

111TH CONGRESS  
1ST SESSION

# S. 434

To amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2009

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

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## A BILL

To amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid program, 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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Empowered at Home Act of 2009”.

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—STRENGTHENING THE MEDICAID HOME AND  
COMMUNITY-BASED STATE PLAN AMENDMENT OPTION

- Sec. 101. Removal of barriers to providing home and community-based services under State plan amendment option for individuals in need.
- Sec. 102. State option to provide home and community-based services to individuals for whom such services are likely to prevent, delay, or decrease the likelihood of an individual's need for institutionalized care.
- Sec. 103. Implementation assistance grants for States electing to provide home and community-based services under Medicaid through the State plan amendment option.

TITLE II—STATE GRANTS TO FACILITATE HOME AND  
COMMUNITY-BASED SERVICES AND PROMOTE HEALTH

- Sec. 201. Reauthorization of medicaid transformation grants and expansion of permissible uses in order to facilitate the provision of home and community-based and other long-term care services.
- Sec. 202. Health promotion grants.

TITLE III—LONG-TERM CARE INSURANCE

- Sec. 301. Treatment of premiums on qualified long-term care insurance contracts.
- Sec. 302. Credit for taxpayers with long-term care needs.
- Sec. 303. Treatment of premiums on qualified long-term care insurance contracts.
- Sec. 304. Additional consumer protections for long-term care insurance.

TITLE IV—PROMOTING AND PROTECTING COMMUNITY LIVING

- Sec. 401. Mandatory application of spousal impoverishment protections to recipients of home and community-based services.
- Sec. 402. State authority to elect to exclude up to 6 months of average cost of nursing facility services from assets or resources for purposes of eligibility for home and community-based services.

TITLE V—MISCELLANEOUS

- Sec. 501. Improved data collection.
- Sec. 502. GAO report on Medicaid home health services and the extent of consumer self-direction of such services.

1 **TITLE I—STRENGTHENING THE**  
 2 **MEDICAID HOME AND COM-**  
 3 **MUNITY-BASED STATE PLAN**  
 4 **AMENDMENT OPTION**

5 **SEC. 101. REMOVAL OF BARRIERS TO PROVIDING HOME**  
 6 **AND COMMUNITY-BASED SERVICES UNDER**  
 7 **STATE PLAN AMENDMENT OPTION FOR INDIV-**  
 8 **IDUALS IN NEED.**

9 (a) PARITY WITH INCOME ELIGIBILITY STANDARD  
 10 FOR INSTITUTIONALIZED INDIVIDUALS.—Paragraph (1)  
 11 of section 1915(i) of the Social Security Act (42 U.S.C.  
 12 1396n(i)) is amended by striking “150 percent of the pov-  
 13 erty line (as defined in section 2110(c)(5))” and inserting  
 14 “300 percent of the supplemental security income benefit  
 15 rate established by section 1611(b)(1)”.

16 (b) ADDITIONAL STATE OPTION TO PROVIDE HOME  
 17 AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELI-  
 18 GIBLE FOR SERVICES UNDER A WAIVER.—Section  
 19 1915(i) of the Social Security Act (42 U.S.C. 1396n(i))  
 20 is amended by adding at the end the following new para-  
 21 graph:

22 “(6) STATE OPTION TO PROVIDE HOME AND  
 23 COMMUNITY-BASED SERVICES TO INDIVIDUALS ELI-  
 24 GIBLE FOR SERVICES UNDER A WAIVER.—

1           “(A) IN GENERAL.—A State that provides  
2           home and community-based services in accord-  
3           ance with this subsection to individuals who  
4           satisfy the needs-based criteria for the receipt  
5           of such services established under paragraph  
6           (1)(A) may, in addition to continuing to provide  
7           such services to such individuals, elect to pro-  
8           vide home and community-based services in ac-  
9           cordance with the requirements of this para-  
10          graph to individuals who are eligible for home  
11          and community-based services under a waiver  
12          approved for the State under subsection (c),  
13          (d), or (e) or under section 1115 to provide  
14          such services, but only for those individuals  
15          whose income does not exceed 300 percent of  
16          the supplemental security income benefit rate  
17          established by section 1611(b)(1).

18          “(B) APPLICATION OF SAME REQUIRE-  
19          MENTS FOR INDIVIDUALS SATISFYING NEEDS-  
20          BASED CRITERIA.—Subject to subparagraph  
21          (C), a State shall provide home and community-  
22          based services to individuals under this para-  
23          graph in the same manner and subject to the  
24          same requirements as apply under the other  
25          paragraphs of this subsection to the provision

1 of home and community-based services to indi-  
 2 viduals who satisfy the needs-based criteria es-  
 3 tablished under paragraph (1)(A).

4 “(C) AUTHORITY TO OFFER DIFFERENT  
 5 TYPE, AMOUNT, DURATION, OR SCOPE OF HOME  
 6 AND COMMUNITY-BASED SERVICES.—A State  
 7 may offer home and community-based services  
 8 to individuals under this paragraph that differ  
 9 in type, amount, duration, or scope from the  
 10 home and community-based services offered for  
 11 individuals who satisfy the needs-based criteria  
 12 established under paragraph (1)(A), so long as  
 13 such services are within the scope of services  
 14 described in paragraph (4)(B) of subsection (c)  
 15 for which the Secretary has the authority to ap-  
 16 prove a waiver and do not include room or  
 17 board.”.

18 (c) REMOVAL OF LIMITATION ON SCOPE OF SERV-  
 19 ICES.—Paragraph (1) of section 1915(i) of the Social Se-  
 20 curity Act (42 U.S.C. 1396n(i)), as amended by sub-  
 21 section (a), is amended by striking “or such other services  
 22 requested by the State as the Secretary may approve”.

23 (d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE  
 24 FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING

1 HOME AND COMMUNITY-BASED SERVICES UNDER A  
2 STATE PLAN AMENDMENT.—

3 (1) IN GENERAL.—Section 1902(a)(10)(A)(ii)  
4 of the Social Security Act (42 U.S.C.  
5 1396a(a)(10)(A)(ii)) is amended—

6 (A) in subclause (XVIII), by striking “or”  
7 at the end;

8 (B) in subclause (XIX), by adding “or” at  
9 the end; and

10 (C) by inserting after subclause (XIX), the  
11 following new subclause:

12 “(XX) who are eligible for home  
13 and community-based services under  
14 needs-based criteria established under  
15 paragraph (1)(A) of section 1915(i),  
16 or who are eligible for home and com-  
17 munity-based services under para-  
18 graph (6) of such section, and who  
19 will receive home and community-  
20 based services pursuant to a State  
21 plan amendment under such sub-  
22 section;”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 1903(f)(4) of the Social Secu-  
25 rity Act (42 U.S.C. 1396b(f)(4)) is amended in

1 the matter preceding subparagraph (A), by in-  
 2 serting “1902(a)(10)(A)(ii)(XX),” after  
 3 “1902(a)(10)(A)(ii)(XIX),”.

