

103^D CONGRESS
1ST SESSION

H. R. 3122

To amend title 38, United States Code, to revise and improve the long-term care programs of the Department of Veterans Affairs.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1993

Mr. STUMP (for himself, Mr. SMITH of New Jersey, Mr. BILIRAKIS, Mr. HUTCHINSON, and Mr. LINDER) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to revise and improve the long-term care programs of the Department of Veterans Affairs.

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 "Veterans' Long-Term
5 Care Act of 1993".

6 **SEC. 2. DEFINITION OF LONG-TERM CARE.**

7 Section 1701 of title 38, United States Code, is
8 amended by adding at the end the following:

1 “(10) The term ‘long-term care’ means a continuum
2 of institutional and noninstitutional programs and services
3 that provide comprehensive restorative care and support
4 services through a time period generally exceeding 90
5 days. Such term includes the following care and services
6 authorized to be provided by the Secretary:

7 “(A) Nursing home care.

8 “(B) Domiciliary care.

9 “(C) State home care.

10 “(D) Hospital-based home care.

11 “(E) Adult day health care.

12 “(F) Hospice care.

13 “(G) Respite care.

14 “(H) Social support services.

15 “(I) Non-institutional alternatives pilot pro-
16 gram.

17 “(J) Community residential care.

18 “(K) Rehabilitative services.

19 “(L) Care provided through Geriatric Research,
20 Education, and Clinical Centers.

21 “(M) Care provided through Geriatric Evalua-
22 tion and Management Programs.

23 “(N) Provision of intermediate medicine.

24 “(O) Any other services that the Secretary de-
25 termines to be needed on a long-term basis.”.

1 **SEC. 3. ELIGIBILITY CRITERIA FOR LONG-TERM CARE.**

2 (a) IN GENERAL.—(1) Chapter 17 of title 38, United
3 States Code, is amended—

4 (A) by redesignating section 1711 as section
5 1710A; and

6 (B) by inserting after such section the following
7 new section 1711:

8 **“§ 1711. Eligibility for long-term care**

9 “(a) The Secretary shall furnish long-term care which
10 the Secretary determines is medically needed—

11 “(1) to any veteran for a service-connected dis-
12 ability;

13 “(2) to any veteran who has a service-connected
14 disability rated at 50 percent or more, for any dis-
15 ability;

16 “(3) to any veteran who is eligible for pension
17 from the Department, for any disability; and

18 “(4) to any veteran for any disability resulting
19 from treatment by the Department.

20 “(b) The Secretary shall furnish long-term care which
21 the Secretary determines is medically needed to any vet-
22 eran enrolled in a long-term care coinsurance plan under
23 subsection (f).

24 “(c) Subject to subsection (e), the Secretary shall fur-
25 nish long-term care which the Secretary determines is
26 medically needed—

1 “(1) to any veteran who has a service-connected
2 disability rated at less than 50 percent, for any dis-
3 ability;

4 “(2) to any veteran whose annual income (as
5 determined under section 1503 of this title) is less
6 than three times the maximum income amount for
7 eligibility of that veteran for pension, for any disabil-
8 ity;

9 “(3) to any veteran who has a catastrophic ill-
10 ness (as determined by the Secretary) resulting from
11 a nonservice-connected disability;

12 “(4) to any veteran who is a veterans’ continu-
13 ing care center resident under section 8119 of this
14 title, for treatment provided by the medical center
15 associated with that veterans’ continuing care center
16 to obviate the need for institutional care; and

17 “(5) to any veteran who needs such care as a
18 follow-on to hospitalization in a Department medical
19 center, for a period not exceeding six months from
20 the termination of hospitalization.

21 “(d) Subject to subsection (d), the Secretary may fur-
22 nish long-term care which the Secretary determines is
23 medically needed to any veteran not described in sub-
24 section (a), (b), or (c), subject to the availability of staff
25 and facilities.

1 “(e)(1) The Secretary may not furnish long-term care
2 under this section to a veteran who is eligible for such
3 care under subsection (c) or (d) unless the veteran agrees
4 to pay to the United States the applicable long-term care
5 copayment prescribed under paragraph (2).

6 “(2) The Secretary shall establish by regulation a
7 schedule of long-term care copayments for the purposes
8 of this section. A veteran who is furnished long-term care
9 under this section and who is required under paragraph
10 (1) to agree to pay a long-term care copayment to the
11 United States in order to be furnished such care shall be
12 liable to the United States for the amount applicable to
13 that veteran under the schedule prescribed under this sub-
14 section. In the case of a veteran enrolled in the long-term
15 care coinsurance plan under subsection (f), copayments
16 may be waived or may be lower than copayments for veter-
17 ans not so enrolled.

