

FISCAL RESPONSIBILITY AND RETIREMENT SECURITY
ACT OF 2011

DECEMBER 23, 2011.—Ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1173]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1173) to repeal the CLASS program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fiscal Responsibility and Retirement Security Act of 2011”.

SEC. 2. REPEAL OF CLASS PROGRAM.

(a) **REPEAL.**—Title XXXII of the Public Health Service Act (42 U.S.C. 300ll et seq.; relating to the CLASS program) is repealed.

(b) **CONFORMING CHANGES.**—

(1)(A) Title VIII of the Patient Protection and Affordable Care Act (Public Law 111–148; 124 Stat. 119, 846–847) is repealed.

(B) The table of contents contained in section 1(b) of such Act is amended by striking the items relating to title VIII.

(2) Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking paragraphs (81) and (82);

(B) in paragraph (80), by inserting “and” at the end; and

(C) by redesignating paragraph (83) as paragraph (81).

(3) Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended—

(A) in paragraph (2)(A)(iv)—

(i) by inserting “not” before “include”; and

(ii) by striking “and information” and inserting “or information”; and

(B) in paragraph (3)—

(i) in the heading, by striking “APPROPRIATION” and inserting “FUNDING”;

(ii) by striking “2015” and inserting “2012”; and

(iii) by adding at the end the following new sentence: “There is authorized to be appropriated to carry out this subsection \$3,000,000 for each of fiscal years 2013 through 2015.”

PURPOSE AND SUMMARY

H.R. 1173, the “Fiscal Responsibility and Retirement Security Act of 2011,” a bill to repeal provisions of the Public Health Service Act enacted under the Patient Protection and Affordable Care Act (PPACA) (entitled the Community Living Assistance Services and Supports Act or the CLASS Act), was introduced on March 17, 2011, by Rep. Charles W. Boustany, Jr. (R-LA), and was referred to the Committees on Energy and Commerce and Ways and Means.

The goal of H.R. 1173 is to terminate any further Federal activity or spending by the Executive Branch on the CLASS program, which the U.S. Department of Health and Human Services (HHS) has determined to be unsustainable.

BACKGROUND AND NEED FOR LEGISLATION

The intent of the CLASS Act was to develop a Federally run voluntary insurance program for purchasing community living assistance services and supports in order to provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence.

However, both before and after passage of PPACA, opponents of the program questioned its long-term sustainability and raised concerns about the program’s affordability for consumers and potential impact on the nation’s deficit if premiums were never actually collected.

Those longstanding concerns were reiterated on Friday, October 14, 2011, when HHS Secretary Kathleen Sebelius announced that HHS had suspended work on the CLASS program, saying “despite our best analytical efforts, I do not see a viable path forward at this time.” On the same day, HHS issued a comprehensive analysis

of its work on the CLASS program entitled “Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program.”

In that report, Administration on Aging Administrator Kathy Greenlee raised concerns with potential adverse selection, noting, “If healthy purchasers are not attracted to the CLASS benefit package, then premiums will increase, which will make it even more unattractive to purchasers who could also obtain policies in the private market. This imbalance in the beneficiary pool would cause the program to quickly collapse.”

The affordability of the program’s premiums was also a concern. The HHS analysis projected premiums even higher than had been previously estimated by outside actuaries, noting the basic CLASS benefit plan could cost, “\$235 and \$391 a month, and may cost as much as \$3,000 per month.”

HEARINGS

The Subcommittee on Health held its first hearing on the “Implementation and Sustainability of the New, Government-Administered CLASS program,” on March 17, 2011. The following witnesses testified at the hearing:

- The Hon. Kathy Greenlee, Assistant Secretary, Administration on Aging;
- Mr. Allen J. Schmitz, FSA, MAAA, Principal, Consulting Actuary, Milliman, American Academy of Actuaries;
- Dr. Joseph Antos, Ph.D., Wilson H. Taylor Scholar in Health Care and Retirement Policy, The American Enterprise Institute;
- The Honorable Mark J. Warshawsky, Current Member of the Social Security Advisory Board, Director of Retirement Research, Towers Watson;
- Anthony (Tony) J. Young, Senior Public Policy Strategist, NISH, The AbilityOne Program; and,
- William Lawrence Minnix, Jr., LeadingAge, CEO, Advance CLASS, Inc, Chair.

The Subcommittee on Health held another hearing on HHS’ decision to halt implementation of the CLASS program, on October 26, 2011. The following witnesses testified at the hearing:

- The Honorable Denny Rehberg, U.S. House of Representatives;
- The Honorable Charles W. Boustany, Jr., M.D., U.S. House of Representatives;
- The Honorable Theodore E. Deutch, U.S. House of Representatives;
- The Honorable Patrick J. Kennedy, Former Congressman, U.S. House of Representatives;
- The Honorable Kathy Greenlee, Assistant Secretary for Aging, Administration on Aging (AOA), U.S. Department of Health and Human Services; and,
- The Honorable Sherry Glied, Ph.D., Assistant Secretary for Planning and Evaluation (ASPE), U.S. Department of Health and Human Services

The Secretary of HHS also testified before the Health Subcommittee at a March 3, 2011 hearing regarding the President’s FY 2012 Budget and implementation of PPACA, during which the CLASS Act was discussed.

COMMITTEE CONSIDERATION

H.R. 1173 was introduced by Mr. Charles W. Boustany, Jr. on March 17, 2011, and was referred to the Committees on Energy and Commerce and Ways and Means.

On November 15, 2011, the Subcommittee on Health met in open markup session to consider H.R. 1173 and favorably reported the bill to the full Committee by voice vote.

On November 29 and 30, 2011, the Energy and Commerce Committee met in open markup session to consider H.R. 1173. The Committee ordered H.R. 1217 favorably reported by a vote of 33 to 17.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 76**

BILL: H.R. 1173, the "Fiscal Responsibility and Retirement Security Act of 2011"

AMENDMENT: An amendment offered by Mrs. Capps, No. 1a (to amend the Terry amendment), to preserve funding for the National Clearinghouse for Long-Term Care Information as a mandatory appropriation.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette			
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy	X						
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

11/30/2011

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 77**

BILL: H.R. 1173, the "Fiscal Responsibility and Retirement Security Act of 2011"

AMENDMENT: An amendment offered by Mr. Pallone, No. 3, to prohibit repeal of the CLASS Program until the CLASS Independence Advisory Council is able to review and respond to the October 14th, 2011, HHS Report on CLASS.

