

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1833

To amend the Public Health Service Act to provide for the establishment of a voluntary long-term care insurance program, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 25), 1994

Mr. KENNEDY (for himself and Mr. WOFFORD) introduced the following bill;  
which was read the first time

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## A BILL

To amend the Public Health Service Act to provide for the establishment of a voluntary long-term care insurance program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Life Care Act”.

5 **SEC. 2. LIFE CARE: PUBLIC INSURANCE PROGRAM FOR**  
6 **NURSING HOME CARE.**

7 (a) IN GENERAL.—The Public Health Service Act  
8 (42 U.S.C. 201 et seq.) is amended—

9 (1) by redesignating title XXVII (42 U.S.C.  
10 300cc et seq.) as title XXVIII; and

1 (2) by inserting after title XXVI the following  
2 new title:

3 **“TITLE XXVII—LIFE CARE: PUB-**  
4 **LIC INSURANCE PROGRAM**  
5 **FOR NURSING HOME CARE**

6 **“SEC. 2701. ESTABLISHMENT OF VOLUNTARY LONG-TERM**  
7 **CARE INSURANCE PROGRAM.**

8 “The Secretary shall establish a voluntary insurance  
9 program for individuals 45 years of age and over to cover  
10 the nursing home stays of such individuals.

11 **“SEC. 2702. BENEFITS.**

12 “(a) IN GENERAL.—Subject to subsection (c), an in-  
13 dividual who meets the eligibility criteria prescribed in sec-  
14 tion 2703 shall be eligible under the program established  
15 under this title for coverage for necessary services de-  
16 scribed in subsection (b) (in the amounts described in sub-  
17 section (c)) that are provided to the individual by a nurs-  
18 ing facility while the individual is an inpatient of the facil-  
19 ity.

20 “(b) TYPES.—Coverage may be provided under this  
21 title for—

22 “(1) nursing care provided by or under the su-  
23 pervision of a registered professional nurse;

1           “(2) physical, occupational, or speech therapy  
2 furnished by a facility or by others under arrange-  
3 ments with a facility;

4           “(3) medical social services;

5           “(4) drug, biological, supply, appliance, and  
6 equipment for use in the facility, that is ordinarily  
7 furnished by the facility for the care and treatment  
8 of an inpatient;

9           “(5) medical service of an intern or resident-in-  
10 training under an approved teaching program of a  
11 hospital with which a facility has in effect a transfer  
12 agreement or other diagnostic or therapeutic service  
13 provided by a hospital with which a facility has in  
14 effect a transfer agreement; and

15           “(6) such other health services necessary to the  
16 health of a patient as are generally provided by a  
17 nursing home facility.

18           “(c) COVERAGE AMOUNT.—

19           “(1) IN GENERAL.—The amount of coverage  
20 provided with respect to an eligible individual for the  
21 services described in subsection (b) shall, based on  
22 an election made by the individual, not exceed  
23 \$30,000, \$60,000, or \$90,000 over the lifetime of  
24 the eligible individual. Such amounts shall be ad-

1       justed by the Secretary to reflect increases in the  
2       Consumer Price Index.

3           “(2) ASSET PROTECTION.—An eligible individ-  
4       ual shall be entitled to the asset protection provided  
5       under section 2708.

6           “(d) PAYMENT.—Amounts provided under this title  
7       with respect to an eligible individual for the services de-  
8       scribed in subsection (b) shall be paid from the general  
9       fund of the Treasury of the United States.

10   **“SEC. 2703. ELIGIBILITY.**

11       “(a) IN GENERAL.—An individual shall be eligible for  
12       benefits under this title if—

13           “(1) the individual—

14               “(A) is a legal resident of the United  
15               States and has elected coverage under sub-  
16               section (c);

17               “(B) has been determined by a Screening  
18               Agency through a screening process (conducted  
19               in accordance with section 2707)—

20                   “(i)(I) to require hands-on or standby  
21                   assistance, supervision, or cueing (as de-  
22                   fined in regulations) to perform three or  
23                   more activities of daily living;

24                   “(II) to require hands-on or standby  
25                   assistance, supervision, or cueing with at

1 least such instrumental activity (or activi-  
2 ties) of daily living related to cognitive or  
3 mental impairment as the Secretary speci-  
4 fies; or

5 “(III) to display symptoms of one or  
6 more serious behavioral problems (that is  
7 on a list of such problems specified by the  
8 Secretary) which create a need for super-  
9 vision to prevent harm to self or others;  
10 and

11 “(ii) to require such assistance, super-  
12 vision, or cueing over a period of at least  
13 100 days; and

14 “(C) has achieved a score, on a standard  
15 mental status protocol (or protocols) appro-  
16 priate for measuring the individual’s particular  
17 condition specified by the Secretary, that indi-  
18 cates either severe cognitive impairment or se-  
19 vere mental impairment, or both.