18 “(3) A copayment required to be paid under this sec-
19 tion may be paid by the veteran from any insurance cov-
20 erage that would be available to the veteran if the care
21 for which the payment is required was provided in a non-
22 Government facility.

23 “(f)(1) The Secretary shall establish by regulation a
24 long-term care coinsurance plan for the purposes of this
25 section. The plan shall provide for enrollment of veterans

1 and the assessment and collection of premiums from veter-
2 ans who are enrolled. The Secretary shall determine en-
3 rollment periods and the requirements for enrollment.

4 “(2) The amount of the premiums under the coinsur-
5 ance plan shall be established by the Secretary taking into
6 consideration the needs of veterans and the needs of the
7 Department. The Secretary may establish different pre-
8 miums for veterans based upon such factors as the Sec-
9 retary determines appropriate, including cost-of-living dif-
10 ferences in different geographic regions and income level
11 of veterans. For veterans whose annual income is greater
12 than the maximum income amount for eligibility of that
13 veteran for pension, but less than three times that
14 amount, the Secretary shall establish a premium scale
15 based upon a veteran’s ability to pay.

16 “(g)(1)(A) Notwithstanding any condition, limitation,
17 or other provision of title XVIII of the Social Security Act,
18 a facility of the Department through which long-term care
19 is provided shall be deemed for the purposes of this section
20 to be a Medicare participating provider with respect to
21 long-term care (as defined in section 1701(9) of this title),
22 and when such a facility provides long-term care covered
23 under title XVIII of the Social Security Act to a veteran
24 who is entitled to benefits under that title, amounts for
25 such care shall be paid to the Secretary as a Medicare

1 participating provider, but in accordance with rates deter-
2 mined under subparagraph (B).

3 “(B) Reimbursement for long-term care provided
4 under this section shall be based upon a methodology
5 which is agreed upon by the Secretary and the Secretary
6 of Health and Human Services and which provides (i) ap-
7 propriate flexibility to the directors of the medical facilities
8 to take into account local conditions and needs and the
9 actual costs to the facility, and (ii) an overall reimburse-
10 ment applicable to each such facility for any fiscal year
11 that is less than the otherwise applicable amount that
12 would be allowed under title XVIII of the Social Security
13 Act for the care provided.

14 “(2)(A) Notwithstanding any condition, limitation, or
15 other provision of title XIX of the Social Security Act,
16 if a facility of the Department is providing long-term care
17 to an individual who would be entitled to medical assist-
18 ance under a State plan under such title with respect to
19 such care if the care were provided by a qualified medicaid
20 participating provider, such facility shall be deemed for
21 the purposes of this section to be a qualified medicaid par-
22 ticipating provider with respect to such care. Amounts for
23 such care shall be paid in accordance with rates deter-
24 mined under subparagraph (B).

1 “(B) Reimbursement for long-term care provided
2 under this section shall be based upon a methodology
3 which is agreed upon by the Secretary and the Secretary
4 of Health and Human Services and which provides (i) ap-
5 propriate flexibility to the directors of the medical facilities
6 to take into account local conditions and needs and the
7 actual costs to the facility, and (ii) an overall reimburse-
8 ment applicable to each such facility for any fiscal year
9 that is less than the otherwise applicable amount that
10 would be allowed under title XIX of the Social Security
11 Act for the care provided.

12 “(h) Amounts received by the Secretary under this
13 section as premiums or copayments shall be deposited into
14 the Long-Term Care Revolving Fund.”.

15 (2) The table of sections at the beginning of such
16 chapter is amended by striking out the item relating to
17 section 1711 and inserting in lieu thereof the following:

“1710A. Care during examinations and in emergencies.

“1711. Eligibility for long-term care.”.

18 (3) The Secretary of Veterans Affairs and the Sec-
19 retary of Health and Human Services shall enter into an
20 agreement to establish methodologies for medicare and
21 medicaid reimbursement rates under subsection (g) of sec-
22 tion 1711 of title 38, United States Code, as added by
23 paragraph (1), not later than six months after the date
24 of the enactment of this Act.

