

Union Calendar No. 333

106TH CONGRESS
2^D SESSION

H. R. 4040

[Report No. 106–610, Part I]

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

MAY 8, 2000

Additional sponsors: Mrs. MORELLA, Mr. DAVIS of Virginia, Mr. BLUMENAUER, Mr. MORAN of Virginia, Mr. MCCOLLUM, Mr. HALL of Ohio, Mr. OSE, Mr. MCHUGH, Mr. GILMAN, Mr. KASICH, Mr. FROST, Ms. DANNER, Mr. PALLONE, Mr. PETRI, Mr. WELDON of Florida, Mr. SAXTON, Mr. FOLEY, Mr. LIPINSKI, Mr. ENGLISH, Mr. WAMP, Mr. NADLER, Mr. CALVERT, and Mr. MCINTOSH

MAY 8, 2000

Reported from the Committee on Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MAY 8, 2000

Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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”.*

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.

1 **“§ 9001. Definitions**

2 *“For purposes of this chapter:*

3 *“(1) EMPLOYEE.—The term ‘employee’ means—*

4 *“(A) an employee as defined by section*
5 *8901(1); and*

6 *“(B) an individual described in section*
7 *2105(e);*

8 *but does not include an individual employed by the*
9 *government of the District of Columbia.*

10 *“(2) ANNUITANT.—The term ‘annuitant’ has the*
11 *meaning such term would have under paragraph (3)*
12 *of section 8901 if, for purposes of such paragraph, the*
13 *term ‘employee’ were considered to have the meaning*
14 *given to it under paragraph (1) of this subsection.*

15 *“(3) MEMBER OF THE UNIFORMED SERVICES.—*
16 *The term ‘member of the uniformed services’ means a*
17 *member of the uniformed services, other than a retired*
18 *member of the uniformed services.*

19 *“(4) RETIRED MEMBER OF THE UNIFORMED*
20 *SERVICES.—The term ‘retired member of the uni-*
21 *formed services’ means a member or former member*
22 *of the uniformed services entitled to retired or re-*
23 *tainer pay.*

24 *“(5) QUALIFIED RELATIVE.—The term ‘qualified*
25 *relative’ means each of the following:*

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

3 “(B) *A parent, stepparent, or parent-in-law*
4 *of an individual described in paragraph (1) or*
5 *(3).*

6 “(C) *A child (including an adopted child, a*
7 *stepchild, or, to the extent the Office of Personnel*
8 *Management by regulation provides, a foster*
9 *child) of an individual described in paragraph*
10 *(1), (2), (3), or (4), if such child is at least 18*
11 *years of age.*

12 “(D) *An individual having such other rela-*
13 *tionship to an individual described in paragraph*
14 *(1), (2), (3), or (4) as the Office may by regula-*
15 *tion prescribe.*

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

19 “(7) *QUALIFIED CARRIER.—The term ‘qualified*
20 *carrier’ means an insurance company (or consortium*
21 *of insurance companies) that is licensed to issue long-*
22 *term care insurance in all States, taking any subsidi-*
23 *aries of such a company into account (and, in the*
24 *case of a consortium, considering the member compa-*
25 *nies and any subsidiaries thereof, collectively).*

1 “(8) *STATE*.—The term ‘State’ includes the Dis-
2 trict of Columbia.

3 “(9) *QUALIFIED LONG-TERM CARE INSURANCE*
4 *CONTRACT*.—The term ‘qualified long-term care insur-
5 ance contract’ has the meaning given such term by
6 section 7702B of the Internal Revenue Code of 1986.

7 “(10) *APPROPRIATE SECRETARY*.—The term ‘ap-
8 propriate Secretary’ means—

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

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

14 “(C) with respect to the commissioned corps
15 of the National Oceanic and Atmospheric Ad-
16 ministration, the Secretary of Commerce; and

17 “(D) with respect to the commissioned corps
18 of the Public Health Service, the Secretary of
19 Health and Human Services.

