through 808 of title 5, United States Code (com-
4 monly known as the “Congressional Review Act”) to
5 any interim final rule issued in accordance with such
6 paragraphs.

7 (5) TECHNICAL AMENDMENT ELIMINATING
8 PRIOR REVIEW STANDARD MADE OBSOLETE.—Sec-
9 tion 1917(b)(5) of the Social Security Act (42
10 U.S.C. 1396p(b)(5)) is amended by striking sub-
11 paragraph (C).

12 (c) MODEL PROVISIONS.—In this section, the term
13 “model provisions” means—

14 (1) each provision of the long-term care insur-
15 ance model regulation, and the long-term care insur-
16 ance model Act, respectively, promulgated by the
17 National Association of Insurance Commissioners
18 (as adopted as of October 2000 and as of December
19 2006);

20 (2) each provision of the model language relat-
21 ing to marketing disclosures and definitions devel-
22 oped under section 102(b)(1); and

23 (3) each provision of any long-term care insur-
24 ance model regulation, or the long-term care insur-
25 ance model Act, respectively, promulgated by the

1 National Association of Insurance Commissioners
2 and adopted after December 2006.

3 **TITLE III—IMPROVED CON-**
4 **SUMER PROTECTIONS FOR**
5 **MEDICAID PARTNERSHIP**
6 **POLICIES**

7 **SEC. 301. BIENNIAL REPORTS ON IMPACT OF MEDICAID**
8 **LONG-TERM CARE INSURANCE PARTNER-**
9 **SHIPS.**

10 Section 6021(c) of the Deficit Reduction Act of 2005
11 (42 U.S.C. 1396p note) is amended to read as follows:

12 “(c) BIENNIAL REPORTS.—

13 “(1) IN GENERAL.—Not later than January 1,
14 2011, and biennially thereafter, the Secretary of
15 Health and Human Services (in this subsection re-
16 ferred to as the ‘Secretary’) shall issue a report to
17 States and Congress on the long-term care insurance
18 partnerships established in accordance with section
19 1917(b)(1)(C)(ii) of the Social Security Act (42
20 U.S.C. 1396p(b)(1)(C)(ii)). Each report shall in-
21 clude (with respect to the period the report address-
22 es) the following information, nationally and on a
23 State-specific basis:

24 “(A) Analyses of the extent to which such
25 partnerships improve access of individuals to af-

1 fordable long-term care services and benefits
2 and the impact of such partnerships on Federal
3 and State expenditures on long-term care under
4 the Medicare and Medicaid programs.

5 “(B) Analyses of the impact of such part-
6 nerships on consumer decisionmaking with re-
7 spect to purchasing, accessing, and retaining
8 coverage under long-term care insurance poli-
9 cies (as defined in subsection (d)(2)(D)), in-
10 cluding a description of the benefits and serv-
11 ices offered under such policies, the average
12 premiums for coverage under such policies, the
13 number of policies sold and at what ages, the
14 number of policies retained and for how long,
15 the number of policies for which coverage was
16 exhausted, the number of insured individuals
17 who were determined eligible for medical assist-
18 ance under the State Medicaid program, and
19 the number of insured individuals who were de-
20 termined ineligible for medical assistance under
21 the State plan and the reason for such deter-
22 minations.

23 “(2) DATA.—The reports by issuers of partner-
24 ship long-term care insurance policies required under
25 section 1917(b)(1)(C)(iii)(VI) of the Social Security

1 Act shall include such data as the Secretary shall
2 specify in order to conduct the analyses required
3 under paragraph (1).

4 “(3) PUBLIC AVAILABILITY.—The Secretary
5 shall make each report issued under this subsection
6 publicly available through the LTC Insurance Com-
7 pare Web site required under subsection (d).

8 “(4) RULE OF CONSTRUCTION.—Nothing in
9 this section shall be construed as requiring the Sec-
10 retary to conduct an independent review of each
11 long-term care insurance policy offered under or in
12 connection with such a partnership.”.

13 **SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR MED-**
14 **ICAID PARTNERSHIPS.**

15 (a) APPLICATION OF 2006 MODEL PROVISIONS.—

16 (1) UPDATING OF 2000 REQUIREMENTS.—

17 (A) IN GENERAL.—Section
18 1917(b)(5)(B)(i) of the Social Security Act (42
19 U.S.C. 1396p(b)(5)(B)(i)) is amended by strik-
20 ing “October 2000” and inserting “December
21 2006”.

