

106TH CONGRESS
2D SESSION

H. R. 4040

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2000

Mr. SCARBOROUGH (for himself, Mr. CUMMINGS, Mr. MICA, Ms. NORTON, Mr. MILLER of Florida, and Mr. ALLEN) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, 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.**

4 This Act may be cited as the “Long-Term Care Secu-
5 rity Act”.

1 **SEC. 2. LONG-TERM CARE INSURANCE.**

2 (a) IN GENERAL.—Subpart G of part III of title 5,
 3 United States Code, is amended by adding at the end the
 4 following:

5 **“CHAPTER 90—LONG-TERM CARE**
 6 **INSURANCE**

“Sec.

“9001. Definitions.

“9002. Availability of insurance.

“9003. Contracting authority.

“9004. Financing.

“9005. Preemption.

“9006. Studies, reports, and audits.

“9007. Jurisdiction of courts.

“9008. Administrative functions.

“9009. Cost accounting standards.

7 **“§ 9001. Definitions**

8 For purposes of this chapter:

9 “(1) EMPLOYEE.—The term ‘employee’
 10 means—

11 “(A) an employee as defined by section
 12 8901(1); and

13 “(B) an individual described in section
 14 2105(e);

15 but does not include an individual employed by the
 16 government of the District of Columbia.

17 “(2) ANNUITANT.—The term ‘annuitant’ has
 18 the meaning such term would have under paragraph
 19 (3) of section 8901 if, for purposes of such para-
 20 graph, the term ‘employee’ were considered to have

1 the meaning given to it under paragraph (1) of this
2 subsection.

3 “(3) MEMBER OF THE UNIFORMED SERV-
4 ICES.—The term ‘member of the uniformed services’
5 means a member of the uniformed services (as de-
6 fined by section 2101(3)).

7 “(4) RETIRED MEMBER OF THE UNIFORMED
8 SERVICES.—The term ‘retired member of the uni-
9 formed services’ means a member of the uniformed
10 services entitled to retired or retainer pay (other
11 than under chapter 1223 of title 10).

12 “(5) QUALIFIED RELATIVE.—The term ‘quali-
13 fied relative’ means each of the following:

14 “(A) The spouse of an individual described
15 in paragraph (1), (2), (3), or (4).

16 “(B) The parent, stepparent, or parent-in-
17 law of an individual described in paragraph (1)
18 or (3).

19 “(C) A child (including an adopted child, a
20 stepchild, or, to the extent the Office of Per-
21 sonnel Management by regulation provides, a
22 foster child) of an individual described in para-
23 graph (1), (2), (3), or (4), if such child is at
24 least 18 years of age.

1 “(6) ELIGIBLE INDIVIDUAL.—The term ‘eligible
2 individual’ refers to an individual described in para-
3 graph (1), (2), (3), (4), or (5).

4 “(7) QUALIFIED CARRIER.—The term ‘qualified
5 carrier’ means an insurance company (or consortium
6 of insurance companies) that is licensed to issue
7 long-term care insurance in all States, taking any
8 subsidiaries of such a company into account (and, in
9 the case of a consortium, considering the member
10 companies and any subsidiaries thereof, collectively).

11 “(8) STATE.—The term ‘State’ includes the
12 District of Columbia.

13 “(9) QUALIFIED LONG-TERM CARE INSURANCE
14 CONTRACT.—The term ‘qualified long-term care in-
15 surance contract’ has the meaning given such term
16 by section 7702B of the Internal Revenue Code of
17 1986.

18 “(10) APPROPRIATE SECRETARY.—The term
19 ‘appropriate Secretary’ means—

20 “(A) except as otherwise provided in this
21 paragraph, the Secretary of Defense;

22 “(B) with respect to the Coast Guard when
23 it is not operating as a service of the Navy, the
24 Secretary of Transportation;

1 “(C) with respect to the commissioned
2 corps of the National Oceanic and Atmospheric
3 Administration, the Secretary of Commerce;
4 and

5 “(D) with respect to the commissioned
6 corps of the Public Health Service, the Sec-
7 retary of Health and Human Services.

8 **“§ 9002. Availability of insurance**

9 “(a) IN GENERAL.—The Office of Personnel Manage-
10 ment shall establish and, in consultation with the appro-
11 priate Secretaries, administer a program through which
12 any individual described in paragraph (1), (2), (3), (4),
13 or (5) of section 9001 may obtain long-term care insur-
14 ance coverage under this chapter for such individual.

15 “(b) GENERAL REQUIREMENTS.—Long-term care in-
16 surance may not be offered under this chapter unless—

17 “(1) the only coverage provided is under quali-
18 fied long-term care insurance contracts; and

19 “(2) each insurance contract under which any
20 such coverage is provided is issued by a qualified
21 carrier.