20 “(2)(A) the individual has filed an application  
21 for such benefits, and is in need of, benefits covered  
22 under this title;

23 “(B) the legal guardian of the individual has  
24 filed an application on behalf of an individual who  
25 is in need of benefits covered under this title; or

1           “(C) the representative of an individual who is  
2           cognitively impaired and who is in need of benefits  
3           covered under this title has filed an application on  
4           behalf of the individual; and

5           “(3) receiving nursing home services in a nurs-  
6           ing facility would be in the best interest of the indi-  
7           vidual.

8           “(b) CURRENT INDIVIDUALS.—An individual who is  
9           in a hospital or nursing home on the date of the enroll-  
10          ment of the individual in the program established under  
11          this title shall be ineligible for coverage under this section  
12          until the individual’s first spell of illness beginning after  
13          such date.

14          “(c) ELECTION OF COVERAGE.—

15                 “(1) IN GENERAL.—Subject to this subsection,  
16                 an individual shall have the option to purchase cov-  
17                 erage under this title when the individual is 35 years  
18                 of age, 45 years of age, 55 years of age, or 65 years  
19                 of age.

20                 “(2) INITIAL YEAR.—During the 1-year period  
21                 beginning on the date of enactment of this title, an  
22                 individual who is 45 years of age or older shall be  
23                 eligible to purchase insurance under this title, except  
24                 that such an individual shall not be eligible to pur-  
25                 chase such insurance—

1           “(A) while confined to a hospital or nurs-  
2           ing home;

3           “(B) within the 6-month period after the  
4           individuals confinement in a nursing home; or

5           “(C) within the 90-day period after the in-  
6           dividuals confinement in a hospital.

7           Individuals described in the matter preceding sub-  
8           paragraph (A) shall become eligible to receive bene-  
9           fits under this title on the expiration of the 3-year  
10          period beginning on the date such individuals pur-  
11          chase insurance under this title.

12          “(3) EXTENSION BEYOND INITIAL YEAR.—If an  
13          individual is confined to a nursing home or hospital  
14          during a period that extends beyond the first year  
15          after the effective date of this title, an individual  
16          shall be eligible to enroll in the program established  
17          by this title during the 60-day period beginning after  
18          the individual’s spell of illness.

19          “(4) SUBSEQUENT YEARS.—During years sub-  
20          sequent to the 1-year period referred to in para-  
21          graph (2), an individual shall be eligible to purchase  
22          insurance under this title within 6 months of the  
23          45th, 55th or 65th birthday of the individual.

24          “(5) ACTIVATION OF BENEFITS.—To receive  
25          coverage under the insurance program established by

1 this title, an individual shall have purchased such  
2 coverage not later than 1 month prior to admission  
3 to a nursing facility, unless the reason for the need  
4 of services is a result of an accident or stroke subse-  
5 quent to the date that such individual enrolled for  
6 coverage under this title.

7 **“SEC. 2704. PREMIUM RATES.**

8 “(a) IN GENERAL.—The Secretary shall determine  
9 one premium rate for individuals electing to purchase cov-  
10 erage under this title at age 45 (or between the ages of  
11 45 and 54 during the initial enrollment period), a separate  
12 rate for those individuals who elect such coverage at age  
13 55 (or between that ages of 55 and 64 during the initial  
14 enrollment period), and a separate rate for those individ-  
15 uals who elect such coverage at age 65 (or at age 65 and  
16 over during the initial enrollment period).

17 “(b) REVISION.—The Secretary shall revise premium  
18 rates annually to increase such rates to reflect the amount  
19 of the increase in the cost of living adjustment with re-  
20 spect to benefits under title II of the Social Security Act.

21 “(c) RATES.—In developing premium rates under the  
22 program established under this title, the Secretary shall  
23 establish rates that are expected to cover 100 percent of  
24 the estimated costs of nursing home stays for those indi-  
25 viduals enrolled in the program.

1       “(d) WAIVER.—An individual electing to purchase  
2 coverage under this title shall not be required to pay pre-  
3 miums during any period in which such individual is re-  
4 ceiving benefits under this title.

5       “(e) PAYMENT.—Premiums shall be paid under this  
6 section into the general fund of the Treasury of the United  
7 States.