22 (B) CONFORMING AMENDMENTS.—

23 (i) Subclause (XVII) of such section is
24 amended by striking “section 26” and in-
25 serting “section 28”.

1 (ii) Subclause (XVIII) of such section
2 is amended by striking “section 29” and
3 inserting “section 31”.

4 (iii) Subclause (XIX) of such section
5 is amended by striking “section 30” and
6 inserting “section 32”.

7 (2) APPLICATION TO GRANDFATHERED PART-
8 NERSHIPS.—Section 1917(b)(1)(C)(iv) of such Act
9 (42 U.S.C. 1396p(b)(1)(C)(iv)) is amended by in-
10 serring “, and the State satisfies the requirements of
11 paragraph (5)” after “2005”.

12 (b) APPLICATION OF PRODUCER TRAINING MODEL
13 ACT REQUIREMENTS.—Section 1917(b)(1)(C) of such Act
14 (42 U.S.C. 1396p(b)(1)(C)) is amended—

15 (1) in clause (iii)(V), by inserting “and satisfies
16 the producer training requirements specified in sec-
17 tion 9 of the model Act specified in paragraph (5)”
18 after “coverage of long-term care”; and

19 (2) in clause (iv), as amended by subsection
20 (a)(2), by inserting “clause (iii)(V) and” before
21 “paragraph (5)”.

22 (c) APPLICATION OF ADDITIONAL REQUIREMENTS
23 FOR ALL PARTNERSHIPS.—Section 1917(b) of the Social
24 Security Act (42 U.S.C. 1396p(b)) is amended—

25 (1) in paragraph (1)(C)—

1 (A) in clause (iii)—

2 (i) by inserting after subclause (VII)

3 the following new subclause:

4 “(VIII) The State satisfies the re-
5 quirements of paragraph (6).”; and

6 (ii) in the flush sentence at the end,

7 by striking “paragraph (5)” and inserting

8 “paragraphs (5) and (6)”; and

9 (B) in clause (iv), as amended by sub-

10 sections (a)(2) and (b)(2), by striking “para-

11 graph (5)” and inserting “paragraphs (5) and

12 (6)”; and

13 (2) by adding at the end the following new

14 paragraph:

15 “(6) For purposes of clauses (iii)(VIII) and (iv) of

16 paragraph (1)(C), the requirements of this paragraph are

17 the following:

18 “(A) The State requires issuers of long-term

19 care insurance policies to—

20 “(i) use marketing materials filed with the

21 State for purposes of the partnership in all

22 sales and marketing activities conducted or sup-

23 ported by the issuers in the State with respect

24 to any long-term care insurance policies mar-

25 keted by the issuer in the State;

1 “(ii) provide such materials to all agents
2 selling long-term care insurance policies in the
3 State;

4 “(iii) ensure that agent training and edu-
5 cation courses conducted or supported by the
6 issuers incorporate discussion of such mar-
7 keting materials; and

8 “(iv) make such materials available to any
9 consumer upon request, and to make such ma-
10 terials available to all prospective purchasers of
11 a policy offered under a qualified State long-
12 term care insurance partnership before submis-
13 sion of an application for coverage under that
14 policy.

15 “(B) The State requires issuers of long-term
16 care insurance policies sold in the State to require
17 agents to use any inflation protection comparison
18 form developed by the National Association of Insur-
19 ance Commissioners when selling the policies in the
20 State.

21 “(C) The State requires issuers of long-term
22 care insurance policies sold in the State to comply
23 with the provisions of section 8 of the model Act
24 specified in paragraph (5) relating to contingent
25 nonforfeiture benefits.

1 “(D) The State enacts legislation, not later
2 than January 1, 2012, that establishes rating stand-
3 ards for all issuers of long-term care insurance poli-
4 cies sold in the State that result in rates over the
5 life of the policy that are no less protective of con-
6 sumers than those produced by the premium rate
7 schedule increase standards specified in section 20
8 of the model regulation specified in paragraph (5),
9 unless the State has more stringent procedures or
10 requirements.