20 **“§ 9002. Availability of insurance**

21 “(a) *IN GENERAL*.—The Office of Personnel Manage-
22 ment shall establish and, in consultation with the appro-
23 priate Secretaries, administer a program through which an
24 individual described in paragraph (1), (2), (3), (4), or (5)

1 of section 9001 may obtain long-term care insurance cov-
 2 erage under this chapter for such individual.

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

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

7 “(2) each insurance contract under which any
 8 such coverage is provided is issued by a qualified car-
 9 rier.

10 “(c) *DOCUMENTATION REQUIREMENT.*—As a condition
 11 for obtaining long-term care insurance coverage under this
 12 chapter based on one’s status as a qualified relative, an ap-
 13 plicant shall provide documentation to demonstrate the re-
 14 lationship, as prescribed by the Office.

15 “(d) *UNDERWRITING STANDARDS.*—

16 “(1) *DISQUALIFYING CONDITION.*—Nothing in
 17 this chapter shall be considered to require that long-
 18 term care insurance coverage be made available in the
 19 case of any individual who would be eligible for bene-
 20 fits immediately.

21 “(2) *SPOUSAL PARITY.*—For the purpose of un-
 22 derwriting standards, a spouse of an individual de-
 23 scribed in paragraph (1), (2), (3), or (4) of section
 24 9001 shall, as nearly as practicable, be treated like
 25 that individual.

1 “(3) *GUARANTEED ISSUE.*—*Nothing in this*
 2 *chapter shall be considered to require that long-term*
 3 *care insurance coverage be guaranteed to an eligible*
 4 *individual.*

5 “(4) *REQUIREMENT THAT CONTRACT BE FULLY*
 6 *INSURED.*—*In addition to the requirements otherwise*
 7 *applicable under section 9001(9), in order to be con-*
 8 *sidered a qualified long-term care insurance contract*
 9 *for purposes of this chapter, a contract must be fully*
 10 *insured, whether through reinsurance with other com-*
 11 *panies or otherwise.*

12 “(5) *HIGHER STANDARDS ALLOWABLE.*—*Nothing*
 13 *in this chapter shall, in the case of an individual ap-*
 14 *plying for long-term care insurance coverage under*
 15 *this chapter after the expiration of such individual’s*
 16 *first opportunity to enroll, preclude the application of*
 17 *underwriting standards more stringent than those*
 18 *that would have applied if that opportunity had not*
 19 *yet expired.*

20 “(e) *GUARANTEED RENEWABILITY.*—*The benefits and*
 21 *coverage made available to eligible individuals under any*
 22 *insurance contract under this chapter shall be guaranteed*
 23 *renewable (as defined by section 7A(2) of the model regula-*
 24 *tions described in section 7702B(g)(2) of the Internal Rev-*
 25 *enue Code of 1986), including the right to have insurance*

1 *remain in effect so long as premiums continue to be timely*
 2 *made. However, the authority to revise premiums under*
 3 *this chapter shall be available only on a class basis and*
 4 *only to the extent otherwise allowable under section 9003(b).*

5 **“§9003. Contracting authority**

6 “(a) *IN GENERAL.—The Office of Personnel Manage-*
 7 *ment shall, without regard to section 5 of title 41 or any*
 8 *other statute requiring competitive bidding, contract with*
 9 *1 or more qualified carriers for a policy or policies of long-*
 10 *term care insurance. The Office shall ensure that each re-*
 11 *sulting contract (hereinafter in this chapter referred to as*
 12 *a ‘master contract’) is awarded on the basis of contractor*
 13 *qualifications, price, and reasonable competition.*

14 “(b) *TERMS AND CONDITIONS.—*

15 “(1) *IN GENERAL.—Each master contract under*
 16 *this chapter shall contain—*

17 “(A) *a detailed statement of the benefits of-*
 18 *fered (including any maximums, limitations, ex-*
 19 *clusions, and other definitions of benefits);*

20 “(B) *the premiums charged (including any*
 21 *limitations or other conditions on their subse-*
 22 *quent adjustment);*

23 “(C) *the terms of the enrollment period; and*

24 “(D) *such other terms and conditions as*
 25 *may be mutually agreed to by the Office and the*

