

## 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

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).

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 111-350, §5(a)(18), Jan. 4, 2011, 124 Stat. 3842.)

#### AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350, §5(a)(18)(A), substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

Subsec. (c)(3). Pub. L. 111-350, §5(a)(18)(B), substituted “chapter 71 of title 41” for “the Contract Disputes Act of 1978” in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 111-350, §5(a)(18)(C), struck out “(after appropriate arrangements, as described in section 8(c) of such Act)” after “specify in writing”.

Subsec. (c)(3)(B). Pub. L. 111-350, §5(a)(18)(D), substituted “section 7104(b)(1) of title 41” for “section 10(a)(1) of such Act”.

#### CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

### § 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 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 with-

holding 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) **REASONABLE INITIAL COSTS.**—

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

(B) **REIMBURSEMENT REQUIREMENT.**—Such Fund shall be reimbursed, before the end of the first year of that 7-year period, for all amounts obligated or expended under subparagraph (A) (including lost investment income). Such reimbursement shall be made by carriers, on a pro rata basis, in accordance with appropriate provisions which shall be included in master contracts under this chapter.

(2) **SUBSEQUENT COSTS.**—

(A) **IN GENERAL.**—There is hereby established in the Employees’ Life Insurance Fund a Long-Term Care Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the 7-year period described in section 9003(d)(2)(B).

(B) **REIMBURSEMENT REQUIREMENT.**—Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions to the Long-Term Care Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year (adjusted to reconcile for any earlier overestimates or underestimates under this subparagraph) are defrayed.

(Added Pub. L. 106-265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 766.)

### § 9005. Preemption

(a) **CONTRACTUAL PROVISIONS.**—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.

(b) **PREMIUMS.**—

(1) **IN GENERAL.**—No tax, fee, or other monetary payment may be imposed or collected, di-