

106TH CONGRESS
2D SESSION

S. 2218

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 and annuitants and members of the uniformed services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2000

Mr. CLELAND (for himself, Ms. MIKULSKI, Mr. GRASSLEY, Mr. AKAKA, Mr. WARNER, Mr. SARBANES, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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 and annuitants and members of the uniformed services, 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 “Federal Employees and
5 Uniformed Services Group Long-Term Care Insurance
6 Act of 2000”.

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. Eligibility to obtain coverage.

“9003. Contracting authority.

“9004. Long-term care benefits.

“9005. Financing.

“9006. Preemption.

“9007. Studies, reports, and audits.

“9008. Claims for benefits.

“9009. Jurisdiction of courts.

“9010. Regulations.

7 **“§ 9001. Definitions**

8 “For purposes of this chapter, the term—

9 “(1) ‘activities of daily living’ includes—

10 “(A) eating;

11 “(B) toileting;

12 “(C) transferring;

13 “(D) bathing;

14 “(E) dressing; and

15 “(F) continence;

16 “(2) ‘annuitant’ has the meaning such term
 17 would have under section 8901(3) if, for purposes of
 18 such paragraph, the term ‘employee’ were considered
 19 to have the meaning under paragraph (5) of this
 20 section;

1 “(3) ‘appropriate Secretary’ means—

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

4 “(B) with respect to the United States
5 Coast Guard when it is not operating as a serv-
6 ice of the Navy, the Secretary of Transpor-
7 tation;

8 “(C) with respect to the commissioned
9 corps of the National Oceanic and Atmospheric
10 Administration, the Secretary of Commerce;
11 and

12 “(D) with respect to the commissioned
13 corps of the Public Health Service, the Sec-
14 retary of Health and Human Services;

15 “(4) ‘eligible individual’ means—

16 “(A) an annuitant, employee, member of
17 the uniformed services, or retired member of
18 the uniformed services; or

19 “(B) a qualified relative of an individual
20 described under subparagraph (A);

21 “(5) ‘employee’ means—

22 “(A) an employee as defined under section
23 8901(1) (A) through (D) and (F) through (I),
24 but does not include an employee excluded by
25 regulation of the Office under section 9010; and

1 “(B) an individual described under section
2 2105(e);

3 “(6) ‘member of the uniformed services’ means
4 a person who—

5 “(A)(i) is a member of the uniformed serv-
6 ices on active duty for a period of more than 30
7 days; or

8 “(ii) is a member of the Selected Reserve
9 as defined under section 10143 of title 10, in-
10 cluding members on—

11 “(I) full-time National Guard duty as
12 defined under section 101(d)(5) of title 10;
13 or

14 “(II) active Guard and Reserve duty
15 as defined under section 101(d)(6) of title
16 10; and

17 “(B) satisfies such eligibility requirements
18 as the Office prescribes under section 9010;

19 “(7) ‘Office’ means the Office of Personnel
20 Management;

21 “(8) ‘qualified carrier’ means a company or
22 consortium licensed and approved to issue group
23 long-term care insurance in all States and to do
24 business in each of the States;

1 “(9) ‘qualified relative’, as used with respect to
 2 an eligible individual described under paragraph
 3 (4)(A), means—

4 “(A) the spouse of such individual;

5 “(B) a parent or parent-in-law of such in-
 6 dividual; and

7 “(C) any other person bearing a relation-
 8 ship to such individual specified by the Office in
 9 regulations;

10 “(10) ‘retired member of the uniformed serv-
 11 ices’ means a member of the uniformed services enti-
 12 tled to retired or retainer pay (other than under
 13 chapter 1223 of title 10) who satisfies such eligi-
 14 bility requirements as the Office prescribes under
 15 section 9010; and

16 “(11) ‘State’ means a State of the United
 17 States, and includes the District of Columbia.

18 **“§ 9002. Eligibility to obtain coverage**

19 “(a) Any eligible individual may obtain long-term
 20 care insurance coverage under this chapter for such indi-
 21 vidual.

22 “(b) As a condition for obtaining long-term care in-
 23 surance coverage under this chapter based on one’s status
 24 as a qualified relative, an applicant shall provide docu-

1 mentation to demonstrate the relationship as prescribed
 2 by the Office.

