

106TH CONGRESS
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S. 2420

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 SENATE OF THE UNITED STATES

APRIL 13, 2000

Mr. GRASSLEY (for himself, Ms. MIKULSKI, Ms. COLLINS, and Mr. CLELAND) 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, 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, other
6 than a retired member of the uniformed services.

7 “(4) RETIRED MEMBER OF THE UNIFORMED
8 SERVICES.—The term ‘retired member of the uni-
9 formed services’ means a member or former member
10 of the uniformed services entitled to retired or re-
11 tainer pay.

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

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

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

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

17 “(9) QUALIFIED LONG-TERM CARE INSURANCE
18 CONTRACT.—The term ‘qualified long-term care in-
19 surance contract’ has the meaning given such term
20 by section 7702B of the Internal Revenue Code of
21 1986.

22 “(10) APPROPRIATE SECRETARY.—The term
23 ‘appropriate Secretary’ means—

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

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

4 “(C) with respect to the commissioned
 5 corps of the National Oceanic and Atmospheric
 6 Administration, the Secretary of Commerce;
 7 and

8 “(D) with respect to the commissioned
 9 corps of the Public Health Service, the Sec-
 10 retary of Health and Human Services.

11 **“§ 9002. Availability of insurance**

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

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

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

22 “(2) each insurance contract under which any
 23 such coverage is provided is issued by a qualified
 24 carrier.

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

6 “(d) UNDERWRITING STANDARDS.—

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

12 “(2) SPOUSAL PARITY.—For the purpose of un-
13 derwriting standards, a spouse of an individual de-
14 scribed in paragraph (1), (2), (3), or (4) of section
15 9001 shall, as nearly as practicable, be treated like
16 that individual.

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

21 “(4) REQUIREMENT THAT CONTRACT BE FULLY
22 INSURED.—In addition to the requirements other-
23 wise applicable under section 9001(9), in order to be
24 considered a qualified long-term care insurance con-
25 tract for purposes of this chapter, a contract must

1 be fully insured, whether through reinsurance with
 2 other companies or otherwise.

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

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

22 **“§ 9003. Contracting authority**

23 “(a) IN GENERAL.—The Office of Personnel Manage-
 24 ment shall, without regard to section 5 of title 41 or any
 25 other statute requiring competitive bidding, contract with

1 1 or more qualified carriers for a policy or policies of long-
 2 term care insurance. The Office shall ensure that each re-
 3 sulting contract (hereinafter in this chapter referred to as
 4 a ‘master contract’) is awarded on the basis of contractor
 5 qualifications, price, and reasonable competition.

6 “(b) TERMS AND CONDITIONS.—

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

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

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

15 “(C) the terms of the enrollment period;
 16 and

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

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

1 the contract unless mutually agreed to by the Office
 2 and the carrier.

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

6 “(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE
 7 RESOLUTION.—

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

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

14 “(B) with respect to disputes regarding
 15 claims for payments or benefits under the terms
 16 of the contract—

17 “(i) to establish internal procedures
 18 designed to expeditiously resolve such dis-
 19 putes; and

20 “(ii) to establish, for disputes not re-
 21 solved through procedures under clause (i),
 22 procedures for 1 or more alternative means
 23 of dispute resolution involving independent
 24 third-party review under appropriate cir-

1 cumstances by entities mutually acceptable
2 to the Office and the carrier.

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

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

13 “(A) the agency board having jurisdiction
14 to decide an appeal relative to such a dispute
15 shall be such board of contract appeals as the
16 Director of the Office of Personnel Management
17 shall specify in writing (after appropriate ar-
18 rangements, as described in section 8(c) of such
19 Act); and

20 “(B) the district courts of the United
21 States shall have original jurisdiction, concur-
22 rent with the United States Court of Federal
23 Claims, of any action described in section
24 10(a)(1) of such Act relative to such a dispute.

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

5 “(d) DURATION.—

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

16 “(2) EXCEPTION.—

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

23 “(B) DEFINITION.—The period described
 24 in this subparagraph is the 7-year period begin-
 25 ning on the earliest date as of which any long-

1 term care insurance coverage under this chapter
2 becomes effective.

3 “(3) CONGRESSIONAL NOTIFICATION.—No later
4 than 180 days after receiving the second report re-
5 quired under section 9006(c), the President (or his
6 designee) shall submit to the Committees on Govern-
7 ment Reform and on Armed Services of the House
8 of Representatives and the Committees on Govern-
9 mental Affairs and on Armed Services of the Senate,
10 a written recommendation as to whether the pro-
11 gram under this chapter should be continued with-
12 out modification, terminated, or restructured. Dur-
13 ing the 180-day period following the date on which
14 the President (or his designee) submits the rec-
15 ommendation required under the preceding sentence,
16 the Office of Personnel Management may not take
17 any steps to rebid or otherwise contract for any cov-
18 erage to be available at any time following the expi-
19 ration of the 7-year period described in paragraph
20 (2)(B).

21 “(4) FULL PORTABILITY.—Each master con-
22 tract under this chapter shall include such provisions
23 as may be necessary to ensure that, once an indi-
24 vidual becomes duly enrolled, long-term care insur-
25 ance coverage obtained by such individual pursuant

1 to that enrollment shall not be terminated due to
2 any change in status (such as separation from Gov-
3 ernment service or the uniformed services) or ceas-
4 ing to meet the requirements for being considered a
5 qualified relative (whether as a result of dissolution
6 of marriage or otherwise).