1 (b) CONFORMING AMENDMENTS TO SECTION
2 1710.—Section 1710 of such title is amended as follows:

3 (1) Subsection (a) is amended—

4 (A) in paragraph (1)(A), by striking out “,
5 and may furnish nursing home care,”;

6 (B) in paragraph (2), by striking out “and
7 nursing home care”; and

8 (C) in paragraph (3), by striking out “and
9 nursing home care” and “and may furnish such
10 nursing home care as authorized under section
11 1720 of this title”.

12 (2) Subsection (b) is repealed.

13 (3) Subsection (c) is amended by striking out
14 “or nursing home care” in the first sentence.

15 (4) Subsection (d) is repealed.

16 **SEC. 4. CONTRACTS FOR LONG-TERM CARE.**

17 (a) IN GENERAL.—Chapter 17 of title 38, United
18 States Code, is amended—

19 (1) by redesignating section 1704 as 1705; and

20 (2) by inserting after section 1703 the following
21 new section:

22 **“§1704. Contracts for long-term care in non-Depart-**
23 **ment facilities**

24 “(a) In carrying out section 1711 of this title, the
25 Secretary may contract for needed long-term care for vet-

1 erans eligible for long-term care under section 1711 of this
2 title when Department facilities are geographically inac-
3 cessible, lack sufficient capacity, or are otherwise not ca-
4 pable of furnishing needed care or when the Secretary de-
5 termines that it would be more economical to contract for
6 such care than to provide it through Department facilities.
7 The authority to enter into a contract under this section
8 shall be subject to the availability of appropriations.

9 “(b) No veteran may be transferred or admitted to
10 any institution for long-term care under this chapter un-
11 less the institution has been determined by the Secretary
12 to meet such standards as the Secretary may prescribe.
13 The standards prescribed and any report of inspection of
14 institutions furnishing care to veterans under this section
15 made by or for the Secretary shall, to the extent possible,
16 be made available to all Federal, State, and local agencies
17 charged with the responsibility of licensing or otherwise
18 regulating or inspecting such institutions.

19 “(c) In applying the provisions of section 2(b)(1) of
20 the Service Contract Act of 1965 (41 U.S.C. 351(b)(1))
21 with respect to any contract entered into under this sec-
22 tion to provide long-term care of veterans, the payment
23 of wages not less than those specified in section 6(b) of
24 the Fair Labor Standards Act of 1938 (29 U.S.C. 206(b))

1 shall be deemed to constitute compliance with such provi-
2 sions.

3 “(d) In arranging to provide adult day health care
4 and other health-related services in noninstitutional set-
5 tings under section 1711 of this title, the Secretary may
6 provide in-kind assistance (through the services of Depart-
7 ment employees and the sharing of other Department re-
8 sources) to a facility furnishing such services to veterans
9 under this chapter. Any such in-kind assistance shall be
10 provided under a contract between the Secretary and the
11 facility concerned. The Secretary may provide such assist-
12 ance only for use solely in the furnishing of adult day
13 health care or other health-related services and only if,
14 under such contract, the Department receives reimburse-
15 ment for the full cost of such assistance, including the cost
16 of services and supplies and normal depreciation and am-
17 ortization of equipment. Such reimbursement may be
18 made by reduction in the charges to the United States
19 or by payment to the United States. Any funds received
20 through such reimbursement shall be credited to funds al-
21 lotted to the Department facility that provided the assist-
22 ance.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of such chapter is amended by striking

1 out the item relating to section 1704 and inserting in lieu
2 thereof the following:

“1704. Contracts for long-term care in non-Department facilities.
“1705. Preventive health services: annual report.”.

3 **SEC. 5. SOCIAL SUPPORT SERVICES.**

4 (a) IN GENERAL.—Chapter 17 of title 38, United
5 States Code, is amended by inserting after section 1720D
6 the following new section:

7 **“§ 1720E. Social support services**

8 “As part of a program of long-term care for a vet-
9 eran, the Secretary may provide social support services,
10 including personal care and homemaker services, if needed
11 to enable the veteran to reside in the home, or another
12 noninstitutional setting, while receiving care under section
13 1710, 1711, or 1712 of this title.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of such chapter is amended by inserting
16 after the item relating to section 1720D the following new
17 item:

“1720E. Social support services.”.