3 “(c) An individual shall not be eligible for coverage
 4 under this chapter if the individual would be immediately
 5 eligible to receive benefits upon obtaining coverage.

6 **“§ 9003. Contracting authority**

7 “(a)(1) Without regard to section 3709 of the Re-
 8 vised Statutes (41 U.S.C. 5) or any other statute requiring
 9 competitive bidding, the Office may contract with qualified
 10 carriers for a policy or policies of group long-term care
 11 insurance to provide benefits as specified by this chapter.

12 “(2) The Office shall—

13 “(A) contract with—

14 “(i) a primary carrier with respect to as-
 15 sumption of risk;

16 “(ii) no less than 2 qualified carriers to act
 17 as reinsurers; and

18 “(iii) as many qualified carriers as nec-
 19 essary to administer this chapter, which shall
 20 also act as reinsurers; and

21 “(B) ensure that each resulting contract is
 22 awarded on the basis of contractor qualifications,
 23 price, and reasonable competition to the maximum
 24 extent practicable.

1 “(b) The Office may design a benefits package or
2 packages and negotiate final offerings with qualified car-
3 riers.

4 “(c) Each contract under this section shall contain
5 a detailed statement of the benefits offered (including any
6 maximums, limitations, exclusions, and other definitions
7 of benefits), the rates charged (including any limitations
8 or other conditions on any subsequent adjustment), and
9 such other terms and conditions as may be mutually
10 agreed to by the Office and the carrier involved, consistent
11 with the requirements of this chapter.

12 “(d) Premium rates charged under a contract entered
13 into under this section shall reasonably reflect the cost of
14 the benefits provided under that contract as determined
15 by the Office.

16 “(e) The coverage and benefits made available to in-
17 dividuals under a contract entered into under this section
18 shall be guaranteed to be renewable and may not be can-
19 celed by the carrier except for nonpayment of premium.

20 “(f) The Office may withdraw an offering under this
21 section based on open season participation rates, the com-
22 position of the risk pool, or both.

23 “(g)(1) Each contract under this section shall require
24 the carrier to provide insurance, payments, or benefits in
25 an individual case if the Office (or a duly designated third-

1 party) finds that the individual involved is entitled to such
 2 payment or benefit under the contract.

3 “(2) Each contract with a carrier described under
 4 subsection (a)(2)(A)(ii) shall require the carrier to partici-
 5 pate in administrative procedures designed to bring about
 6 the expeditious resolution of disputes arising under such
 7 contract, including, in appropriate circumstances, 1 or
 8 more alternative means of dispute resolution, as pre-
 9 scribed by the Office.

10 “(h)(1)(A) Subject to subparagraph (B), each con-
 11 tract under this section shall be for a term of 5 years,
 12 unless terminated earlier by the Office.

13 “(B) The rights and responsibilities of the enrolled
 14 individual, the insurer, and the Office (or duly designated
 15 third-party) under any such contract shall continue until
 16 the termination of coverage of the enrolled individual.

17 “(2) Group long-term care insurance coverage ob-
 18 tained by an individual under this chapter shall terminate
 19 only upon the occurrence of—

20 “(A) the death of the insured;

21 “(B) exhaustion of benefits, as determined
 22 under the contract; or

23 “(C) any event justifying a cancellation under
 24 subsection (e).

1 “(3) Subject to paragraph (2), each contract under
 2 this section shall include such provisions as may be nec-
 3 essary and consistent with regulations of the Office under
 4 section 9010, to—

5 “(A) effectively preserve all parties’ rights and
 6 responsibilities under such contract notwithstanding
 7 the termination of such contract (whether due to
 8 nonrenewal under paragraph (1)(A) or otherwise);
 9 and

10 “(B) ensure that, once an individual becomes
 11 duly enrolled, long-term care insurance coverage ob-
 12 tained by such individual under that enrollment shall
 13 not be terminated due to any change in status (as
 14 described under section 9001(4)), such as separation
 15 from Government service or the uniformed services,
 16 or ceasing to meet the requirements for being con-
 17 sidered a qualified relative (whether due to divorce
 18 or otherwise).

19 “(i) Nothing in this chapter may be construed to
 20 grant authority for the Office or a third party to change
 21 the rules under which the contract operates for disputed
 22 claims purposes.

