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,

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

- Section 101. NAIC national market survey.
- Section 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.

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 nurs-
ing-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 ap-
propriate, 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) \textbf{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) \textbf{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) \textbf{Standardized Methodology for Calculating Inflation Protection}.—Standardized methodology for use by issuers to use to calculate inflation protection under such policies.

(2) \textbf{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 in-
cludes the following:

“(aa) The medical assistance
provided under each State’s Med-
icaid program for nursing facility
services and other long-term care
services (including any functional
criteria imposed for receipt of
such services, as reported in ac-
cordance with section
1902(a)(28)(D) of the Social Se-
curity Act) and any differences
from benefits and services offered
under long-term care insurance
policies in the State and the cri-
tera for triggering receipt of
such benefits and services.

“(bb) If the State has a
qualified State long-term care in-
surance partnership under sec-
1917(b)(1)(C)(iii) of the So-
cial Security Act, information re-
arding how and when an indi-
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 ``(but'';

(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,''.

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(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

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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 in-
surance contract qualifying for treatment as a quali-
fied long-term care insurance contract under the In-
ternal Revenue Code of 1986, the Secretary, shall
promulgate an interim final rule applying such pro-
visions 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 provi-
sions 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 part-
nership under section 1917(b)(1)(C)(iii) of such Act
(42 U.S.C. 1396p(b)(1)(C)(iii)), the Secretary, shall
promulgate an interim final rule applying such pro-
visions for such purposes not later than 3 months
after making such determination.

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

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

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

(4) Rule of Construction relating to Ap-
lication of Congressional Review Act.—Nothing
in paragraphs (1), (2), or (3) shall be construed
as affecting the application of the sections 801
through 808 of title 5, United States Code (com-
monly known as the “Congressional Review Act”) to
any interim final rule issued in accordance with such paragraphs.

(5) TECHNICAL AMENDMENT ELIMINATING PRIOR REVIEW STANDARD MADE OBSOLETE.—Section 1917(b)(5) of the Social Security Act (42 U.S.C. 1396p(b)(5)) is amended by striking subparagraph (C).

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

(1) each provision of the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000 and as of December 2006);

(2) each provision of the model language relating to marketing disclosures and definitions developed under section 102(b)(1); and

(3) each provision of any long-term care insurance model regulation, or the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners and adopted after December 2006.
TITLE III—IMPROVED CONSUMER PROTECTIONS FOR MEDICAID PARTNERSHIP POLICIES

SEC. 301. BIENNIAL REPORTS ON IMPACT OF MEDICAID LONG-TERM CARE INSURANCE PARTNERSHIPS.

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

“(c) Biennial Reports.—

“(1) In general.—Not later than January 1, 2010, and biennially thereafter, the Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall issue a report to States and Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(ii)). Each report shall include (with respect to the period the report addresses) the following information, nationally and on a State-specific basis:

“(A) Analyses of the extent to which such partnerships improve access of individuals to affordable long-term care services and benefits and the impact of such partnerships on Federal
and State expenditures on long-term care under
the Medicare and Medicaid programs.

“(B) Analyses of the impact of such part-
nerships on consumer decisionmaking with re-
spect to purchasing, accessing, and retaining
coverage under long-term care insurance poli-
cies (as defined in subsection (d)(2)(D)), in-
cluding a description of the benefits and serv-
ices offered under such policies, the average
premiums for coverage under such policies, the
number of policies sold and at what ages, the
number of policies retained and for how long,
the number of policies for which coverage was
exhausted, and the number of insured individ-
uals who were determined eligible for medical
assistance under the State Medicaid program.

“(2) DATA.—The reports by issuers of partner-
ship long-term care insurance policies required under
section 1917(b)(1)(C)(iii)(VI) of the Social Security
Act shall include such data as the Secretary shall
specify in order to conduct the analyses required
under paragraph (1).

“(3) PUBLIC AVAILABILITY.—The Secretary
shall make each report issued under this subsection
publicly available through the LTC Insurance Compare website required under subsection (d).

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

“(5) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this subsection, $1,000,000 for the period of fiscal years 2010 through 2012.”.

SEC. 302. ADDITIONAL CONSUMER PROTECTIONS FOR MEDICAID PARTNERSHIPS.

(a) APPLICATION OF 2006 MODEL PROVISIONS.—

(1) UPDATING OF 2000 REQUIREMENTS.—

(A) IN GENERAL.—Section 1917(b)(5)(B)(i) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(i)) is amended by striking “October 2000” and inserting “December 2006”.

(B) CONFORMING AMENDMENTS.—

(i) Subclause (XVII) of such section is amended by striking “section 26” and inserting “section 28”.

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

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

(2) Application to Grandfathered Partnerships.—Section 1917(b)(1)(C)(iv) of such Act (42 U.S.C. 1396p(b)(1)(C)(iv)) is amended by inserting “, and the State satisfies the requirements of paragraph (5)” after “2005”.

