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113TH CONGRESS
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H. R. 2698

To provide a short-term disability insurance program for Federal employees for disabilities that are not work-related, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2013

Ms. NORTON introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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A BILL

To provide a short-term disability insurance program for Federal employees for disabilities that are not work-related, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Employee Short-Term Disability Insurance Act of 2013''.

SEC. 2. PURPOSE.

The purpose of this Act is to offer voluntary insurance to Federal employees for protection against the loss of pay resulting from—

(1) short-term injury or disability;

(2) short-term leave taken for the purpose of caring for a family member;

(3) the birth of a child of such an employee; or

(4) making arrangements to adopt a child or to become a foster parent.

SEC. 3. NON-WORK RELATED DISABILITY INSURANCE.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after chapter 87 the following:

"CHAPTER 88—NON-WORK RELATED SHORT-TERM DISABILITY INSURANCE

''Sec.
''8801. Definitions.
''8802. Availability of insurance.
''8803. Contracting authority.
''8804. Benefits.
''8805. Premiums.
''8806. Preemption.
''8807. Studies, reports, and audits.
''8808. Jurisdiction of courts.
''8809. Administrative functions.
''8810. Cost accounting standards.

"§ 8801. Definitions

''For purposes of this chapter—

''(1) the term 'Director' means the Director of the Office of Personnel Management;

''(2) the term 'employee' means—

''(A) an employee defined in section 8901(1); and

''(B) an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

"(3) the term 'injury or disability', with respect to an employee, means that such employee is unable to perform the essential functions of such employee's position of employment with the Federal Government;

"(4) the term 'member of family' has the meaning given such term in section 8901(5);

"(5) the term 'carrier' means an insurance company that is licensed to issue disability insurance in all States, taking into account any subsidiaries or affiliates of such a company; and

"(6) the term 'State' includes the District of Columbia.

"§ 8802. Availability of insurance

"(a) The Director shall establish and administer a program to make insurance coverage available under this chapter—

"(1) for an injury or disability not covered under chapter 81;

"(2) for leave to care for, or leave to make arrangements to care for, a member of family, including the birth of a son or a daughter; and

"(3) for leave to make arrangements—

"(A) to become a foster parent; or

"(B) to adopt a child.

"(b) Insurance shall not be available under this chapter if the injury or disability of an employee is—

"(1) caused by willful misconduct of such employee;

"(2) caused by such employee's intention to bring about such injury or disability to himself or to another individual; or

"(3) proximately caused by the intoxication of such employee.

"(c) In addition to the requirements otherwise applicable under section 8801(5), an insurance contract under this chapter must be fully insured, whether through reinsurance with other carriers or otherwise.

"§ 8803. Contracting authority

"(a) The Director shall, without regard to any statute requiring competitive bidding, contract with one or more carriers for a policy or policies of disability insurance as described under this chapter. The Director shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

"(b)(1) Each contract under this section 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 duration of the enrollment period; and

"(D) such other terms and conditions (including procedures for establishing eligibility for insurance under this chapter) as may be determined by the Director, consistent with the requirements of this chapter.

"(2) Premiums charged under a contract under this section shall reasonably and equitably reflect the cost of the benefits provided, as determined by the Director.

"(c)(1) Each contract under this section shall require the carrier—

"(A) to provide payments or benefits described in section 8804(c) to an employee if such employee 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 resolve such disputes expeditiously; 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 circumstances acceptable to the Director.

"(2) The carrier's determination as to whether or not a particular employee is eligible to obtain insurance coverage under this chapter shall be subject to review to the extent and in the manner provided in the applicable contract.

"(3) Nothing in this chapter shall be considered to grant authority for a third-party reviewer to change the terms of any contract under this chapter.

"(d)(1) Each contract under this section shall be for a term of not less than 3 years and not greater than 7 years, and may be terminated earlier than the termination date of such contract by the Director in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled employee, the insurer, and the Director under each contract shall continue with respect to such employee until the termination of coverage of the

enrolled employee or the effective date of a successor contract.

"(2) A contract described in paragraph (1) may be made automatically renewable, for a term of 1 year each January 1, unless written notice of non-renewal is given either by the Director or the carrier not less than 180 days before the renewal date, or unless modified by mutual agreement.

"(3) A contract described in paragraph (1) shall include such provisions as may be necessary to ensure that, once an employee becomes duly enrolled, insurance coverage pursuant to that enrollment shall be terminated only if the individual is separated from Federal service or, where appropriate, for non-payment of premiums.

"§ 8804. Benefits

"(a) The Director may prescribe reasonable minimum standards for benefit plans offered under this chapter.

"(b)(1) Benefits provided to an employee under this chapter shall offset other benefits received by such employee for the same injury or disability, leave to care for or make arrangements to care for a member of family (including the birth of a son or a daughter), or leave to make arrangements to adopt a child or become a foster parent including worker's compensation and disability retirement income.

"(2) A contract providing benefits under this chapter—

"(A) shall not provide for a preexisting condition exclusion; and

"(B) shall not charge higher premiums, deny coverage, or drop coverage of an employee with a preexisting condition.

"(3) A contract providing benefits under this chapter shall provide incentives for an employee who is receiving benefits under such contract to return to work.

"(c)(1) For each instance that such employee suffers an injury or disability, takes leave to care for or make arrangements to care for a member of family (including the birth of a son or a daughter), or takes leave to make arrangements to adopt a child or become a foster parent, and is eligible for benefits under this chapter, such employee may receive benefits under this chapter for a period not to exceed 12 months beginning on the date on which such employee qualifies for such benefits. An employee shall receive such benefits after the expiration of the waiting period selected by such employee under paragraph (2)(A). The amount of benefits shall be equal to the lesser of—

"(A) 70 percent of the annual rate of pay, excluding bonuses, of an employee at the time of the injury or disability of such employee occurs; or

"(B) 70 percent of the maximum rate of basic pay provided for grade GS–15 of the General Schedule.

