

Calendar No. 371

103^D CONGRESS
2^D SESSION

S. 1833

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.

FEBRUARY 22, 1994

Read the second time and placed on the calendar

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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

FEBRUARY 22, 1994

Read the second time and placed on the calendar

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”.

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

3 (a) IN GENERAL.—The Public Health Service Act
 4 (42 U.S.C. 201 et seq.) is amended—

5 (1) by redesignating title XXVII (42 U.S.C.
 6 300cc et seq.) as title XXVIII; and

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

9 **“TITLE XXVII—LIFE CARE: PUB-**
 10 **LIC INSURANCE PROGRAM**
 11 **FOR NURSING HOME CARE**

12 **“SEC. 2701. ESTABLISHMENT OF VOLUNTARY LONG-TERM**
 13 **CARE INSURANCE PROGRAM.**

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

17 **“SEC. 2702. BENEFITS.**

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

1 “(b) TYPES.—Coverage may be provided under this
2 title for—

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

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

8 “(3) medical social services;

9 “(4) drug, biological, supply, appliance, and
10 equipment for use in the facility, that is ordinarily
11 furnished by the facility for the care and treatment
12 of an inpatient;

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

19 “(6) such other health services necessary to the
20 health of a patient as are generally provided by a
21 nursing home facility.

22 “(c) COVERAGE AMOUNT.—

23 “(1) IN GENERAL.—The amount of coverage
24 provided with respect to an eligible individual for the
25 services described in subsection (b) shall, based on

1 an election made by the individual, not exceed
2 \$30,000, \$60,000, or \$90,000 over the lifetime of
3 the eligible individual. Such amounts shall be ad-
4 justed by the Secretary to reflect increases in the
5 Consumer Price Index.

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

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

13 **“SEC. 2703. ELIGIBILITY.**

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

16 “(1) the individual—

17 “(A) is a legal resident of the United
18 States and has elected coverage under sub-
19 section (c);

20 “(B) has been determined by a Screening
21 Agency through a screening process (conducted
22 in accordance with section 2707)—

23 “(i)(I) to require hands-on or standby
24 assistance, supervision, or cueing (as de-

1 fined in regulations) to perform three or
2 more activities of daily living;

3 “(II) to require hands-on or standby
4 assistance, supervision, or cueing with at
5 least such instrumental activity (or activi-
6 ties) of daily living related to cognitive or
7 mental impairment as the Secretary speci-
8 fies; or

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

15 “(ii) to require such assistance, super-
16 vision, or cueing over a period of at least
17 100 days; and

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

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

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

7 “(C) the representative of an individual who is
8 cognitively impaired and who is in need of benefits
9 covered under this title has filed an application on
10 behalf of the individual; and

11 “(3) receiving nursing home services in a nurs-
12 ing facility would be in the best interest of the indi-
13 vidual.

14 “(b) CURRENT INDIVIDUALS.—An individual who is
15 in a hospital or nursing home on the date of the enroll-
16 ment of the individual in the program established under
17 this title shall be ineligible for coverage under this section
18 until the individual’s first spell of illness beginning after
19 such date.

20 “(c) ELECTION OF COVERAGE.—

21 “(1) IN GENERAL.—Subject to this subsection,
22 an individual shall have the option to purchase cov-
23 erage under this title when the individual is 35 years
24 of age, 45 years of age, 55 years of age, or 65 years
25 of age.

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

7 “(A) while confined to a hospital or nurs-
8 ing home;

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

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

13 Individuals described in the matter preceding sub-
14 paragraph (A) shall become eligible to receive bene-
15 fits under this title on the expiration of the 3-year
16 period beginning on the date such individuals pur-
17 chase insurance under this title.

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

1 “(4) SUBSEQUENT YEARS.—During years sub-
2 sequent to the 1-year period referred to in para-
3 graph (2), an individual shall be eligible to purchase
4 insurance under this title within 6 months of the
5 45th, 55th or 65th birthday of the individual.

6 “(5) ACTIVATION OF BENEFITS.—To receive
7 coverage under the insurance program established by
8 this title, an individual shall have purchased such
9 coverage not later than 1 month prior to admission
10 to a nursing facility, unless the reason for the need
11 of services is a result of an accident or stroke subse-
12 quent to the date that such individual enrolled for
13 coverage under this title.

14 **“SEC. 2704. PREMIUM RATES.**

15 “(a) IN GENERAL.—The Secretary shall determine
16 one premium rate for individuals electing to purchase cov-
17 erage under this title at age 45 (or between the ages of
18 45 and 54 during the initial enrollment period), a separate
19 rate for those individuals who elect such coverage at age
20 55 (or between that ages of 55 and 64 during the initial
21 enrollment period), and a separate rate for those individ-
22 uals who elect such coverage at age 65 (or at age 65 and
23 over during the initial enrollment period).

24 “(b) REVISION.—The Secretary shall revise premium
25 rates annually to increase such rates to reflect the amount

1 of the increase in the cost of living adjustment with re-
2 spect to benefits under title II of the Social Security Act.

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

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

12 “(e) PAYMENT.—Premiums shall be paid under this
13 section into the general fund of the Treasury of the United
14 States.

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

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

19 “(b) TYPES.—A provider shall be considered a quali-
20 fied service provider under this title if the provider is a
21 nursing facility that is certified by the State and meets
22 the requirements of this title and any other standards es-
23 tablished by the Secretary by regulation for the safe and
24 efficient provision of services covered under this title.