18 **SEC. 6. LONG-TERM CARE FACILITIES.**

19 (a) VETERANS’ SERVICE AREAS.—Chapter 81 of title
20 38, United States Code, is amended by inserting after sec-
21 tion 8116 the following new sections:

1 **“§8117. Veterans’ service areas for provision of long-**
2 **term care**

3 “(a) The Secretary shall designate geographic areas
4 (to be known as ‘veterans’ service areas’) throughout the
5 United States as areas in which the complete range of
6 long-term care services will be available to veterans. Such
7 areas shall be established based on the number of veterans
8 in an area and their health needs and on traveltime to
9 various facilities.

10 “(b)(1) Not later than six months after the date of
11 the enactment of this section, the Secretary shall submit
12 to Congress a report on the Secretary’s plan for the imple-
13 mentation of this section and the provisions of chapter 17
14 of this title relating to long-term care. The Secretary shall
15 set forth in the report the plans of the Secretary for ensur-
16 ing by October 1, 1999, that there is available within each
17 service area designated under subsection (a) all of the
18 services considered to be long-term care for the purposes
19 of chapter 17 of this title and that such services are avail-
20 able in each such area in an appropriate balance of serv-
21 ices for the needs of veterans in that area.

22 “(2) The Secretary shall use the authority provided
23 in section 1704 of this title as appropriate to ensure that
24 the plan is fully complied with.

25 “(c)(1) The Secretary shall on a regular basis assess
26 the need for new long-term care facilities for the Depart-

1 ment in each veterans' service area. In assessing the need
2 for construction or acquisition of new facilities for the De-
3 partment in any veterans' service area, the Secretary shall
4 assess and take into consideration other Government fa-
5 cilities in the area and facilities available in the community
6 so as to avoid duplication of existing long-term care capac-
7 ity.

8 “(2) The Secretary shall include the Secretary's find-
9 ings and recommendations under paragraph (1) in each
10 report of the Secretary under section 8107 of this title.

11 “(d) The Secretary shall ensure that not less than
12 one-third of the amount programmed for major construc-
13 tion projects in the budget of the Department for any fis-
14 cal year, and not less than one-third of the amount obli-
15 gated for minor construction projects in any fiscal year,
16 are for projects and activities relating to long-term care
17 until such time as the Secretary determines that the ap-
18 propriate mix of long-term care facilities and services are
19 available in each veterans' service area.

20 **“§8118. Long-term care fund**

21 “(a) There is hereby established on the books of the
22 Treasury the Veterans' Long-Term Care Fund. The fund
23 shall be administered by the Secretary of Veterans Affairs.

1 “(b) Assets of the fund shall consist of amounts de-
2 posited in the fund pursuant to section 1711 of this title
3 and any amounts that may be appropriated to the fund.

4 “(c) The Secretary may use the assets of the fund
5 for the provision of long-term care services to veterans and
6 for construction, acquisition, and alteration of long-term
7 care facilities (including site preparation).

8 “(d) Obligations from the fund may only be made to
9 the extent provided in appropriation Acts.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such chapter is amended by inserting
12 after the item relating to section 8116 the following new
13 item:

“8117. Veterans’ service areas for provision of long-term care.
“8118. Long-term care fund.”.

14 **SEC. 7. VETERANS’ CONTINUING CARE CENTERS.**

15 (a) AUTHORITY TO ALLOW USE OF DEPARTMENT
16 PROPERTY.—Chapter 81 of title 38, United States Code,
17 is amended by inserting after section 8118 (as added by
18 section 6) the following new section:

19 **“§8119. Veterans’ continuing care centers**

20 “(a)(1) The Secretary, using the authority to enter
21 into enhanced-use leases under section 8162 of this title,
22 may enter into agreements to permit the establishment,
23 on property of the Department, of residential facilities for
24 veterans. Such agreements may be entered into with pri-

1 vate sector entities, with entities of State or local govern-
2 ment, or with other Federal departments or agencies.

3 “(2) Such a facility shall be available as a residence—

4 “(A) for veterans whose requirements for long-
5 term care are such that they would otherwise require
6 nursing home care (or another form of institutional
7 care), with consequent loss of functional independ-
8 ence; and

9 “(B) for veterans with respect to whom the
10 Secretary determines, in any case, that the condition
11 of the veteran is such that the veteran would be
12 most appropriately served in the setting provided by
13 such a facility.

14 “(3) In this section—

15 “(A) a facility established on property of the
16 Department pursuant to this section is referred to
17 as a ‘veterans’ continuing care center’;

18 “(B) an agreement under this section for the
19 establishment of such a facility is referred to as a
20 ‘veterans’ continuing care center agreement’; and

21 “(C) an entity with which the Secretary enters
22 into such an agreement is referred to as a ‘partici-
23 pating entity’.