DISPOSITION: NOT AGREED TO, by a roll call vote of 15 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns				Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 78**

BILL: H.R. 1173, the "Fiscal Responsibility and Retirement Security Act of 2011"

AMENDMENT: An amendment offered by Mr. Towns, No. 4, to prohibit repeal of the CLASS Program until a long-term care alternative is implemented.

DISPOSITION: NOT AGREED TO, by a roll call vote of 15 yeas to 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton				Mr. Waxman			
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns				Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 79**

BILL: H.R. 1173, the "Fiscal Responsibility and Retirement Security Act of 2011"

AMENDMENT: An amendment offered by Mr. Engel, No. 5, to prohibit repeal of the CLASS Program until 50 percent of individuals in the United States who are 18 years of age or older have private long-term care insurance.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman			
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin			
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 80**

BILL: H.R. 1173, the "Fiscal Responsibility and Retirement Security Act of 2011"

AMENDMENT: A motion by Mr. Upton to order H.R. 1173 favorably reported to the House, as amended.
(Final Passage)

DISPOSITION: **AGREED TO**, by a roll call vote of 33 yeas to 17 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey			
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green		X	
Mr. Rogers				Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin			
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Mrs. Christensen		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

11/30/2011

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report, including the finding that reining in mandatory spending is necessary to avoid a debt crisis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report, including the goal of avoiding a debt crisis by reining in mandatory spending.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND
TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1173 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1173 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 2, 2011.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julia Mitchell.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1173—Fiscal Responsibility and Retirement Security Act of 2011

Summary: H.R. 1173 would repeal title VIII of the Patient Protection and Affordable Care Act (PPACA). That title of the PPACA established the Community Living Assistance Services and Supports (CLASS) Program—a national, voluntary long-term care insurance program for purchasing community living assistance services and supports. Title VIII also authorized and appropriated funding through 2015 for the National Clearinghouse for Long-Term Care Information (clearinghouse). H.R. 1173 would replace those appropriated funds for the clearinghouse for 2013 through 2015 with funding subject to future appropriation actions.

CBO estimates that enacting H.R. 1173 would reduce direct spending by \$9 million over the 2012–2016 and 2012–2021 periods. H.R. 1173 also would increase spending subject to future appropriation by \$9 million over the same periods. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. Enacting H.R. 1173 would have no impact on federal revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1173 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—											2012–2016	2012–2021	
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021				
CHANGES IN DIRECT SPENDING														
Estimated Budget Authority	0	–3	–3	–3	0	0	0	0	0	0	0	–9	–9	
Estimated Outlays	0	–3	–3	–3	0	0	0	0	0	0	0	–9	–9	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION														
Estimated Authorization														
Level	0	3	3	3	0	0	0	0	0	0	0	9	9	
Estimated Outlays	0	3	3	3	0	0	0	0	0	0	0	9	9	

Basis of estimate: In its March 2011 baseline projections, CBO anticipated that the CLASS program would begin collecting premiums in fiscal year 2012 and that net receipts of the program over the 2012–2021 period would amount to \$81 billion, not including estimated Medicaid savings of \$2 billion. On October 14, 2011, the Secretary of the Department of Health and Human Services announced that she did not “see a viable path forward for CLASS implementation at this time.”¹ CBO considers that announcement to be definitive new information and as a result, in its next baseline projections (which will be issued in January), CBO will assume that CLASS will not be implemented unless there are changes in law or other actions by the Administration that would supersede the Secretary’s announcement. Further, legislation to repeal the provisions of law establishing the CLASS program are now estimated as having no budgetary effect relative to current law.

However, the Secretary’s announcement does not affect use of the funds authorized and appropriated for the clearinghouse. There-

¹Letter from Kathleen Sebelius, Secretary of the Department of Health and Human Services, to John A. Boehner, Speaker, House of Representatives, October 14, 2011.

fore, the replacement of these appropriated funds for the clearinghouse for 2013 through 2015 with funding subject to future appropriation actions would have a budgetary effect of reducing direct spending by \$9 million and subsequently increasing spending subject to appropriation by \$9 million over the 2012–2021 period.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table. Enacting H.R. 1173 would have no impact on federal revenues.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1173, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON NOVEMBER 30, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
NET DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	–3	–3	–3	0	0	0	0	0	0	–9	–9

Intergovernmental and private-sector impact: H.R. 1173 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On October 31, 2011, CBO transmitted a letter to Senator John Thune providing a cost estimate for S. 720, the Repeal the CLASS Entitlement Act, as introduced in the Senate on April 4, 2011. H.R. 1173 is similar to S. 720. Both bills would have no budgetary effect over the 2012–2021 period for provisions repealing the CLASS program. Both bills, however, would reduce direct spending by \$9 million over the 2012–2021 period as a result of rescinding appropriated funding for the National Clearinghouse for Long-Term Care Information. Due to an error on CBO’s part, the savings of \$9 million over the 2012–2021 period attributed to rescinding appropriated funding for the clearinghouse were not included in the October 31 letter to Senator Thune. H.R. 1173 would replace that appropriated funding with an authorization for future appropriations of similar amounts for the clearinghouse, but S. 720 would not.

Estimate prepared by: Federal Costs: Julia Mitchell; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Michael Levine.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section I. Short title

The bill is entitled the “Fiscal Responsibility and Retirement Security Act of 2011.”

Section II. Repeal of the CLASS program

Section II repeals Title XXXII of the Public Health Service Act and Title VIII of the Patient Protection and Affordable Care Act (P.L. 111–148)—provisions related to the CLASS program and amends the Deficit Reduction Act of 2005 (P.L. 109–171) to repeal provisions providing appropriations for the National Clearinghouse for Long-Term Care Information through FY2015.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE XXXII OF THE PUBLIC HEALTH SERVICE ACT

[TITLE XXXII—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

[SEC. 3201. PURPOSE.

[The purpose of this title is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

[(1) provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;

[(2) establish an infrastructure that will help address the Nation’s community living assistance services and supports needs;

[(3) alleviate burdens on family caregivers; and

[(4) address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

[SEC. 3202. DEFINITIONS.

[In this title:

[(1) ACTIVE ENROLLEE.—The term “active enrollee” means an individual who is enrolled in the CLASS program in accord-

ance with section 3204 and who has paid any premiums due to maintain such enrollment.