22 “(c) DOCUMENTATION REQUIREMENT.—As a condi-
23 tion for obtaining long-term care insurance coverage under
24 this chapter based on one’s status as a qualified relative,

1 an applicant shall provide documentation to demonstrate
2 the relationship, as prescribed by the Office.

3 “(d) UNDERWRITING STANDARDS.—

4 “(1) DISQUALIFYING CONDITION.—Nothing in
5 this chapter shall be considered to require that long-
6 term care insurance coverage be made available in
7 the case of any individual who would be eligible for
8 benefits immediately.

9 “(2) SPOUSAL PARITY.—For the purpose of un-
10 derwriting standards, a spouse of an individual de-
11 scribed in paragraph (1), (2), (3), or (4) of section
12 9001 shall, as nearly as practicable, be treated like
13 that individual.

14 “(3) GUARANTEED ISSUE.—Nothing in this
15 chapter shall be considered to require that long-term
16 care insurance coverage be guaranteed to an eligible
17 individual.

18 “(4) REQUIREMENT THAT CONTRACT BE FULLY
19 INSURED.—In addition to the requirements other-
20 wise applicable under section 9001(9), in order to be
21 considered a qualified long-term care insurance con-
22 tract for purposes of this chapter, a contract must
23 be fully insured, whether through reinsurance with
24 other companies or otherwise.

1 “(5) HIGHER STANDARDS ALLOWABLE.—Noth-
2 ing in this chapter shall, in the case of an individual
3 applying for long-term care insurance coverage
4 under this chapter after the expiration of such indi-
5 vidual’s first opportunity to enroll, preclude the ap-
6 plication of underwriting standards more stringent
7 than those that would have applied if that oppor-
8 tunity had not yet expired.

9 “(e) GUARANTEED RENEWABILITY.—The benefits
10 and coverage made available to eligible individuals under
11 any insurance contract under this chapter shall be guaran-
12 teed renewable (as defined by section 7A(2) of the model
13 regulations described in section 7702B(g)(2) of the Inter-
14 nal Revenue Code of 1986), including the right to have
15 insurance remain in effect so long as premiums continue
16 to be timely made. However, the authority to revise pre-
17 miums under this chapter shall be available only on a class
18 basis and only to the extent otherwise allowable under sec-
19 tion 9003(b).

20 **“§ 9003. Contracting authority**

21 “(a) IN GENERAL.—The Office of Personnel Manage-
22 ment shall, without regard to section 5 of title 41 or any
23 other statute requiring competitive bidding, contract with
24 1 or more qualified carriers for a policy or policies of long-
25 term care insurance. The Office shall ensure that each re-

1 sulting contract (hereinafter in this chapter referred to as
2 a ‘master contract’) is awarded on the basis of contractor
3 qualifications, price, and reasonable competition.

4 “(b) TERMS AND CONDITIONS.—

5 “(1) IN GENERAL.—Each master contract
6 under this chapter shall contain—

7 “(A) a detailed statement of the benefits
8 offered (including any maximums, limitations,
9 exclusions, and other definitions of benefits);

10 “(B) the premiums charged (including any
11 limitations or other conditions on their subse-
12 quent adjustment);

13 “(C) the terms of the enrollment period;
14 and

15 “(D) such other terms and conditions as
16 may be mutually agreed to by the Office and
17 the carrier involved, consistent with the require-
18 ments of this chapter.

19 “(2) PREMIUMS.—Premiums charged under
20 each master contract entered into under this section
21 shall reasonably and equitably reflect the cost of the
22 benefits provided, as determined by the Office. The
23 premiums shall not be adjusted during the term of
24 the contract unless mutually agreed to by the Office
25 and the carrier.

1 “(3) NONRENEWABILITY.—Master contracts
2 under this chapter may not be made automatically
3 renewable.

4 “(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE
5 RESOLUTION.—

6 “(1) IN GENERAL.—Each master contract
7 under this chapter shall require the carrier to
8 agree—

9 “(A) to provide payments or benefits to an
10 eligible individual if such individual is entitled
11 thereto under the terms of the contract; and

12 “(B) to participate in administrative proce-
13 dures designed to expeditiously resolve disputes
14 regarding claims for payments or benefits under
15 the terms of the contract, including, in appro-
16 priate circumstances, 1 or more alternative
17 means of dispute resolution involving inde-
18 pendent third-party review.

19 “(2) ELIGIBILITY.—A carrier’s determination
20 as to whether or not a particular individual is eligi-
21 ble to obtain long-term care insurance coverage
22 under this chapter shall be subject to review only to
23 the extent and in the manner provided in the appli-
24 cable master contract.

