

106TH CONGRESS
1ST SESSION

S. 894

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 for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 1999

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 and annuitants, 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 Civilian and
5 Uniformed Services Long-Term Care Insurance Act of
6 1999”.

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

2 Subpart G of part III of title 5, United States Code,
3 is amended by adding after chapter 89 the following:

4 **“Chapter 90—Long-Term Care Insurance**

“Sec.

“9001. Definitions.

“9002. Eligibility to obtain coverage.

“9003. Contracting authority.

“9004. Long-term care benefits.

“9005. Financing.

“9006. Regulations.

5 **“§ 9001. Definitions**

6 “For purposes of this chapter, the term—

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

8 “(A) eating;

9 “(B) toileting;

10 “(C) transferring;

11 “(D) bathing;

12 “(E) dressing; and

13 “(F) continence;

14 “(2) ‘annuitant’ has the meaning such term
15 would have under section 8901(3) if, for purposes of
16 such paragraph, the term ‘employee’ were considered
17 to have the meaning under paragraph (7) of this
18 section;

19 “(3) ‘appropriate Secretary’ means—

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

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

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

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

11 “(E) with respect to members of the For-
12 eign Service, the Secretary of State;

13 “(4) ‘assisted living facility’ has the meaning
14 given such term under section 232 of the National
15 Housing Act (12 U.S.C. 1715w);

16 “(5) ‘carrier’ means a voluntary association,
17 corporation, partnership, or other nongovernmental
18 organization that is lawfully engaged in providing,
19 paying for, or reimbursing the cost of, qualified
20 long-term care services under group insurance poli-
21 cies or contracts, or similar group arrangements, in
22 consideration of premiums or other periodic charges
23 payable to the carrier;

24 “(6) ‘eligible individual’ means—

1 “(A) an employee who has completed 6
2 months of continuous service as an employee
3 under other than a temporary appointment lim-
4 ited to 6 months or less;

5 “(B) an annuitant;

6 “(C) a member of the uniformed services
7 on active duty for a period of more than 30
8 days or full-time National Guard duty (as de-
9 fined under section 101(d)(5) of title 10) who
10 satisfies such eligibility requirements as the Of-
11 fice prescribes under section 9006(c);

12 “(D) a member of the uniformed services
13 entitled to retired or retainer pay (other than
14 under chapter 1223 of title 10) who satisfies
15 such eligibility requirements as the Office pre-
16 scribes under section 9006(c);

17 “(E) a member of the Foreign Service
18 who—

19 “(i) is described under section 103(1),
20 (2), (3), (4), or (5) of the Foreign Service
21 Act of 1980 (22 U.S.C. 3903(1), (2), (3),
22 (4), or (5); and

23 “(ii) satisfies such eligibility require-
24 ments as the Office prescribes under sanc-
25 tion 9006(c);

1 “(F) a member of the Foreign Service en-
2 titled to an annuity under the Foreign Service
3 Retirement and Disability System or the For-
4 eign Service Pension System who satisfies such
5 eligibility requirements as the Office prescribes
6 under section 9006(c); or

7 “(G) a qualified relative of a sponsoring
8 individual;

9 “(7) ‘employee’ means—

10 “(A) an employee as defined under section
11 8901(1) (A) through (H); and

12 “(B) an individual described under section
13 2105(e);

14 “(8) ‘home and community care’ has the mean-
15 ing given such term under section 1929 of the Social
16 Security Act (42 U.S.C. 1396t(a));

17 “(9) ‘long-term care benefits plan’ means a
18 group insurance policy or contract, or similar group
19 arrangement, provided by a carrier for the purpose
20 of providing, paying for, or reimbursing expenses for
21 qualified long-term care services;

22 “(10) ‘nursing home’ has the meaning given
23 such term under section 1908 of the Social Security
24 Act (42 U.S.C. 1396g(e)(1));

1 “(11) ‘Office’ means the Office of Personnel
2 Management;

3 “(12) ‘qualified long-term care services’ has the
4 meaning given such term under section 7702B of
5 the Internal Revenue Code of 1986;

6 “(13) ‘qualified relative’, as used with respect
7 to a sponsoring individual, means—

8 “(A) the spouse of such sponsoring indi-
9 vidual;

10 “(B) a parent or parent-in-law of such
11 sponsoring individual; and

12 “(C) any other person bearing a relation-
13 ship to such sponsoring individual specified by
14 the Office in regulations; and

15 “(14) ‘sponsoring individual’ refers to an indi-
16 vidual described under paragraph (6)(A), (B), (C),
17 or (D).

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)(1) As a condition for obtaining long-term care
23 insurance coverage under this chapter based on an individ-
24 ual’s status as a qualified relative, certification from the
25 applicant’s sponsoring individual shall be required as to—

1 “(A) such sponsoring individual’s status, as de-
 2 scribed under section 9001(6)(A), (B), (C), or (D)
 3 (as applicable), as of the time of the qualified rel-
 4 ative’s application for coverage; and

5 “(B) the existence of the claimed relationship
 6 as of that time.

7 “(2) Any certification under paragraph (1) shall be
 8 submitted at such time and in such form and manner as
 9 the Office shall by regulation prescribe.

10 “(c) Nothing in this chapter shall be considered to
 11 require that long-term care insurance coverage be made
 12 available in the case of any individual who would be imme-
 13 diately benefit eligible.

14 **“§ 9003. Contracting authority**

15 “(a) Without regard to section 3709 of the Revised
 16 Statutes or other statute requiring competitive bidding,
 17 the Office may contract with qualified carriers to provide
 18 group long-term care insurance under this chapter, except
 19 that the Office may not have contracts in effect under this
 20 section with more than 3 qualified carriers.

21 “(b) To be considered a qualified carrier under this
 22 chapter, a company shall be licensed to issue group long-
 23 term care insurance in all the States and the District of
 24 Columbia.

1 “(c)(1) Each contract under this section shall contain
2 a detailed statement of the benefits offered (including any
3 maximums, limitations, exclusions, and other definitions
4 of benefits), the rates charged (including any limitations
5 or other conditions on any subsequent adjustment), and
6 such other terms and conditions as may be mutually
7 agreed to by the Office and the carrier involved, consistent
8 with the requirements of this chapter.

9 “(2) The rates charged under any contract under this
10 section shall reasonably reflect the cost of the benefits pro-
11 vided under such contract.

12 “(d) The benefits and coverage made available to in-
13 dividuals under any contract under this section shall be
14 guaranteed to be renewable and may not be canceled by
15 the carrier except for nonpayment of charges.

16 “(e) Each contract under this section shall require
17 the carrier to agree to—

18 “(1) pay or provide benefits in an individual
19 case if the Office (or a duly designated third-party
20 administrator) finds that the individual involved is
21 entitled to such payment or benefit under the con-
22 tract; and

23 “(2) participate in administrative procedures
24 designed to bring about the expeditious resolution of
25 disputes arising under such contract, including, in

1 appropriate circumstances, 1 or more alternative
2 means of dispute resolution.

3 “(f)(1)(A) Subject to subparagraph (B), each con-
4 tract under this section shall be for a term of 5 years,
5 but may be made automatically renewable from term to
6 term in the absence of notice of termination by either
7 party.

8 “(B) The rights and responsibilities of the enrolled
9 individual, the insurer, and the Office (or duly designated
10 third-party administrator) under any such contract shall
11 continue until the termination of coverage of the enrolled
12 individual.

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

16 “(A) the death of the insured;

17 “(B) exhaustion of benefits, as determined
18 under the contract;

19 “(C) insolvency of the insurer, as determined
20 under the contract; or

21 “(D) any event justifying a cancellation under
22 subsection (d).

23 “(3) Subject to paragraph (2), each contract under
24 this section shall include such provisions as may be nec-
25 essary to—

1 “(A) effectively preserve all parties’ rights and
 2 responsibilities under such contract notwithstanding
 3 the termination of such contract (whether due to
 4 nonrenewal under paragraph (1) or otherwise); and

5 “(B) ensure that, once an individual becomes
 6 duly enrolled, long-term care insurance coverage ob-
 7 tained by such individual under that enrollment shall
 8 not be terminated due to any change in status (as
 9 described under section 9001(6)), such as separation
 10 from Government service or the uniformed services,
 11 or ceasing to meet the requirements for being con-
 12 sidered a qualified relative (whether due to divorce
 13 or otherwise).

14 **“§ 9004. Long-term care benefits**

15 “(a) Benefits under this chapter shall be provided
 16 under qualified long-term care insurance contracts, within
 17 the meaning of section 7702B of the Internal Revenue
 18 Code of 1986.

19 “(b) Each contract under section 9003, in addition
 20 to any matter otherwise required under this chapter, shall
 21 provide for—

22 “(1) adequate consumer protections (including
 23 through establishment of sufficient reserves or rein-
 24 surance);

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

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

5 “(A) inability (without substantial assist-
6 ance from another individual) to perform at
7 least 2 activities of daily living for a period of
8 at least 90 days due to a loss of functional ca-
9 pacity;

10 “(B) having a level of disability similar (as
11 determined under regulations prescribed by the
12 Secretary of the Treasury in consultation with
13 the Secretary of Health and Human Services)
14 to the level of disability described in subpara-
15 graph (A); or

16 “(C) requiring substantial supervision to
17 protect such individual from threats to health
18 and safety due to severe cognitive impairment;

19 “(4) choice of cash or service benefits (such as
20 the expense-incurred method or the indemnity meth-
21 od);

22 “(5) inflation protection (whether through sim-
23 ple or compounded adjustment of benefits); and

24 “(6) portability of benefits (consistent with sec-
25 tion 9003 (d) and (f)).

1 “(c) To the maximum extent practicable, at least 1
 2 of the policies being offered under this chapter shall, in
 3 addition to any matter otherwise required under this chap-
 4 ter, provide for—

5 “(1) length-of-benefit options;

6 “(2) options relating to the provision of cov-
 7 erage in a variety of settings, including nursing
 8 homes, assisted living facilities, and home and com-
 9 munity care;

10 “(3) options relating to elimination periods;

11 “(4) options relating to nonforfeiture benefits;
 12 and

13 “(5) availability of benefits upon appropriate
 14 certification of medical necessity (as defined by the
 15 Office in consultation with the Secretary of Health
 16 and Human Services) not satisfying the require-
 17 ments of subsection (b)(3).

18 “(d)(1) The Office shall take all practicable measures
 19 to ensure that, at least 1 of the long-term care benefits
 20 plans available under this chapter shall be a Government-
 21 wide long-term care benefits plan.

22 “(2) Neither subsection (c)(5) nor the exception
 23 under subsection (e) shall apply with respect to any Gov-
 24 ernmentwide plan under this subsection.

1 “(e) Nothing in this chapter shall be considered to
 2 permit or require the inclusion, in any contract, of provi-
 3 sions inconsistent with section 7702B of the Internal Rev-
 4 enue Code of 1986 or any other provision of such Code
 5 (except to the extent necessary to carry out subsection
 6 (c)(5)).

7 “(f) If a State (or the District of Columbia) imposes
 8 any requirement which is more stringent than the require-
 9 ment imposed by subsection (b)(1), the requirement im-
 10 posed by subsection (b)(1) shall be treated as met if the
 11 more stringent requirement of the State (or the District
 12 of Columbia) is met.

13 **“§ 9005. Financing**

14 “(a) Except as provided in subsection (b)(2), each in-
 15 dividual having long-term care insurance coverage under
 16 this chapter shall be responsible for 100 percent of the
 17 charges for such coverage.

18 “(b)(1) The amount necessary to pay the charges for
 19 enrollment shall—

20 “(A) in the case of an employee, be withheld
 21 from the pay of such employee;

22 “(B) in the case of an annuitant, be withheld
 23 from the annuity of such annuitant;

1 “(C) in the case of a member of the uniformed
2 services described under section 9001(6)(C), be
3 withheld from the basic pay of such member; and

4 “(D) in the case of a member of the uniformed
5 services described in section 9001(6)(D), be withheld
6 from the retired pay or retainer pay payable to such
7 member.

8 “(2) Withholdings to pay the charges for enrollment
9 of a qualified relative may, upon election of the sponsoring
10 individual involved, be withheld under paragraph (1) in
11 the same manner as if enrollment were for such spon-
12 soring individual.

13 “(3) All amounts withheld under paragraph (1) or
14 (2) shall be paid directly to the carrier.

15 “(c)(1) Any enrollee whose pay, annuity, or retired
16 or retainer pay (as referred to in subsection (b)(1)) is in-
17 sufficient to cover the withholding required for enrollment
18 (or who is not receiving any regular amounts from the
19 Government, as referred to in subsection (b)(1), from
20 which any such withholdings may be made) shall pay an
21 amount described under paragraph (2) (or, in the case of
22 an enrollee not receiving any regular amounts, the full
23 amount of those charges) directly to the carrier.

24 “(2) The amount referred to under paragraph (1) is
25 the amount equal to the difference between the amount

1 of withholding required for the enrollment and the amount
2 actually withheld.

3 “(d) Each carrier participating under this chapter
4 shall maintain all amounts received under this chapter
5 separate from all other funds.

6 “(e) Contracts under this chapter shall include appro-
7 priate provisions under which each carrier shall reimburse
8 the Office or other administering entity for the adminis-
9 trative costs incurred by the Office or such entity under
10 this chapter (such as for dispute resolution) which are al-
11 locable to such carrier.

12 **“§ 9006. Regulations**

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

15 “(b)(1) Subject to paragraph (2), the regulations of
16 the Office shall prescribe the time at which and the man-
17 ner and conditions under which an individual may obtain
18 long-term care insurance under this chapter.

19 “(2) The regulations prescribed under this section
20 shall provide for an open enrollment period at least once
21 each year (similar to the open enrollment period provided
22 under section 8905(f)).

23 “(c) Any regulations necessary to effect the applica-
24 tion and operation of this chapter with respect to an eligi-
25 ble individual or a qualified relative of such individual

1 shall be prescribed by the Office in consultation with the
2 appropriate Secretary.”.

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

4 The amendments made by this Act shall take effect
5 on the date of enactment of this Act, except that no cov-
6 erage may become effective before the first calendar year
7 beginning after the expiration of the 18-month period be-
8 ginning on the date of enactment of this Act.

○