11 “(E) The State develops and updates marketing
12 materials filed with the State whenever changes are
13 made under the State plan that relate to eligibility
14 for medical assistance for nursing facility services or
15 other long-term care services or the amount, dura-
16 tion, or scope of medical assistance for nursing facil-
17 ity services or other long-term care services, and also
18 provides to individuals at the time of application for
19 medical assistance under the State plan, or under a
20 waiver of the plan materials that describe in clear,
21 simple language the terms of eligibility, the benefits
22 and services provided as such assistance, and rules
23 relating to adjustment or recovery from the estate of
24 an individual who receives such assistance. Such ma-
25 terials shall include a clear disclosure that medical

1 assistance is not guaranteed to partnership policy-
2 holders who exhaust or use benefits under a partner-
3 ship policy, and that Federal changes to the pro-
4 gram under this title or State changes to the State
5 plan may affect an individual's eligibility for, or re-
6 ceipt of, such assistance.

7 “(F) The State—

8 “(i) through the State Medicaid agency
9 under section 1902(a)(5) and in consultation
10 with the State insurance department, develops
11 materials explaining how the benefits and rules
12 of long-term care policies offered by issuers par-
13 ticipating in the partnership interact with the
14 benefits and rules under the State plan under
15 this title;

16 “(ii) requires agents to use such materials
17 when selling or otherwise discussing how long-
18 term care policies offered by issuers partici-
19 pating in the partnership work with potential
20 purchasers and to provide the materials to any
21 such purchasers upon request;

22 “(iii) informs holders of such policies of
23 any changes in eligibility requirements and cov-
24 ered services under the State plan under this
25 title and of any changes in estate recovery rules

1 under the State plan as soon as practicable
2 after such changes are made at the time and at
3 the time of application for medical assistance;
4 and

5 “(iv) agrees to honor the asset protections
6 of any such policy that were provided under the
7 policy when purchased, regardless of whether
8 the State subsequently terminates a partnership
9 program under the State plan.

10 The materials under clause (i) shall include informa-
11 tion on how benefits under a State plan under this
12 title may not be available based on an individual’s
13 moving to a State that is identified as not offering
14 partnership reciprocity (and, to the extent prac-
15 ticable, the identify of those States), based an indi-
16 vidual’s home value exceeding the applicable limits
17 as modified by the State (and, to the extent prac-
18 ticable, the limits applicable in different States), or
19 based on an individual’s income exceeding the appli-
20 cable limits (and, to the extent practicable, informa-
21 tion on current average long-term care costs and on
22 applied income requirements for different States).

23 “(G) The State Medicaid agency under section
24 1902(a)(5) and the State insurance department
25 enter into a memorandum of understanding to—

1 “(i) inform consumers about long-term
2 care policies offered by issuers participating in
3 the partnership, the amount, duration, or scope
4 of medical assistance for nursing facility serv-
5 ices and other long-term care services offered
6 under the State plan, consumer protections, and
7 any other issues such agency and department
8 determine appropriate through such means as
9 the State determines appropriate; and

10 “(ii) jointly facilitate coordination in eligi-
11 bility determinations for medical assistance
12 under the State plan and the provision of bene-
13 fits or other services under such policies and
14 medical assistance provided under the State
15 plan that includes—

16 “(I) the number of policyholders ap-
17 plying for medical assistance under the
18 State plan; and

19 “(II) the number of policyholders
20 deemed eligible (and, if applicable, ineli-
21 gible) for such assistance.

22 “(H) Subject to subparagraph (I), the State en-
23 ters into agreements with other States that have es-
24 tablished qualified State long-term care insurance
25 partnerships under which such States agree to pro-

1 vide reciprocity for policyholders under such partner-
2 ships, including providing guaranteed asset protec-
3 tion to all individuals covered under a policy offered
4 under a qualified State long-term care insurance
5 partnership who bought such a policy in the State
6 or in another State with such a partnership and
7 with which the State has a reciprocity agreement.

