

S.1177

Confidence in Long-Term Care Insurance Act of 2009 (Introduced in Senate)

S 1177 IS

111th CONGRESS
1st Session
S. 1177

To improve consumer protections for purchasers of long-term care insurance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 3, 2009

Mr. KOHL (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve consumer protections for purchasers of long-term care insurance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the 'Confidence in Long-Term Care Insurance Act of 2009'.
- (b) Table of Contents- The table of contents of 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 disclosures and definitions.
- 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 I--NATIONAL MARKET SURVEY; MODEL DISCLOSURES AND DEFINITIONS; LTC INSURANCE COMPARE

SEC. 101. NAIC NATIONAL MARKET SURVEY.

(a) In General- The Secretary shall request the NAIC to conduct biennial reviews of the national and State-specific markets for long-term care insurance policies and to submit biennial reports to the Secretary on the results of such reviews.

(b) Content- The Secretary shall request that the biennial reviews include, with respect to the period occurring since any prior review, analysis of the following:

(1) Information on key market parameters, including the number of carriers offering long-term care insurance, and the scope of coverage offered under those policies (such as policies offering nursing-home only benefits, policies offering comprehensive coverage, and hybrid products in which long-term care benefits are present).

(2) The number of complaints received and resolved, including benefit denials.

(3) The number of policies that are cancelled (including because of having lapsed or not being renewed) and reasons for such cancellations.

(4) The number of agents trained and the content of that training, including a description of agent training standards, the extent to which competency tests are included in such standards, and the pass and fail rates associated with such tests.

- (5) The number of policyholders exhausting benefits.
- (6) Premium rate increases sought by carriers and the range of the amount of the increase sought.
- (7) Premium rate increases that were approved and the range of the amount of increase.
- (8) The number of policyholders affected by any approved premium rate increases.
- (9) Requests for exceptions to State reserving or capital requirements.

(c) Timing for Biennial Review and Report- The Secretary shall request the NAIC to--

- (1) complete the initial market review under this section not later than 2 years after the date of enactment of this Act;
- (2) submit a report to the Secretary on the results of the initial review not later than December 31, 2011; and
- (3) complete each subsequent biennial review and submit each subsequent biennial report not later than December 31 of each second succeeding year.

(d) Consultation Required- The Secretary shall request the NAIC to consult with State insurance commissioners, appropriate Federal agencies, issuers of long-term care insurance, States with experience in long-term care insurance partnership plans, other States, representatives of consumer groups, consumers of long-term care insurance policies, and such other stakeholders as the Secretary or the NAIC determine appropriate, to conduct the market reviews requested under this section.

(e) Definitions- In this section and section 102:

(1) LONG-TERM CARE INSURANCE POLICY- The term `long-term care insurance policy'--

(A) means--

(i) a qualified long-term care insurance contract (as defined in section 7702B(b) of the Internal Revenue Code of 1986); and

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

(B) includes any other insurance policy or rider described in the definition of `long-term care insurance' in section 4 of the model Act promulgated by the National Association of Insurance Commissioners (as adopted December 2006).

(2) NAIC- The term `NAIC' means the National Association of Insurance Commissioners.

(3) SECRETARY- The term `Secretary' means the Secretary of Health and Human Services.

SEC. 102. MODEL DISCLOSURES AND DEFINITIONS.

(a) In General- The Secretary shall request the NAIC, in consultation with State health agencies as appropriate, to carry out the activities described in subsection (b).

(b) Activities Described- The activities described in this subsection are the following:

(1) DEVELOP MODEL DISCLOSURES AND DEFINITIONS FOR MARKETING OF POLICIES- To develop model language for marketing of long-term care insurance policies (including, as appropriate, language specific to qualified long-term care insurance contracts, partnership long-term care insurance policies, and such other contracts for coverage of long-term care services or benefits as the NAIC determines appropriate), that includes the following:

(A) CONSISTENT DEFINITIONS- Consistent definitions for coverage of the various types of services and benefits provided under such policies, including institutional services, residential services with varying levels of assistance, such as assisted living, home care services, adult day services, and other types of home and community-based care (as appropriate to describe the range of services and benefits offered under such policies in various States).