1 **“SEC. 2706. REIMBURSEMENT.**

2 “(a) AMOUNT.—Monthly reimbursement for nursing
3 facility services under this title shall equal 65 percent of
4 the amount the Secretary determines to be reasonable and
5 appropriate to cover the cost of care provided under this
6 title, taking into account the average cost of providing ap-
7 propriate care in the most efficient manner.

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

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

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

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

1 “(d) PRIORITY PAYERS.—Notwithstanding any other
2 provision of this title, reimbursement for nursing facility
3 services provided under this title to an individual shall,
4 to the extent available, be made under the Medicare pro-
5 gram, under Department of Veterans Affairs’ programs,
6 or under private insurance policies prior to reimbursement
7 under this title.

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

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

19 “(b) ELIGIBILITY.—The Screening Agency shall de-
20 termine the eligibility of an individual under this title
21 based on the results of a preliminary telephone interview
22 or written questionnaire (completed by the applicant, by
23 the caregiver of the applicant, or by the legal guardian
24 or representative of the applicant) that shall be validated
25 through the use of a screening tool administered in person

1 to each applicant determined eligible through initial tele-
2 phone or written questionnaire interviews not later than
3 15 days from the date on which such individual initially
4 applied for services under this title.

5 “(c) QUESTIONNAIRES AND SCREENING TOOLS.—

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

13 “(2) QUESTIONNAIRES.—The questionnaire
14 shall include questions about the functional impair-
15 ment, mental status, and living arrangement of an
16 individual and other criteria that the Secretary shall
17 prescribe by regulation.

18 “(3) SCREENING TOOLS.—The screening tool
19 should measure functional impairment caused by
20 physical or cognitive conditions as well as informa-
21 tion concerning cognition disability, behavioral prob-
22 lems (such as wandering or abusive and aggressive
23 behavior), the living arrangement of an individual,
24 availability of caregivers, and any other criteria that

1 the Secretary shall prescribe by regulation. The
2 screening tool shall be administered in person.

3 “(d) NOTIFICATION.—Not later than 15 days after
4 the date on which an individual initially applied for serv-
5 ices under this title (by telephone or written question-
6 naire), the Screening Agency shall notify such individual
7 that such individual is not eligible for benefits, or that
8 such individuals must schedule an in-person screening to
9 determine final eligibility for benefits under this title. The
10 Screening Agency shall notify such individual of its final
11 decision not later than 2 working days after the in-person
12 screening.

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

20 “(f) APPEALS.—The Secretary shall establish a
21 mechanism for hearings and appeals in cases in which in-
22 dividuals contest the eligibility findings of the Screening
23 Agency.

1 **“SEC. 2708. RELATION TO TITLE XIX OF THE SOCIAL SECUR-**
2 **RITY ACT; ASSET PROTECTION.**

3 “Notwithstanding any other provision of law, the as-
4 sets an eligible individual may retain and continue to be
5 determined eligible for nursing facility benefits under
6 State Medicaid programs (in accordance with section
7 1902(a)(10)) shall be increased by the amount of coverage
8 (\$30,000, \$60,000, or \$90,000) elected under section
9 2702.

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

11 “(a) IN GENERAL.—Except as provided in subsection
12 (b), an insurer may not offer a health insurance policy
13 to an individual covered under this title if the coverage
14 under such policy duplicates the coverage provided under
15 this title.

16 “(b) DEVELOPMENT OF STANDARD PACKAGES.—The
17 Secretary shall develop standard health insurance benefits
18 packages that insurers may offer to individuals receiving
19 benefits under this title. Such packages shall provide cov-
20 erage for benefits that compliment, but do not duplicate,
21 those covered under this title.

22 **“SEC. 2710. DEFINITIONS.**

23 “As used in this title:

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

1 “(A) BATHING.—Getting water and cleans-
2 ing the whole body, including turning on the
3 water for a bath, shower, or sponge bath, get-
4 ting to, in, and out of a tub or shower, and
5 washing and drying oneself;

6 “(B) DRESSING.—Getting clothes from
7 closets and drawers and then getting dressed,
8 including putting on braces or other devices and
9 fastening buttons, zippers, snaps, or other clo-
10 sures, selecting appropriate attire, and dressing
11 in the proper order;

12 “(C) TOILETING.—Going to a bathroom
13 for bowel and bladder function, transferring on
14 and off the toilet, cleaning after elimination,
15 and arranging clothes;

16 “(D) TRANSFERRING.—Moving in and out
17 of bed and in and out of a chair or wheelchair;
18 or

19 “(E) EATING.—Transferring food from a
20 plate or its equivalent into the body, including
21 cutting food so as to make possible safe inges-
22 tion.

23 “(2) NURSING FACILITY.—The term ‘nursing
24 facility’ means—

1 “(A) a skilled nursing facility (as defined
2 in section 1819(a) of the Social Security Act);
3 or

4 “(B) a facility that is a nursing facility (as
5 defined in section 1919(a) of such Act) which
6 meets the requirements of section
7 1819(b)(4)(C) of such Act (relating to nursing
8 care).

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

18 (b) CONFORMING AMENDMENTS.—

19 (1) Sections 2701 through 2714 of the Public
20 Health Service Act (42 U.S.C. 300cc through
21 300cc–15) are redesignated as sections 2801
22 through 2814, respectively.

23 (2) Sections 465(f) and 497 of such Act (42
24 U.S.C. 286(f) and 289(f)) are amended by striking

- 1 out "2701" each place that such appears and insert-
- 2 ing in lieu thereof "2801".

○