1 *carrier involved, consistent with the requirements*
2 *of this chapter.*

3 “(2) *PREMIUMS.—Premiums charged under each*
4 *master contract entered into under this section shall*
5 *reasonably and equitably reflect the cost of the benefits*
6 *provided, as determined by the Office. The premiums*
7 *shall not be adjusted during the term of the contract*
8 *unless mutually agreed to by the Office and the car-*
9 *rier.*

10 “(3) *NONRENEWABILITY.—Master contracts*
11 *under this chapter may not be made automatically*
12 *renewable.*

13 “(c) *PAYMENT OF REQUIRED BENEFITS; DISPUTE*
14 *RESOLUTION.—*

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

17 “(A) *to provide payments or benefits to an*
18 *eligible individual if such individual is entitled*
19 *thereto under the terms of the contract;*

20 “(B) *to establish internal administrative*
21 *procedures designed to expeditiously resolve dis-*
22 *putes regarding claims for payments or benefits*
23 *under the terms of the contract; and*

24 “(C) *for disputes not resolved under sub-*
25 *paragraph (B), to establish procedures for 1 or*

1 *more alternative means of dispute resolution in-*
2 *volving independent third-party review under*
3 *appropriate circumstances mutually acceptable*
4 *to the Office and the carrier.*

5 “(2) *ELIGIBILITY.*—*A carrier’s determination as*
6 *to whether or not a particular individual is eligible*
7 *to obtain long-term care insurance coverage under*
8 *this chapter shall be subject to review only to the ex-*
9 *tent and in the manner provided in the applicable*
10 *master contract.*

11 “(3) *OTHER CLAIMS.*—*Disputes arising under*
12 *this chapter between a carrier and the Office shall,*
13 *after exhaustion of administrative remedies, be subject*
14 *to de novo judicial review under section 9007.*

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

19 “(d) *DURATION.*—

20 “(1) *IN GENERAL.*—*Each master contract under*
21 *this chapter shall be for a term of 7 years, unless ter-*
22 *minated earlier by the Office in accordance with the*
23 *terms of such contract. However, the rights and re-*
24 *sponsibilities of the enrolled individual, the insurer,*
25 *and the Office (or duly designated third-party admin-*

1 *istrator) under such contract shall continue with re-*
 2 *spect to such individual until the termination of cov-*
 3 *erage of the enrolled individual or the effective date*
 4 *of a successor contract thereto.*

5 *“(2) EXCEPTION.—*

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

12 *“(B) DEFINITION.—The period described in*
 13 *this subparagraph is the 7-year period beginning*
 14 *on the earliest date as of which any long-term*
 15 *care insurance coverage under this chapter be-*
 16 *comes effective.*

17 *“(3) CONGRESSIONAL NOTIFICATION.—No later*
 18 *than 180 days after receiving the second report re-*
 19 *quired under section 9006(c), the Office of Personnel*
 20 *Management shall submit to the Committees on Gov-*
 21 *ernment Reform and on Armed Services of the House*
 22 *of Representatives and the Committees on Govern-*
 23 *mental Affairs and on Armed Services of the Senate,*
 24 *a written recommendation as to whether the program*
 25 *under this chapter should be continued without modi-*

1 *fication, terminated, or restructured. During the 180-*
 2 *day period following the date on which it submits its*
 3 *recommendation under this paragraph, the Office*
 4 *may not take any steps to rebid or otherwise contract*
 5 *for any coverage to be available at any time following*
 6 *the expiration of the 7-year period described in para-*
 7 *graph (2)(B).*

8 *“(4) FULL PORTABILITY.—Each master contract*
 9 *under this chapter shall include such provisions as*
 10 *may be necessary to ensure that, once an individual*
 11 *becomes duly enrolled, long-term care insurance cov-*
 12 *erage obtained by such individual pursuant to that*
 13 *enrollment shall not be terminated due to any change*
 14 *in status (such as separation from Government serv-*
 15 *ice or the uniformed services) or ceasing to meet the*
 16 *requirements for being considered a qualified relative*
 17 *(whether as a result of dissolution of marriage or oth-*
 18 *erwise).*

