

106TH CONGRESS
2^D SESSION

H. R. 4040

IN THE SENATE OF THE UNITED STATES

MAY 10, 2000

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

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”.

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

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

10 **“CHAPTER 90—LONG-TERM CARE**
 11 **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.

12 **“§ 9001. Definitions**

13 For purposes of this chapter:

14 “(1) EMPLOYEE.—The term ‘employee’
 15 means—

16 “(A) an employee as defined by section
 17 8901(1); and

18 “(B) an individual described in section
 19 2105(e),

1 but does not include an individual employed by the
2 government of the District of Columbia.

3 “(2) ANNUITANT.—The term ‘annuitant’ has
4 the meaning such term would have under paragraph
5 (3) of section 8901 if, for purposes of such para-
6 graph, the term ‘employee’ were considered to have
7 the meaning given to it under paragraph (1) of this
8 subsection.

9 “(3) MEMBER OF THE UNIFORMED SERV-
10 ICES.—The term ‘member of the uniformed services’
11 means a member of the uniformed services, other
12 than a retired member of the uniformed services,
13 who is—

14 “(A) on active duty or full-time National
15 Guard duty for a period of more than 30 days;
16 and

17 “(B) a member of the Selected Reserve.

18 “(4) RETIRED MEMBER OF THE UNIFORMED
19 SERVICES.—The term ‘retired member of the uni-
20 formed services’ means a member or former member
21 of the uniformed services entitled to retired or re-
22 tainer pay, including a member or former member
23 retired under chapter 1223 of title 10 who has at-
24 tained the age of 60 and who satisfies such eligi-

1 bility requirements as the Office of Personnel Man-
2 agement prescribes under section 9008.

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

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

7 “(B) A parent, stepparent, or parent-in-
8 law of an individual described in paragraph (1)
9 or (3).

10 “(C) A child (including an adopted child, a
11 stepchild, or, to the extent the Office of Per-
12 sonnel Management by regulation provides, a
13 foster child) of an individual described in para-
14 graph (1), (2), (3), or (4), if such child is at
15 least 18 years of age.

16 “(D) An individual having such other rela-
17 tionship to an individual described in paragraph
18 (1), (2), (3), or (4) as the Office may by regula-
19 tion prescribe.

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

23 “(7) QUALIFIED CARRIER.—The term ‘qualified
24 carrier’ means an insurance company (or consortium
25 of insurance companies) that is licensed to issue

1 long-term care insurance in all States, taking any
2 subsidiaries of such a company into account (and, in
3 the case of a consortium, considering the member
4 companies and any subsidiaries thereof, collectively).

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

7 “(9) QUALIFIED LONG-TERM CARE INSURANCE
8 CONTRACT.—The term ‘qualified long-term care in-
9 surance contract’ has the meaning given such term
10 by section 7702B of the Internal Revenue Code of
11 1986.

12 “(10) APPROPRIATE SECRETARY.—The term
13 ‘appropriate Secretary’ means—

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

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

19 “(C) with respect to the commissioned
20 corps of the National Oceanic and Atmospheric
21 Administration, the Secretary of Commerce;
22 and

23 “(D) with respect to the commissioned
24 corps of the Public Health Service, the Sec-
25 retary of Health and Human Services.

1 **“§ 9002. Availability of insurance**

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

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

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

12 “(2) each insurance contract under which any
13 such coverage is provided is issued by a qualified
14 carrier.

15 “(c) DOCUMENTATION REQUIREMENT.—As a condi-
16 tion for obtaining long-term care insurance coverage under
17 this chapter based on one’s status as a qualified relative,
18 an applicant shall provide documentation to demonstrate
19 the relationship, as prescribed by the Office.

20 “(d) UNDERWRITING STANDARDS.—

21 “(1) DISQUALIFYING CONDITION.—Nothing in
22 this chapter shall be considered to require that long-
23 term care insurance coverage be made available in
24 the case of any individual who would be eligible for
25 benefits immediately.

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

6 “(3) GUARANTEED ISSUE.—Nothing in this
7 chapter shall be considered to require that long-term
8 care insurance coverage be guaranteed to an eligible
9 individual.

10 “(4) REQUIREMENT THAT CONTRACT BE FULLY
11 INSURED.—In addition to the requirements other-
12 wise applicable under section 9001(9), in order to be
13 considered a qualified long-term care insurance con-
14 tract for purposes of this chapter, a contract must
15 be fully insured, whether through reinsurance with
16 other companies or otherwise.