[(2) ACTIVELY EMPLOYED.—The term “actively employed” means an individual who—

[(A) is reporting for work at the individual’s usual place of employment or at another location to which the individual is required to travel because of the individual’s employment (or in the case of an individual who is a member of the uniformed services, is on active duty and is physically able to perform the duties of the individual’s position); and

[(B) is able to perform all the usual and customary duties of the individual’s employment on the individual’s regular work schedule.

[(3) ACTIVITIES OF DAILY LIVING.—The term “activities of daily living” means each of the following activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986:

[(A) Eating.

[(B) Toileting.

[(C) Transferring.

[(D) Bathing.

[(E) Dressing.

[(F) Continence.

[(4) CLASS PROGRAM.—The term “CLASS program” means the program established under this title.

[(5) ELIGIBILITY ASSESSMENT SYSTEM.—The term “Eligibility Assessment System” means the entity established by the Secretary under section 3205(a)(2) to make functional eligibility determinations for the CLASS program.

[(6) ELIGIBLE BENEFICIARY.—

[(A) IN GENERAL.—The term “eligible beneficiary” means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

[(i) has paid premiums for enrollment in such program for at least 60 months;

[(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act for the year; and

[(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual’s enrollment and ends on the date of such determination.

[(B) DATE DESCRIBED.—For purposes of subparagraph (A), the date described in this subparagraph is the date on which the individual is determined to have a functional limitation described in section 3203(a)(1)(C) that is expected to last for a continuous period of more than 90 days.

[(C) REGULATIONS.—The Secretary shall promulgate regulations specifying exceptions to the minimum earnings requirements under subparagraph (A)(ii) for purposes of being considered an eligible beneficiary for certain populations.

[(7) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR MENTAL DISEASES.—The terms “hospital”, “nursing facility”, “intermediate care facility for the mentally retarded”, and “institution for mental diseases” have the meanings given such terms for purposes of Medicaid.

[(8) CLASS INDEPENDENCE ADVISORY COUNCIL.—The term “CLASS Independence Advisory Council” or “Council” means the Advisory Council established under section 3207 to advise the Secretary.

[(9) CLASS INDEPENDENCE BENEFIT PLAN.—The term “CLASS Independence Benefit Plan” means the benefit plan developed and designated by the Secretary in accordance with section 3203.

[(10) CLASS INDEPENDENCE FUND.—The term “CLASS Independence Fund” or “Fund” means the fund established under section 3206.

[(11) MEDICAID.—The term “Medicaid” means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

[(12) POVERTY LINE.—The term “poverty line” has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

[(13) PROTECTION AND ADVOCACY SYSTEM.—The term “Protection and Advocacy System” means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

[SEC. 3203. CLASS INDEPENDENCE BENEFIT PLAN.

[(a) PROCESS FOR DEVELOPMENT.—

[(1) IN GENERAL.—The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this title. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 3205 consistent with the following requirements:

[(A) PREMIUMS.—

[(i) IN GENERAL.—Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

[(ii) NOMINAL PREMIUM FOR POOREST INDIVIDUALS AND FULL-TIME STUDENTS.—

[(I) IN GENERAL.—The monthly premium for enrollment in the CLASS program shall not exceed

the applicable dollar amount per month determined under subclause (II) for—

[(aa) any individual whose income does not exceed the poverty line; and

[(bb) any individual who has not attained age 22, and is actively employed during any period in which the individual is a full-time student (as determined by the Secretary).

[(II) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount described in this subclause is the amount equal to \$5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

[(iii) CLASS INDEPENDENCE FUND RESERVES.—At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Independence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

[(B) VESTING PERIOD.—A 5-year vesting period for eligibility for benefits.

[(C) BENEFIT TRIGGERS.—A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner, described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

[(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

[(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

[(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

[(D) CASH BENEFIT.—Payment of a cash benefit that satisfies the following requirements:

[(i) MINIMUM REQUIRED AMOUNT.—The benefit amount provides an eligible beneficiary with not less than an average of \$50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

[(ii) AMOUNT SCALED TO FUNCTIONAL ABILITY.—The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

[(iii) DAILY OR WEEKLY.—The benefit is paid on a daily or weekly basis.

[(iv) NO LIFETIME OR AGGREGATE LIMIT.—The benefit is not subject to any lifetime or aggregate limit.

[(2) REVIEW AND RECOMMENDATION BY THE CLASS INDEPENDENCE ADVISORY COUNCIL.—The CLASS Independence Advisory Council shall—

[(A) evaluate the alternative benefit plans developed under paragraph (1); and

[(B) recommend for designation as the CLASS Independence Benefit Plan for offering to the public the plan that the Council determines best balances price and benefits to meet enrollees' needs in an actuarially sound manner, while optimizing the probability of the long-term sustainability of the CLASS program.

[(3) DESIGNATION BY THE SECRETARY.—Not later than October 1, 2012, the Secretary, taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

[(b) ADDITIONAL PREMIUM REQUIREMENTS.—

[(1) ADJUSTMENT OF PREMIUMS.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual's enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

[(B) RECALCULATED PREMIUM IF REQUIRED FOR PROGRAM SOLVENCY.—

[(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

[(ii) EXEMPTION FROM INCREASE.—Any increase in a monthly premium imposed as result of a determina-

tion described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

[(I) has attained age 65;

[(II) has paid premiums for enrollment in the program for at least 20 years; and

[(III) is not actively employed.

[(C) RECALCULATED PREMIUM IF REENROLLMENT AFTER MORE THAN A 3-MONTH LAPSE.—

[(i) IN GENERAL.—The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for reenrollment in the program.

[(ii) CREDIT FOR PRIOR MONTHS IF REENROLLED WITHIN 5 YEARS.—An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the program shall be—

[(I) credited with any months of paid premiums that accrued prior to the individual's lapse in enrollment; and

[(II) notwithstanding the total amount of any such credited months, required to satisfy section 3202(6)(A)(ii) before being eligible to receive benefits.

[(D) NO LONGER STATUS AS A FULL-TIME STUDENT.—An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii)(I)(bb) who ceases to be described in that subsection, beginning with the first month following the month in which the individual ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

[(E) PENALTY FOR REENROLLMENT AFTER 5-YEAR LAPSE.—In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

[(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

[(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

[(2) ADMINISTRATIVE EXPENSES.—In determining the monthly premiums for the CLASS program the Secretary may factor in costs for administering the program, not to exceed for any year in which the program is in effect under this title, an amount equal to 3 percent of all premiums paid during the year.

[(3) NO UNDERWRITING REQUIREMENTS.—No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

[(A) determine the monthly premium for enrollment in the CLASS program; or

[(B) prevent an individual from enrolling in the program.