23 **“§ 9004. Long-term care benefits**

24 “(a) Benefits under this chapter shall be—

1 “(1) provided under qualified long-term care in-
2 surance contracts, within the meaning of section
3 7702B of the Internal Revenue Code of 1986; and

4 “(2) to the extent determined appropriate by
5 the Office, consistent with the more stringent of—

6 “(A) the most recent standards rec-
7 ommended by the National Association of In-
8 surance Commissioners; or

9 “(B) such standards as recommended in
10 calendar year 1993.

11 “(b) Each contract under section 9003, in addition
12 to any matter otherwise required under this chapter, shall
13 provide for—

14 “(1) adequate consumer protections (including
15 through establishment of sufficient reserves or rein-
16 surance);

17 “(2) adequate protections in the event of carrier
18 bankruptcy (or other similar event);

19 “(3) availability of benefits upon appropriate
20 certification as to an individual’s—

21 “(A) inability (without substantial assist-
22 ance from another individual) to perform at
23 least 2 activities of daily living for a period of
24 at least 90 days due to a loss of functional ca-
25 pacity; or

1 “(B) requiring substantial supervision to
2 protect such individual from threats to health
3 and safety due to severe cognitive impairment
4 as defined in the contract;

5 “(4) choice of service benefits (such as the ex-
6 pense-incurred method or the indemnity method);

7 “(5) the availability of inflation protection;

8 “(6) portability of benefits (consistent with sec-
9 tion 9003 (e) and (h));

10 “(7) length-of-benefit options;

11 “(8) options relating to long-term care benefits
12 designed to provide maximum flexibility regarding
13 care modalities, including nursing home care, as-
14 sisted living care, home care, and care by family
15 members;

16 “(9) options relating to elimination periods; and

17 “(10) options relating to nonforfeiture benefits.

18 **“§ 9005. Financing**

19 “(a) Each individual having long-term care insurance
20 coverage under this chapter shall be responsible for 100
21 percent of the charges for such coverage.

22 “(b) The amount necessary to pay the premium for
23 enrollment shall—

24 “(1) in the case of an employee, be withheld
25 from the pay of such employee;

1 “(2) in the case of an annuitant, be withheld
2 from the annuity of such annuitant;

3 “(3) in the case of a member of the uniformed
4 services described under section 9001(6), be with-
5 held from the basic pay of such member; and

6 “(4) in the case of a retired member of the uni-
7 formed services described in section 9001(10), be
8 withheld from the retired pay or retainer pay pay-
9 able to such member.

10 “(c) Withholdings to pay the charges for enrollment
11 of a qualified relative may, upon election of the eligible
12 individual related to the qualified relative, be withheld
13 under subsection (b) in the same manner as if enrollment
14 were for such eligible individual.

15 “(d) Any enrollee whose pay, annuity, or retired or
16 retainer pay (as referred to in subsection (b)) is insuffi-
17 cient to cover the withholding required for enrollment (or
18 who is not receiving any regular amounts from the Gov-
19 ernment, as referred to in subsection (b), from which any
20 such withholdings may be made) shall pay the full amount
21 of those charges directly to the carrier.

22 “(e) Each carrier participating under this chapter
23 shall account for all funds received under this chapter sep-
24 arate and apart from all other funds relating to contracts
25 or matters that are unrelated to this chapter.

1 “(f)(1) A contract under this chapter shall include
 2 appropriate provisions under which the carrier shall reim-
 3 burse the Office or other administering Federal agency for
 4 the administrative costs incurred by the Office or such
 5 agency under this chapter (such as for dispute resolution),
 6 and including the costs of the initial implementation of
 7 this chapter, which are allocable to such carrier.

8 “(2) Reimbursements required under this subsection,
 9 except those relating to the costs of the initial implementa-
 10 tion of this chapter, shall be deposited in the Employees
 11 Health Benefits Fund established under section 8909, and
 12 held in a separate Long-Term Care Insurance Account.
 13 This account shall be available to the Office without limi-
 14 tation for the purposes of this chapter.