(B) CONSISTENT EXPLANATORY LANGUAGE- Consistent language for use by issuers of such policies, and for agents selling such policies, in explaining the services and benefits covered under the policies and restrictions on the services and benefits.

(C) INFLATION PROTECTION OPTIONS- A form that describes different inflation level options offered for long-term care insurance policies, including how policies with various levels of inflation protection compare in premium costs and benefits within 5-year time increments from 5 years through 30 years post-purchase.

(D) STANDARDIZED METHODOLOGY FOR CALCULATING INFLATION PROTECTION- Standardized methodology for use by issuers to use to calculate inflation protection under such policies.

(2) ENFORCE- To develop recommendations for enforcement of the model marketing disclosures and definitions, including standardized language for States to adopt to prohibit carriers from marketing policies within the State that do not meet the model marketing disclosures and definitions or the rate stability provisions under section 20 of the long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000 and as of December 2006) and any provisions of such section adopted after December 2006.

(c) Public Comment- The Secretary shall request the NAIC to allow for public comment on the work of the NAIC in carrying out the activities described in subsection (b).

SEC. 103. LTC INSURANCE COMPARE.

(a) In General- Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended--

(1) in paragraph (2)--

(A) in subparagraph (A)--

(i) in clause (ii), by striking `and' at the end;

(ii) in clause (iii), by striking the period at the end and inserting `; and'; and

(iii) by adding at the end the following:

(iv) establish an Internet directory of information regarding long-term care insurance, to be known as `LTC Insurance Compare', that shall include the following:

(I) Comparison tools to assist consumers in evaluating long-term care insurance policies (as defined in subparagraph (D)) with different benefits and features.

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

(aa) Whether a State has promulgated rate stability provisions for all issuers of long-term care insurance policies and how the rate stability standards work.

(bb) The rating history for issuers selling long-term care insurance policies in the State for at least the most recent preceding 5 years.

(cc) The policy documents for each such policy marketed in the State.

(III) Links to State information regarding long-term care under State Medicaid programs (which may be provided, as appropriate, through Internet linkages to the websites of State Medicaid programs) that includes the following:

(aa) The medical assistance provided under each State's Medicaid program for nursing facility services and other long-term care services (including any functional criteria imposed for receipt of such services, as reported in accordance with section 1902(a)(28)(D) of the Social Security Act) and any differences from benefits and services offered under long-term care insurance

policies in the State and the criteria for triggering receipt of such benefits and services.

`(bb) If the State has a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of the Social Security Act, information regarding how and when an individual with a partnership long-term care insurance policy who is receiving benefits under the policy should apply for medical assistance for nursing facility services or other long-term care services under the State Medicaid program and information regarding about how Medicaid asset protection is accumulated over time under such policies.'; and

(B) by adding at the end the following:

`(C) CURRENT INFORMATION- The Secretary of Health and Human Services shall ensure that, to the greatest extent practicable, the information maintained in the National Clearinghouse for Long-Term Care Information, including the information required for LTC Insurance Compare, is the most recent information available.

`(D) LONG-TERM CARE INSURANCE POLICY DEFINED- In subparagraph (A)(iv), the term `long-term care insurance policy' means a qualified long-term care insurance contract (as defined in section 7702B(b) of the Internal Revenue Code of 1986), a qualified long-term care insurance contract that covers an insured who is a resident of a State with a qualified State long-term care insurance partnership under clause (iii) of section 1917(b)(1)(C) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)) or a long-term care insurance policy offered in connection with a State plan amendment described in clause (iv) of such section, and includes any other insurance policy or rider described in the definition of `long-term care insurance' in section 4 of the model Act promulgated by the National Association of Insurance Commissioners (as adopted December 2006).';

(2) by redesignating paragraph (3) as paragraph (4);

(3) in paragraph (4) (as so redesignated), by inserting `, and \$5,000,000 for each of fiscal years 2011 through 2013' after `2010'; and

(4) by inserting after paragraph (2) the following:

`(3) CONSULTATION ON LTC INSURANCE COMPARE- The Secretary of Health and Human Services shall consult with the National Association of Insurance Commissioners and the entities and stakeholders specified in section 101(d) of the Confidence in Long-Term Care Insurance Act of 2009 in designing and implementing the LTC Insurance Compare required under paragraph (2)(A)(iv).'.

(b) Medicaid State Plan Requirement To Submit Nursing Facility Services Functional Criteria Data- Section 1902(a)(28) of the Social Security Act (42 U.S.C. 1396a(a)(28)) is amended--

(1) in subparagraph (C), by striking `and' after the semicolon;

(2) in subparagraph (D)(iii), by adding `and' after the semicolon;
and

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

`(E) for the annual submission of data relating to functional criteria for the receipt of nursing facility services under the plan (in such form and manner as the Secretary shall specify);'.

(c) Effective Date-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section take effect on the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT- In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation or State regulation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

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.

(a) In General- Section 7702B(g)(1) of the Internal Revenue Code of 1986 (relating to consumer protection provisions) is amended--

(1) in subparagraph (A), by inserting `(but only to the extent such requirements do not conflict with requirements applicable under subparagraph (B)),' after `paragraph (2)',

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

(3) by inserting after subparagraph (A), the following new subparagraph:

`(B) the requirements of the model regulation and model Act described in section 1917(b)(5) of the Social Security Act,'.

(b) Effective Date- The amendments made by subsection (a) shall apply to contracts issued after the date of enactment of this Act.

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

(a) Secretarial Review-

(1) TAX-QUALIFIED POLICIES-

(A) 2000 AND 2006 MODEL PROVISIONS- Not later than 3 months after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall review the model provisions specified in subsection (c)(1) for purposes of determining whether updating any such provisions for a provision specified in section 7702B(g)(2) of the Internal Revenue Code of 1986, or the inclusion of any such provisions in such section, for purposes of an insurance contract qualifying for treatment as a qualified long-term care insurance contract under such Code, would improve consumer protections for insured individuals under such contracts.

(B) SUBSEQUENT MODEL PROVISIONS- Not later than 3 months after model provisions described in paragraph (2) or (3) of subsection (c) are adopted by the National Association of Insurance Commissioners, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall review the model provisions to determine whether the application of such provisions to an insurance contract for purposes of qualifying for treatment as a qualified long-term care insurance contract under section 7702B(g)(2) of the Internal Revenue Code of 1986, would improve consumer protections for insured individuals under such contracts.

(2) MEDICAID PARTNERSHIP POLICIES-

(A) SUBSEQUENT MODEL PROVISIONS- Not later than 3 months after model provisions described in paragraph (2) or (3) of subsection (c) are adopted by the National Association of Insurance Commissioners, the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury, shall review the model provisions to determine whether the application of such provisions to an insurance contract for purposes of satisfying the requirements for participation in a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act (42 U.S.C. 1396p(b)(1)(C)(iii)) would improve consumer protections for insured individuals under such contracts.

(B) REVIEW OF OTHER PARTNERSHIP REQUIREMENTS- The Secretary of Health and Human Services, in consultation with

the Secretary of the Treasury, shall review clauses (iii) and (iv) of section 1917(b)(1)(C) for purposes of determining whether the requirements specified in such clauses should be modified to provide improved consumer protections or, as appropriate, to resolve any conflicts with the application of the 2006 model provisions under paragraph (5) of section 1917(b) (as amended by section 302(a)) or with the application of any model provisions that the Secretary determines should apply to an insurance contract as a result of a review required under subparagraph (A).

(b) Expedited Rulemaking-

(1) TAX-QUALIFIED POLICIES- Subject to paragraph (3), if the Secretary of the Treasury determines that any model provisions reviewed under subsection (a)(1) should apply for purposes of an insurance contract qualifying for treatment as a qualified long-term care insurance contract under the Internal Revenue Code of 1986, the Secretary, shall promulgate an interim final rule applying such provisions for such purposes not later than 3 months after making such determination.

(2) MEDICAID PARTNERSHIP POLICIES- Subject to paragraph (3), if the Secretary of Health and Human Services determines that any model provisions or requirements reviewed under subsection (a)(2) should apply for purposes of an insurance contract satisfying the requirements for participation in a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act (42 U.S.C.