[(c) SELF-ATTESTATION AND VERIFICATION OF INCOME.—The Secretary shall establish procedures to—

[(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii) to self-attest that their income does not exceed the poverty line or that their status as a full-time student who is actively employed;

[(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1631(e)(1)(B)(ii) of the Social Security Act and consistent with the requirements applicable to the conveyance of data and information under section 1942 of such Act, the validity of such self-attestation; and

[(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.

[(SEC. 3204. ENROLLMENT AND DISENROLLMENT REQUIREMENTS.

[(a) AUTOMATIC ENROLLMENT.—

[(1) IN GENERAL.—Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

[(2) ALTERNATIVE ENROLLMENT PROCEDURES.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

[(A) who is self-employed;

[(B) who has more than 1 employer; or

[(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

[(3) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

[(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

[(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment in the CLASS program at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.

[(c) INDIVIDUAL DESCRIBED.—For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

[(1) who has attained age 18;

[(2) who—

[(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of the Internal Revenue Code of 1986; or

[(B) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986;

[(3) who is actively employed; and

[(4) who is not—

[(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases and receiving medical assistance under Medicaid; or

[(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 202(x)(1)(A)(ii) of the Social Security Act (42 U.S.C. 402(x)(1)(A)(ii)).

[(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as requiring an active enrollee to continue to satisfy subparagraph (A) or (B) of subsection (c)(2) in order to maintain enrollment in the CLASS program.

[(e) PAYMENT.—

[(1) PAYROLL DEDUCTION.—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in coordination with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

[(2) ALTERNATIVE PAYMENT MECHANISM.—The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

[(A) who does not have an employer who elects to deduct and withhold premiums in accordance with paragraph (1); or

[(B) who does not earn wages or derive self-employment income.

[(f) TRANSFER OF PREMIUMS COLLECTED.—

[(1) IN GENERAL.—During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

[(2) TRANSFERS BASED ON ESTIMATES.—The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5). Proper adjustments shall be made in amounts subsequently transferred to the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

[(g) OTHER ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

[(1) an individual who, in the year of the individual's initial eligibility to enroll in the CLASS program, has not enrolled in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program; and

[(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.

[SEC. 3205. BENEFITS.

[(a) DETERMINATION OF ELIGIBILITY.—

[(1) APPLICATION FOR RECEIPT OF BENEFITS.—The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

[(2) ELIGIBILITY ASSESSMENTS.—

[(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall—

[(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

[(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

[(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

[(B) REGULATIONS.—The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redetermination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the

amount of the cash benefit (in accordance the sliding scale established under the plan).

[(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLANNING TO DISCHARGE.—An active enrollee shall be deemed presumptively eligible if the enrollee—

[(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding scale established under the CLASS Independence Benefit Plan;

[(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

[(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

[(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

[(b) BENEFITS.—An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

[(1) CASH BENEFIT.—A cash benefit established by the Secretary in accordance with the requirements of section 3203(a)(1)(D) that—

[(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

[(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

[(2) ADVOCACY SERVICES.—Advocacy services in accordance with subsection (d).

[(3) ADVICE AND ASSISTANCE COUNSELING.—Advice and assistance counseling in accordance with subsection (e).

[(4) ADMINISTRATIVE EXPENSES.—Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3203(b)(3).

[(c) PAYMENT OF BENEFITS.—

[(1) LIFE INDEPENDENCE ACCOUNT.—

[(A) IN GENERAL.—The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

[(B) USE OF CASH BENEFITS.—Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence

at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

[(C) ELECTRONIC MANAGEMENT OF FUNDS.—The Secretary shall establish procedures for—

[(i) crediting an account established on behalf of a beneficiary with the beneficiary’s cash daily benefit;

[(ii) allowing the beneficiary to access such account through debit cards; and

[(iii) accounting for withdrawals by the beneficiary from such account.

[(D) PRIMARY PAYOR RULES FOR BENEFICIARIES WHO ARE ENROLLED IN MEDICAID.—In the case of an eligible beneficiary who is enrolled in Medicaid, the following payment rules shall apply:

[(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary’s daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary’s personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility’s cost of providing the beneficiary’s care, and Medicaid shall provide secondary coverage for such care.

[(ii) BENEFICIARIES RECEIVING HOME AND COMMUNITY-BASED SERVICES.—

[(I) 50 PERCENT OF BENEFIT RETAINED BY BENEFICIARY.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

【(II) REQUIREMENT FOR STATE OFFSET.—A State shall be paid the remainder of a beneficiary’s daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) or of section 1902(a)(10)(B) of such Act (relating to comparability) and the State offers at a minimum case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

【(III) DEFINITION OF HOME AND COMMUNITY-BASED SERVICES.—In this clause, the term “home and community-based services” means any services which may be offered under a home and community-based waiver authorized for a State under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (i) of such section.

【(iii) BENEFICIARIES ENROLLED IN PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).—

【(I) IN GENERAL.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u–4), the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

【(II) INSTITUTIONALIZED RECIPIENTS OF PACE PROGRAM SERVICES.—If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in institutionalized beneficiary under clause (i).

【(2) AUTHORIZED REPRESENTATIVES.—

【(A) IN GENERAL.—The Secretary shall establish procedures to allow access to a beneficiary’s cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

[(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

[(3) COMMENCEMENT OF BENEFITS.—Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

[(4) ROLLOVER OPTION FOR LUMP-SUM PAYMENT.—An eligible beneficiary may elect to—

[(A) defer payment of their daily or weekly benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

[(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

[(i) the total amount of the accrued deferred benefits; or

[(ii) the applicable annual benefit.

[(5) PERIOD FOR DETERMINATION OF ANNUAL BENEFITS.—

[(A) IN GENERAL.—The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

[(B) INCLUSION OF INCREASED BENEFITS.—The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

[(C) RECOUPMENT OF UNPAID, ACCRUED BENEFITS.—

[(i) IN GENERAL.—The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—

[(I) the death of a beneficiary; or

[(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

[(ii) PAYMENT INTO CLASS INDEPENDENCE FUND.—Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 3206.

[(6) REQUIREMENT TO RECERTIFY ELIGIBILITY FOR RECEIPT OF BENEFITS.—An eligible beneficiary shall periodically, as determined by the Secretary—

[(A) recertify by submission of medical evidence the beneficiary's continued eligibility for receipt of benefits; and

[(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

[(7) SUPPLEMENT, NOT SUPPLANT OTHER HEALTH CARE BENEFITS.—Subject to the Medicaid payment rules under paragraph (1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

[(d) ADVOCACY SERVICES.—An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—

[(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—

[(A) information regarding how to access the appeals process established for the program;

[(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and

[(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and

[(2) ensure that the System and such counselors comply with the requirements of subsection (h).