"(2)(A) The period for which benefits are payable to an employee under this subsection shall begin after the completion of a waiting period, subject to the requirement in subparagraph (C). An employee shall elect one of the following waiting period options:

"(i) On the 8th day of continuous injury or disability, leave to care for or to make arrangements to care for a member of family (including the birth of a son or a daughter), or leave to make arrangements to adopt a child or become a foster parent.

"(ii) On the 31st day of continuous disability, leave to care for or to make arrangements to care for a member of family (including the birth of a son or a daughter), or leave to make arrangements to adopt a child or become a foster parent.

"(iii) On the 91st day of continuous disability, leave to care for or to make arrangements to care for a member of family (including the birth of a son

or a daughter), or leave to make arrangements to adopt a child or become a foster parent.

''(iv) On the 181st day of continuous disability, leave to care for or to make arrangements to care for a member of family (including the birth of a son or a daughter), or leave to make arrangements to adopt a child or become a foster parent.

''(B) An employee who elects to receive benefits earlier shall pay a higher premium.

''(C) A waiting period selected under subparagraph (A) shall begin on the first day of an employee's injury or disability.

"§ 8805. Premiums

''(a) Each eligible individual obtaining insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

''(b) The amount necessary to pay the premiums for enrollment shall be withheld from the pay of the enrolled individual.

''(c) The 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.

"(d)(1)(A) The Employees' Life Insurance Fund is available, without fiscal year limitation, for reasonable expenses incurred in administering this chapter before the start of the first term described in section 8803(d)(1), including reasonable implementation costs.

"(B) Such Fund shall be reimbursed, before the end of the first year of a contract described in section 8803(d)(1), for all amounts obligated or expended under subparagraph (A) (including lost investment income). Reimbursement under this subparagraph shall be made by the carrier in accordance with applicable provisions included in the relevant contract.

"(C)(i) There is hereby established in the Employees' Life Insurance Fund a Non-Work Related Disability Insurance Administrative Account, which shall be available to the Office of Personnel Management, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first term described in section 8803(d)(1).

"(ii) A contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions to the Non-Work Related Disability Insurance Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office of Personnel Management in

1 administering this chapter during such year (adjusted to
2 reconcile for any earlier overestimates or underestimates
3 under this subparagraph) are defrayed.

4 ''(e) Nothing in this chapter shall, in the case of an
5 enrolled individual applying for an extension of insurance
6 coverage under this chapter after the expiration of such
7 enrolled individual's first opportunity to enroll, preclude
8 the application of underwriting standards for later enroll-
9 ment.

10 **"§ 8806. Preemption**

11 ''(a) The terms of any contract under this chapter
12 which relate to the nature, provision, or extent of coverage
13 or benefits (including payments with respect to benefits)
14 shall supersede and preempt any State, territorial, tribal,
15 or local law, or any regulation issued thereunder, which
16 relates to non-work related disability insurance or con-
17 tracts.

18 ''(b)(1) No tax, fee, or other monetary payment may
19 be imposed or collected, directly or indirectly, by any
20 State, territory, tribe, or locality, or by any political sub-
21 division or other governmental authority thereof, on, or
22 with respect to, any premium paid for an insurance policy
23 under this chapter.

24 ''(2) Paragraph (1) shall not be construed to exempt
25 any company or other entity issuing a policy of insurance

under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such entity from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

''(c) No law of a State, territory, tribe, or locality, pertaining to subrogation or reimbursement with respect to benefits provided under this chapter, shall operate except as expressly adopted by the Director.

"§ 8807. Studies, reports, and audits

''(a) A contract under this chapter shall contain provisions requiring the carrier to furnish such reasonable reports as the Director determines to be necessary to enable the Director to carry out the Director's functions under this chapter.

''(b) Each Federal agency shall keep such records, make such certifications, and furnish the Director, the carrier, or both, with such information and reports as the Director may require.

''(c) The Director shall conduct periodic reviews of each plan under this chapter to ensure its competitiveness.

"§ 8808. Jurisdiction of courts

''The district courts of the United States have original jurisdiction, concurrent with the United States Court

of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8803(c) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

"§ 8809. Administrative functions

''(a)(1) Except as otherwise provided in this chapter, the Director shall prescribe regulations necessary to carry out this chapter and to make arrangements as necessary with other agencies and payroll systems to implement the program.

''(2) Except as otherwise provided by law, the Director shall specify in regulation the treatment of time spent by an individual in receipt of benefits under this chapter for the purposes of periodic increases in pay, retention purposes, and other rights, benefits, and conditions of employment for which length of service is a factor.

''(b) The carrier shall provide for periodic coordinated enrollment, promotion, and education efforts, as specified by the Director.

"§ 8810. Cost accounting standards

''The cost accounting standards issued pursuant to section 1502 of title 41 shall not apply with respect to an insurance contract under this chapter.''.

(b) CONFORMING AMENDMENT.—Section 1005(f) of title 39, United States Code, is amended by inserting ''88,'' after ''87,''.

(c) CLERICAL AMENDMENT.—The analysis for part III of title 5, United States Code, is amended by adding at the end of subpart G the following:

''88. Non-Work Related Short-Term Disability Insurance 8801''.

(d) DATE OF APPLICATION.—The amendment made by subsection (a) shall apply to contracts that take effect with respect to the first calender year that begins more than 18 months after the date of enactment of this section.

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