1 “(4) OTHER CLAIMS.—Disputes arising under
2 this chapter between a carrier and the Office shall,
3 after exhaustion of administrative remedies, be sub-
4 ject to de novo judicial review under section 9007.

5 “(5) RULE OF CONSTRUCTION.—Nothing in
6 this chapter shall be considered to grant authority
7 for the Office or a third-party reviewer to change the
8 terms of any contract under this chapter.

9 “(d) DURATION.—

10 “(1) IN GENERAL.—Each master contract
11 under this chapter shall be for a term of 7 years,
12 unless terminated earlier by the Office in accordance
13 with the terms of such contract. However, the rights
14 and responsibilities of the enrolled individual, the in-
15 surer, and the Office (or duly designated third-party
16 administrator) under such contract shall continue
17 with respect to such individual until the termination
18 of coverage of the enrolled individual or the effective
19 date of a successor contract thereto.

20 “(2) EXCEPTION.—

21 “(A) SHORTER DURATION.—In the case of
22 a master contract entered into before the end of
23 the period described in subparagraph (B), para-
24 graph (1) shall be applied by substituting ‘end-

1 ing on the last day of the 7-year period de-
2 scribed in paragraph (2)(B)' for '7 years'.

3 “(B) DEFINITION.—The period described
4 in this subparagraph is the 7-year period begin-
5 ning on the earliest date as of which any long-
6 term care insurance coverage under this chapter
7 becomes effective.

8 “(3) CONGRESSIONAL NOTIFICATION.—No later
9 than 180 days after receiving the second report re-
10 quired under section 9006(c), the Office of Per-
11 sonnel Management shall submit to the Committees
12 on Government Reform and on Armed Services of
13 the House of Representatives and the Committees
14 on Governmental Affairs and on Armed Services of
15 the Senate, a written recommendation as to whether
16 the program under this chapter should be continued
17 without modification, terminated, or restructured.
18 During the 180-day period following the date on
19 which it submits its recommendation under this
20 paragraph, the Office may not take any steps to
21 rebid or otherwise contract for any coverage to be
22 available at any time following the expiration of the
23 7-year period described in paragraph (2)(B).

24 “(4) FULL PORTABILITY.—Each master con-
25 tract under this chapter shall include such provisions

1 as may be necessary to ensure that, once an indi-
2 vidual becomes duly enrolled, long-term care insur-
3 ance coverage obtained by such individual pursuant
4 to that enrollment shall not be terminated due to
5 any change in status (such as separation from Gov-
6 ernment service or the uniformed services) or ceas-
7 ing to meet the requirements for being considered a
8 qualified relative (whether as a result of dissolution
9 of marriage or otherwise).

10 **“§ 9004. Financing**

11 “(a) IN GENERAL.—Each eligible individual obtain-
12 ing long-term care insurance coverage under this chapter
13 shall be responsible for 100 percent of the premiums for
14 such coverage.

15 “(b) WITHHOLDINGS.—

16 “(1) IN GENERAL.—The amount necessary to
17 pay the premiums for enrollment may—

18 “(A) in the case of an employee, be with-
19 held from the pay of such employee;

20 “(B) in the case of an annuitant, be with-
21 held from the annuity of such annuitant;

22 “(C) in the case of a member of the uni-
23 formed services described in section 9001(3), be
24 withheld from the basic pay of such member;
25 and

1 “(D) in the case of a retired member of
2 the uniformed services described in section
3 9001(4), be withheld from the retired pay or re-
4 tainer pay payable to such member.

5 “(2) VOLUNTARY WITHHOLDINGS FOR QUALI-
6 FIED RELATIVES.—Withholdings to pay the pre-
7 miums for enrollment of a qualified relative may,
8 upon election of the appropriate eligible individual
9 (described in section 9001(1)–(4)), be withheld
10 under paragraph (1) to the same extent and in the
11 same manner as if enrollment were for such indi-
12 vidual.

13 “(c) DIRECT PAYMENTS.—All amounts withheld
14 under this section shall be paid directly to the carrier.

15 “(d) OTHER FORMS OF PAYMENT.—Any enrollee
16 who does not elect to have premiums withheld under sub-
17 section (b) or whose pay, annuity, or retired or retainer
18 pay (as referred to in subsection (b)(1)) is insufficient to
19 cover the withholding required for enrollment (or who is
20 not receiving any regular amounts from the Government,
21 as referred to in subsection (b)(1), from which any such
22 withholdings may be made, and whose premiums are not
23 otherwise being provided for under subsection (b)(2)) shall
24 pay an amount equal to the full amount of those charges
25 directly to the carrier.