8 **“SEC. 2705. QUALIFIED SERVICE PROVIDERS.**

9       “(a) IN GENERAL.—To be considered as a covered  
10 nursing home service under this title, such service must  
11 have been provided by a qualified service provider.

12       “(b) TYPES.—A provider shall be considered a quali-  
13 fied service provider under this title if the provider is a  
14 nursing facility that is certified by the State and meets  
15 the requirements of this title and any other standards es-  
16 tablished by the Secretary by regulation for the safe and  
17 efficient provision of services covered under this title.

18 **“SEC. 2706. REIMBURSEMENT.**

19       “(a) AMOUNT.—Monthly reimbursement for nursing  
20 facility services under this title shall equal 65 percent of  
21 the amount the Secretary determines to be reasonable and  
22 appropriate to cover the cost of care provided under this  
23 title, taking into account the average cost of providing ap-  
24 propriate care in the most efficient manner.

1       “(b) PROSPECTIVE PAYMENT.—To the extent fea-  
2 sible, the Secretary shall establish a prospective payment  
3 mechanism for payment for nursing home services under  
4 this title that takes into account the expected resource uti-  
5 lization of individual patients based on their degree of dis-  
6 ability and other factors determining service requirements.

7       “(c) ROOM AND BOARD PAYMENT.—An individual  
8 receiving benefits under this program shall be responsible  
9 for the payment of an amount for room and board that  
10 is equal to—

11           “(1) with respect to the initial 6 months of con-  
12 finement to a nursing facility, 20 percent of the av-  
13 erage per diem rate paid by the Secretary to nursing  
14 facilities receiving reimbursement under this title;  
15 and

16           “(2) with respect to subsequent periods of con-  
17 finement, 35 percent of the average per diem rate  
18 paid by the Secretary to nursing facilities receiving  
19 reimbursement under this title.

20       “(d) PRIORITY PAYERS.—Notwithstanding any other  
21 provision of this title, reimbursement for nursing facility  
22 services provided under this title to an individual shall,  
23 to the extent available, be made under the Medicare pro-  
24 gram, under Department of Veterans Affairs’ programs,

1 or under private insurance policies prior to reimbursement  
2 under this title.

3 **“SEC. 2707. LONG-TERM CARE SCREENING AGENCY.**

4 “(a) ESTABLISHMENT.—The Secretary shall contract  
5 with entities to act as Long-Term Care Screening Agen-  
6 cies (hereafter referred to in this title as the ‘Screening  
7 Agency’) for each designated area of a State. It shall be  
8 the responsibility of such agency to assess the eligibility  
9 of individuals residing in the geographic jurisdiction of the  
10 Agency, for services provided under this title according to  
11 the requirements of this title and regulations prescribed  
12 by the Secretary. In entering into such contracts, the Sec-  
13 retary shall give preference to State governmental entities.

14 “(b) ELIGIBILITY.—The Screening Agency shall de-  
15 termine the eligibility of an individual under this title  
16 based on the results of a preliminary telephone interview  
17 or written questionnaire (completed by the applicant, by  
18 the caregiver of the applicant, or by the legal guardian  
19 or representative of the applicant) that shall be validated  
20 through the use of a screening tool administered in person  
21 to each applicant determined eligible through initial tele-  
22 phone or written questionnaire interviews not later than  
23 15 days from the date on which such individual initially  
24 applied for services under this title.

25 “(c) QUESTIONNAIRES AND SCREENING TOOLS.—

1           “(1) IN GENERAL.—The Secretary shall estab-  
2           lish a telephone or written questionnaire and a  
3           screening tool to be used by the Screening Agency  
4           to determine the eligibility of an individual for serv-  
5           ices under this title consistent with requirements of  
6           this title and the standards established by the Sec-  
7           retary by regulation.

8           “(2) QUESTIONNAIRES.—The questionnaire  
9           shall include questions about the functional impair-  
10          ment, mental status, and living arrangement of an  
11          individual and other criteria that the Secretary shall  
12          prescribe by regulation.

13          “(3) SCREENING TOOLS.—The screening tool  
14          should measure functional impairment caused by  
15          physical or cognitive conditions as well as informa-  
16          tion concerning cognition disability, behavioral prob-  
17          lems (such as wandering or abusive and aggressive  
18          behavior), the living arrangement of an individual,  
19          availability of caregivers, and any other criteria that  
20          the Secretary shall prescribe by regulation. The  
21          screening tool shall be administered in person.