8 “(I)(i) In the case of a State described in para-
9 graph (1)(C)(iv) (in this subparagraph referred to as
10 a ‘grandfathered partnership State’) —

11 “(I) the grandfathered partnership State
12 may, in lieu of entering into agreements that
13 satisfy subparagraph (I), enter into individual
14 reciprocity agreements with other States that
15 have established qualified State long-term care
16 insurance partnerships; and

17 “(II) if the grandfathered partnership
18 State has not, as of January 1, 2013, entered
19 into a reciprocity agreement with each State
20 that has a qualified State long-term care insur-
21 ance partnership, the grandfathered partnership
22 State shall enter into and comply with a reci-
23 procity agreement developed by the Secretary in
24 accordance with clause (ii) for each partnership
25 State that the grandfathered State does not

1 have a reciprocity agreement with and, with re-
2 spect to each such State, for so long as the
3 grandfathered partnership State does not have
4 an individual reciprocity agreement with that
5 State.

6 “(ii) In developing a reciprocity agreement for
7 purposes of clause (i)(II), the Secretary shall take
8 into account—

9 “(I) the difference in consumer protections
10 under the partnership program of the grand-
11 fathered partnership State and the other part-
12 nership State that will be covered by the agree-
13 ment, and, to the greatest extent possible, pre-
14 serve the more protective requirements; and

15 “(II) the impact the reciprocity agreement
16 will have on expenditures under the State plan
17 under this title (including under any waivers of
18 such plan) of each such State and, to the great-
19 est extent possible, minimize any negative im-
20 pact on such expenditures and States.”.

21 (d) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), the amendments made by this section
24 take effect on the date that is 1 year after the date
25 of enactment of this Act.

1 (2) EXTENSION OF EFFECTIVE DATE FOR
2 STATE LAW AMENDMENT.—In the case of a State
3 plan under title XIX of the Social Security Act (42
4 U.S.C. 1396 et seq.) which the Secretary of Health
5 and Human Services determines requires State legis-
6 lation in order for the plan to meet the additional
7 requirements imposed by the amendments made by
8 this section, the State plan shall not be regarded as
9 failing to comply with the requirements of such title
10 solely on the basis of its failure to meet these addi-
11 tional requirements before the first day of the first
12 calendar quarter beginning after the close of the
13 first regular session of the State legislature that be-
14 gins after the date of enactment of this Act. For
15 purposes of the previous sentence, in the case of a
16 State that has a 2-year legislative session, each year
17 of the session is considered to be a separate regular
18 session of the State legislature.

19 **SEC. 303. REPORT TO CONGRESS REGARDING NEED FOR**
20 **MINIMUM ANNUAL COMPOUND INFLATION**
21 **PROTECTION.**

22 Not later than 18 months after the date of enactment
23 of this Act, the Secretary of Health and Human Services
24 (in this section referred to as the “Secretary”) shall sub-
25 mit a report to Congress that includes the Secretary’s rec-

1 ommendation regarding whether legislative or other ad-
2 ministrative action should be taken to require all long-
3 term care insurance policies sold after a date determined
4 by the Secretary in connection with a qualified State long-
5 term care insurance partnership under clause (iii) of sec-
6 tion 1917(b)(1)(C) of the Social Security Act (42 U.S.C.
7 1396p(b)(1)(C)) or a long-term care insurance policy of-
8 fered in connection with a State plan amendment de-
9 scribed in clause (iv) of such section, provide a minimum
10 level of annual compound inflation protection, and if so,
11 whether such requirements should be imposed on a basis
12 related to the age of the policyholder at the time of pur-
13 chase. The Secretary shall include in the report informa-
14 tion on the various levels of inflation protection available
15 under such long-term care insurance partnerships and the
16 methodologies used by issuers of such policies to calculate
17 and present various inflation protection options under
18 such policies, including policies with a future purchase op-
19 tion feature.

20 **TITLE IV—PRESERVATION OF**
21 **STATE AUTHORITY**

22 **SEC. 401. PRESERVATION OF STATE AUTHORITY.**

23 Nothing in this Act, any amendments made by this
24 Act, or any rules promulgated to carry out this Act or
25 such amendments, shall be construed to limit the authority

1 of a State to enact, adopt, promulgate, and enforce any
2 law, rule, regulation, or other measure with respect to
3 long-term care insurance that is in addition to, or more
4 stringent than, requirements established under this Act
5 and the amendments made by this Act.

○