1 “(e) SEPARATE ACCOUNTING REQUIREMENT.—Each
2 carrier participating under this chapter shall maintain
3 records that permit it to account for all amounts received
4 under this chapter (including investment earnings on
5 those amounts) separate and apart from all other funds.

6 “(f) REIMBURSEMENTS.—

7 “(1) The Office shall have access to the unused
8 funds in the Administrative Reserve of the Employ-
9 ees Health Benefits Fund for its reasonable ex-
10 penses in administering this chapter, including rea-
11 sonable initial implementation costs.

12 “(2) Each master contract under this chapter
13 shall include appropriate provisions under which the
14 carrier involved shall reimburse the Employees
15 Health Benefits Fund for funds accessed under
16 paragraph (1) (including lost investment income), on
17 a pro rata basis.

18 **“§ 9005. Preemption**

19 The terms of any contract under this chapter which
20 relate to the nature, provision, or extent of coverage or
21 benefits (including payments with respect to benefits)
22 shall supersede and preempt any State or local law, or
23 any regulation issued thereunder, which relates to long-
24 term care insurance or contracts.

1 **“§ 9006. Studies, reports, and audits**

2 “(a) PROVISIONS RELATING TO CARRIERS.—Each
3 master contract under this chapter shall contain provi-
4 sions requiring the carrier—

5 “(1) to furnish such reasonable reports as the
6 Office of Personnel Management determines to be
7 necessary to enable it to carry out its functions
8 under this chapter; and

9 “(2) to permit the Office and representatives of
10 the General Accounting Office to examine such
11 records of the carrier as may be necessary to carry
12 out the purposes of this chapter.

13 “(b) PROVISIONS RELATING TO FEDERAL AGEN-
14 CIES.—Each Federal agency shall keep such records,
15 make such certifications, and furnish the Office, the car-
16 rier, or both, with such information and reports as the
17 Office may require.

18 “(c) REPORTS BY THE GENERAL ACCOUNTING OF-
19 FICE.—The General Accounting Office shall prepare and
20 submit to the Office of Personnel Management and each
21 House of Congress, before the end of the third and fifth
22 years during which the program under this chapter is in
23 effect, a written report evaluating such program. Each
24 such report shall include an analysis of the competitive-
25 ness of the program, as compared to both group and indi-
26 vidual coverage generally available to individuals in the

1 private insurance market. The Office shall cooperate with
2 the General Accounting Office to provide periodic evalua-
3 tions of the program.

4 **“§ 9007. Jurisdiction of courts**

5 “The district courts of the United States have origi-
6 nal jurisdiction of a civil action or claim against the
7 United States or a carrier founded on this chapter, after
8 exhausting such administrative remedies as required
9 under section 9003(c)(2) or (4), but only to the extent
10 judicial review is not precluded by any dispute resolution
11 or other administrative remedy under this chapter. In
12 cases against the United States, the jurisdiction of the dis-
13 trict courts shall be concurrent with the United States
14 Court of Federal Claims.

15 **“§ 9008. Administrative functions**

16 “(a) IN GENERAL.—The Office shall prescribe regu-
17 lations necessary to carry out this chapter.

18 “(b) ENROLLMENT PERIODS.—The Office shall pro-
19 vide for periodic coordinated enrollment, promotion, and
20 education efforts in consultation with the carriers.

21 “(c) CONSULTATION.—Any regulations necessary to
22 effect the application and operation of this chapter with
23 respect to an eligible individual described in paragraph (3)
24 or (4) of section 9001, or a qualified relative thereof, shall

1 be prescribed by the Office in consultation with the appro-
 2 priate Secretary.

3 **“§ 9009. Cost accounting standards**

4 The cost accounting standards issued pursuant to
 5 section 26(f) of the Office of Federal Procurement Policy
 6 Act (41 U.S.C. 422(f)) shall not apply with respect to a
 7 long-term care insurance contract under this chapter.”.

8 (b) CONFORMING AMENDMENT.—The analysis for
 9 part III of title 5, United States Code, is amended by add-
 10 ing at the end of subpart G the following:

“90. Long-Term Care Insurance 9001.”.

11 **SEC. 3. EFFECTIVE DATE.**

12 The Office of Personnel Management shall take such
 13 measures as may be necessary to ensure that long-term
 14 care insurance coverage under title 5, United States Code,
 15 as amended by this Act, may be obtained in time to take
 16 effect not later than the first day of the first applicable
 17 pay period of the first fiscal year which begins after the
 18 end of the 18-month period beginning on the date of en-
 19 actment of this Act.

○