19 **“§9004. Financing**

20 *“(a) IN GENERAL.—Each eligible individual obtaining*
 21 *long-term care insurance coverage under this chapter shall*
 22 *be responsible for 100 percent of the premiums for such cov-*
 23 *erage.*

24 *“(b) WITHHOLDINGS.—*

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

3 “(A) *in the case of an employee, be withheld*
4 *from the pay of such employee;*

5 “(B) *in the case of an annuitant, be with-*
6 *held from the annuity of such annuitant;*

7 “(C) *in the case of a member of the uni-*
8 *formed services described in section 9001(3), be*
9 *withheld from the basic pay of such member; and*

10 “(D) *in the case of a retired member of the*
11 *uniformed services described in section 9001(4),*
12 *be withheld from the retired pay or retainer pay*
13 *payable to such member.*

14 “(2) *VOLUNTARY WITHHOLDINGS FOR QUALIFIED*
15 *RELATIVES.*—*Withholdings to pay the premiums for*
16 *enrollment of a qualified relative may, upon election*
17 *of the appropriate eligible individual (described in*
18 *section 9001(1)–(4)), be withheld under paragraph*
19 *(1) to the same extent and in the same manner as if*
20 *enrollment were for such individual.*

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

23 “(d) *OTHER FORMS OF PAYMENT.*—*Any enrollee who*
24 *does not elect to have premiums withheld under subsection*
25 *(b) or whose pay, annuity, or retired or retainer pay (as*

1 *referred to in subsection (b)(1)) is insufficient to cover the*
 2 *withholding required for enrollment (or who is not receiving*
 3 *any regular amounts from the Government, as referred to*
 4 *in subsection (b)(1), from which any such withholdings may*
 5 *be made, and whose premiums are not otherwise being pro-*
 6 *vided for under subsection (b)(2)) shall pay an amount*
 7 *equal to the full amount of those charges directly to the car-*
 8 *rier.*

9 “(e) *SEPARATE ACCOUNTING REQUIREMENT.—Each*
 10 *carrier participating under this chapter shall maintain*
 11 *records that permit it to account for all amounts received*
 12 *under this chapter (including investment earnings on those*
 13 *amounts) separate and apart from all other funds.*

14 “(f) *REIMBURSEMENTS.—*

15 “(1) *The Office shall have access to the Employ-*
 16 *ees’ Life Insurance Fund without fiscal year limita-*
 17 *tion for its reasonable expenses in administering this*
 18 *chapter, including reasonable initial implementation*
 19 *costs.*

20 “(2) *Each master contract under this chapter*
 21 *shall include appropriate provisions under which the*
 22 *carrier involved shall reimburse the Employees’ Life*
 23 *Insurance Fund for funds accessed under paragraph*
 24 *(1) (including lost investment income), on a pro rata*
 25 *basis.*

1 **“§ 9005. Preemption**

2 *“The terms of any contract under this chapter which*
 3 *relate to the nature, provision, or extent of coverage or bene-*
 4 *fits (including payments with respect to benefits) shall su-*
 5 *persede and preempt any State or local law, or any regula-*
 6 *tion issued thereunder, which relates to long-term care in-*
 7 *surance or contracts.*

8 **“§ 9006. Studies, reports, and audits**

9 *“(a) PROVISIONS RELATING TO CARRIERS.—Each*
 10 *master contract under this chapter shall contain provisions*
 11 *requiring the carrier—*

12 *“(1) to furnish such reasonable reports as the Of-*
 13 *fice of Personnel Management determines to be nec-*
 14 *essary to enable it to carry out its functions under*
 15 *this chapter; and*

16 *“(2) to permit the Office and representatives of*
 17 *the General Accounting Office to examine such records*
 18 *of the carrier as may be necessary to carry out the*
 19 *purposes of this chapter.*