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

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

12 **“§ 9003. Contracting authority**

13 “(a) IN GENERAL.—The Office of Personnel Manage-
14 ment shall, without regard to section 5 of title 41 or any
15 other statute requiring competitive bidding, contract with
16 one or more qualified carriers for a policy or policies of
17 long-term care insurance. The Office shall ensure that
18 each resulting contract (hereafter in this chapter referred
19 to as a ‘master contract’) is awarded on the basis of con-
20 tractor qualifications, price, and reasonable competition.

21 “(b) TERMS AND CONDITIONS.—

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

1 “(A) a detailed statement of the benefits
2 offered (including any maximums, limitations,
3 exclusions, and other definitions of benefits);

4 “(B) the premiums charged (including any
5 limitations or other conditions on their subse-
6 quent adjustment);

7 “(C) the terms of the enrollment period;
8 and

9 “(D) such other terms and conditions as
10 may be mutually agreed to by the Office and
11 the carrier involved, consistent with the require-
12 ments of this chapter.

13 “(2) PREMIUMS.—Premiums charged under
14 each master contract entered into under this section
15 shall reasonably and equitably reflect the cost of the
16 benefits provided, as determined by the Office. The
17 premiums shall not be adjusted during the term of
18 the contract unless mutually agreed to by the Office
19 and the carrier.

20 “(3) NONRENEWABILITY.—Master contracts
21 under this chapter may not be made automatically
22 renewable.

23 “(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE
24 RESOLUTION.—

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

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

7 “(B) with respect to disputes regarding
8 claims for payments or benefits under the terms
9 of the contract—

10 “(i) to establish internal procedures
11 designed to expeditiously resolve such dis-
12 putes; and

13 “(ii) to establish, for disputes not re-
14 solved through procedures under clause (i),
15 procedures for one or more alternative
16 means of dispute resolution involving inde-
17 pendent third-party review under appro-
18 priate circumstances by entities mutually
19 acceptable to the Office and the carrier.

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

1 “(3) OTHER CLAIMS.—For purposes of apply-
2 ing the Contract Disputes Act of 1978 to disputes
3 arising under this chapter between a carrier and the
4 Office—

5 “(A) the agency board having jurisdiction
6 to decide an appeal relative to such a dispute
7 shall be such board of contract appeals as the
8 Director of the Office of Personnel Management
9 shall specify in writing (after appropriate ar-
10 rangements, as described in section 8(c) of such
11 Act); and

12 “(B) the district courts of the United
13 States shall have original jurisdiction, concu-
14 rent with the United States Court of Federal
15 Claims, of any action described in section
16 10(a)(1) of such Act relative to such a dispute.

17 “(4) RULE OF CONSTRUCTION.—Nothing in
18 this chapter shall be considered to grant authority
19 for the Office or a third-party reviewer to change the
20 terms of any contract under this chapter.

21 “(d) DURATION.—

22 “(1) IN GENERAL.—Each master contract
23 under this chapter shall be for a term of 7 years,
24 unless terminated earlier by the Office in accordance
25 with the terms of such contract. However, the rights

1 and responsibilities of the enrolled individual, the in-
2 surer, and the Office (or duly designated third-party
3 administrator) under such contract shall continue
4 with respect to such individual until the termination
5 of coverage of the enrolled individual or the effective
6 date of a successor contract thereto.

7 “(2) EXCEPTION.—

8 “(A) SHORTER DURATION.—In the case of
9 a master contract entered into before the end of
10 the period described in subparagraph (B), para-
11 graph (1) shall be applied by substituting ‘end-
12 ing on the last day of the 7-year period de-
13 scribed in paragraph (2)(B)’ for ‘of 7 years’.

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

19 “(3) CONGRESSIONAL NOTIFICATION.—No later
20 than 180 days after receiving the second report re-
21 quired under section 9006(c), the President (or his
22 designee) shall submit to the Committees on Govern-
23 ment Reform and on Armed Services of the House
24 of Representatives and the Committees on Govern-
25 mental Affairs and on Armed Services of the Senate,

1 a written recommendation as to whether the pro-
2 gram under this chapter should be continued with-
3 out modification, terminated, or restructured. Dur-
4 ing the 180-day period following the date on which
5 the President (or his designee) submits the rec-
6 ommendation required under the preceding sentence,
7 the Office of Personnel Management may not take
8 any steps to rebid or otherwise contract for any cov-
9 erage to be available at any time following the expi-
10 ration of the 7-year period described in paragraph
11 (2)(B).

12 “(4) FULL PORTABILITY.—Each master con-
13 tract under this chapter shall include such provisions
14 as may be necessary to ensure that, once an indi-
15 vidual becomes duly enrolled, long-term care insur-
16 ance coverage obtained by such individual pursuant
17 to that enrollment shall not be terminated due to
18 any change in status (such as separation from Gov-
19 ernment service or the uniformed services) or ceas-
20 ing to meet the requirements for being considered a
21 qualified relative (whether as a result of dissolution
22 of marriage or otherwise).

23 **“§ 9004. Financing**

24 “(a) IN GENERAL.—Each eligible individual obtain-
25 ing long-term care insurance coverage under this chapter

1 shall be responsible for 100 percent of the premiums for
2 such coverage.

3 “(b) WITHHOLDINGS.—

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

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

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

10 “(C) in the case of a member of the uni-
11 formed services described in section 9001(3), be
12 withheld from the pay of such member; and

13 “(D) in the case of a retired member of
14 the uniformed services described in section
15 9001(4), be withheld from the retired pay or re-
16 tainer pay payable to such member.

17 “(2) VOLUNTARY WITHHOLDINGS FOR QUALI-
18 FIED RELATIVES.—Withholdings to pay the pre-
19 miums for enrollment of a qualified relative may,
20 upon election of the appropriate eligible individual
21 (described in section 9001(1)–(4)), be withheld
22 under paragraph (1) to the same extent and in the
23 same manner as if enrollment were for such indi-
24 vidual.

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

3 “(d) OTHER FORMS OF PAYMENT.—Any enrollee
4 who does not elect to have premiums withheld under sub-
5 section (b) or whose pay, annuity, or retired or retainer
6 pay (as referred to in subsection (b)(1)) is insufficient to
7 cover the withholding required for enrollment (or who is
8 not receiving any regular amounts from the Government,
9 as referred to in subsection (b)(1), from which any such
10 withholdings may be made, and whose premiums are not
11 otherwise being provided for under subsection (b)(2)) shall
12 pay an amount equal to the full amount of those charges
13 directly to the carrier.

14 “(e) SEPARATE ACCOUNTING REQUIREMENT.—Each
15 carrier participating under this chapter shall maintain
16 records that permit it to account for all amounts received
17 under this chapter (including investment earnings on
18 those amounts) separate and apart from all other funds.

19 “(f) REIMBURSEMENTS.—

20 “(1) REASONABLE INITIAL COSTS.—

21 “(A) IN GENERAL.—The Employees’ Life
22 Insurance Fund is available, without fiscal year
23 limitation, for reasonable expenses incurred by
24 the Office of Personnel Management in admin-
25 istering this chapter before the start of the 7-

1 year period described in section 9003(d)(2)(B),
2 including reasonable implementation costs.

3 “(B) REIMBURSEMENT REQUIREMENT.—
4 Such Fund shall be reimbursed, before the end
5 of the first year of that 7-year period, for all
6 amounts obligated or expended under subpara-
7 graph (A) (including lost investment income).
8 Such reimbursement shall be made by carriers,
9 on a pro rata basis, in accordance with appro-
10 priate provisions which shall be included in
11 master contracts under this chapter.

12 “(2) SUBSEQUENT COSTS.—

13 “(A) IN GENERAL.—There is hereby estab-
14 lished in the Employees’ Life Insurance Fund a
15 Long-Term Care Administrative Account, which
16 shall be available to the Office, without fiscal
17 year limitation, to defray reasonable expenses
18 incurred by the Office in administering this
19 chapter after the start of the 7-year period de-
20 scribed in section 9003(d)(2)(B).

21 “(B) REIMBURSEMENT REQUIREMENT.—
22 Each master contract under this chapter shall
23 include appropriate provisions under which the
24 carrier involved shall, during each year, make
25 such periodic contributions to the Long-Term

1 Care Administrative Account as necessary to
2 ensure that the reasonable anticipated expenses
3 of the Office in administering this chapter dur-
4 ing such year (adjusted to reconcile for any ear-
5 lier overestimates or underestimates under this
6 subparagraph) are defrayed.

7 **“§ 9005. Preemption**

8 “The terms of any contract under this chapter which
9 relate to the nature, provision, or extent of coverage or
10 benefits (including payments with respect to benefits)
11 shall supersede and preempt any State or local law, or
12 any regulation issued thereunder, which relates to long-
13 term care insurance or contracts.

14 **“§ 9006. Studies, reports, and audits**

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

18 “(1) to furnish such reasonable reports as the
19 Office of Personnel Management determines to be
20 necessary to enable it to carry out its functions
21 under this chapter; and

22 “(2) to permit the Office and representatives of
23 the General Accounting Office to examine such
24 records of the carrier as may be necessary to carry
25 out the purposes of this chapter.

1 “(b) PROVISIONS RELATING TO FEDERAL AGEN-
2 CIES.—Each Federal agency shall keep such records,
3 make such certifications, and furnish the Office, the car-
4 rier, or both, with such information and reports as the
5 Office may require.

6 “(c) REPORTS BY THE GENERAL ACCOUNTING OF-
7 FICE.—The General Accounting Office shall prepare and
8 submit to the President, the Office of Personnel Manage-
9 ment, and each House of Congress, before the end of the
10 third and fifth years during which the program under this
11 chapter is in effect, a written report evaluating such pro-
12 gram. Each such report shall include an analysis of the
13 competitiveness of the program, as compared to both
14 group and individual coverage generally available to indi-
15 viduals in the private insurance market. The Office shall
16 cooperate with the General Accounting Office to provide
17 periodic evaluations of the program.

18 **“§ 9007. Jurisdiction of courts**

19 “The district courts of the United States have origi-
20 nal jurisdiction of a civil action or claim described in para-
21 graph (1) or (2) of section 9003(c), after such administra-
22 tive remedies as required under such paragraph (1) or (2)
23 (as applicable) have been exhausted, but only to the extent
24 judicial review is not precluded by any dispute resolution
25 or other remedy under this chapter.

1 **“§ 9008. Administrative functions**

2 “(a) IN GENERAL.—The Office of Personnel Manage-
3 ment shall prescribe regulations necessary to carry out
4 this chapter.

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

8 “(c) CONSULTATION.—Any regulations necessary to
9 effect the application and operation of this chapter with
10 respect to an eligible individual described in paragraph (3)
11 or (4) of section 9001, or a qualified relative thereof, shall
12 be prescribed by the Office in consultation with the appro-
13 priate Secretary.

14 “(d) INFORMED DECISIONMAKING.—The Office shall
15 ensure that each eligible individual applying for long-term
16 care insurance under this chapter is furnished the infor-
17 mation necessary to enable that individual to evaluate the
18 advantages and disadvantages of obtaining long-term care
19 insurance under this chapter, including the following:

20 “(1) The principal long-term care benefits and
21 coverage available under this chapter, and how those
22 benefits and coverage compare to the range of long-
23 term care benefits and coverage otherwise generally
24 available.

25 “(2) Representative examples of the cost of
26 long-term care, and the sufficiency of the benefits

1 available under this chapter relative to those costs.
2 The information under this paragraph shall also
3 include—

4 “(A) the projected effect of inflation on the
5 value of those benefits; and

6 “(B) a comparison of the inflation-adjusted
7 value of those benefits to the projected future
8 costs of long-term care.

9 “(3) Any rights individuals under this chapter
10 may have to cancel coverage, and to receive a total
11 or partial refund of premiums. The information
12 under this paragraph shall also include—

13 “(A) the projected number or percentage
14 of individuals likely to fail to maintain their
15 coverage (determined based on lapse rates expe-
16 rienced under similar group long-term care in-
17 surance programs and, when available, this
18 chapter); and

19 “(B)(i) a summary description of how and
20 when premiums for long-term care insurance
21 under this chapter may be raised;

22 “(ii) the premium history during the last
23 10 years for each qualified carrier offering long-
24 term care insurance under this chapter; and

1 “(iii) if cost increases are anticipated, the
2 projected premiums for a typical insured indi-
3 vidual at various ages.

4 “(4) The advantages and disadvantages of long-
5 term care insurance generally, relative to other
6 means of accumulating or otherwise acquiring the
7 assets that may be needed to meet the costs of long-
8 term care, such as through tax-qualified retirement
9 programs or other investment vehicles.

10 **“§ 9009. Cost accounting standards**

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

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

 “90. Long-Term Care Insurance 9001.”.

18 **SEC. 3. EFFECTIVE DATE.**

19 The Office of Personnel Management shall take such
20 measures as may be necessary to ensure that long-term
21 care insurance coverage under title 5, United States Code,
22 as amended by this Act, may be obtained in time to take
23 effect not later than the first day of the first applicable
24 pay period of the first fiscal year which begins after the

