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LONG-TERM CARE SECURITY ACT

MAY 8, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

[To accompany H.R. 4040]

The Committee on Government Reform, to whom was referred the bill (H.R. 4040) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Long-Term Care Security Act".

SEC. 2. LONG-TERM CARE INSURANCE.

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

"CHAPTER 90—LONG-TERM CARE 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.

"§ 9001. Definitions

For purposes of this chapter:

"(1) EMPLOYEE.—The term 'employee' means—

"(A) an employee as defined by section 8901(1); and

"(B) an individual described in section 2105(e);

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

"(2) ANNUITANT.—The term 'annuitant' has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term 'employee' were considered to have the meaning given to it under paragraph (1) of this subsection.

"(3) MEMBER OF THE UNIFORMED SERVICES.—The term 'member of the uniformed services' means a member of the uniformed services, other than a retired member of the uniformed services.

"(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term 'retired member of the uniformed services' means a member or former member of the uniformed services entitled to retired or retainer pay.

"(5) QUALIFIED RELATIVE.—The term 'qualified relative' means each of the following:

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

"(B) A parent, stepparent, or parent-in-law of an individual described in paragraph (1) or (3).

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

"(D) An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

"(6) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' refers to an individual described in paragraph (1), (2), (3), (4), or (5).

"(7) QUALIFIED CARRIER.—The term 'qualified carrier' means an insurance company (or consortium of insurance companies) that is licensed to issue long-term care insurance in all States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

"(8) STATE.—The term 'State' includes the District of Columbia.

"(9) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term 'qualified long-term care insurance contract' has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

"(10) APPROPRIATE SECRETARY.—The term 'appropriate Secretary' means—

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

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

"(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce; and

"(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services.

"§ 9002. Availability of insurance

"(a) IN GENERAL.—The Office of Personnel Management shall establish and, in consultation with the appropriate Secretaries, administer a program through which

an individual described in paragraph (1), (2), (3), (4), or (5) of section 9001 may obtain long-term care insurance coverage under this chapter for such individual.

"(b) GENERAL REQUIREMENTS.—Long-term care insurance may not be offered under this chapter unless—

"(1) the only coverage provided is under qualified long-term care insurance contracts; and

"(2) each insurance contract under which any such coverage is provided is issued by a qualified carrier.

"(c) DOCUMENTATION REQUIREMENT.—As a condition for obtaining long-term care insurance coverage under this chapter based on one's status as a qualified relative, an applicant shall provide documentation to demonstrate the relationship, as prescribed by the Office.

"(d) UNDERWRITING STANDARDS.—

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

"(2) SPOUSAL PARITY.—For the purpose of underwriting standards, a spouse of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

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

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

"(5) HIGHER STANDARDS ALLOWABLE.—Nothing in this chapter shall, in the case of an individual applying for long-term care insurance coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of underwriting standards more stringent than those that would have applied if that opportunity had not yet expired.

"(e) GUARANTEED RENEWABILITY.—The benefits and coverage made available to eligible individuals under any insurance contract under this chapter shall be guaranteed renewable (as defined by section 7A(2) of the model regulations described in section 7702B(g)(2) of the Internal Revenue Code of 1986), including the right to have insurance remain in effect so long as premiums continue to be timely made. However, the authority to revise premiums under this chapter shall be available only on a class basis and only to the extent otherwise allowable under section 9003(b).

"§ 9003. Contracting authority

"(a) IN GENERAL.—The Office of Personnel Management shall, without regard to section 5 of title 41 or any other statute requiring competitive bidding, contract with 1 or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereinafter in this chapter referred to as a 'master contract') is awarded on the basis of contractor qualifications, price, and reasonable competition.

"(b) TERMS AND CONDITIONS.—

"(1) IN GENERAL.—Each master contract under this chapter shall contain—

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

"(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

"(C) the terms of the enrollment period; and

"(D) such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

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

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

"(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE RESOLUTION.—

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

"(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract;

"(B) to establish internal administrative procedures designed to expeditiously resolve disputes regarding claims for payments or benefits under the terms of the contract; and

"(C) for disputes not resolved under subparagraph (B), to establish procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances mutually acceptable to the Office and the carrier.

"(2) ELIGIBILITY.—A carrier's determination as to whether or not a particular individual is eligible to obtain long-term care insurance coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable master contract.

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

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

"(d) DURATION.—

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

"(2) EXCEPTION.—

"(A) SHORTER DURATION.—In the case of a master contract entered into before the end of the period described in subparagraph (B), paragraph (1) shall be applied by substituting 'ending on the last day of the 7-year period described in paragraph (2)(B)' for 'of 7 years'.

"(B) DEFINITION.—The period described in this subparagraph is the 7-year period beginning on the earliest date as of which any long-term care insurance coverage under this chapter becomes effective.

"(3) CONGRESSIONAL NOTIFICATION.—No later than 180 days after receiving the second report required under section 9006(c), the Office of Personnel Management shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed Services of the Senate, a written recommendation as to whether the program under this chapter should be continued without modification, terminated, or restructured. During the 180-day period following the date on which it submits its recommendation under this paragraph, the Office may not take any steps to rebid or otherwise contract for any coverage to be available at any time following the expiration of the 7-year period described in paragraph (2)(B).

"(4) FULL PORTABILITY.—Each master contract under this chapter shall include such provisions as may be necessary to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment shall not be terminated due to any change in status (such as separation from Government service or the uniformed services) or ceasing to meet the requirements for being considered a qualified relative (whether as a result of dissolution of marriage or otherwise).

"§ 9004. Financing

"(a) IN GENERAL.—Each eligible individual obtaining long-term care insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

"(b) WITHHOLDINGS.—

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

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

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

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

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

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

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

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

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

"(f) REIMBURSEMENTS.—

"(1) The Office shall have access to the Employees' Life Insurance Fund without fiscal year limitation for its reasonable expenses in administering this chapter, including reasonable initial implementation costs.

"(2) Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall reimburse the Employees' Life Insurance Fund for funds accessed under paragraph (1) (including lost investment income), on a pro rata basis.

"§ 9005. Preemption

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

"§ 9006. Studies, reports, and audits

"(a) PROVISIONS RELATING TO CARRIERS.—Each master contract under this chapter shall contain provisions requiring the carrier—

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

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

"(b) PROVISIONS RELATING TO FEDERAL AGENCIES.—Each Federal agency shall keep such records, make such certifications, and furnish the Office, the carrier, or both, with such information and reports as the Office may require.

"(c) REPORTS BY THE GENERAL ACCOUNTING OFFICE.—The General Accounting Office shall prepare and submit to the Office of Personnel Management and each House of Congress, before the end of the third and fifth years during which the program under this chapter is in effect, a written report evaluating such program. Each such report shall include an analysis of the competitiveness of the program, as compared to both group and individual coverage generally available to individuals 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 against the United States or a carrier founded on this chapter, after such administrative remedies as required under section 9003(c)(2) or (3) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other administrative remedy under this chapter. In cases against the United States, the jurisdiction of the district courts shall be concurrent with that of the United States Court of Federal Claims.

"§ 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.

"(d) INFORMED DECISIONMAKING.—The Office shall ensure that each eligible individual applying for long-term care insurance under this chapter is furnished the information necessary to enable that individual to evaluate the advantages and disadvantages of obtaining long-term care insurance under this chapter, including:

"(1) The principal long-term care benefits and coverage available under this chapter, and how those benefits and coverage compare to the range of long-term care benefits and coverage otherwise generally available.

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

"(A) the projected effect of inflation on the value of those benefits; and

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

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

"(A) the projected number or percentage of individuals likely to fail to maintain their coverage (determined based on lapse rates experienced under similar group long-term care insurance programs and, when available, this chapter); and

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

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

"(iii) if cost increases are anticipated, the projected premiums for a typical insured individual at various ages.

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

"§ 9009. Cost accounting standards

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

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

"90. Long-Term Care Insurance ..... 9001.".

SEC. 3. EFFECTIVE DATE.

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

I. SHORT SUMMARY OF LEGISLATION

H.R. 4040 establishes a program under which federal civilian employees, members of the uniformed services, as well as civilian and military retirees can purchase private group long-term care insurance for themselves and certain qualified relatives at a discount.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Long-term care refers to a broad range of supportive, medical, personal, and social services designed for individuals who are lim-

ited in their ability to function independently on a daily basis. Long-term care needs may arise at any time due to an injury, chronic illness, or the effects of the natural aging process. Functional dependency is generally defined as the inability to function independently, perform essential activities of daily living (ADLs) such as dressing, bathing, eating, toileting, transferring (e.g., from a bed to a chair), walking, and maintaining continence, or to perform instrumental activities of daily living (IADLs) such as shopping, preparing meals, taking medicine, and housekeeping. Assistance with these ADLs may require hands-on assistance or direction, instruction, or supervision from another individual. Long-term care services can be provided in a nursing home, an assisted living facility, the community or in the home.

Longer life spans coupled with a steady increase in the elderly population as baby boomers (people born between 1946 and 1964) age will lead to a dramatic rise in the numbers of Americans who will need long-term care. Continuing increases in the number of two worker families, more single workers, and the increased geographic spread of family members means that there will be fewer family members available to provide care on an informal basis. As a result of these trends, long-term care will increasingly be provided in institutional settings or by hired personnel.

Long-term care is expensive. For example, a person with a severe disability living at home may pay over $36,000 per year for the help of a home care aide.[1] Assisted living facilities charge $26,000 on average. A nursing home can cost $40,000 per year.[2] These figures are averages and can vary depending on geographic location.

It is projected that the costs per nursing home resident will increase. Since 1990, the costs per stay have increased at an annual average rate of 3% above inflation. When today's 45–year-olds reach age 85, one year of nursing home care will cost $244,000. The increase in the number of nursing home residents combined with a higher cost per stay is estimated to quadruple nursing home expenditures by the year 2030.[3]

Long-term care insurance is an affordable way for a number of eligible individuals to protect against the risk of losing their savings to pay for long-term care services. The younger one is when purchasing long-term care insurance, the less expensive the premium. Once a policy is purchased, the premiums cannot be increased solely because one grows older. However, with OPM's approval, rates may be adjusted by class to reflect claims experience and underlying costs. By offering long-term care insurance to individuals in their working years, the federal government can provide federal employees the opportunity to purchase this product at younger ages, when premiums are lower.

Most people believe that they are covered for long-term care by their health care plans, disability insurance, or by Medicare. Unfortunately, many learn the hard way—when they or a family member needs care—that they are not sufficiently covered and must pay

[1] This represents two visits per day by a home care aid costing $54 per visit in 1997. National Association for Home Care (1997). "Basic Statistics About Home Care in 1997. Washington, DC."

[2] American Health Care Association (1998). "Today's Nursing Facilities and the People They Serve". Washington, DC.

[3] American Council of Life Insurance Policy Research Department.

for long-term care on their own. By 2030, the average cost of a nursing home stay will increase from $40,000 today to more than $97,000 (in 1996 dollars).[4] As nursing home costs rise faster than overall inflation and incomes, many more middle income baby boomers could become impoverished by nursing home costs and thus become eligible for Medicaid. To the extent that individuals purchase long term care insurance, the burden of paying for long-term care will be shifted from Medicaid and other public programs to private resources, and individuals will be able to protect their life's savings and other assets.

Medicare covers very little long-term care. In fact, the only type of long-term care that Medicare covers is skilled care. Only 12% of all long-term care provided is skilled care. Medicare also limits the amount of time it will pay for skilled care (up to 100 days in a nursing home, with a $95 copayment from day 21 to day 100). Further, Medicare only pays for skilled nursing home care under limited circumstances (e.g., if one is first in a hospital for the same condition and one is in a Medicare-certified nursing home). In short, one cannot rely on Medicare to pay for long-term care.

Medicaid is a federal/state health insurance program for the poor. It provides a major portion of long-term care financing, paying for care when someone is at or below the federal poverty level known as welfare. Eligibility for Medicaid is based on income and assets. Individuals must deplete their assets to a certain percentage of the poverty level (spend-down requirements) before they are eligible for Medicaid benefits.

Many people also believe that their health care insurance will pay for long-term care services. Most health care insurance plans pay for medical services resulting from illness or injury, but not for costs associated with long-term care. Generally, these plans follow the same rules and limitations as Medicare. Also, custodial/personal care services are never covered.

Personal assets are often inadequate. As previously noted, long-term care services are expensive. The vast majority of families are unprepared to shoulder the costs of long-term care. Therefore, without long-term care insurance, they must deplete hard-earned assets, and eventually depend on Medicaid to pay the costs of long-term care.

Employer-based plans represent the fastest growing market for long-term care insurance. These plans are generally available to the employer's employees, their spouses, parents, parents-in-law, and retirees on a beneficiary-pay-all basis. As a major employer in America, the federal government can reach over 2.8 million workers and an additional 2.1 million annuitants and survivors. Depending on how such a benefit is administered, competition among carriers, group discounts, and volumes of sales should keep premiums affordable for federal employees.

Federal employees have expressed a significant interest in being offered an option to purchase long-term care insurance. Specifically, in response to an Office of Personnel Management (OPM) random survey distributed to federal employees in 1997, approxi-

[4] American Council of Life Insurance Policy Research Department.

mately 86% of federal employees reported an interest in long-term care insurance.[5]

III. Legislative Hearings and Committee Actions

The Committee held no legislative hearings on H.R. 4040. Rep. Joe Scarborough introduced this measure on March 21, 2000. It was referred to the Committee on Government Reform, and in addition, to the Committee on the Armed Services. The Committee on Government Reform's Civil Service Subcommittee marked up the bill on March 22, 2000. By voice vote, the Subcommittee approved an amendment offered by Mr. Waxman to ensure that those eligible to purchase long-term care insurance under this program will be able to make informed decisions. The Subcommittee approved the bill as amended and forwarded it to the Committee on Government Reform by voice vote.

On March 30, 2000, the Committee on Government Reform marked up the bill. Chairman Burton offered an amendment in the nature of a substitute. The Chairman's amendment revised the educational information to be made available to prospective purchasers, the mechanism for funding OPM's initial administrative expenses, and the dispute resolution procedures. It also broadened the class of qualified relatives eligible to buy insurance. The Committee agreed to the Burton amendment by voice vote. Also by voice votes, the Committee adopted H.R. 4040, as amended, and ordered it favorably reported to the House of Representatives.

IV. Committee Hearings and Written Testimony

Three hearings were held to examine various aspects of the long term care insurance issue.

MARCH 18, 1999 HEARING

On March 18, 1999, Chairman Scarborough conducted a hearing entitled, "Long-Term Care Insurance for Federal Employees" to address H.R. 602 and H.R. 110, both of which establish a program under which federal employees and annuitants may purchase long-term care insurance.

Chairman Scarborough stated that achieving maximum participation would require affordable premiums and an ability to satisfy the varying needs of a diverse population. The success of the program would be measured by the number of participants in the federal program. The Chairman also noted that as one of the nation's largest employers, the federal program would serve as a model for employers throughout the country.

Three panels presented testimony to the subcommittee. The first panel consisted of Judy Kramer, a private individual with personal experience with the Medicaid spend-down process. The second panel provided the Administration's views on H.R. 602 and H.R. 110 through the testimony of OPM Director Janice Lachance and William E. Flynn, III, Associate Director for Retirement and Insurance Services. The third panel consisted of representatives from the insurance industry, including the American Council of Life Insur-

[5] Office of Personnel Management, 1997.

ance, the Health Insurance Association of America, and New York Life Insurance company.

Ms. Kramer gave a compelling account of her struggles with the current system of government assistance as a custodian for her aging parents. After a difficult spend-down process, her parents had to rely on Medicaid to cover the costs of their nursing home care. She testified to her desire to purchase long-term care for herself and her husband, a retired federal employee, yet noted without a group discount it would be difficult to afford such protection.

Director Lachance provided the Administration's views on H.R. 602 and H.R. 110. Director Lachance agreed that long-term care insurance for federal employees is an idea whose time has come. The Administration estimates that, initially, 300,000 eligible participants would enroll in such a program. OPM hopes to seek competitive bids for long-term care insurance that meets specified quality and price criteria in order to select the best contractor or contractors possible. As program administrator, OPM envisions its role to negotiate an optimum price for a benefit package it predetermines and that subsequently information on available options is broadly disseminated.

David Martin, on behalf of the American Council of Life Insurance, testified to the importance of a long-term care insurance program as an integral part of an employees' retirement security. Without this protection, retirement savings could be wiped out with just one long-term care episode.

Mr. Martin's testimony spoke to the varying long-term care needs of individuals. Based on ACLI's experience in dealing with large employers, it would be appropriate for the federal government to offer a variety of options. More than one carrier would have to participate in order to underwrite the risk inherent in such a large population. The federal participant group, as defined by both H.R. 602 and H.R. 110, would be greater than any group underwritten by a single carrier today.

David Brenerman, on behalf of the Health Insurance Association of America, focused on the development of the long-term care insurance market. He noted the ability of companies to offer quality products at affordable premiums results from the abilities of companies to freely compete with each other in the marketplace, not because of the imposition of federal or state requirements that would regulate premiums, hinder product development, and stifle market competition. He drew a distinction between a quality, affordable product and the danger of promising a low-cost plan with "rich" benefits and minimum underwriting requirements that would be financially unsustainable in the long run.

Kenneth Grubb, President, NY Life Administration Corporation, NY Life Insurance Company, provided the views of carriers who sell individual as opposed to group products. He raised concerns about the limitations in H.R. 602 and H.R. 110 restricting participation to group carriers only. He pointed out that several companies currently offer discounts on individual contracts or have specific individual long-term care policies priced for offering on a group sponsored basis. Since the individual contracts are competitive with group coverage, Mr. Grubb stressed they ought not to be excluded from consideration in the federal program.

Mr. Grubb also highlighted the benefits of broad eligibility under H.R. 602, resulting in a broader, younger risk pool that would result in lower overall costs. Letting the marketplace dictate costs and benefits was key to both wide acceptance of the product and long term commitments from strong, reliable carriers.

APRIL 18, 1999 HEARING

On April 18, 1999, Chairman Scarborough held the second hearing on Long-Term Care Insurance for Federal Employees at the Naval Air Station in Jacksonville, FL. The purposes of the hearing were twofold. The subcommittee examined the benefit of including active and retired members of the uniformed services in any long-term care insurance program offered to civilian employees and retirees. The subcommittee also continued its examination of the scope of OPM's role in administering a long-term care program and whether participating carriers would be required to offer policies on a "guaranteed issue" basis. Guaranteed issue refers to the practice of allowing individuals to purchase long term care insurance without regard to their current health status and without answering any questions regarding their medical history. While of obvious benefit to at-risk individuals, the costs of issuing policies on a guaranteed basis increase premiums substantially for all enrollees.

Chairman Scarborough reiterated his intent to include both active and retired members of the uniformed services in the long-term care insurance program at the appropriate time in the legislative process. He recognized the valuable service active duty service men and women have provided as employees of the federal government. The Chairman also emphasized the need to build on past successes in crafting legislation and the importance of offering competitive benefits at affordable prices.

Two panels presented testimony to the subcommittee. The first panel consisted of representatives from the organizations representing active and retired members of the uniformed services including The Retired Officers Association (TROA), the National Military Families Association (NMFA), and The Retired Enlisted Association (TREA). The second panel consisted of witnesses on behalf of the American Health Care Association, the Health Insurance Association of America, and the Department of Defense.

Speaking for NMFA, Marilyn Cobb Croach provided testimony on the importance of affordable premiums. Few military families have the disposable income after the basics of housing, health care and food to afford a policy with high premiums, no matter how wise an investment they felt it might be. She also stressed that service members and their families should not be left out of a program that includes civilian employees and annuitants.

Of particular importance to the National Military Families Association was the inclusion of parents and parents-in-law as eligible to receive coverage. Since thousands of miles often separate military families from their parents, significant stress occurs when parents can no longer care for themselves. The high operations tempo facing the armed services often puts the burden of care for both sets of parents on the spouse, who is left with few alternatives. The safety net of an affordable long-term care insurance policy would

relieve families of the stress involved in caring for an elderly parent.

Larry Hyland testified on behalf of The Retired Enlisted Association. Mr. Hyland emphasized the equity of including the military in a program that will provide access to long-term care insurance at group rates for civilian employees. He highlighted the increasing anxiety among aging retirees who were "promised free health care for life," by the Department of Defense. The ability to purchase long-term care insurance in the same program would ensure some financial security for retired members of the uniformed services and ensure quality health care is available.

Colonel Klyne Nowlin presented testimony on behalf of The Retired Officers Association. Colonel Nowlin spoke to the need for the subcommittee to remember those who served in the Armed Forces and who need comprehensive long-term care coverage for their remaining years. His testimony also provided an estimate of participation. Based on the national participation rate of 6 percent, TROA expects that participation for military members would be approximately 203,000 individuals. By broadening the participation base to include the military community, all participants could be the beneficiaries of reduced premiums or enhanced benefits packages. Without access to the government plan, it is feared that most service members would not be in a position to afford long-term care insurance.

Pat Freeman, Associate Executive Director of the John Knox Village Medical Center, testified for the American Health Care Association. She examined the effect both affordable premiums and choice among a variety would have in encouraging the purchase of private long-term care insurance. The John Knox Village Medical Center has both nursing and assisted living facilities in Orange City, Florida.

Ms. Freeman provided the subcommittee information on a recently released American Health Care Association survey on long term care. While female baby boomers expressed concerns about their retirement security, survey results indicated they were not saving adequately for long-term care costs that nearly three out of five of them will encounter. The overall conclusion drawn from the survey findings was the reality that an alarming gap exists in how baby boomers viewed their retirement needs. While 91 percent of baby boomers are covered by health insurance, many incorrectly believe either these policies or Medicare would pay for their long-term care needs. The study also highlighted that 41 percent of the women surveyed have either been forced to quit their jobs or take an extended leave of absence to provide long-term care to a family member or friend.

Kenneth Grubb, testifying on behalf of the Health Insurance Association of America, provided information regarding the desirability and relative importance of both competition in price and variety of insurance products. Mr. Grubb discussed the importance of market competition in determining the availability, quality and affordability of long-term care plans. He also noted the need for the government to encourage personal responsibility for financing long-term care through the expansion of the private long-term care insurance market, including enhancement of the tax status of long-

term care insurance. As a retired Air Force Reserve Colonel, Mr. Grubb felt the military should have the opportunity to obtain affordable coverage to protect themselves against the financial ravages of a long-term illness.

William J. Carr, Deputy Director, Officer and Enlisted Personnel Management, provided testimony on the desire of the Department of Defense to have the military included in the list of eligible participants. Mr. Carr noted the willingness of the Department of Defense to study how the inclusion of uniformed service personnel in long-term care proposals might contribute to recruitment, retention and morale of military personnel. He also stated the Department of Defense was willing to work with the appropriate committees on the issue of long-term care insurance.

JUNE 14, 1999 HEARING

On June 14, 1999, Chairman Scarborough held a second field hearing, this time in Baltimore, to further discuss the various legislative proposals to establish a long-term care insurance benefit for federal employees. Three bills referred to the subcommittee were addressed: H.R. 602, H.R. 110, and H.R. 1111.

Chairman Scarborough emphasized the importance of letting beneficiaries, not government officials, make their own long-term care decisions. The Chairman also stressed the need for the legislation to allow for continued innovation of policies as the insurance industry continues to evolve and mature.

Two panels presented testimony to the subcommittee. The first panel consisted of two witnesses from AT&T and the Maryland Department of Health and Mental Hygiene, as well as a witness with the responsibility for caring for his elderly relatives. The second panel consisted of representatives of the National Association of Retired Federal Employees (NARFE), the Health Insurance Association of America, and Wright & Company.

Charles Yocum provided an account of his experiences with long-term care as custodian for his aging relatives. His depiction of his struggles with the current system of government assistance further emphasized the necessity of finding a workable solution to the financing of long-term care. He described himself as a member of the "sandwich generation". Although his children are not yet fully on their own, he now has the added responsibility of seeing to it that his parents and other elderly relatives are cared for. An attorney by profession, he noted the need to consult with an attorney specializing in "elder law" in order to understand the Medicaid spend-down process.

Dr. Georges Benjamin, the Secretary of Maryland's Department of Health & Mental Hygiene, provided informative testimony regarding the State of Maryland's initiatives to control the growth of public long-term care spending through partnership with public and private stakeholders. Maryland is implementing the Outreach Empowerment Campaign for Individual Long-Term Care Planning. Under this initiative, various Medicaid waivers and programs have been proposed or are under development to manage public long-term care spending and provide home and community based services as alternatives to institutionalization.

Dr. Benjamin provided statistics regarding expenses for Maryland's Medicaid program. During fiscal year 1997, the program spent close to $557 million on long-term care for recipients aged 21 or over, representing 22 percent of the total Medicaid budget. His testimony highlighted the need for private long term care insurance to shift the burden of paying for long term care from Medicaid and other public programs.

David Carver testified about the long-term care insurance program offered by AT&T to its employees. In 1990, AT&T began work on the planning phase of its long-term care program. The market at that time was considerably less developed than it is today. AT&T looked for its plan to achieve two goals: (1) assure financial protection by making the breadth of benefits extensive, and (2) permit employees to meet specific needs by offering significant choice of plan designs. AT&T anticipated a 5–7% enrollment rate for management, and a 2–3% enrollment rate for retired employees and occupational employees. AT&T has exceeded these targets, with 14% of management enrolled, 3% of retired employees enrolled, and 4% of occupational employees enrolled. Since inception of the program, AT&T feels awareness for this type of coverage has increased, and touted its continued good experience with lower than expected lapse rates.

The program was not without challenges, and AT&T continues to be frustrated by the ineligibility of children, the mandating of certain provisions in specific states, the difficulty in protecting the integrity of the plan as employee expectations exceed what can be offered due to underwriting requirements, and exclusion from Section 125 of the Internal Revenue Code.

David Cavanaugh, of Wright & Company, provided information on products that offer the benefits of life insurance and long-term care insurance in a single policy. This "linked benefits" approach provides various options during the completion of the aging process, including long-term care coverage, a cash accumulation fund, death benefits, and, if necessary, a recapture of the dollars paid in premium. A key advantage to this type of policy is that the "gamble" aspect of paying premiums for long-term care insurance coverage is eliminated. The entire life insurance benefit can be paid as a tax-free benefit to a beneficiary or can be used to provide long-term care services.

Frank Atwater, President of the National Association of Retired Federal Employees, testified on the importance of long-term care insurance to meet its goal of assuring financial stability in retirement for government employees. Protecting retirement assets through careful financial planning means considering long-term care insurance as an option. Mr. Atwater commended the efforts of all members of the subcommittee to provide a long-term care insurance program.

While NARFE's goal is to ensure that annuitant underwriting standards are less burdensome than those offered in the private market today, Mr. Atwater did recognize that insurance carriers would be unlikely to participate in the proposed federal program if they were forced to sell policies to senior citizens that are probable candidates for long-term care.

Kenneth Grubb, on behalf of the Health Insurance Association of America, emphasized the necessity of public education about the risks and costs of long-term care. Without understanding the problem, the public cannot be expected to understand the appropriate solutions. It is critically important for the public and private sectors to provide long-term care insurance education. By making the investment now and designing a financing arrangement our elderly can live with today, our future retirees can protect their assets. Successful employer plans that have experienced high participation rates are those that have invested in multi-faceted education and marketing campaigns. The federal government's involvement, in partnership with carriers, is critical to the success of this program. Without substantial employer participation and commitment to educating employees about the importance of a long-term care insurance policy, the Health Insurance Association of America believes the federal program will not be successful.

Mr. Grubb's testimony provided information regarding the costs of long-term care to employers. Long-term care related expenses cost employers $29 billion a year in lost time, lost employees, and lost productivity. A federal employee long-term care insurance program would be the clearest signal of government support for encouraging personal responsibility and planning for long-term care through avenues such as long-term care insurance. The sheer size of the federal government as an employer would assure an immediate and heightened awareness of long-term care financing among working adults.

V. Explanation of the Bill as Reported: Section-by-Section

SECTION-BY-SECTION SUMMARY OF H.R. 4040 AS REPORTED BY THE COMMITTEE ON GOVERNMENT REFORM ON MARCH 30, 2000

Section 1. Short title

This section titles the bill the "Long-Term Care Security Act."

Section 2

This section amends Subpart G of Part III of Title 5, United States Code, by adding a new Chapter 90—Long-Term Care Insurance, Sections 9001–9009 as follows:

Section 9001. Definitions.—Under this section, individuals eligible to purchase long-term care insurance include most of those employees and annuitants who would be eligible to participate in the Federal Employees Health Benefits Program (FEHBP) with the exception of District of Columbia government employees. Eligibility also extends to active duty and retired members of the uniformed services, including the Commissioned Corps of the Public Health Service and National Oceanic and Atmospheric Administration. Relatives of active employees or members of the uniformed services qualified to purchase long-term care insurance include the spouse, children at least 18 years of age, parents, stepparents, or parents-in-law. For retirees, only spouses or children are qualified to participate. The Office of Personnel Management (OPM) may include other eligible relatives.

This section defines a "qualified carrier" as an insurance company or consortium of insurance companies licensed to issue long-

term care insurance in all 50 States and the District of Columbia, either directly or through their subsidiaries. Through reference to Section 7702B of the Internal Revenue Code (IRC) of 1986 (the amendments made by the Health Insurance Portability and Accountability Act of 1996, which establish favorable tax treatment for certain long-term care insurance contracts), this section defines a "qualified long-term care insurance contract" as one which covers only long-term care services; does not pay or reimburse expenses covered under Medicare; is guaranteed renewable; does not provide for a cash surrender value or other money that can be paid, assigned, or pledged as collateral for a loan, or borrowed; applies all refunds of premiums and policy holder dividends or similar amounts as a reduction in future premiums or to increase future benefits; and meets certain consumer protection standards.

The reference in section 9001(7) to the possible use of consortia of insurance carriers has generated questions regarding the antitrust implications of such an arrangement. The Committee is not aware of any difficulties in using such forms of organization in other insurance contexts involving other employers. In the absence of an objection or expression of concern in the Statement of Administration Policy on H.R. 4040, it can be assumed that the Administration has not found a problem in that regard.

By reference to the definition of qualified long-term care insurance contracts and services contained in Section 7702B of the IRC, this section defines qualified long-term care services as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance or personal care services required by a chronically ill individual and provided according to a plan prescribed by a licensed health care practitioner. Under the IRC and this chapter, "chronically ill individuals" must have functional impairments which make them unable to perform, without substantial assistance from another individual, at least two of five, among a listing of six, specified activities of daily living (ADLs) for a period certified to last at least 90 days. Also includes any cognitively impaired person who requires substantial supervision to protect them from threats to health and safety.

Section 9002. Availability of insurance.—This section authorizes the OPM to establish and, in consultation with the appropriate executive branch cabinet secretaries, administer a program through which eligible individuals may obtain long-term care insurance coverage. Individuals seeking coverage as relatives of eligible employees or annuitants are required to provide documentation of their relationship, as determined by OPM. (The eligible employee or annuitant need not purchase a policy for a qualified relative to purchase one.) Coverage must be provided through qualified long-term care insurance contracts (as defined by the Sec. 7702B of the IRC) that are fully insured or reinsured (that is, financially capable of paying all qualified claims) and issued by a qualified carrier.

This section establishes underwriting standards under which provision of long-term care insurance is not guaranteed to any individual, and it is not required to be provided to individuals who would be immediately eligible for benefits. The intent of this section is to make clear that OPM is not required to offer long-term care policies to those who are immediately eligible. The provision

should not be read, however, to preclude OPM from offering long-term care insurance to individuals who are immediately benefit eligible if OPM during the contract negotiation process determines it is appropriate to do so. Individuals who do not enroll during their first period of opportunity but who elect to enroll during a subsequent opportunity may be required to meet more stringent underwriting standards than would have been applied during the first enrollment period.

For purposes of underwriting, this section specifies that spouses of eligible employees and spouses of eligible annuitants must be treated as nearly as practicable like the eligible individual. It further provides that benefits and coverage are guaranteed renewable as long as the premiums continue to be paid in a timely manner. Premiums may be revised on a class basis only.

The Committee acknowledges that the need to screen enrollees, and the desire to qualify as many eligible individuals as possible, is a balancing act. For that reason, prescriptive statutory requirements regarding underwriting have not been included in this Act. Instead, this Act provides OPM with authority and flexibility to negotiate underwriting standards with carriers, just as it negotiates premiums, benefit design, and other terms and conditions. It is the Committee's intention that underwriting standards allow the greatest possible number of employees, active duty personnel, annuitants, and retirees to buy long-term care insurance at reasonable rates while still containing costs and making carrier participation feasible. The Committee expects OPM to use the buying power inherent in the large group of eligible individuals under this chapter to make the underwriting standards initially less burdensome to eligible individuals than commonly required by plans available in the private market. Representative Waxman wrote OPM to learn how OPM intends to address underwriting under H.R. 4040. OPM's letter in response outlines their goal of offering insurance on a modified issue basis, which in order "to insure as many participants as possible." OPM's letter, which is included as an exhibit to this report, embodies the Committee's understanding of how OPM intends to address the underwriting issue.

Section 9003. Contracting authority.—This section authorizes OPM to contract with one or more qualified carriers for a policy or policies of long-term care insurance on the basis of contractor qualifications, price, and reasonable competition. The Committee directs the Office of Personnel Management to ensure that the selection process of qualified carriers is as competitive as possible. The Committee expects competition among the carriers will result in affordable premiums and attractive benefit packages for the federal community. The Committee encourages the Office of Personnel Management to consider all insurance companies who meet program criteria and standards for participation in the program. In particular, the Committee believes that insurers in the individual market could make a significant contribution to the program, and should have the opportunity to compete. Each "master contract" is required to include a detailed statement of benefits, premium charges, the terms of the enrollment period, and any limitations. Master contracts shall not be automatically renewable. Premiums must reasonably and equitably reflect the cost of benefits provided,

as determined by OPM; premiums can be adjusted during a contract period only by mutual agreement between OPM and the carrier.

Under the terms of the master contract, carriers must agree to provide payments or benefits to entitled individuals. Master contracts must also specify procedures to resolve expeditiously disputes regarding payment of claims or benefits, including internal administrative procedures and independent third-party review under circumstances approved by OPM. The choice of third party review entities must be mutually acceptable to OPM and the carrier. Master contracts shall also include procedures for review of an individual's eligibility for coverage. Disputes between a carrier and OPM shall be subject to de novo judicial review after exhaustion of administrative remedies.

Neither OPM nor any third-party reviewer shall have the authority to change the terms of any master contract. Each master contract is for a term of 7 years, that term beginning on the earliest date as of which any long-term care insurance coverage under the Act becomes effective. Any master contract entered into later than the effective date for coverage shall end at the close of the same 7-year period. Master contracts may be terminated earlier by OPM according to the contract terms. If a master contract is terminated, the rights and responsibilities of the enrolled individuals, of the insurers, and OPM must continue until the termination of the enrolled individuals' coverage or the effective date of a successor contract.

Within 180 days of submission of a report by the General Accounting Office (GAO) before the end of the fifth year of the program, OPM shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed Services of the Senate a written recommendation as to whether this program should be continued unmodified, terminated, or restructured. For 180 days after their recommendation, OPM is prevented from rebidding or otherwise contracting for any coverage which would follow the expiration of the 7-year period.

This section requires each master contract to provide for portability of coverage, ensuring that the policies of duly enrolled individuals shall not be terminated because of a change in the individual's status, such as separating from covered employment or no longer being a qualified relative due to divorce or otherwise.

Section 9004. Financing.—This section establishes that 100 percent of the premiums for long-term care insurance coverage under this program must be paid by eligible individuals either through withholding from pay or retirement benefits or through direct payments to the carrier. Eligible employees or annuitants may pay for a qualified relative's premium through withholding from the employee's pay or annuitant's retirement benefit.

This section requires each participating carrier to maintain records which permit it to account for all amounts received under this program, including investment earnings on these amounts, separately and apart from all other funds of the carrier. It grants OPM access to the Employees' Life Insurance Fund to finance reasonable expenses associated with initial implementation and ad-

ministration of this chapter, without fiscal year limitation. Subsequently, the master contracts must require each carrier to reimburse the Employees' Life Insurance Fund on a pro rata basis for ongoing OPM administrative expenses, including lost investment income of the Life Insurance Fund.

Section 9005. Preemption.—This section states that any state or local laws and regulations relating to long-term care insurance or contracts are superseded and preempted by the terms of any contract under this chapter.

During this process, the Committee encourages OPM to give scrutiny to state practices with respect to consumer protection. The Committee urges the Office of Personnel Management, in negotiating contracts with carriers, to strive to maximize consumer protections. This will promote consumer confidence in the process and in the insurance products created by the Act.

Concerns have been raised regarding the effect of the preemption provision in this section on the tax qualification of products under this program. The Committee has been assured that the provisions in question present no barrier to the products under this program being tax qualified under section 7702B of the Internal Revenue Code. The Statement of Administration Policy on H.R. 4040 would express a similar concern if the Administration believed a problem existed.

Section 9006. Studies, reports, and audits.—This section requires carriers with master contracts to furnish reasonable reports to OPM and permits OPM and GAO to examine the carrier's records as necessary to carry out this chapter. Additionally, federal agencies are required to keep records, make certifications, and furnish OPM with information and reports. GAO is required to compare the competitiveness of this program with group and individual coverage available in the private insurance market and submit written evaluations to OPM and each House of Congress before the end of the third and fifth years of this program. OPM is also required to cooperate with GAO in providing periodic evaluations of the program.

Section 9007. Jurisdiction of courts.—This section provides that, after all required administrative remedies have been exhausted, individuals disputing a decision of a carrier or of OPM may file a civil action or claim against the carrier or against the United States in U.S. District Courts. In cases against the United States, the U.S. District Court jurisdiction shall be concurrent with that of the U.S. Court of Federal Claims.

Section 9008. Administrative functions.—Under this section, OPM is required to prescribe the regulations necessary to carry out this chapter, including enrollment periods, promotion, and education efforts. In addition, OPM is required to consult with the appropriate Secretaries in prescribing regulations with respect to active and retired members of the uniformed services and their qualified relatives. OPM is also required to ensure that each applicant has the information necessary to make an informed decision about obtaining long-term care insurance and to compare coverage and benefits to that otherwise generally available. OPM must provide information on the cost of long-term care and sufficiency of benefits to cover those costs, including the effects of inflation; an individ-

ual's right to cancel coverage and receive a premium refund; the number or percent of individuals likely to fail to maintain their coverage; how and when premiums for long-term care insurance under this chapter may be raised; a 10 year premium history for each qualified long-term care insurer under this chapter and whether increases are anticipated; the projected premiums for a typical insured individual at various ages; and the general advantages and disadvantages of long-term care insurance relative to other means of meeting the costs of long-term care.

The Committee strongly believes that eligible individuals will need access to a substantial amount of information in order to make an informed decision regarding the purchase of long-term care insurance coverage. Long-term care is a complicated product. For some, it is a good way for individuals to save for the future. But for others, it can have drawbacks. Given the size and diversity of the pool of eligibles, the Committee recognizes the need to strike the appropriate balance and to provide information that is adequate without being overwhelming. The Committee expects the Office of Personnel Management to involve the insurance industry, consumer advocates, state insurance commissioners, and other experts in the field in the development of appropriate educational materials, and to keep the Committee informed as to how it is meeting requirements specified in section 9008(d).

Section 9009. Cost Accounting standards.—This section provides that long-term care insurance contracts under this chapter are exempt from the cost accounting standards issued by the Office of Federal Procurement Policy.

Section 3. Effective date

This section requires OPM to ensure that long-term care insurance coverage under this Act will be available so that it may take effect at the beginning of the first fiscal year following a period of 18 months after enactment.

The Committee understands that some individuals eligible to participate in the long-term care insurance program made available by this Act have previously purchased such insurance in the private market. Some of these individuals have expressed an interest in converting their present long-term care insurance policies, purchased before this Act became law, into policies made available under the program authorized by this Act. The Committee directs the Office of Personnel Management to investigate and, to the extent practicable, facilitate such conversions with insurance carriers selected by the Office to sell long-term care insurance under the program authorized by this Act. The Committee acknowledges, however, that such conversions are to be contingent on whether they are allowed by policies purchased by eligible individuals before this Act became law. Further, the Committee directs the Office to examine whether facilitating such conversions would have an adverse impact on the program authorized by this Act. If the Office anticipates adverse impact from such conversions, it should take such findings into account before facilitating such conversions.

VI. Compliance With Rule XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from Committee oversight activities are incorporated in the bill and this report.

VII. Budget Analysis and Projections

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. Cost Estimate of the Congressional Budget Office

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 6, 2000.

Hon. Dan Burton,
Chairman, Committee on Government Reform,
Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4040, the Long-Term Care Security Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Charles Betley.

Sincerely,

Steven Lieberman
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4040—Long Term Care Security Act

Summary: H.R. 4040 would require the Office of Personnel Management (OPM) to develop and administer a long-term care insurance program for federal employees, members of the uniformed services, retirees from federal or military service, and specified relatives of the primary eligible groups. Because the federal government would not contribute to the enrollees' premiums, and the insurer or insurers would be required to reimburse OPM for its expenses in setting up and administering the plan, net federal outlays would be zero over the long run.

However, the expenses that OPM would incur before collecting premiums from enrollees and reimbursement from the insurers would be funded by outlays from the federal government's Employee's Life Insurance Fund. CBO estimates that such outlays would increase direct spending by $3 million during fiscal year 2001 and $18 million during 2002, while receipts would exceed outlays by $2 million in 2003 and by $4 million per year in 2004 and 2005. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 4040 provides that the contracts for long-term care offered under the bill would supersede and preempt state and local laws governing long-term care insurance or contracts. This preemption would be an intergovernmental mandate as defined in the Un-

funded Mandates Reform Act (UMRA). The bill does not contain any private-sector mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4040 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars				
	2001	2002	2003	2004	2005
Changes in Direct Spending					
Estimated Budget Authority	0	0	0	0	0
Estimated Outlays	3	18	−2	−4	−4

Basis of estimate: H.R. 4040 specifies that eligible individuals who opt to purchase long-term care insurance would be responsible for 100 percent of the cost of the premiums, so that the federal government would not incur net costs over the long term. However, because OPM would expend funds for start-up and administrative expenses before enrolles' premiums are received, the agency would incur outlays in 2001 and 2002, which would be direct spending from the Employee's Life Insurance Fund.

Upon enactment of H.R. 4040, OPM would be allowed 18 months to set up the long-term care insurance program. CBO assumes that, if the bill were enacted in fiscal year 2000, OPM would begin in 2001 to negotiate with one or more insurance carriers to establish the benefits to be provided under the plan and the premiums to be charged. Marketing the chosen plan or plans would begin in 2002. The program would take effect in 2003, and premiums would begin to be deducted from enrollees' salary or retirement payments. The federal government would not contribute to the enrollees' premiums, and the insurer or insurers would be required to reimburse OPM for the agency's expenses in setting up and administering the plan.

The expenses that OPM would incur before being able to collect premiums from enrollees and reimbursement from the insurers would be paid from the Employees' Life Insurance Fund. The only limitation on these outlays are the bill's requirement that they be "reasonable." Based on information from OPM and the costs of administering other benefit programs, CBO estimates that start-up costs over three fiscal years would be about $23 million. A significant portion of the costs would be for education and outreach—especially for printing and mailing brochures to inform potential participants of their eligibility and options under the plan. About 10 percent of the estimated costs represents expenses for drafting plan specifications, evaluating contract proposals, negotiating with contractors, and setting up systems for tracking enrollment and premium deductions.

Expenditures for education and outreach would be significant because long-term care insurance is a new type of benefit, unlike pensions and health insurance, which are already established and familiar. Furthermore, OPM would have to contact active and retired military personnel, whose benefits are ordinarily administered by the Department of Defense. More intensive outreach efforts may attract a larger pool of participants, which would help to assure the plan's financial solvency by broadening the distribution of people

who pay premiums and including more enrollees with lower risk of needing services.

Expenses of $3 million in 2001 would be primarily for developing plans, while education and outreach expenses are projected to increase outlays to $18 million in 2002. Start-up expenses for administrative costs and processing enrollment in the first year of the plan's operation are estimated to amount to $2 million in 2003. Once the insurance program is established, CBO expects that, beginning in 2003, OPM would incur costs of about $1 million annually to administer it.

Those ongoing expenses are expected to remain steady unless another open season is held. The bill directs OPM "periodically" to conduct open enrollment seasons, during which administrative expenses would be expected to increase. However, frequent open seasons would create greater opportunities for risk selection, as low-risk individuals could defer joining the plan until they perceive that their risk of needing long-term care has changed. The bill would make it harder for people to elect coverage only when their risk changes by authorizing the insurance plans to apply underwriting standards for individuals who defer joining at their first opportunity. Nevertheless, CBO expects that OPM would allow open seasons infrequently. If open seasons occur at the same intervals as the length of the contract specified in the bill, or once every seven years, the next increase in outlays for a new open season would occur in 2010.

CBO expects that reimbursement of the $23 million in start-up costs, including interest paid at the current rate for Treasury bills, and for ongoing administrative expenses, would be spread over the duration of the seven-year contract specified in the legislation. Those payments from insurers would result in offsetting collections of $5 million a year to the Life Insurance Fund beginning in 2003. Since payments from the contracting insurers would lag outlays, net outlays over the 2001–2005 period would be about $11 million.

H.R. 4040 specifies that the government collect premiums from most enrollees by withholding a portion of their pay and, in turn, transfer those amounts to the insurance companies. These transactions would also be direct spending but would have no significant net effect on the budget.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	3	18	−2	−4	−4	−4	−4	−4	−4	3
Change in receipts	Not applicable									

Estimated impact on State, local, and tribal governments: H.R. 4040 provides that the contracts for long-term care offered under

the bill would supersede and preempt state and local laws governing long-term care insurance or contracts. This preemption would be an intergovernmental mandate as defined in UMRA. By preempting those state and local laws, the bill would enable the federal government to enter into contracts for long-term care insurance without meeting the various state and local requirements and limitations on such coverage. CBO estimates that the limitation on regulatory and oversight authority would result in no costs to state, local, or tribal governments.

Estimated impact on the private sector: The bill does not contain private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Charles L. Betley; impact on State, local, and tribal governments: Leo Lex; impact on the private sector: Stuart Hagen.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

IX. Specific Constitutional Authority for this Legislation

Clauses 1 and 18 of Article I, Sec. 8 of the Constitution grant Congress the power to enact this law.

X. Committee Recommendation

On March 30, 2000, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM—106TH CONGRESS ROLLCALL

Date: March 30, 2000.
Amendment offered by: Hon. Dan Burton.
Adopted by voice vote.
Final Passage of H.R. 4040, as amended.
Offered by: Hon. Dan Burton.
Adopted by voice vote.

XI. Congressional Accountability Act; Public Law 104–1; Section 102(B)(3)

H.R. 4040 will allow employees in the legislative branch to purchase private long-term care insurance under the same terms as other federal employees.

XII. Unfunded Mandates Reform Act; Public Law 104–4; Section 423

H.R. 4040 does not impose any federal mandates on state, local, or tribal governments. However, in order to ensure that all federal employees are offered a uniform benefit nationwide, H.R. 4040 preempts state and local laws relating to long-term care insurance or plans.

XIII. Federal Advisory Committee Act (5 U.S.C. App.) Section 5(b)

The Committee finds that H.R. 4040 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart G—Insurance and Annuities

Chap.		Sec.
81.	Compensation for Work Injuries	8101
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90.	*Long-Term Care Insurance*	*9001.*
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Subpart G—Insurance and Annuities

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CHAPTER 90—LONG-TERM CARE INSURANCE

Sec.
9001. Definitions.
9002. Availability of insurance.
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9004. Financing.
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9007. Jurisdiction of courts.
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§ 9001. Definitions

For purposes of this chapter:

(1) EMPLOYEE.—The term "employee" means—

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

(B) an individual described in section 2105(e);

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

(2) ANNUITANT.—The term "annuitant" has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term "employee" were considered to have the meaning given to it under paragraph (1) of this subsection.

(3) MEMBER OF THE UNIFORMED SERVICES.—The term "member of the uniformed services" means a member of the uniformed services, other than a retired member of the uniformed services.

(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term "retired member of the uniformed services" means a member or former member of the uniformed services entitled to retired or retainer pay.

(5) QUALIFIED RELATIVE.—The term "qualified relative" means each of the following:

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

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

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

(D) An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

(6) ELIGIBLE INDIVIDUAL.—The term "eligible individual" refers to an individual described in paragraph (1), (2), (3), (4), or (5).

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

(8) STATE.—The term "State" includes the District of Columbia.

(9) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term "qualified long-term care insurance contract" has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

(10) APPROPRIATE SECRETARY.—The term "appropriate Secretary" means—

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

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

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

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

§ 9002. Availability of insurance

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

(b) GENERAL REQUIREMENTS.—Long-term care insurance may not be offered under this chapter unless—

(1) the only coverage provided is under qualified long-term care insurance contracts; and

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

(c) DOCUMENTATION REQUIREMENT.—As a condition for obtaining long-term care insurance coverage under this chapter based on one's status as a qualified relative, an applicant shall provide documentation to demonstrate the relationship, as prescribed by the Office.

(d) UNDERWRITING STANDARDS.—

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

(2) SPOUSAL PARITY.—For the purpose of underwriting standards, a spouse of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

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

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

(5) HIGHER STANDARDS ALLOWABLE.—Nothing in this chapter shall, in the case of an individual applying for long-term care insurance coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of underwriting standards more stringent than those that would have applied if that opportunity had not yet expired.

(e) GUARANTEED RENEWABILITY.—The benefits and coverage made available to eligible individuals under any insurance contract under this chapter shall be guaranteed renewable (as defined by section 7A(2) of the model regulations described in section 7702B(g)(2) of the Internal Revenue Code of 1986), including the right to have insurance remain in effect so long as premiums continue to be timely made. However, the authority to revise premiums under this chapter shall be available only on a class basis and only to the extent otherwise allowable under section 9003(b).

§ 9003. Contracting authority

(a) IN GENERAL.—The Office of Personnel Management shall, without regard to section 5 of title 41 or any other statute requiring competitive bidding, contract with 1 or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereinafter in this chapter referred to as a "master contract") is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) TERMS AND CONDITIONS.—

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

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

(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

(C) the terms of the enrollment period; and

(D) such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

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

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

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

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

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

(B) to establish internal administrative procedures designed to expeditiously resolve disputes regarding claims for payments or benefits under the terms of the contract; and

(C) for disputes not resolved under subparagraph (B), to establish procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances mutually acceptable to the Office and the carrier.

(2) ELIGIBILITY.—A carrier's determination as to whether or not a particular individual is eligible to obtain long-term care insurance coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable master contract.

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

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

(d) DURATION.—

(1) IN GENERAL.—Each master contract under this chapter shall be for a term of 7 years, unless terminated earlier by the Office in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under such contract shall continue with respect to such

individual until the termination of coverage of the enrolled individual or the effective date of a successor contract thereto.

(2) EXCEPTION.—

(A) SHORTER DURATION.—In the case of a master contract entered into before the end of the period described in subparagraph (B), paragraph (1) shall be applied by substituting "ending on the last day of the 7-year period described in paragraph (2)(B)" for "of 7 years".

(B) DEFINITION.—The period described in this subparagraph is the 7-year period beginning on the earliest date as of which any long-term care insurance coverage under this chapter becomes effective.

(3) CONGRESSIONAL NOTIFICATION.—No later than 180 days after receiving the second report required under section 9006(c), the Office of Personnel Management shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed Services of the Senate, a written recommendation as to whether the program under this chapter should be continued without modification, terminated, or restructured. During the 180-day period following the date on which it submits its recommendation under this paragraph, the Office may not take any steps to rebid or otherwise contract for any coverage to be available at any time following the expiration of the 7-year period described in paragraph (2)(B).

(4) FULL PORTABILITY.—Each master contract under this chapter shall include such provisions as may be necessary to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment shall not be terminated due to any change in status (such as separation from Government service or the uniformed services) or ceasing to meet the requirements for being considered a qualified relative (whether as a result of dissolution of marriage or otherwise).

§ 9004. Financing

(a) IN GENERAL.—Each eligible individual obtaining long-term care insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) WITHHOLDINGS.—

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

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

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

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

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

(2) VOLUNTARY WITHHOLDINGS FOR QUALIFIED RELATIVES.—Withholdings to pay the premiums for enrollment of a qualified

relative may, upon election of the appropriate eligible individual (described in section 9001(1)–(4)), be withheld under paragraph (1) to the same extent and in the same manner as if enrollment were for such individual.

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

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

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

(f) REIMBURSEMENTS.—

(1) The Office shall have access to the Employees' Life Insurance Fund without fiscal year limitation for its reasonable expenses in administering this chapter, including reasonable initial implementation costs.

(2) Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall reimburse the Employees' Life Insurance Fund for funds accessed under paragraph (1) (including lost investment income), on a pro rata basis.

§ 9005. Preemption

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

§ 9006. Studies, reports, and audits

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

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

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

(b) PROVISIONS RELATING TO FEDERAL AGENCIES.—Each Federal agency shall keep such records, make such certifications, and furnish the Office, the carrier, or both, with such information and reports as the Office may require.

(c) REPORTS BY THE GENERAL ACCOUNTING OFFICE.—The General Accounting Office shall prepare and submit to the Office of Personnel Management and each House of Congress, before the end of

the third and fifth years during which the program under this chapter is in effect, a written report evaluating such program. Each such report shall include an analysis of the competitiveness of the program, as compared to both group and individual coverage generally available to individuals 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 against the United States or a carrier founded on this chapter, after such administrative remedies as required under section 9003(c)(2) or (3) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other administrative remedy under this chapter. In cases against the United States, the jurisdiction of the district courts shall be concurrent with that of the United States Court of Federal Claims.

§ 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.

(d) INFORMED DECISIONMAKING.—The Office shall ensure that each eligible individual applying for long-term care insurance under this chapter is furnished the information necessary to enable that individual to evaluate the advantages and disadvantages of obtaining long-term care insurance under this chapter, including:

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

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

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

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

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

(A) the projected number or percentage of individuals likely to fail to maintain their coverage (determined based on lapse rates experienced under similar group long-term

care insurance programs and, when available, this chapter); and

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

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

(iii) if cost increases are anticipated, the projected premiums for a typical insured individual at various ages.

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

§ 9009. Cost accounting standards

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

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, March 21, 2000.

Hon. JANICE R. LACHANCE,
Director, Office of Personnel Management,
Washington, DC.

DEAR MADAM DIRECTOR: The House Committee on Government Reform, Civil Service Subcommittee, is currently considering legislation that would authorize the Office of Personnel Management (OPM) to purchase group insurance policies from qualified private-sector contractors to make long-term care insurance available to federal employees, federal employees' spouses, federal retirees, and family members.

In meetings with my staff, OPM representatives have stated that, for the purpose of underwriting, a "modified guarantee issue" application form would be used to determine the eligibility of at-work federal employees, and their spouses, for long-term care insurance. Please explain "modified guarantee issue" and how it would be applied to at-work federal employees and their spouses.

A prompt response to this request would be appreciated. If you have any questions, please contact Tania Shand, of my staff.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member.

OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, March 22, 2000.

Hon. HENRY WAXMAN,
Ranking Minority Member,
Committee on Government Reform,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN WAXMAN: Thank you for your letter dated March 20, 2000, requesting additional information on how the Office of Personnel Management (OPM) would implement a long-term care insurance program for Federal employees and their spouses, as it pertains to underwriting standards and modified guarantee issue.

In keeping with our mission to provide Government-wide human resource management leadership, one of OPM's objectives is to achieve a modern, performance-oriented compensation system. As part of that, we intend to include a quality and affordable group long-term care benefit package for Federal employees and their family members.

Although we cannot state definitively what the final underwriting standards will be, we can describe what our goals will be in approaching this important issue.

At-work Federal employees

If OPM is authorized to establish a long-term care insurance program for Federal employees, we will work to negotiate a long-term care benefit package that is affordable for all eligible groups. We intend to make this long-term care insurance available to as many at-work Federal employees as possible.

Our goal for at-work Federal employees will be to apply minimal underwriting standards, often referred to in the insurance industry as "modified guaranteed issue," during their initial enrollment period. Our objective would be to make Federal long-term care insurance available to all at-work Federal employees except for those who would be eligible for benefits immediately. Thus, we anticipate asking questions aimed at determining if at-work employees require assistance with activities of daily living, such as eating or bathing. Our goal would be to avoid asking detailed questions about the health status of at-work employees.

We expect that different underwriting standards would apply in the case of at-work employees who seek to enroll in the long-term care program after the initial enrollment period. To prevent adverse selection, additional underwriting questions are likely to be required for these employees.

Spouses of Federal employees

Our goal will be to treat spouses of at-work Federal employees in much the same way we treat at-work Federal employees. This means that our goal would be to ask them the same questions that we ask at-work Federal employees.

In the case of at-work Federal employees, we know something about their health status simply by virtue of the fact that they are actively at work. We do not have the same information about spouses of Federal employees. Although it is our intention to treat

spouses like at-work Federal employees, it may be necessary to seek additional information from spouses during the underwriting process to compensate for the fact that we do not know they are actively at work. However, our goal will be to seek as little additional information as necessary.

Premium considerations

A long-term care insurance program can provide a substantial benefit to Federal employees, their spouses, Federal retirees, and other eligible participants by providing access to quality long-term care insurance products on a group basis. To achieve a viable program, however, we believe that Federal long-term care insurance must be less expensive than the insurance that a Federal employee can obtain on the private long-term care market. The level of underwriting affects the insurer's ability to assess the risk of enrolling an applicant for coverage and what the cost of that coverage should be.

For this reason, until we have engaged in contract negotiations with the long-term care carrier or carriers, we will not be in a position to be definitive about what specific underwriting standard will be applied to eligible groups. Our intent will be to achieve the goals described above and to insure as many participants as possible. We will also explore alternative forms of coverage for those who do not meet the underwriting standards applied to the workforce at large. Until we complete contract negotiations, we will not know for certain the details of the underwriting standards.

We look forward to working with Congress, Federal employee groups, and the insurance industry to implement a successful long-term care insurance program for Federal employees.

Sincerely,

JANICE R. LACHANCE, *Director.*

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