[(e) ADVICE AND ASSISTANCE COUNSELING.—An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding—

[(1) accessing and coordinating long-term services and supports in the most integrated setting;

[(2) possible eligibility for other benefits and services;

[(3) development of a service and support plan;

[(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs;

[(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and

[(6) such other services as the Secretary, by regulation, may require.

[(f) NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.—Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary's eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq.,

1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

[(g) **RULE OF CONSTRUCTION.**—Nothing in this title shall be construed as prohibiting benefits paid under the CLASS Independence Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

[(h) **PROTECTION AGAINST CONFLICT OF INTERESTS.**—The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following:

[(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

[(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

[(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

[(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.

[(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

[(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

[(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

[SEC. 3206. CLASS INDEPENDENCE FUND.]

[(a) **ESTABLISHMENT OF CLASS INDEPENDENCE FUND.**—There is established in the Treasury of the United States a trust fund to be known as the “CLASS Independence Fund”. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3204(f) and 3205(c)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

[(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

[(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and

[(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

[(b) INVESTMENT OF FUND BALANCE.—The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1841(d) of the Social Security Act (42 U.S.C. 1395t).

[(c) BOARD OF TRUSTEES.—

[(1) IN GENERAL.—With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the “Board of Trustees”) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

[(2) DUTIES.—

[(A) IN GENERAL.—It shall be the duty of the Board of Trustees to do the following:

[(i) Hold the CLASS Independence Fund.

[(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

[(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i).

[(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

[(B) REPORT.—The report provided for in subparagraph (A)(ii) shall—

[(i) include—

[(I) a statement of the assets of, and the disbursements made from, the CLASS Independence Fund during the preceding fiscal year;

[(II) an estimate of the expected income to, and disbursements to be made from, the CLASS Independence Fund during the current fiscal year and each of the next 2 fiscal years;

[(III) a statement of the actuarial status of the CLASS Independence Fund for the current fiscal year, each of the next 2 fiscal years, and as projected over the 75-year period beginning with the current fiscal year; and

[(IV) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable; and

[(ii) be printed as a House document of the session of the Congress to which the report is made.

[(C) RECOMMENDATIONS.—If the Board of Trustees determines that enrollment trends and expected future benefit claims on the CLASS Independence Fund are not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i) and are unlikely to be resolved with reasonable premium increases or through other means, the Board of Trustees shall include in the report provided for in subparagraph (A)(ii) recommendations for such legislative action as the Board of Trustees determine to be appropriate, including whether to adjust monthly premiums or impose a temporary moratorium on new enrollments.

[SEC. 3207. CLASS INDEPENDENCE ADVISORY COUNCIL.

[(a) ESTABLISHMENT.—There is hereby created an Advisory Committee to be known as the “CLASS Independence Advisory Council”.

[(b) MEMBERSHIP.—

[(1) IN GENERAL.—The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

[(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

[(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

[(2) TERMS.—

[(A) IN GENERAL.—The members of the CLASS Independence Advisory Council shall serve overlapping terms

of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

[(B) LIMITATION.—A member shall not be eligible to serve for more than 2 consecutive terms.

[(3) CHAIR.—The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

[(c) DUTIES.—The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this title and in the formulation of regulations under this title including with respect to—

[(1) the development of the CLASS Independence Benefit Plan under section 3203;

[(2) the determination of monthly premiums under such plan; and

[(3) the financial solvency of the program.

[(d) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall apply to the CLASS Independence Advisory Council.

[(e) AUTHORIZATION OF APPROPRIATIONS.—

[(1) IN GENERAL.—There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

[(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

[SEC. 3208. SOLVENCY AND FISCAL INDEPENDENCE; REGULATIONS; ANNUAL REPORT.

[(a) SOLVENCY.—The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 3202.

[(b) NO TAXPAYER FUNDS USED TO PAY BENEFITS.—No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term “taxpayer funds” means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.

[(c) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.

[(d) ANNUAL REPORT.—Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

[(1) The total number of enrollees in the program.

[(2) The total number of eligible beneficiaries during the fiscal year.

[(3) The total amount of cash benefits provided during the fiscal year.

[(4) A description of instances of fraud or abuse identified during the fiscal year.

[(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.

[SEC. 3209. INSPECTOR GENERAL'S REPORT.

[The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

[(1) The eligibility determination process.

[(2) The provision of cash benefits.

[(3) Quality assurance and protection against waste, fraud, and abuse.

[(4) Recouping of unpaid and accrued benefits.

[SEC. 3210. TAX TREATMENT OF PROGRAM.

[The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.]

PATIENT PROTECTION AND AFFORDABLE CARE ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Patient Protection and Affordable Care Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

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[TITLE VIII—CLASS ACT

[Sec. 8001. Short title of title.

[Sec. 8002. Establishment of national voluntary insurance program for purchasing community living assistance services and support.]

* * * * *

[TITLE VIII—CLASS ACT

[SEC. 8001. SHORT TITLE OF TITLE.

[This title may be cited as the “Community Living Assistance Services and Supports Act” or the “CLASS Act”.

[SEC. 8002. ESTABLISHMENT OF NATIONAL VOLUNTARY INSURANCE PROGRAM FOR PURCHASING COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORT.

[(a) **ESTABLISHMENT OF CLASS PROGRAM.**—

[(1) IN GENERAL.—The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 4302(a), is amended by adding at the end the following:

["TITLE XXXII—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

["SEC. 3201. PURPOSE.

[The purpose of this title is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

["(1) provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;

["(2) establish an infrastructure that will help address the Nation's community living assistance services and supports needs;

["(3) alleviate burdens on family caregivers; and

["(4) address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.

["SEC. 3202. DEFINITIONS.

[In this title:

["(1) ACTIVE ENROLLEE.—The term 'active enrollee' means an individual who is enrolled in the CLASS program in accordance with section 3204 and who has paid any premiums due to maintain such enrollment.

["(2) ACTIVELY EMPLOYED.—The term 'actively employed' means an individual who—

["(A) is reporting for work at the individual's usual place of employment or at another location to which the individual is required to travel because of the individual's employment (or in the case of an individual who is a member of the uniformed services, is on active duty and is physically able to perform the duties of the individual's position); and

["(B) is able to perform all the usual and customary duties of the individual's employment on the individual's regular work schedule.