24 “(4) A veterans’ continuing care center agreement
25 shall provide for the colocation of the veterans’ continuing

1 care center covered by the agreement with a Department
2 medical center, outpatient clinic, or nursing home.

3 “(b)(1) Each veterans’ continuing care center agree-
4 ment shall provide that residence in the veterans’ continu-
5 ing care center covered by the agreement shall, subject
6 to space limitations, be available to any veteran covered
7 by subsection (a)(2) who meets the financial qualification
8 requirements of the participating entity.

9 “(2) Acceptance of a veteran for residence in a veter-
10 ans’ continuing care center shall include acceptance for
11 residence with the veteran of the veteran’s spouse (if any)
12 or other person designated by the veteran as the veteran’s
13 primary caretaker.

14 “(c) Under a veterans’ continuing care center agree-
15 ment, the participating entity shall agree to—

16 “(1) construct or otherwise establish on the
17 property covered by the agreement a residential fa-
18 cility that includes individual, handicap-accessible
19 apartment units;

20 “(2) provide by contract with each resident for
21 specified nonmedical services (which may include
22 meals, housekeeping, recreation, security, 24-hour
23 monitoring, and transportation); and

24 “(3) provide case management services to the
25 veteran’s spouse (or other primary caretaker des-

1 ignated under subsection (b)(2)) for the manage-
2 ment of necessary health care services required by
3 the spouse (or other designated primary caretaker)
4 from sources outside the Department.

5 “(d) A veteran who is accepted for residence in a vet-
6 erans’ continuing care center shall enter into a lease
7 agreement with the participating entity for at least one
8 year.

9 “(e) In entering into agreements under this section,
10 the Secretary shall, in order to make veterans’ continuing
11 care centers affordable to low-income veterans, give prior-
12 ity, in selecting participating entities, to agreements with
13 entities that would establish facilities through which public
14 housing subsidies would be available to residents.

15 “(f) The Secretary shall establish, at each Depart-
16 ment facility that has collocated with it a veterans’ con-
17 tinuing care center, a team of primary care providers to
18 be known as the Veterans’ Continuing Care Center Health
19 team. Each such team shall, at a minimum, consist of a
20 physician and a home-health nurse and shall be respon-
21 sible for maintaining access of the veterans’ continuing
22 care center residents to appropriate health care services
23 and for home health visits at the center.

24 “(g)(1) Before entering into any veterans’ continuing
25 care center agreement, the Secretary shall submit to the

1 congressional veterans' affairs committees notice in writ-
2 ing of the Secretary's intention to enter into the agree-
3 ment. Each such notice shall include the following:

4 (A) Identification of the property involved.

5 (B) A description of the proposed veterans' con-
6 tinuing care center.

7 (C) A statement of the number of veterans who
8 would be residents at the proposed center.

9 (D) A statement of the projected costs of the
10 proposed center.

11 "(2) If a proposed veterans' continuing care center
12 agreement for which a notice is submitted under para-
13 graph (1) is not executed within one year from the date
14 on which such notice is submitted, the Secretary shall sub-
15 mit to the congressional veterans' affairs committees no-
16 tice in writing that the proposed agreement has not been
17 executed. Any such notice shall include an identification
18 of the specific reasons why the agreement was not exe-
19 cuted.

20 "(h) The Secretary shall submit to the congressional
21 veterans' affairs committees a report on the first year's
22 operation of each veterans' continuing care center. Each
23 such report shall be submitted not later than 30 days after
24 the one-year anniversary of the date on which the veter-

1 ans' continuing care center began operation. Each such
2 report shall set forth—

3 “(1) the cost to the Department of the veter-
4 ans' continuing care center;

5 “(2) any cost savings to the Department that
6 are derived from the avoidance of institutionalization
7 of veterans residing at the center;

8 “(3) degree of use by veterans of the center;

9 “(4) the types of health-care services used by
10 residents of the center; and

11 “(5) any plans of the Secretary for expansion of
12 the center or for creation of additional centers.

13 “(i) The provisions of section 8163, 8168, and 8169
14 of this title shall not apply with respect to a veterans' con-
15 tinuing care center agreement under this section. ”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of such chapter is amended by inserting
18 after the item relating to section 8118 (as added by sec-
19 tion 6) the following new item:

“8119. Veterans' continuing care centers.”.

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