15 **“§ 9006. Preemption**

16 “Except with regard to any financial requirement im-
 17 posed by a State or the District of Columbia which is more
 18 stringent than the analogous requirement imposed by sec-
 19 tion 9004(b)(1), this chapter shall supersede and preempt
 20 any State or local law, or law of a territory or possession,
 21 which is determined by the Office to be inconsistent
 22 with—

23 “(1) the provisions of this chapter; or

24 “(2) after consultation with appropriate State
 25 Insurance Commissioners, the efficient provision of a

1 nationwide long-term care insurance program for
2 Federal employees.

3 **“§ 9007. Studies, reports, and audits**

4 “(a) Each qualified carrier entering into a contract
5 under this chapter shall—

6 “(1) furnish such reasonable reports as the Of-
7 fice determines to be necessary to enable the Office
8 to carry out its functions under this chapter; and

9 “(2) 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) Each Federal agency shall keep such records,
14 make such certifications, and furnish the Office, the car-
15 rier, or both, with such information and reports as the
16 Office may require.

17 **“§ 9008. Claims for benefits**

18 “(a) A claim for benefits under this chapter shall be
19 filed within 4 years after the date on which the reimburs-
20 able cost was incurred or the service was provided.

21 “(b)(1) Except as provided under paragraph (2), ben-
22 efits payable under this chapter for any reimbursable cost
23 incurred or service provided are secondary to any other
24 benefit payable for such cost or service. No payment may

1 be made where there is no legal obligation for such pay-
2 ment.

3 “(2)(A) Benefits payable under the programs de-
4 scribed under subparagraph (B) shall be secondary to ben-
5 efits payable under this chapter.

6 “(B) The programs referred to under subparagraph
7 (A) are—

8 “(i) the program of medical assistance under
9 title XIX of the Social Security Act (42 U.S.C. 1396
10 et seq.); and

11 “(ii) any other Federal or State programs that
12 the Office may specify in regulations that provide
13 health benefit coverage designed to be secondary to
14 other insurance coverage.

15 **“§ 9009. Jurisdiction of courts**

16 “A claimant under this chapter may file suit against
17 the carrier of the long-term care insurance policy covering
18 such claimant in the district courts of the United States,
19 after exhausting all available administrative remedies.

20 **“§ 9010. Regulations**

21 “(a) The Office shall prescribe regulations necessary
22 to carry out this chapter.

23 “(b) The regulations of the Office shall—

24 “(1) prescribe the time at which and the man-
25 ner and conditions under which an individual may

1 obtain or continue long-term care insurance under
 2 this chapter, including—

3 “(A) the length of time constituting the
 4 first opportunity to enroll; and

5 “(B) the minimum period of coverage re-
 6 quired for portability; and

7 “(2) provide for periodic coordinated enrollment
 8 promotion and education efforts.

9 “(c) The regulations of the Office may not exclude—

10 “(1) an employee or group of employees solely
 11 on the basis of the hazardous nature of employment;
 12 or

13 “(2) an employee who is occupying a position
 14 on a part-time career employment basis, as defined
 15 under section 3401(2).

16 “(d) Any regulations necessary to effect the applica-
 17 tion and operation of this chapter with respect to an eligi-
 18 ble individual or a qualified relative of such individual
 19 shall be prescribed by the Office in consultation with the
 20 appropriate Secretary.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 22 The table of chapters for part III of title 5, United States
 23 Code, is amended by inserting after the item relating to
 24 chapter 89 the following:

“90. Long-Term Care Insurance 9001”.

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR IMPLE-**
2 **MENTATION.**

3 There are authorized to be appropriated such sums
4 as may be necessary to pay costs incurred by the Office
5 of Personnel Management for implementation of chapter
6 90 of title 5, United States Code, during the period be-
7 tween the date of enactment of this Act and the date on
8 which long-term care insurance coverage first becomes ef-
9 fective under that chapter. Any reimbursement of such
10 costs by a carrier under section 9005(f) of title 5, United
11 States Code (as added by this Act) shall be deposited in
12 the General Fund.

13 **SEC. 4. EFFECTIVE DATE.**

14 (a) IN GENERAL.—The amendments made by this
15 Act shall take effect on the date of enactment of this Act.

16 (b) COVERAGE.—Coverage under this Act shall be-
17 come effective as specified by the Office of Personnel Man-
18 agement, except that such coverage shall be effective not
19 later than the first day of the first fiscal year beginning
20 more than 2 years after the date of enactment of this Act.

○