["(3) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' means each of the following activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986:

["(A) Eating.

["(B) Toileting.

["(C) Transferring.

["(D) Bathing.

["(E) Dressing.

["(F) Continence.

["(4) CLASS PROGRAM.—The term 'CLASS program' means the program established under this title.

["(5) ELIGIBILITY ASSESSMENT SYSTEM.—The term 'Eligibility Assessment System' means the entity established by the Sec-

retary under section 3205(a)(2) to make functional eligibility determinations for the CLASS program.

【“(6) ELIGIBLE BENEFICIARY.—

【“(A) IN GENERAL.—The term ‘eligible beneficiary’ means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

【“(i) has paid premiums for enrollment in such program for at least 60 months;

【“(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act for the year; and

【“(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual’s enrollment and ends on the date of such determination.

【“(B) DATE DESCRIBED.—For purposes of subparagraph (A), the date described in this subparagraph is the date on which the individual is determined to have a functional limitation described in section 3203(a)(1)(C) that is expected to last for a continuous period of more than 90 days.

【“(C) REGULATIONS.—The Secretary shall promulgate regulations specifying exceptions to the minimum earnings requirements under subparagraph (A)(ii) for purposes of being considered an eligible beneficiary for certain populations.

【“(7) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR MENTAL DISEASES.—The terms ‘hospital’, ‘nursing facility’, ‘intermediate care facility for the mentally retarded’, and ‘institution for mental diseases’ have the meanings given such terms for purposes of Medicaid.

【“(8) CLASS INDEPENDENCE ADVISORY COUNCIL.—The term ‘CLASS Independence Advisory Council’ or ‘Council’ means the Advisory Council established under section 3207 to advise the Secretary.

【“(9) CLASS INDEPENDENCE BENEFIT PLAN.—The term ‘CLASS Independence Benefit Plan’ means the benefit plan developed and designated by the Secretary in accordance with section 3203.

【“(10) CLASS INDEPENDENCE FUND.—The term ‘CLASS Independence Fund’ or ‘Fund’ means the fund established under section 3206.

【“(11) MEDICAID.—The term ‘Medicaid’ means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

[(12) POVERTY LINE.—The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

[(13) PROTECTION AND ADVOCACY SYSTEM.—The term ‘Protection and Advocacy System’ means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

[(SEC. 3203. CLASS INDEPENDENCE BENEFIT PLAN.

[(a) PROCESS FOR DEVELOPMENT.—

[(1) IN GENERAL.—The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this title. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 3205 consistent with the following requirements:

[(A) PREMIUMS.—

[(i) IN GENERAL.—Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

[(ii) NOMINAL PREMIUM FOR POOREST INDIVIDUALS AND FULL-TIME STUDENTS.—

[(I) IN GENERAL.—The monthly premium for enrollment in the CLASS program shall not exceed the applicable dollar amount per month determined under subclause (II) for—

[(aa) any individual whose income does not exceed the poverty line; and

[(bb) any individual who has not attained age 22, and is actively employed during any period in which the individual is a full-time student (as determined by the Secretary).

[(II) APPLICABLE DOLLAR AMOUNT.—The applicable dollar amount described in this subclause is the amount equal to \$5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

[(iii) CLASS INDEPENDENCE FUND RESERVES.—At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Inde-

pendence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

【“(B) VESTING PERIOD.—A 5-year vesting period for eligibility for benefits.

【“(C) BENEFIT TRIGGERS.—A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner, described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

【“(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

【“(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

【“(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

【“(D) CASH BENEFIT.—Payment of a cash benefit that satisfies the following requirements:

【“(i) MINIMUM REQUIRED AMOUNT.—The benefit amount provides an eligible beneficiary with not less than an average of \$50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

【“(ii) AMOUNT SCALED TO FUNCTIONAL ABILITY.—The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

【“(iii) DAILY OR WEEKLY.—The benefit is paid on a daily or weekly basis.

【“(iv) NO LIFETIME OR AGGREGATE LIMIT.—The benefit is not subject to any lifetime or aggregate limit.

【“(2) REVIEW AND RECOMMENDATION BY THE CLASS INDEPENDENCE ADVISORY COUNCIL.—The CLASS Independence Advisory Council shall—

【“(A) evaluate the alternative benefit plans developed under paragraph (1); and

【“(B) recommend for designation as the CLASS Independence Benefit Plan for offering to the public the plan that the Council determines best balances price and benefits to meet enrollees’ needs in an actuarially sound manner, while optimizing the probability of the long-term sustainability of the CLASS program.

【“(3) DESIGNATION BY THE SECRETARY.—Not later than October 1, 2012, the Secretary, taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the

reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

[(b) ADDITIONAL PREMIUM REQUIREMENTS.—

[(1) ADJUSTMENT OF PREMIUMS.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual's enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

[(B) RECALCULATED PREMIUM IF REQUIRED FOR PROGRAM SOLVENCY.—

[(i) IN GENERAL.—Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

[(ii) EXEMPTION FROM INCREASE.—Any increase in a monthly premium imposed as result of a determination described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

[(I) has attained age 65;

[(II) has paid premiums for enrollment in the program for at least 20 years; and

[(III) is not actively employed.

[(C) RECALCULATED PREMIUM IF REENROLLMENT AFTER MORE THAN A 3-MONTH LAPSE.—

[(i) IN GENERAL.—The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for reenrollment in the program.

[(ii) CREDIT FOR PRIOR MONTHS IF REENROLLED WITHIN 5 YEARS.—An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the program shall be—

【“(I) credited with any months of paid premiums that accrued prior to the individual’s lapse in enrollment; and

【“(II) notwithstanding the total amount of any such credited months, required to satisfy section 3202(6)(A)(ii) before being eligible to receive benefits.

【“(D) NO LONGER STATUS AS A FULL-TIME STUDENT.—An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii)(I)(bb) who ceases to be described in that subsection, beginning with the first month following the month in which the individual ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

【“(E) PENALTY FOR REENROLLMENT AFTER 5-YEAR LAPSE.—In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

【“(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

【“(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

【“(2) ADMINISTRATIVE EXPENSES.—In determining the monthly premiums for the CLASS program the Secretary may factor in costs for administering the program, not to exceed for any year in which the program is in effect under this title, an amount equal to 3 percent of all premiums paid during the year.

【“(3) NO UNDERWRITING REQUIREMENTS.—No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

【“(A) determine the monthly premium for enrollment in the CLASS program; or

【“(B) prevent an individual from enrolling in the program.

【“(c) SELF-ATTESTATION AND VERIFICATION OF INCOME.—The Secretary shall establish procedures to—

【“(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii) to self-attest that their income does not exceed the poverty line or that their status as a full-time student who is actively employed;

[(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1631(e)(1)(B)(ii) of the Social Security Act and consistent with the requirements applicable to the conveyance of data and information under section 1942 of such Act, the validity of such self-attestation; and

[(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.

SEC. 3204. ENROLLMENT AND DISENROLLMENT REQUIREMENTS.

[(a) AUTOMATIC ENROLLMENT.—

[(1) IN GENERAL.—Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

[(2) ALTERNATIVE ENROLLMENT PROCEDURES.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

[(A) who is self-employed;

[(B) who has more than 1 employer; or

[(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

[(3) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

[(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

[(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment in the CLASS program at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.

[(c) INDIVIDUAL DESCRIBED.—For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

[(1) who has attained age 18;

[(2) who—

[(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of the Internal Revenue Code of 1986; or

[(B) derives self-employment income on which there is imposed a tax under section 1401(a) of the Internal Revenue Code of 1986;

[(3) who is actively employed; and

[(4) who is not—

[(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an insti-

tution for mental diseases and receiving medical assistance under Medicaid; or

【“(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 202(x)(1)(A)(ii) of the Social Security Act (42 U.S.C. 402(x)(1)(A)(ii)).

【“(d) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as requiring an active enrollee to continue to satisfy subparagraph (A) or (B) of subsection (c)(2) in order to maintain enrollment in the CLASS program.

【“(e) PAYMENT.—

【“(1) PAYROLL DEDUCTION.—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in coordination with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

【“(2) ALTERNATIVE PAYMENT MECHANISM.—The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

【“(A) who does not have an employer who elects to deduct and withhold premiums in accordance with paragraph (1); or

【“(B) who does not earn wages or derive self-employment income.

【“(f) TRANSFER OF PREMIUMS COLLECTED.—

【“(1) IN GENERAL.—During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

【“(2) TRANSFERS BASED ON ESTIMATES.—The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5). Proper adjustments shall be made in amounts subsequently transferred to the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

【“(g) OTHER ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

【“(1) an individual who, in the year of the individual’s initial eligibility to enroll in the CLASS program, has not enrolled in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program; and

【“(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during

an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.

["SEC. 3205. BENEFITS.

["(a) DETERMINATION OF ELIGIBILITY.—

["(1) APPLICATION FOR RECEIPT OF BENEFITS.—The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

["(2) ELIGIBILITY ASSESSMENTS.—

["(A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall—

["(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

["(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

["(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

["(B) REGULATIONS.—The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redetermination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the amount of the cash benefit (in accordance the sliding scale established under the plan).

["(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLANNING TO DISCHARGE.—An active enrollee shall be deemed presumptively eligible if the enrollee—

["(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding scale established under the CLASS Independence Benefit Plan;

["(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

["(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

["(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

[(b) BENEFITS.—An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

[(1) CASH BENEFIT.—A cash benefit established by the Secretary in accordance with the requirements of section 3203(a)(1)(D) that—

[(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

[(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

[(2) ADVOCACY SERVICES.—Advocacy services in accordance with subsection (d).

[(3) ADVICE AND ASSISTANCE COUNSELING.—Advice and assistance counseling in accordance with subsection (e).

[(4) ADMINISTRATIVE EXPENSES.—Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3203(b)(3).

[(c) PAYMENT OF BENEFITS.—

[(1) LIFE INDEPENDENCE ACCOUNT.—

[(A) IN GENERAL.—The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

[(B) USE OF CASH BENEFITS.—Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

[(C) ELECTRONIC MANAGEMENT OF FUNDS.—The Secretary shall establish procedures for—

[(i) crediting an account established on behalf of a beneficiary with the beneficiary's cash daily benefit;

[(ii) allowing the beneficiary to access such account through debit cards; and

[(iii) accounting for withdrawals by the beneficiary from such account.

[(D) PRIMARY PAYOR RULES FOR BENEFICIARIES WHO ARE ENROLLED IN MEDICAID.—In the case of an eligible beneficiary who is enrolled in Medicaid, the following payment rules shall apply:

[(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary's daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary's personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility's cost of providing the beneficiary's care, and Medicaid shall provide secondary coverage for such care.

[(ii) BENEFICIARIES RECEIVING HOME AND COMMUNITY-BASED SERVICES.—

[(I) 50 PERCENT OF BENEFIT RETAINED BY BENEFICIARY.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary's daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

[(II) REQUIREMENT FOR STATE OFFSET.—A State shall be paid the remainder of a beneficiary's daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (relating to statewideness) or of section 1902(a)(10)(B) of such Act (relating to comparability) and the State offers at a minimum case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

[(III) DEFINITION OF HOME AND COMMUNITY-BASED SERVICES.—In this clause, the term 'home and community-based services' means any services which may be offered under a home and community-based waiver authorized for a State under section 1115 of the Social Security Act (42 U.S.C.

1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (i) of such section.

【“(iii) BENEFICIARIES ENROLLED IN PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE).—

【“(I) IN GENERAL.—Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u-4), the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

【“(II) INSTITUTIONALIZED RECIPIENTS OF PACE PROGRAM SERVICES.—If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in institutionalized beneficiary under clause (i).

【“(2) AUTHORIZED REPRESENTATIVES.—

【“(A) IN GENERAL.—The Secretary shall establish procedures to allow access to a beneficiary’s cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

【“(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

【“(3) COMMENCEMENT OF BENEFITS.—Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

【“(4) ROLLOVER OPTION FOR LUMP-SUM PAYMENT.—An eligible beneficiary may elect to—

【“(A) defer payment of their daily or weekly benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

【“(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

【“(i) the total amount of the accrued deferred benefits; or

【“(ii) the applicable annual benefit.

[(5) PERIOD FOR DETERMINATION OF ANNUAL BENEFITS.—

[(A) IN GENERAL.—The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

[(B) INCLUSION OF INCREASED BENEFITS.—The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

[(C) RECOUPMENT OF UNPAID, ACCRUED BENEFITS.—

[(i) IN GENERAL.—The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—

[(I) the death of a beneficiary; or

[(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

[(ii) PAYMENT INTO CLASS INDEPENDENCE FUND.—Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 3206.