22          “(d) NOTIFICATION.—Not later than 15 days after  
23          the date on which an individual initially applied for serv-  
24          ices under this title (by telephone or written question-  
25          naire), the Screening Agency shall notify such individual

1 that such individual is not eligible for benefits, or that  
2 such individuals must schedule an in-person screening to  
3 determine final eligibility for benefits under this title. The  
4 Screening Agency shall notify such individual of its final  
5 decision not later than 2 working days after the in-person  
6 screening.

7 “(e) IN-PERSON SCREENING.—An individual (or the  
8 legal guardian or representative of such individual) whose  
9 application for benefits under this title is denied on the  
10 basis of information provided through a telephone or writ-  
11 ten questionnaire, shall be notified of such individual’s  
12 right to an in-person screening by a nurse or appropriate  
13 health care professionals.

14 “(f) APPEALS.—The Secretary shall establish a  
15 mechanism for hearings and appeals in cases in which in-  
16 dividuals contest the eligibility findings of the Screening  
17 Agency.

18 **“SEC. 2708. RELATION TO TITLE XIX OF THE SOCIAL SECU-  
19 RITY ACT; ASSET PROTECTION.**

20 “Notwithstanding any other provision of law, the as-  
21 sets an eligible individual may retain and continue to be  
22 determined eligible for nursing facility benefits under  
23 State Medicaid programs (in accordance with section  
24 1902(a)(10)) shall be increased by the amount of coverage

1 (\$30,000, \$60,000, or \$90,000) elected under section  
2 2702.

3 **“SEC. 2709. RELATION TO PRIVATE INSURANCE.**

4 “(a) IN GENERAL.—Except as provided in subsection  
5 (b), an insurer may not offer a health insurance policy  
6 to an individual covered under this title if the coverage  
7 under such policy duplicates the coverage provided under  
8 this title.

9 “(b) DEVELOPMENT OF STANDARD PACKAGES.—The  
10 Secretary shall develop standard health insurance benefits  
11 packages that insurers may offer to individuals receiving  
12 benefits under this title. Such packages shall provide cov-  
13 erage for benefits that compliment, but do not duplicate,  
14 those covered under this title.

15 **“SEC. 2710. DEFINITIONS.**

16 “As used in this title:

17 “(1) ACTIVITY OF DAILY LIVING.—The term  
18 ‘activity of daily living’ includes:

19 “(A) BATHING.—Getting water and cleans-  
20 ing the whole body, including turning on the  
21 water for a bath, shower, or sponge bath, get-  
22 ting to, in, and out of a tub or shower, and  
23 washing and drying oneself;

24 “(B) DRESSING.—Getting clothes from  
25 closets and drawers and then getting dressed,

1 including putting on braces or other devices and  
2 fastening buttons, zippers, snaps, or other clo-  
3 sures, selecting appropriate attire, and dressing  
4 in the proper order;

5 “(C) TOILETING.—Going to a bathroom  
6 for bowel and bladder function, transferring on  
7 and off the toilet, cleaning after elimination,  
8 and arranging clothes;

9 “(D) TRANSFERRING.—Moving in and out  
10 of bed and in and out of a chair or wheelchair;  
11 or

12 “(E) EATING.—Transferring food from a  
13 plate or its equivalent into the body, including  
14 cutting food so as to make possible safe inges-  
15 tion.

16 “(2) NURSING FACILITY.—The term ‘nursing  
17 facility’ means—

18 “(A) a skilled nursing facility (as defined  
19 in section 1819(a) of the Social Security Act);  
20 or

21 “(B) a facility that is a nursing facility (as  
22 defined in section 1919(a) of such Act) which  
23 meets the requirements of section  
24 1819(b)(4)(C) of such Act (relating to nursing  
25 care).

1           “(3) SPELL OF ILLNESS.—The term ‘spell of  
2 illness’ means a period of consecutive days beginning  
3 with the first day on which an individual is fur-  
4 nished services as an inpatient in a hospital or nurs-  
5 ing facility and ending with the close of the first 6  
6 consecutive months thereafter during which the indi-  
7 vidual is no longer an inpatient of a nursing facility,  
8 or 90 days after the individual is no longer an inpa-  
9 tient in a hospital.”.

10       (b) CONFORMING AMENDMENTS.—

11           (1) Sections 2701 through 2714 of the Public  
12 Health Service Act (42 U.S.C. 300cc through  
13 300cc-15) are redesignated as sections 2801  
14 through 2814, respectively.

15           (2) Sections 465(f) and 497 of such Act (42  
16 U.S.C. 286(f) and 289(f)) are amended by striking  
17 out “2701” each place that such appears and insert-  
18 ing in lieu thereof “2801”.

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