(b) Application of Producer Training Model Act Requirements.—Section 1917(b)(1)(C) of such Act (42 U.S.C. 1396p(b)(1)(C)) is amended—

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

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

(c) Application of Additional Requirements for All Partnerships.—Section 1917(b) of the Social Security Act (42 U.S.C. 1396p(b)) is amended—

(1) in paragraph (1)(C)—
(A) in clause (iii)—

(i) by inserting after subclause (VII) the following new subclause:

“(VIII) The State satisfies the requirements of paragraph (6).”; and

(ii) in the flush sentence at the end, by striking “paragraph (5)” and inserting “paragraphs (5) and (6)”; and

(B) in clause (iv), as amended by subsections (a)(2) and (b)(2), by striking “paragraph (5)” and inserting “paragraphs (5) and (6)”;

(2) by adding at the end the following new paragraph:

“(6) For purposes of clauses (iii)(VIII) and (iv) of paragraph (1)(C), the requirements of this paragraph are the following:

“(A) The State requires issuers of long-term care insurance policies to—

“(i) use marketing materials approved by the State for purposes of the partnership verbatim in all sales and marketing activities conducted or supported by the issuers in the State with respect to any long-term care insurance policies marketed by the issuer in the State;
“(ii) provide such materials to all agents selling long-term care insurance policies in the State;

“(iii) ensure that agent training and education courses conducted or supported by the issuers incorporate such materials; and

“(iv) make such materials available to any consumer upon request, and to make such materials available to all prospective purchasers of a policy offered under a qualified State long-term care insurance partnership before submission of an application for coverage under that policy.

“(B) The State requires issuers of long-term care insurance policies to require agents to use the inflation protection comparison form developed by the National Association of Insurance Commissioners in accordance with section 102(b)(1)(C) of the Confidence in Long-Term Care Insurance Act of 2009 when selling the policies in the State.

“(C) The State requires issuers of long-term care insurance policies sold in the State to comply with the provisions of section 8 of the model Act specified in paragraph (5) relating to contingent nonforfeiture benefits.
“(D) The State enacts legislation, not later than January 1, 2012, that establishes rate stability standards for all issuers of long-term care insurance policies sold in the State that are no less stringent than the premium rate schedule increase standards specified in section 20 of the model regulation specified in paragraph (5).

“(E) The State develops, updates whenever changes are made under the State plan that relate to eligibility for medical assistance for nursing facility services or other long-term care services or the amount, duration, or scope of such assistance, and provides public, readily accessible materials that describe in clear, simple language the terms of such eligibility, the benefits and services provided as such assistance, and rules relating to adjustment or recovery from the estate of an individual who receives such assistance under the State plan. Such materials shall include a clear disclosure that medical assistance is not guaranteed to partnership policyholders who exhaust benefits under a partnership policy, and that Federal changes to the program under this title or State changes to the State plan may affect an individual’s eligibility for, or receipt of, such assistance.
“(F) The State—

“(i) through the State Medicaid agency under section 1902(a)(5) and in consultation with the State insurance department, develops written materials explaining how the benefits and rules of long-term care policies offered by issuers participating in the partnership interact with the benefits and rules under the State plan under this title;

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

“(iii) informs holders of such policies of any changes in eligibility requirements under the State plan under this title and of any changes in estate recovery rules under the State plan as soon as practicable after such changes are made; and

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

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

“(i) inform consumers about changes in long-term care policies offered by issuers participating in the partnership, changes in the amount, duration, or scope of medical assistance for nursing facility services or other long-term care services offered under the State plan, changes in consumer protections, and any other issues such agency and department determine appropriate; and

“(ii) jointly maintain a nonpublic database of partnership policyholders for purposes of facilitating coordination in eligibility determinations for medical assistance under the State plan and the provision of benefits or other services under such policies and medical assistance provided under the State plan that includes—

“(I) the number of policyholders applying for medical assistance under the State plan; and
“(II) the number of policyholders deemed eligible (and, if applicable, ineligible) for such assistance.

“(II) The State does not apply any limit to the disregard, for purposes of determining the eligibility of a partnership policyholder for medical assistance under the State plan and for purposes of exemption from the estate recovery requirements under the plan, of benefits provided under a partnership policy, including cash benefits provided for long-term care services, and benefits provided under the policy after the effective date of the policyholder’s enrollment in the State plan.

“(I) The State enters into agreements with other States that have established qualified State long-term care insurance partnerships under which such States agree to provide reciprocity for policyholders under such partnerships.

“(J) The State provides guaranteed asset protection to all individuals covered under a policy offered under a qualified State long-term care insurance partnership who bought such a policy in the State or in another State with such a partnership and with which the State has a reciprocity agreement at the time of purchase.
“(K) At the option of the State, notwithstanding any limitation that would otherwise be imposed under subsection (f), the State disregards any amount of the equity interest in the home of an individual covered of policy offered under a qualified State long-term care insurance partnership for purposes of determining the individual’s eligibility for medical assistance with respect to nursing facility services or other long-term care services.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section take effect on the date that is 1 year after 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 in order for the plan to meet the additional requirements imposed by the amendments made by this section, 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.

SEC. 303. REPORT TO CONGRESS REGARDING NEED FOR MINIMUM ANNUAL COMPOUND INFLATION PROTECTION.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit a report to Congress that includes the Secretary’s recommendation regarding whether legislative or other administrative action should be taken to require all long-term care insurance policies sold after a date determined by the Secretary in connection 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, provide, at a minimum, 5 percent annual compound inflation protection, and if so, whether such requirements should be imposed.
on a basis related to the age of the policyholder at the
time of purchase. The Secretary shall include in the report
information on the various levels of inflation protection
available under such long-term care insurance partner-
ships and the methodologies used by issuers of such poli-
cies to calculate and present various inflation protection
options under such policies, including policies with a fu-
ture purchase option feature.