7 **“§ 9004. Financing**

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

12 “(b) WITHHOLDINGS.—

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

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

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

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

23 “(D) in the case of a retired member of
24 the uniformed services described in section

1 9001(4), be withheld from the retired pay or re-
2 tainer pay payable to such member.

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

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

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

24 “(e) SEPARATE ACCOUNTING REQUIREMENT.—Each
25 carrier participating under this chapter shall maintain

1 records that permit it to account for all amounts received
 2 under this chapter (including investment earnings on
 3 those amounts) separate and apart from all other funds.

4 “(f) REIMBURSEMENTS.—

5 “(1) REASONABLE INITIAL COSTS.—

6 “(A) IN GENERAL.—The Employees’ Life
 7 Insurance Fund is available, without fiscal year
 8 limitation, for reasonable expenses incurred by
 9 the Office of Personnel Management in admin-
 10 istering this chapter before the start of the 7-
 11 year period described in section 9003(d)(2)(B),
 12 including reasonable implementation costs.

13 “(B) REIMBURSEMENT REQUIREMENT.—
 14 Such Fund shall be reimbursed, before the end
 15 of the first year of that 7-year period, for all
 16 amounts obligated or expended under subpara-
 17 graph (A) (including lost investment income).
 18 Such reimbursement shall be made by carriers,
 19 on a pro rata basis, in accordance with appro-
 20 priate provisions which shall be included in
 21 master contracts under this chapter.

22 “(2) SUBSEQUENT COSTS.—

23 “(A) IN GENERAL.—There is hereby estab-
 24 lished in the Employees’ Life Insurance Fund a
 25 Long-Term Care Administrative Account, which

1 shall be available to the Office, without fiscal
2 year limitation, to defray reasonable expenses
3 incurred by the Office in administering this
4 chapter after the start of the 7-year period de-
5 scribed in section 9003(d)(2)(B).

6 “(B) REIMBURSEMENT REQUIREMENT.—
7 Each master contract under this chapter shall
8 include appropriate provisions under which the
9 carrier involved shall, during each year, make
10 such periodic contributions to the Long-Term
11 Care Administrative Account as necessary to
12 ensure that the reasonable anticipated expenses
13 of the Office in administering this chapter dur-
14 ing such year (adjusted to reconcile for any ear-
15 lier overestimates or underestimates under this
16 subparagraph) are defrayed.

17 **“§ 9005. Preemption**

18 “The terms of any contract under this chapter which
19 relate to the nature, provision, or extent of coverage or
20 benefits (including payments with respect to benefits)
21 shall supersede and preempt any State or local law, or
22 any regulation issued thereunder, which relates to long-
23 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 President, the Office of Personnel Manage-
21 ment, and each House of Congress, before the end of the
22 third and fifth years during which the program under this
23 chapter is in effect, a written report evaluating such pro-
24 gram. Each such report shall include an analysis of the
25 competitiveness of the program, as compared to both
26 group and individual coverage generally available to indi-

viduals in the private insurance market. The Office shall cooperate with the General Accounting Office to provide periodic evaluations of the program.

“§ 9007. Jurisdiction of courts

“The district courts of the United States have original jurisdiction of a civil action or claim described in paragraph (1) or (2) of section 9003(c), after such administrative remedies as required under such paragraph (1) or (2) (as applicable) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

“§ 9008. Administrative functions

“(a) IN GENERAL.—The Office of Personnel Management shall prescribe regulations necessary to carry out this chapter.

“(b) ENROLLMENT PERIODS.—The Office shall provide for periodic coordinated enrollment, promotion, and education efforts in consultation with the carriers.

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

1 “(d) INFORMED DECISIONMAKING.—The Office shall
 2 ensure that each eligible individual applying for long-term
 3 care insurance under this chapter is furnished the infor-
 4 mation necessary to enable that individual to evaluate the
 5 advantages and disadvantages of obtaining long-term care
 6 insurance under this chapter, including the following:

7 “(1) The principal long-term care benefits and
 8 coverage available under this chapter, and how those
 9 benefits and coverage compare to the range of long-
 10 term care benefits and coverage otherwise generally
 11 available.

12 “(2) Representative examples of the cost of
 13 long-term care, and the sufficiency of the benefits
 14 available under this chapter relative to those costs.
 15 The information under this paragraph shall also
 16 include—

17 “(A) the projected effect of inflation on the
 18 value of those benefits; and

19 “(B) a comparison of the inflation-adjusted
 20 value of those benefits to the projected future
 21 costs of long-term care.

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

1 “(A) the projected number or percentage
 2 of individuals likely to fail to maintain their
 3 coverage (determined based on lapse rates expe-
 4 rienced under similar group long-term care in-
 5 surance programs and, when available, this
 6 chapter); and

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

10 “(ii) the premium history during the last
 11 10 years for each qualified carrier offering long-
 12 term care insurance under this chapter; and

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

16 “(4) The advantages and disadvantages of long-
 17 term care insurance generally, relative to other
 18 means of accumulating or otherwise acquiring the
 19 assets that may be needed to meet the costs of long-
 20 term care, such as through tax-qualified retirement
 21 programs or other investment vehicles.

22 **“§ 9009. Cost accounting standards**

23 “The cost accounting standards issued pursuant to
 24 section 26(f) of the Office of Federal Procurement Policy

1 Act (41 U.S.C. 422(f)) shall not apply with respect to a
 2 long-term care insurance contract under this chapter.”.

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

“90. Long-Term Care Insurance 9001.”.

6 **SEC. 3. EFFECTIVE DATE.**

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

○