4 (B) Section 1905(a) of the Social Security  
 5 Act (42 U.S.C. 1396d(a)) is amended in the  
 6 matter preceding paragraph (1)—

7 (i) in clause (xii), by striking “or” at  
 8 the end;

9 (ii) in clause (xiii), by adding “or” at  
 10 the end; and

11 (iii) by inserting after clause (xiii) the  
 12 following new clause:

13 “(xiv) individuals who are eligible for home and  
 14 community-based services under needs-based criteria  
 15 established under paragraph (1)(A) of section  
 16 1915(i), or who are eligible for home and commu-  
 17 nity-based services under paragraph (6) of such sec-  
 18 tion, and who will receive home and community-  
 19 based services pursuant to a State plan amendment  
 20 under such subsection,”.

21 (e) ELIMINATION OF OPTION TO LIMIT NUMBER OF  
 22 ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR  
 23 GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA  
 24 IS MODIFIED.—Paragraph (1) of section 1915(i) of such  
 25 Act (42 U.S.C. 1396n(i)) is amended—

1           (1) by striking subparagraph (C) and inserting  
2           the following:

3                   “(C) PROJECTION OF NUMBER OF INDI-  
4           VIDUALS TO BE PROVIDED HOME AND COMMU-  
5           NITY-BASED SERVICES.—The State submits to  
6           the Secretary, in such form and manner, and  
7           upon such frequency as the Secretary shall  
8           specify, the projected number of individuals to  
9           be provided home and community-based serv-  
10          ices.”; and

11          (2) in subclause (II) of subparagraph (D)(ii),  
12          by striking “to be eligible for such services for a pe-  
13          riod of at least 12 months beginning on the date the  
14          individual first received medical assistance for such  
15          services” and inserting “to continue to be eligible for  
16          such services after the effective date of the modifica-  
17          tion and until such time as the individual no longer  
18          meets the standard for receipt of such services under  
19          such pre-modified criteria”.

20          (f) ELIMINATION OF OPTION TO WAIVE  
21          STATEWIDENESS.—Paragraph (3) of section 1915(i) of  
22          such Act (42 U.S.C. 1396n(3)) is amended by striking  
23          “section 1902(a)(1) (relating to statewideness) and”.

24          (g) EFFECTIVE DATE.—The amendments made by  
25          this section take effect on the first day of the first fiscal

1 year quarter that begins after the date of enactment of  
 2 this Act.

3 **SEC. 102. STATE OPTION TO PROVIDE HOME AND COMMU-**  
 4 **NITY-BASED SERVICES TO INDIVIDUALS FOR**  
 5 **WHOM SUCH SERVICES ARE LIKELY TO PRE-**  
 6 **VENT, DELAY, OR DECREASE THE LIKELI-**  
 7 **HOOD OF AN INDIVIDUAL’S NEED FOR INSTI-**  
 8 **TUTIONALIZED CARE.**

9 (a) STATE PLAN AMENDMENT REQUIRED.—

10 (1) IN GENERAL.—Section 1915 of the Social  
 11 Security Act (42 U.S.C. 1396n) is amended by add-  
 12 ing at the end the following new subsection:

13 “(k) STATE PLAN AMENDMENT OPTION TO PROVIDE  
 14 HOME AND COMMUNITY-BASED SERVICES TO INDIVID-  
 15 UALS FOR WHOM SUCH SERVICES ARE LIKELY TO PRE-  
 16 VENT, DELAY, OR DECREASE THE LIKELIHOOD OF AN IN-  
 17 DIVIDUAL’S NEED FOR INSTITUTIONALIZED CARE.—

18 “(1) IN GENERAL.—Subject to the succeeding  
 19 provisions of this subsection, a State that has an ap-  
 20 proved State plan amendment under subsection (i)  
 21 may provide, through a State plan amendment for  
 22 the provision of medical assistance for home and  
 23 community-based services that are within the scope  
 24 of services described in paragraph (4)(B) of sub-  
 25 section (c) for which the Secretary has the authority

1 to approve a waiver and do not include room or  
2 board to individuals—

3 “(A) who are not otherwise eligible for  
4 medical assistance under the State plan or  
5 under a waiver of such plan;

6 “(B) whose income does not exceed 300  
7 percent of the supplemental security income  
8 benefit rate established by section 1611(b)(1);  
9 and

10 “(C) who satisfy such needs-based criteria  
11 for determining eligibility for medical assistance  
12 for such services as the State shall establish in  
13 accordance with paragraph (2).

14 “(2) REQUIREMENT FOR NEEDS-BASED CRI-  
15 TERIA.—In establishing needs-based criteria for pur-  
16 poses of determining eligibility for medical assistance  
17 for home and community-based services under this  
18 subsection, a State shall specify the specific physical,  
19 mental, cognitive, or intellectual impairments, or the  
20 inability of an individual to perform 1 or more spe-  
21 cific activities of daily living (as defined in section  
22 7702B(c)(2)(B) of the Internal Revenue Code of  
23 1986) or the need for significant assistance to per-  
24 form such activities, for which the State determines  
25 that the provision of home and community-based

1 services are reasonably expected to prevent, delay, or  
2 decrease the likelihood of an individual's need for in-  
3 stitutionalized care.

4 “(3) APPLICATION OF SAME REQUIREMENTS  
5 FOR PROVIDING HOME AND COMMUNITY-BASED  
6 SERVICES UNDER SUBSECTION (i).—Subject to para-  
7 graphs (4) and (5), a State shall provide home and  
8 community-based services to individuals under this  
9 paragraph in the same manner and subject to the  
10 same requirements as apply to the provision of home  
11 and community-based services to individuals under  
12 subsection (i).

13 “(4) AUTHORITY TO LIMIT NUMBER OF INDIV-  
14 IDUALS.—A State may limit the number of individ-  
15 uals who are eligible to receive home and commu-  
16 nity-based services under this subsection and may  
17 establish waiting lists for the receipt of such serv-  
18 ices.

19 “(5) AUTHORITY TO OFFER DIFFERENT TYPE,  
20 AMOUNT, DURATION, OR SCOPE OF HOME AND COM-  
21 MUNITY-BASED SERVICES.—A State may offer home  
22 and community-based services to individuals under  
23 this subsection that differ in type, amount, duration,  
24 or scope from the home and community-based serv-  
25 ices offered for individuals under paragraph (1)(A)

of subsection (i) and, if applicable, under paragraph (6) of such subsection.”.

(2) OPTIONAL CATEGORICALLY NEEDY GROUP; STATE OPTION TO LIMIT BENEFITS TO HOME AND COMMUNITY-BASED SERVICES OR TO PROVIDE FULL MEDICAL ASSISTANCE.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii), as amended by section 101(d)(1)—

(I) in subclause (XIX), by striking “or” at the end;

(II) in subclause (XX), by adding “or” at the end; and

(III) by inserting after subclause (XX), the following new subclause:

“(XXI) who are eligible for home and community-based services under section 1915(k) and who will receive home and community-based services pursuant to a State plan amendment under such subsection;” and

(ii) in the matter following subparagraph (G)—

(I) by striking “and (XIV)” and inserting “(XIV)”; and

(II) by inserting “, and (XV) at the option of the State, the medical assistance made available to an individual described in section 1915(k) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXI) may be limited to medical assistance for home and community-based services described in a State plan amendment submitted under that section” before the semicolon.

(B) CONFORMING AMENDMENTS.—

(i) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)), as amended by section 101(d)(2)(A), is amended in the matter preceding subparagraph (A), by inserting “1902(a)(10)(A)(ii)(XXI),” after “1902(a)(10)(A)(ii)(XX),”.

(ii) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), as amended by section 101(d)(2)(B), is

1                   amended in the matter preceding para-  
2                   graph (1)—

3                   (I) in clause (xiii), by striking  
4                   “or” at the end;

5                   (II) in clause (xiv), by adding  
6                   “or” at the end; and

7                   (III) by inserting after clause  
8                   (xiv) the following new clause:

9                   “(xv) who are eligible for home and community-  
10                  based services under section 1915(k) and who will  
11                  receive home and community-based services pursu-  
12                  ant to a State plan amendment under such sub-  
13                  section,”.

14               (b) EFFECTIVE DATE.—The amendments made by  
15 this section take effect on the first day of the first fiscal  
16 year quarter that begins after the date of enactment of  
17 this Act.

18 **SEC. 103. IMPLEMENTATION ASSISTANCE GRANTS FOR**  
19 **STATES ELECTING TO PROVIDE HOME AND**  
20 **COMMUNITY-BASED SERVICES UNDER MED-**  
21 **ICAID THROUGH THE STATE PLAN AMEND-**  
22 **MENT OPTION.**

23               (a) AUTHORITY TO AWARD GRANTS.—The Secretary  
24 of Health and Human Services (in this section referred  
25 to as the “Secretary”) shall award grants to eligible States

1 to provide incentives to States for the implementation of  
2 State plan amendments that meet the requirements of sec-  
3 tion 1915(i) of the Social Security Act (42 U.S.C.  
4 1396n(i)).

5 (b) ELIGIBLE STATE.—For purposes of this section,  
6 an eligible State is a State that—

7 (1) has an approved State plan amendment de-  
8 scribed in subsection (a); and

9 (2) submits an application to the Secretary, in  
10 such form and manner as the Secretary shall re-  
11 quire, specifying the costs the State will incur in im-  
12 plementing such amendment and such additional in-  
13 formation as the Secretary may require.

14 (c) AMOUNT AND DURATION OF GRANTS.—

15 (1) AMOUNT.—The Secretary shall determine  
16 the amount to be awarded all eligible States under  
17 this section for a fiscal year based on the applica-  
18 tions submitted by such States and the amount  
19 available for such fiscal year under subsection (d).

20 (2) LIMITATION ON DURATION OF AWARD.—A  
21 State may receive a grant under this section for not  
22 more than 3 consecutive fiscal years.

23 (d) APPROPRIATIONS.—There are appropriated, from  
24 any funds in the Treasury not otherwise appropriated,  
25 \$40,000,000 for each of fiscal years 2010 through 2014

1 for making grants to States under this section. Funds ap-  
 2 propriated under this subsection for a fiscal year shall re-  
 3 main available for expenditure through September 30,  
 4 2014.

5 **TITLE II—STATE GRANTS TO FA-**  
 6 **CILITATE HOME AND COMMU-**  
 7 **NITY-BASED SERVICES AND**  
 8 **PROMOTE HEALTH**

9 **SEC. 201. REAUTHORIZATION OF MEDICAID TRANS-**  
 10 **FORMATION GRANTS AND EXPANSION OF**  
 11 **PERMISSIBLE USES IN ORDER TO FACILI-**  
 12 **TATE THE PROVISION OF HOME AND COMMU-**  
 13 **NITY-BASED AND OTHER LONG-TERM CARE**  
 14 **SERVICES.**

15 (a) 2-YEAR REAUTHORIZATION; INCREASED FUND-  
 16 ING.—Section 1903(z)(4)(A) of the Social Security Act  
 17 (42 U.S.C. 1396b(z)(4)(A)) is amended—

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

19 (2) in clause (ii), by striking the period at the  
 20 end and inserting “; and”; and

21 (3) by inserting after clause (ii), the following  
 22 new clauses:

23 “(iii) \$150,000,000 for fiscal year  
 24 2010; and

1                   “(iv) \$150,000,000 for fiscal year  
2                   2011.”.

3           (b) EXPANSION OF PERMISSIBLE USES.—Section  
4 1903(z)(2) of the Social Security Act (42 U.S.C.  
5 1396b(z)(2)) is amended by adding at the end the fol-  
6 lowing new subparagraphs:

7                   “(G)(i) Methods for ensuring the avail-  
8                   ability and accessibility of home and commu-  
9                   nity-based services in the State, recognizing  
10                  multiple delivery options that take into account  
11                  differing needs of individuals, through the cre-  
12                  ation or designation (in consultation with orga-  
13                  nizations representing elderly individuals and  
14                  individuals of all ages with physical, mental,  
15                  cognitive, or intellectual impairments, and orga-  
16                  nizations representing the long-term care work-  
17                  force, including organized labor, and health  
18                  care and direct service providers) of one or  
19                  more statewide or regional public entities or  
20                  non-profit organizations (such as fiscal inter-  
21                  mediaries, agencies with choice, home care com-  
22                  missions, public authorities, worker associa-  
23                  tions, consumer-owned and controlled organiza-  
24                  tions (including representatives of individuals  
25                  with severe intellectual or cognitive impair-

1           ment), area agencies on aging, independent liv-  
2           ing centers, aging and disability resource cen-  
3           ters, or other disability organizations) which  
4           may—

5                   “(I) develop programs where qualified  
6                   individuals provide home- and community-  
7                   based services while solely or jointly em-  
8                   ployed by recipients of such services;

9                   “(II) facilitate the training and re-  
10                  cruitment of qualified health and direct  
11                  service professionals and consumers who  
12                  use services;

13                  “(III) recommend or develop a system  
14                  to set wages and benefits, and recommend  
15                  commensurate reimbursement rates;

16                  “(IV) with meaningful ongoing in-  
17                  volvement from consumers and workers (or  
18                  their respective representatives), develop  
19                  procedures for the appropriate screening of  
20                  workers, create a registry or registries of  
21                  available workers, including policies and  
22                  procedures to ensure no interruption of  
23                  care for eligible individuals;

24                  “(V) assist consumers in identifying  
25                  workers;

1 “(VI) act as a fiscal intermediary;

2 “(VII) assist workers in finding em-  
3 ployment, including consumer-directed em-  
4 ployment;

5 “(VIII) provide funding for disability  
6 organizations, aging organizations, or  
7 other organizations, to assume roles that  
8 promote consumers’ ability to acquire the  
9 necessary skills for directing their own  
10 services and financial resources; or

11 “(IX) create workforce development  
12 plans on a regional or statewide basis (or  
13 both), to ensure a sufficient supply of  
14 qualified home and community-based serv-  
15 ices workers, including reviews and anal-  
16 yses of actual and potential worker short-  
17 ages, training and retention programs for  
18 home and community-based services work-  
19 ers (which may include, as determined ap-  
20 propriate by the State, allowing participa-  
21 tion in such training to count as an allow-  
22 able work activity under the State tem-  
23 porary assistance for needy families pro-  
24 gram funded under part A of title IV), and

1 plans to assist consumers with finding and  
2 retaining qualified workers.

3 “(ii) Nothing in clause (i) shall be con-  
4 strued as prohibiting the use of funds made  
5 available to carry out this subparagraph for  
6 start-up costs associated with any of the activi-  
7 ties described in subclauses (I) through (IX), as  
8 requiring any consumer to hire workers who are  
9 listed in a worker registry developed with such  
10 funds, or to limit the ability of consumers to  
11 hire or fire their own workers.

12 “(H) Methods for providing an integrated  
13 and efficient system of long-term care through  
14 a review of the Federal, State, local, and pri-  
15 vate long-term care resources, services, and  
16 supports available to elderly individuals and in-  
17 dividuals of all ages with physical, mental, cog-  
18 nitive, or intellectual impairments and the de-  
19 velopment and implementation of a plan to fully  
20 integrate such resources, services, and supports  
21 by aggregating such resources, services, and  
22 supports to create a consumer-centered and  
23 cost-effective resource and delivery system and  
24 expanding the availability of home and commu-  
25 nity-based services, and that is designed to re-

1           sult in administrative savings, consolidation of  
 2           common activities, and the elimination of re-  
 3           dundant processes.”.

4           (c) ALLOCATION OF FUNDS.—

5           (1) ELIMINATION OF CURRENT LAW REQUIRE-  
 6           MENTS FOR ALLOCATION OF FUNDS.—Section  
 7           1903(z)(4)(B) of the Social Security Act (42 U.S.C.  
 8           1396b(z)(4)(B)) is amended by striking the second  
 9           and third sentences.

10          (2) ASSURANCE OF FUNDS TO FACILITATE THE  
 11          PROVISION OF HOME AND COMMUNITY-BASED SERV-  
 12          ICES AND INTEGRATED SYSTEMS OF LONG-TERM  
 13          CARE.—Section 1903(z)(4)(B) of the Social Security  
 14          Act (42 U.S.C. 1396b(z)(4)(B)), as amended by  
 15          paragraph (1), is amended by inserting after the  
 16          first sentence the following new sentence: “Such  
 17          method shall provide that 50 percent of such funds  
 18          shall be allocated among States that design pro-  
 19          grams to adopt the innovative methods described in  
 20          subparagraph (G) or (H) (or both) of paragraph  
 21          (2).”.

22          (d) EFFECTIVE DATE.—The amendments made by  
 23          this section take effect on October 1, 2009.

24       **SEC. 202. HEALTH PROMOTION GRANTS.**

25          (a) DEFINITIONS.—In this section:

1           (1) ELIGIBLE MEDICAID BENEFICIARY.—The  
 2           term “eligible Medicaid beneficiary” means an indi-  
 3           vidual who is enrolled in the State Medicaid plan  
 4           under title XIX of the Social Security Act and—

5                   (A) has attained the age of 60 and is not  
 6                   a resident of a nursing facility; or

7                   (B) is an adult with a physical, mental,  
 8                   cognitive, or intellectual impairment.

9           (2) ELIGIBLE STATE.—The term “eligible  
 10          State” means a State that submits an application to  
 11          the Secretary for a grant under this section, in such  
 12          form and manner as the Secretary shall require.

13          (3) EVIDENCE- AND COMMUNITY-BASED  
 14          HEALTH PROMOTION PROGRAM.—The term  
 15          “evidence- and community-based health promotion  
 16          program” means a community-based program (such  
 17          as a program for chronic disease self-management,  
 18          physical or mental activity, falls prevention, smoking  
 19          cessation, or dietary modification) that has been ob-  
 20          jectively evaluated and found to improve health out-  
 21          comes or meet health promotion goals by preventing,  
 22          delaying, or decreasing the severity of physical, men-  
 23          tal, cognitive, or intellectual impairment and that  
 24          meets generally accepted standards for best profes-  
 25          sional practice.

1           (4) SECRETARY.—The term “Secretary” means  
2           the Secretary of Health and Human Services.

3           (b) AUTHORITY TO CONDUCT DEMONSTRATION  
4 PROJECT.—The Secretary shall award grants on a com-  
5 petitive basis to eligible States to conduct in accordance  
6 with this section an evidence- and community-based health  
7 promotion program that is designed to achieve the fol-  
8 lowing objectives with respect to eligible Medicaid bene-  
9 ficiaries:

10           (1) LIFESTYLE CHANGES.—To empower eligible  
11 Medicaid beneficiaries to take more control over  
12 their own health through lifestyle changes that have  
13 proven effective in reducing the effects of chronic  
14 disease and slowing the progression of disability.

15           (2) DIFFUSION.—To mobilize the Medicaid,  
16 aging, disability, public health, and nonprofit net-  
17 works at the State and local levels to accelerate the  
18 translation of credible research into practice through  
19 the deployment of low-cost evidence-based health  
20 promotion and disability prevention programs at the  
21 community level.

22           (c) SELECTION AND AMOUNT OF GRANT AWARDS.—  
23 In awarding grants to eligible States under this section  
24 and determining the amount of the awards, the Secretary  
25 shall—

1           (1) take into consideration the manner and ex-  
2           tent to which the eligible State proposes to achieve  
3           the objectives specified in subsection (b); and

4           (2) give preference to eligible States pro-  
5           posing—

6                   (A) programs through public service pro-  
7                   vider organizations or other organizations with  
8                   expertise in serving eligible Medicaid bene-  
9                   ficiaries;

10                   (B) strong State-level collaboration across,  
11                   Medicaid agencies, State units on aging, State  
12                   independent living councils, State associations  
13                   of Area Agencies on Aging, and State agencies  
14                   responsible for public health; or

15                   (C) interventions that have already dem-  
16                   onstrated effectiveness and replicability in a  
17                   community-based, non-medical setting.

18           (d) USE OF FUNDS.—An eligible State awarded a  
19           grant under this section shall use the funds awarded to  
20           develop, implement, and sustain high quality evidence- and  
21           community-based health promotion programs. As a condi-  
22           tion of being awarded such a grant, an eligible State shall  
23           agree to—

24                   (1) implement such programs in at least 3 geo-  
25                   graphic areas of the State; and

1           (2) develop the infrastructure and partnerships  
 2           that will be necessary over the long-term to effec-  
 3           tively embed evidence- and community-based health  
 4           promotion programs for eligible Medicaid bene-  
 5           ficiaries within the statewide health, aging, dis-  
 6           ability, and long-term care systems.

7           (e) TECHNICAL ASSISTANCE.—The Secretary shall  
 8           provide assistance to eligible States awarded grants under  
 9           this section, sub-grantees and their partners, program or-  
 10          ganizers, and others in developing evidence- and commu-  
 11          nity-based health promotion programs.

12          (f) PAYMENTS TO ELIGIBLE STATES; CARRYOVER OF  
 13          UNUSED GRANT AMOUNTS.—

14               (1) PAYMENTS.—For each calendar quarter of  
 15               a fiscal year that begins during the period for which  
 16               an eligible State is awarded a grant under this sec-  
 17               tion, the Secretary shall pay to the State from its  
 18               grant award for such fiscal year an amount equal to  
 19               the lesser of—

20                       (A) the amount of qualified expenditures  
 21                       made by the State for such quarter; or

22                       (B) the total amount remaining in such  
 23                       grant award for such fiscal year (taking into  
 24                       account the application of paragraph (2)).

1           (2) CARRYOVER OF UNUSED AMOUNTS.—Any  
 2           portion of a State grant award for a fiscal year  
 3           under this section remaining available at the end of  
 4           such fiscal year shall remain available for making  
 5           payments to the State for the next 4 fiscal years,  
 6           subject to paragraph (3).

7           (3) REAWARDING OF CERTAIN UNUSED  
 8           AMOUNTS.—In the case of a State that the Sec-  
 9           retary determines has failed to meet the conditions  
 10          for continuation of a demonstration project under  
 11          this section in a succeeding year, the Secretary shall  
 12          rescind the grant award for each succeeding year,  
 13          together with any unspent portion of an award for  
 14          prior years, and shall add such amounts to the ap-  
 15          propriation for the immediately succeeding fiscal  
 16          year for grants under this section.

17          (4) PREVENTING DUPLICATION OF PAYMENT.—  
 18          The payment under a demonstration project with re-  
 19          spect to qualified expenditures shall be in lieu of any  
 20          payment with respect to such expenditures that  
 21          would otherwise be paid to the State under section  
 22          1903(a) of the Social Security Act (42 U.S.C.  
 23          1396a(a)). Nothing in the previous sentence shall be  
 24          construed as preventing a State from being paid  
 25          under such section for expenditures in a grant year

1       for which payment is available under such section  
 2       1903(a) after amounts available to pay for such ex-  
 3       penditures under the grant awarded to the State  
 4       under this section for the fiscal year have been ex-  
 5       hausted.

6       (g) EVALUATION.—Not later than 3 years after the  
 7       date on which the first grant is awarded to an eligible  
 8       State under this section, the Secretary shall, by grant,  
 9       contract, or interagency agreement, conduct an evaluation  
 10      of the demonstration projects carried out under this sec-  
 11      tion that measures the health-related, quality of life, and  
 12      cost outcomes for eligible Medicaid beneficiaries and in-  
 13      cludes information relating to the quality, infrastructure,  
 14      sustainability, and effectiveness of such projects.

15      (h) APPROPRIATIONS.—There are appropriated, from  
 16      any funds in the Treasury not otherwise appropriated, the  
 17      following amounts to carry out this section:

18           (1) GRANTS TO STATES.—For grants to States,  
 19      to remain available until expended—

20                   (A) \$4,000,000 for fiscal year 2010;

21                   (B) \$6,000,000 for fiscal year 2011;

22                   (C) \$8,000,000 for fiscal year 2012;

23                   (D) \$10,000,000 for fiscal year 2013; and

24                   (E) \$12,000,000 for fiscal year 2014.

1           (2) TECHNICAL ASSISTANCE.—For the provi-  
 2           sion of technical assistance through such center in  
 3           accordance with subsection (e)—

4                   (A) \$800,000 for fiscal year 2010;

5                   (B) \$1,200,000 for fiscal year 2011;

6                   (C) \$1,600,000 for fiscal year 2012;

7                   (D) \$2,000,000 for fiscal year 2013; and

8                   (E) \$2,400,000 for fiscal year 2014.

9           (3) EVALUATION.—For conducting the evalua-  
 10          tion required under subsection (g), \$4,000,000 for  
 11          fiscal year 2012.

## 12           **TITLE III—LONG-TERM CARE** 13                   **INSURANCE**

### 14   **SEC. 301. TREATMENT OF PREMIUMS ON QUALIFIED LONG-** 15                   **TERM CARE INSURANCE CONTRACTS.**

16          (a) IN GENERAL.—Part VII of subchapter B of chap-  
 17          ter 1 of the Internal Revenue Code of 1986 (relating to  
 18          additional itemized deductions) is amended by redesign-  
 19          ing section 224 as section 225 and by inserting after  
 20          section 223 the following new section:

### 21   **“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-** 22                   **SURANCE CONTRACTS.**

23          “(a) IN GENERAL.—In the case of an individual,  
 24          there shall be allowed as a deduction an amount equal to  
 25          the applicable percentage of the amount of eligible long-

1 term care premiums (as defined in section 213(d)(10))  
 2 paid during the taxable year for coverage for the taxpayer  
 3 and the taxpayer's spouse and dependents under a quali-  
 4 fied long-term care insurance contract (as defined in sec-  
 5 tion 7702B(b)).

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

| <b>“For taxable years beginning in<br/>calendar year—</b> | <b>The<br/>applicable<br/>percentage<br/>is—</b> |
|-----------------------------------------------------------|--------------------------------------------------|
| 2010 or 2011 .....                                        | 25                                               |
| 2012 .....                                                | 35                                               |
| 2013 .....                                                | 65                                               |
| 2014 or thereafter .....                                  | 100.                                             |

9 “(c) COORDINATION WITH OTHER DEDUCTIONS.—  
 10 Any amount paid by a taxpayer for any qualified long-  
 11 term care insurance contract to which subsection (a) ap-  
 12 plies shall not be taken into account in computing the  
 13 amount allowable to the taxpayer as a deduction under  
 14 section 162(l) or 213(a).”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 62(a) of the Internal Revenue Code  
 17 of 1986 is amended by inserting before the last sen-  
 18 tence at the end the following new paragraph:

19 “(22) PREMIUMS ON QUALIFIED LONG-TERM  
 20 CARE INSURANCE CONTRACTS.—The deduction al-  
 21 lowed by section 224.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

17           “(a) ALLOWANCE OF CREDIT.—

•S 434 IS

1           “(2) APPLICABLE CREDIT AMOUNT.—For pur-  
 2           poses of paragraph (1), the applicable credit amount  
 3           shall be determined in accordance with the following  
 4           table:

| <b>“For taxable years beginning in<br/>calendar year—</b> | <b>The<br/>applicable<br/>credit<br/>amount<br/>is—</b> |
|-----------------------------------------------------------|---------------------------------------------------------|
| 2010 .....                                                | \$1,000                                                 |
| 2011 .....                                                | 1,500                                                   |
| 2012 .....                                                | 2,000                                                   |
| 2013 .....                                                | 2,500                                                   |
| 2014 or thereafter .....                                  | 3,000.                                                  |

5           “(b) LIMITATION BASED ON ADJUSTED GROSS IN-  
 6           COME.—

7           “(1) IN GENERAL.—The amount of the credit  
 8           allowable under subsection (a) shall be reduced (but  
 9           not below zero) by \$100 for each \$1,000 (or fraction  
 10          thereof) by which the taxpayer’s modified adjusted  
 11          gross income exceeds the threshold amount. For  
 12          purposes of the preceding sentence, the term ‘modi-  
 13          fied adjusted gross income’ means adjusted gross in-  
 14          come increased by any amount excluded from gross  
 15          income under section 911, 931, or 933.

16          “(2) THRESHOLD AMOUNT.—For purposes of  
 17          paragraph (1), the term ‘threshold amount’ means—

18                  “(A) \$150,000 in the case of a joint re-  
 19                  turn, and

20                  “(B) \$75,000 in any other case.

“(3) INDEXING.—In the case of any taxable year beginning in a calendar year after 2010, each dollar amount contained in paragraph (2) shall be increased by an amount equal to the product of—

“(A) such dollar amount, and

“(B) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting ‘August 2009’ for ‘August 1996’ in subclause (II) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

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

“(1) APPLICABLE INDIVIDUAL.—

“(A) IN GENERAL.—The term ‘applicable individual’ means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

1 “(i) which is at least 180 consecutive  
2 days, and

3 “(ii) a portion of which occurs within  
4 the taxable year.

5 Notwithstanding the preceding sentence, a cer-  
6 tification shall not be treated as valid unless it  
7 is made within the 39½ month period ending  
8 on such due date (or such other period as the  
9 Secretary prescribes).

10 “(B) INDIVIDUALS WITH LONG-TERM CARE  
11 NEEDS.—An individual is described in this sub-  
12 paragraph if the individual meets any of the fol-  
13 lowing requirements:

14 “(i) The individual is at least 6 years  
15 of age and—

16 “(I) is unable to perform (with-  
17 out substantial assistance from an-  
18 other individual) at least 3 activities  
19 of daily living (as defined in section  
20 7702B(c)(2)(B)) due to a loss of  
21 functional capacity, or

22 “(II) requires substantial super-  
23 vision to protect such individual from  
24 threats to health and safety due to se-  
25 vere cognitive impairment and is un-

able to perform, without reminding or  
 cuing assistance, at least 1 activity of  
 daily living (as so defined) or to the  
 extent provided in regulations pre-  
 scribed by the Secretary (in consulta-  
 tion with the Secretary of Health and  
 Human Services), is unable to engage  
 in age appropriate activities.

“(ii) The individual is at least 2 but  
 not 6 years of age and is unable due to a  
 loss of functional capacity to perform  
 (without substantial assistance from an-  
 other individual) at least 2 of the following  
 activities: eating, transferring, or mobility.

“(iii) The individual is under 2 years  
 of age and requires specific durable med-  
 ical equipment by reason of a severe health  
 condition or requires a skilled practitioner  
 trained to address the individual’s condi-  
 tion to be available if the individual’s par-  
 ents or guardians are absent.

“(2) ELIGIBLE CAREGIVER.—

“(A) IN GENERAL.—A taxpayer shall be  
 treated as an eligible caregiver for any taxable  
 year with respect to the following individuals:

1 “(i) The taxpayer.

2 “(ii) The taxpayer’s spouse.

3 “(iii) An individual with respect to  
4 whom the taxpayer is allowed a deduction  
5 under section 151(c) for the taxable year.

6 “(iv) An individual who would be de-  
7 scribed in clause (iii) for the taxable year  
8 if section 151(c) were applied by sub-  
9 stituting for the exemption amount an  
10 amount equal to the sum of the exemption  
11 amount, the standard deduction under sec-  
12 tion 63(c)(2)(C), and any additional stand-  
13 ard deduction under section 63(c)(3) which  
14 would be applicable to the individual if  
15 clause (iii) applied.

16 “(v) An individual who would be de-  
17 scribed in clause (iii) for the taxable year  
18 if—

19 “(I) the requirements of clause  
20 (iv) are met with respect to the indi-  
21 vidual, and

22 “(II) the requirements of sub-  
23 paragraph (B) are met with respect to  
24 the individual in lieu of the support

1 test under subsection (c)(1)(D) or  
 2 (d)(1)(C) of section 152.

3 “(B) RESIDENCY TEST.—The require-  
 4 ments of this subparagraph are met if an indi-  
 5 vidual has as his principal place of abode the  
 6 home of the taxpayer and—

7 “(i) in the case of an individual who  
 8 is an ancestor or descendant of the tax-  
 9 payer or the taxpayer’s spouse, is a mem-  
 10 ber of the taxpayer’s household for over  
 11 half the taxable year, or

12 “(ii) in the case of any other indi-  
 13 vidual, is a member of the taxpayer’s  
 14 household for the entire taxable year.

15 “(C) SPECIAL RULES WHERE MORE THAN  
 16 1 ELIGIBLE CAREGIVER.—

17 “(i) IN GENERAL.—If more than 1 in-  
 18 dividual is an eligible caregiver with re-  
 19 spect to the same applicable individual for  
 20 taxable years ending with or within the  
 21 same calendar year, a taxpayer shall be  
 22 treated as the eligible caregiver if each  
 23 such individual (other than the taxpayer)  
 24 files a written declaration (in such form  
 25 and manner as the Secretary may pre-

1           scribe) that such individual will not claim  
 2           such applicable individual for the credit  
 3           under this section.

4           “(ii) NO AGREEMENT.—If each indi-  
 5           vidual required under clause (i) to file a  
 6           written declaration under clause (i) does  
 7           not do so, the individual with the highest  
 8           adjusted gross income shall be treated as  
 9           the eligible caregiver.

10           “(iii) MARRIED INDIVIDUALS FILING  
 11           SEPARATELY.—In the case of married indi-  
 12           viduals filing separately, the determination  
 13           under this subparagraph as to whether the  
 14           husband or wife is the eligible caregiver  
 15           shall be made under the rules of clause (ii)  
 16           (whether or not one of them has filed a  
 17           written declaration under clause (i)).

18           “(d) IDENTIFICATION REQUIREMENT.—No credit  
 19           shall be allowed under this section to a taxpayer with re-  
 20           spect to any applicable individual unless the taxpayer in-  
 21           cludes the name and taxpayer identification number of  
 22           such individual, and the identification number of the phy-  
 23           sician certifying such individual, on the return of tax for  
 24           the taxable year.

1       “(e) TAXABLE YEAR MUST BE FULL TAXABLE  
 2 YEAR.—Except in the case of a taxable year closed by rea-  
 3 son of the death of the taxpayer, no credit shall be allow-  
 4 able under this section in the case of a taxable year cov-  
 5 ering a period of less than 12 months.”.

6       (b) CONFORMING AMENDMENTS.—

7           (1) Section 6213(g)(2) of the Internal Revenue  
 8 Code of 1986 is amended by striking “and” at the  
 9 end of subparagraph (L), by striking the period at  
 10 the end of subparagraph (M) and inserting “, and”,  
 11 and by inserting after subparagraph (M) the fol-  
 12 lowing new subparagraph:

13           “(N) an omission of a correct TIN or phy-  
 14 sician identification required under section  
 15 25E(d) (relating to credit for taxpayers with  
 16 long-term care needs) to be included on a re-  
 17 turn.”.

18           (2) The table of sections for subpart A of part  
 19 IV of subchapter A of chapter 1 of such Code is  
 20 amended by inserting after the item relating to sec-  
 21 tion 25D the following new item:

“Sec. 25E. Credit for taxpayers with long-term care needs.”.

22       (c) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to taxable years beginning after  
 24 December 31, 2009.

1 **SEC. 303. TREATMENT OF PREMIUMS ON QUALIFIED LONG-**  
 2 **TERM CARE INSURANCE CONTRACTS.**

3 (a) IN GENERAL.—

4 (1) CAFETERIA PLANS.—The last sentence of  
 5 section 125(f) of the Internal Revenue Code of 1986  
 6 (defining qualified benefits) is amended by inserting  
 7 before the period at the end “; except that such term  
 8 shall include the payment of premiums for any quali-  
 9 fied long-term care insurance contract (as defined in  
 10 section 7702B) to the extent the amount of such  
 11 payment does not exceed the eligible long-term care  
 12 premiums (as defined in section 213(d)(10)) for  
 13 such contract”.

14 (2) FLEXIBLE SPENDING ARRANGEMENTS.—  
 15 Section 106 of such Code (relating to contributions  
 16 by an employer to accident and health plans) is  
 17 amended by striking subsection (c) and redesign-  
 18 ating subsection (d) as subsection (c).

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 6041 of the Internal Revenue Code  
 21 of 1986 is amended by adding at the end the fol-  
 22 lowing new subsection:

23 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-  
 24 FINED.—For purposes of this section, a flexible spending  
 25 arrangement is a benefit program which provides employ-  
 26 ees with coverage under which—

1 “(1) specified incurred expenses may be reim-  
 2 bursed (subject to reimbursement maximums and  
 3 other reasonable conditions), and

4 “(2) the maximum amount of reimbursement  
 5 which is reasonably available to a participant for  
 6 such coverage is less than 500 percent of the value  
 7 of such coverage.

8 In the case of an insured plan, the maximum amount rea-  
 9 sonably available shall be determined on the basis of the  
 10 underlying coverage.”.

11 (2) The following sections of such Code are  
 12 each amended by striking “section 106(d)” and in-  
 13 serting “section 106(c)”: sections 223(b)(4)(B),  
 14 223(d)(4)(C), 223(f)(3)(B), 3231(e)(11),  
 15 3306(b)(18), 3401(a)(22), 4973(g)(1), and  
 16 4973(g)(2)(B)(i).

17 (3) Section 6041(f)(1) of such Code is amended  
 18 by striking “(as defined in section 106(c)(2))”.

19 (c) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to taxable years beginning after  
 21 December 31, 2009.

22 **SEC. 304. ADDITIONAL CONSUMER PROTECTIONS FOR**  
 23 **LONG-TERM CARE INSURANCE.**

24 (a) ADDITIONAL PROTECTIONS APPLICABLE TO  
 25 LONG-TERM CARE INSURANCE.—Subparagraphs (A) and

1 (B) of section 7702B(g)(2) of the Internal Revenue Code  
 2 of 1986 (relating to requirements of model regulation and  
 3 Act) are amended to read as follows:

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

7 “(i) MODEL REGULATION.—The fol-  
 8 lowing requirements of the model regula-  
 9 tion:

10 “(I) Section 6A (relating to guar-  
 11 anteed renewal or noncancellability),  
 12 other than paragraph (5) thereof, and  
 13 the requirements of section 6B of the  
 14 model Act relating to such section 6A.

15 “(II) Section 6B (relating to pro-  
 16 hibitions on limitations and exclu-  
 17 sions) other than paragraph (7) there-  
 18 of.

19 “(III) Section 6C (relating to ex-  
 20 tension of benefits).

21 “(IV) Section 6D (relating to  
 22 continuation or conversion of cov-  
 23 erage).

1 “(V) Section 6E (relating to dis-  
2 continuance and replacement of poli-  
3 cies).

4 “(VI) Section 7 (relating to unin-  
5 tentional lapse).

6 “(VII) Section 8 (relating to dis-  
7 closure), other than sections 8F, 8G,  
8 8H, and 8I thereof.

9 “(VIII) Section 11 (relating to  
10 prohibitions against post-claims un-  
11 derwriting).

12 “(IX) Section 12 (relating to  
13 minimum standards).

14 “(X) Section 13 (relating to re-  
15 quirement to offer inflation protec-  
16 tion).

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

21 “(XII) The provisions of section  
22 28 relating to contingent nonforfeiture  
23 benefits, if the policyholder declines  
24 the offer of a nonforfeiture provision

1 described in paragraph (4) of this  
2 subsection.

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

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

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

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

15 “(B) DEFINITIONS.—For purposes of this  
16 paragraph—

17 “(i) MODEL REGULATION.—The term  
18 ‘model regulation’ means the long-term  
19 care insurance model regulation promul-  
20 gated by the National Association of Insur-  
21 ance Commissioners (as adopted as of De-  
22 cember 2006).

23 “(ii) MODEL ACT.—The term ‘model  
24 Act’ means the long-term care insurance  
25 model Act promulgated by the National

1 Association of Insurance Commissioners  
 2 (as adopted as of December 2006).

3 “(iii) COORDINATION.—Any provision  
 4 of the model regulation or model Act listed  
 5 under clause (i) or (ii) of subparagraph  
 6 (A) shall be treated as including any other  
 7 provision of such regulation or Act nec-  
 8 essary to implement the provision.

9 “(iv) DETERMINATION.—For pur-  
 10 poses of this section and section 4980C,  
 11 the determination of whether any require-  
 12 ment of a model regulation or the model  
 13 Act has been met shall be made by the  
 14 Secretary.”.

15 (b) EXCISE TAX.—Paragraph (1) of section  
 16 4980C(c) of the Internal Revenue Code of 1986 (relating  
 17 to requirements of model provisions) is amended to read  
 18 as follows:

19 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

20 “(A) MODEL REGULATION.—The following  
 21 requirements of the model regulation must be  
 22 met:

23 “(i) Section 9 (relating to required  
 24 disclosure of rating practices to consumer).

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

3 “(iii) Section 15 (relating to reporting  
4 requirements).

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

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.

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

14 “(vii) Section 26 (relating to policy-  
15 holder notifications).

16 “(viii) Section 27 (relating to the  
17 right to reduce coverage and lower pre-  
18 miums).

19 “(ix) Section 31 (relating to standard  
20 format outline of coverage).

21 “(x) Section 32 (relating to require-  
22 ment to deliver shopper’s guide).

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

1 “(i) Section 6F (relating to right to  
2 return).

3 “(ii) Section 6G (relating to outline of  
4 coverage).

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

7 “(iv) Section 6J (relating to policy  
8 summary).

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

11 “(vi) Section 7 (relating to incontest-  
12 ability period).

13 “(vii) Section 9 (relating to producer  
14 training requirements).

15 “(C) DEFINITIONS.—For purposes of this  
16 paragraph, the terms ‘model regulation’ and  
17 ‘model Act’ have the meanings given such terms  
18 by section 7702B(g)(2)(B).”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to policies issued more than 1 year  
21 after the date of the enactment of this Act.

1 **TITLE IV—PROMOTING AND**  
 2 **PROTECTING COMMUNITY**  
 3 **LIVING**

4 **SEC. 401. MANDATORY APPLICATION OF SPOUSAL IMPOV-**  
 5 **ERISHMENT PROTECTIONS TO RECIPIENTS**  
 6 **OF HOME AND COMMUNITY-BASED SERVICES.**

7 (a) IN GENERAL.—Section 1924(h)(1)(A) of the So-  
 8 cial Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amend-  
 9 ed by striking “(at the option of the State) is described  
 10 in section 1902(a)(10)(A)(ii)(VI)” and inserting “is eligi-  
 11 ble for medical assistance for home and community-based  
 12 services under subsection (c), (d), (e), (i), or (k) of section  
 13 1915”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 subsection (a) takes effect on October 1, 2009.

16 **SEC. 402. STATE AUTHORITY TO ELECT TO EXCLUDE UP TO**  
 17 **6 MONTHS OF AVERAGE COST OF NURSING**  
 18 **FACILITY SERVICES FROM ASSETS OR RE-**  
 19 **SOURCES FOR PURPOSES OF ELIGIBILITY**  
 20 **FOR HOME AND COMMUNITY-BASED SERV-**  
 21 **ICES.**

22 (a) IN GENERAL.—Section 1917 of the Social Secu-  
 23 rity Act (42 U.S.C. 1396p) is amended by adding at the  
 24 end the following new subsection:

1       “(i) STATE AUTHORITY TO EXCLUDE UP TO 6  
2 MONTHS OF AVERAGE COST OF NURSING FACILITY  
3 SERVICES FROM HOME AND COMMUNITY-BASED SERV-  
4 ICES ELIGIBILITY DETERMINATIONS.—Nothing in this  
5 section or any other provision of this title, shall be con-  
6 strued as prohibiting a State from excluding from any de-  
7 termination of an individual’s assets or resources for pur-  
8 poses of determining the eligibility of the individual for  
9 medical assistance for home and community-based services  
10 under subsection (c), (d), (e), (i), or (k) of section 1915  
11 (if a State imposes an limitation on assets or resources  
12 for purposes of eligibility for such services), an amount  
13 equal to the product of the amount applicable under sub-  
14 section (c)(1)(E)(ii)(II) (at the time such determination  
15 is made) and such number, not to exceed 6, as the State  
16 may elect.”.

17       (b) RULE OF CONSTRUCTION.—Nothing in the  
18 amendment made by subsection (a) shall be construed as  
19 affecting a State’s option to apply less restrictive meth-  
20 odologies under section 1902(r)(2) for purposes of deter-  
21 mining income and resource eligibility for individuals spec-  
22 ified in that section.

23       (c) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) takes effect on October 1, 2009.

# 1       **TITLE V—MISCELLANEOUS**

## 2   **SEC. 501. IMPROVED DATA COLLECTION.**

3       (a) SECRETARIAL REQUIREMENT TO REVISE DATA  
4 REPORTING FORMS AND SYSTEMS TO ENSURE UNIFORM  
5 AND CONSISTENT REPORTING BY STATES.—Not later  
6 than 6 months after the date of enactment of this Act,  
7 the Secretary of Health and Human Services, acting  
8 through the Administrator of the Centers for Medicare &  
9 Medicaid Services, shall revise CMS Form 372, CMS  
10 Form 64, and CMS Form 64.9 (or any successor forms)  
11 and the Medicaid Statistical Information Statistics  
12 (MSIS) claims processing system to ensure that, with re-  
13 spect to any State that provides medical assistance to indi-  
14 viduals under a waiver or State plan amendment approved  
15 under subsection (c), (d), (e), (i), (j), or (k) of section  
16 1915 of the Social Security Act (42 U.S.C. 1396n), the  
17 State reports to the Secretary, not less than annually and  
18 in a manner that is consistent and uniform for all States  
19 (and, in the case of medical assistance provided under a  
20 waiver or State plan amendment under any such sub-  
21 section for home and community-based services, in a man-  
22 ner that is consistent and uniform with the data required  
23 to be reported for purposes of monitoring or evaluating  
24 the provision of such services under the State plan or  
25 under a waiver approved under section 1115 of the Social

1 Security Act (42 U.S.C. 1315) to provide such services)  
2 the following data:

3 (1) The total number of individuals provided  
4 medical assistance for such services under each waiver  
5 er to provide such services conducted by the State  
6 and each State plan amendment option to provide  
7 such services elected by the State.

8 (2) The total amount of expenditures incurred  
9 for such services under each such waiver and State  
10 plan amendment option, disaggregated by expendi-  
11 tures for medical assistance and administrative or  
12 other expenditures.

13 (3) The types of such services provided by the  
14 State under each such waiver and State plan amend-  
15 ment option.

16 (4) The number of individuals on a waiting list  
17 (if any) to be enrolled under each such waiver and  
18 State plan amendment option or to receive services  
19 under each such waiver and State plan amendment  
20 option.

21 (5) With respect to home health services, pri-  
22 vate duty nursing services, case management serv-  
23 ices, and rehabilitative services provided under each  
24 such waiver and State plan amendment option, the  
25 total number of individuals provided each type of

1       such services, the total amount of expenditures in-  
2       curred for each type of services, and whether each  
3       such service was provided for long-term care or  
4       acute care purposes.

5       (b) PUBLIC AVAILABILITY.—Not later than 6 months  
6       after the date of enactment of this Act, the Secretary of  
7       Health and Human Services, acting through the Adminis-  
8       trator of the Centers for Medicare & Medicaid Services,  
9       shall make publicly available, in a State identifiable man-  
10      ner, the data described in subsection (a) through an Inter-  
11      net website and otherwise as the Secretary determines ap-  
12      propriate.

13   **SEC. 502. GAO REPORT ON MEDICAID HOME HEALTH SERV-**  
14                   **ICES AND THE EXTENT OF CONSUMER SELF-**  
15                   **DIRECTION OF SUCH SERVICES.**

16      (a) STUDY.—The Comptroller General of the United  
17      States shall study the provision of home health services  
18      under State Medicaid plans under title XIX of the Social  
19      Security Act. Such study shall include an examination of  
20      the extent to which there are variations among the States  
21      with respect to the provision of home health services in  
22      general under State Medicaid plans, including the extent  
23      to which such plans impose limits on the types of services  
24      that a home health aide may provide a Medicaid bene-  
25      ficiary and the extent to which States offer consumer self-

1 direction of such services or allow for other consumer-ori-  
2 ented policies with respect to such services.

3 (b) REPORT.—Not later than 1 year after the date  
4 of enactment of this Act, the Comptroller General shall  
5 submit a report to Congress on the results of the study  
6 conducted under subsection (a), together with such rec-  
7 ommendations for legislative or administrative changes as  
8 the Comptroller General determines appropriate in order  
9 to provide home health services under State Medicaid  
10 plans in accordance with identified best practices for the  
11 provision of such services.

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