20 *“(b) PROVISIONS RELATING TO FEDERAL AGEN-*
 21 *CIES.—Each Federal agency shall keep such records, make*
 22 *such certifications, and furnish the Office, the carrier, or*
 23 *both, with such information and reports as the Office may*
 24 *require.*

25 *“(c) REPORTS BY THE GENERAL ACCOUNTING OF-*
 26 *FICE.—The General Accounting Office shall prepare and*

1 submit to the Office of Personnel Management and each
2 House of Congress, before the end of the third and fifth years
3 during which the program under this chapter is in effect,
4 a written report evaluating such program. Each such report
5 shall include an analysis of the competitiveness of the pro-
6 gram, as compared to both group and individual coverage
7 generally available to individuals in the private insurance
8 market. The Office shall cooperate with the General Ac-
9 counting Office to provide periodic evaluations of the pro-
10 gram.

11 **“§ 9007. Jurisdiction of courts**

12 “The district courts of the United States have original
13 jurisdiction of a civil action or claim against the United
14 States or a carrier founded on this chapter, after such ad-
15 ministrative remedies as required under section 9003(c)(2)
16 or (3) have been exhausted, but only to the extent judicial
17 review is not precluded by any dispute resolution or other
18 administrative remedy under this chapter. In cases against
19 the United States, the jurisdiction of the district courts shall
20 be concurrent with that of the United States Court of Fed-
21 eral Claims.

22 **“§ 9008. Administrative functions**

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

1 “(b) *ENROLLMENT PERIODS.*—*The Office shall provide*
 2 *for periodic coordinated enrollment, promotion, and edu-*
 3 *cation efforts in consultation with the carriers.*

4 “(c) *CONSULTATION.*—*Any regulations necessary to ef-*
 5 *fect the application and operation of this chapter with re-*
 6 *spect to an eligible individual described in paragraph (3)*
 7 *or (4) of section 9001, or a qualified relative thereof, shall*
 8 *be prescribed by the Office in consultation with the appro-*
 9 *priate Secretary.*

10 “(d) *INFORMED DECISIONMAKING.*—*The Office shall*
 11 *ensure that each eligible individual applying for long-term*
 12 *care insurance under this chapter is furnished the informa-*
 13 *tion necessary to enable that individual to evaluate the ad-*
 14 *vantages and disadvantages of obtaining long-term care in-*
 15 *surance under this chapter, including:*

16 “(1) *The principal long-term care benefits and*
 17 *coverage available under this chapter, and how those*
 18 *benefits and coverage compare to the range of long-*
 19 *term care benefits and coverage otherwise generally*
 20 *available.*

21 “(2) *Representative examples of the cost of long-*
 22 *term care, and the sufficiency of the benefits available*
 23 *under this chapter relative to those costs. The infor-*
 24 *mation under this paragraph shall also include—*

1 “(A) the projected effect of inflation on the
2 value of those benefits; and

3 “(B) a comparison of the inflation-adjusted
4 value of those benefits to the projected future
5 costs of long-term care.

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

10 “(A) the projected number or percentage of
11 individuals likely to fail to maintain their cov-
12 erage (determined based on lapse rates experi-
13 enced under similar group long-term care insur-
14 ance programs and, when available, this chap-
15 ter); and

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

19 “(ii) the premium history during the last
20 10 years for each qualified carrier offering long-
21 term care insurance under this chapter; and

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

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

7 **“§ 9009. Cost accounting standards**

8 *“The cost accounting standards issued pursuant to sec-*
 9 *tion 26(f) of the Office of Federal Procurement Policy Act*
 10 *(41 U.S.C. 422(f)) shall not apply with respect to a long-*
 11 *term care insurance contract under this chapter.”.*

12 (b) *CONFORMING AMENDMENT.—The analysis for part*
 13 *III of title 5, United States Code, is amended by adding*
 14 *at the end of subpart G the following:*

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

15 **SEC. 3. EFFECTIVE DATE.**

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

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106TH CONGRESS
2D SESSION

H. R. 4040

[Report No. 106–610, Part I]

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.

MAY 8, 2000

Reported from the Committee on Government Reform
with an amendment

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Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed