

2003—Par. (1). Pub. L. 108-136, §561(a), substituted a period for a comma at end of subpar. (D) and struck out concluding provisions which read: “but does not include an individual employed by the government of the District of Columbia (other than an employee of the District of Columbia Courts).”

Pub. L. 108-7 inserted “(other than an employee of the District of Columbia Courts)” before period at end of concluding provisions.

Par. (2)(A). Pub. L. 108-136, §561(d), struck out “of this subsection” after “paragraph (1)”.

Par. (2)(C). Pub. L. 108-136, §561(b), added subpar. (C).

Par. (4). Pub. L. 108-136, §561(c), substituted “and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having” for “including a member or former member retired under chapter 1223 of title 10 who has”.

2002—Par. (1)(D). Pub. L. 107-314 added subpar. (D).

2001—Par. (2). Pub. L. 107-104 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “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.”

Par. (3)(A). Pub. L. 107-107 substituted “or” for “and” after semicolon.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-104, §3, Dec. 27, 2001, 115 Stat. 1002, provided that: “The amendments made by this Act [amending this section and section 9005 of this title] shall take effect as if included in the enactment of section 1002 of the Long-Term Care Security Act (Public Law 106-265; 114 Stat. 762).”

#### EFFECTIVE DATE

Pub. L. 106-265, title I, §1003, Sept. 19, 2000, 114 Stat. 770, provided that: “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 title [enacting this chapter], 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 the enactment of this Act [Sept. 19, 2000].”

#### SHORT TITLE

Pub. L. 106-265, title I, §1001, Sept. 19, 2000, 114 Stat. 762, provided that: “This title [enacting this chapter] may be cited as the ‘Long-Term Care Security Act.’”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 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) **DISCRETIONARY AUTHORITY REGARDING NON-APPROPRIATED FUND INSTRUMENTALITIES.**—The Secretary of Defense may determine that a non-appropriated fund instrumentality of the De-

partment of Defense is covered under this chapter or is covered under an alternative long-term care insurance program.

(c) **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.

(d) **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.

(e) **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.

(f) **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).

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 107-314, div. A, title XI, §1101(b), Dec. 2, 2002, 116 Stat. 2660.)

#### REFERENCES IN TEXT

Section 7702B(g)(2) of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 7702B(g)(2) of Title 26, Internal Revenue Code.

## AMENDMENTS

2002—Subsecs. (b) to (f). Pub. L. 107-314 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

**§ 9003. Contracting authority**

(a) **IN GENERAL.**—The Office of Personnel Management shall, without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding, contract with one or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereafter 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; and

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

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for one or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities 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.**—For purposes of applying chapter 71 of title 41 to disputes arising under this chapter between a carrier and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing; and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 7104(b)(1) of title 41 relative to such a dispute.

(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 President (or his designee) 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 the President (or his designee) submits the recommendation required under the preceding sentence, the Office of Personnel Management 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