[(6) REQUIREMENT TO RECERTIFY ELIGIBILITY FOR RECEIPT OF BENEFITS.—An eligible beneficiary shall periodically, as determined by the Secretary—

[(A) recertify by submission of medical evidence the beneficiary's continued eligibility for receipt of benefits; and

[(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

[(7) SUPPLEMENT, NOT SUPPLANT OTHER HEALTH CARE BENEFITS.—Subject to the Medicaid payment rules under paragraph (1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

[(d) ADVOCACY SERVICES.—An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—

[(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—

[(A) information regarding how to access the appeals process established for the program;

[(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and

[(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and

[(2) ensure that the System and such counselors comply with the requirements of subsection (h).

[(e) ADVICE AND ASSISTANCE COUNSELING.—An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding—

[(1) accessing and coordinating long-term services and supports in the most integrated setting;

[(2) possible eligibility for other benefits and services;

[(3) development of a service and support plan;

[(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs;

[(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and

[(6) such other services as the Secretary, by regulation, may require.

[(f) NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.—Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary's eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

[(g) RULE OF CONSTRUCTION.—Nothing in this title shall be construed as prohibiting benefits paid under the CLASS Independence Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

[(h) PROTECTION AGAINST CONFLICT OF INTERESTS.—The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following:

[(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

[(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

【“(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

【“(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.

【“(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

【“(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

【“(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

【“SEC. 3206. CLASS INDEPENDENCE FUND.

【“(a) ESTABLISHMENT OF CLASS INDEPENDENCE FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘CLASS Independence Fund’. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3204(f) and 3205(c)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

【“(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

【“(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and

【“(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

【“(b) INVESTMENT OF FUND BALANCE.—The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1841(d) of the Social Security Act (42 U.S.C. 1395t).

【“(c) BOARD OF TRUSTEES.—

【“(1) IN GENERAL.—With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the ‘Board of Trustees’) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position

after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

【“(2) DUTIES.—

【“(A) IN GENERAL.—It shall be the duty of the Board of Trustees to do the following:

【“(i) Hold the CLASS Independence Fund.

【“(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

【“(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i).

【“(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

【“(B) REPORT.—The report provided for in subparagraph (A)(ii) shall—

【“(i) include—

【“(I) a statement of the assets of, and the disbursements made from, the CLASS Independence Fund during the preceding fiscal year;

【“(II) an estimate of the expected income to, and disbursements to be made from, the CLASS Independence Fund during the current fiscal year and each of the next 2 fiscal years;

【“(III) a statement of the actuarial status of the CLASS Independence Fund for the current fiscal year, each of the next 2 fiscal years, and as projected over the 75-year period beginning with the current fiscal year; and

【“(IV) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable; and

【“(ii) be printed as a House document of the session of the Congress to which the report is made.

【“(C) RECOMMENDATIONS.—If the Board of Trustees determines that enrollment trends and expected future ben-

efit claims on the CLASS Independence Fund are not actuarially sound in regards to the projection under section 3203(b)(1)(B)(i) and are unlikely to be resolved with reasonable premium increases or through other means, the Board of Trustees shall include in the report provided for in subparagraph (A)(ii) recommendations for such legislative action as the Board of Trustees determine to be appropriate, including whether to adjust monthly premiums or impose a temporary moratorium on new enrollments.

["SEC. 3207. CLASS INDEPENDENCE ADVISORY COUNCIL.

["(a) ESTABLISHMENT.—There is hereby created an Advisory Committee to be known as the 'CLASS Independence Advisory Council'.

["(b) MEMBERSHIP.—

["(1) IN GENERAL.—The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

["(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

["(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

["(2) TERMS.—

["(A) IN GENERAL.—The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

["(B) LIMITATION.—A member shall not be eligible to serve for more than 2 consecutive terms.

["(3) CHAIR.—The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

["(c) DUTIES.—The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this title and in the formulation of regulations under this title including with respect to—

["(1) the development of the CLASS Independence Benefit Plan under section 3203;

["(2) the determination of monthly premiums under such plan; and

["(3) the financial solvency of the program.

["(d) APPLICATION OF FACa.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall apply to the CLASS Independence Advisory Council.

["(e) AUTHORIZATION OF APPROPRIATIONS.—

["(1) IN GENERAL.—There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

["(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

["SEC. 3208. SOLVENCY AND FISCAL INDEPENDENCE; REGULATIONS; ANNUAL REPORT.

["(a) SOLVENCY.—The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 3202.

["(b) NO TAXPAYER FUNDS USED TO PAY BENEFITS.—No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term ‘taxpayer funds’ means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.

["(c) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.

["(d) ANNUAL REPORT.—Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

["(1) The total number of enrollees in the program.

["(2) The total number of eligible beneficiaries during the fiscal year.

["(3) The total amount of cash benefits provided during the fiscal year.

["(4) A description of instances of fraud or abuse identified during the fiscal year.

["(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.

["SEC. 3209. INSPECTOR GENERAL’S REPORT.

["The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

["(1) The eligibility determination process.

["(2) The provision of cash benefits.

["(3) Quality assurance and protection against waste, fraud, and abuse.

["(4) Recouping of unpaid and accrued benefits.

["SEC. 3210. TAX TREATMENT OF PROGRAM.

["The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services."]

[(2) CONFORMING AMENDMENTS TO MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 6505, is amended by inserting after paragraph (80) the following:

["(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible beneficiaries under the CLASS program established under title XXXII of the Public Health Service Act as the Secretary shall establish; and"]

[(b) ASSURANCE OF ADEQUATE INFRASTRUCTURE FOR THE PROVISION OF PERSONAL CARE ATTENDANT WORKERS.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by subsection (a)(2), is amended by inserting after paragraph (81) the following:

["(82) provide that, not later than 2 years after the date of enactment of the Community Living Assistance Services and Supports Act, each State shall—

["(A) assess the extent to which entities such as providers of home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for medical assistance under the State plan, and nonprofit organizations, are serving or have the capacity to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas;

["(B) designate or create such entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers to ensure an adequate supply of the workers for individuals receiving benefits under the CLASS program, including in rural and underserved areas; and

["(C) ensure that the designation or creation of such entities will not negatively alter or impede existing programs, models, methods, or administration of service delivery that provide for consumer controlled or self-directed home and community services and further ensure that such entities will not impede the ability of individuals to direct and control their home and community services, including the ability to select, manage, dismiss, co-employ, or employ such workers or inhibit such individuals from relying on family members for the provision of personal care services."]

[(c) PERSONAL CARE ATTENDANTS WORKFORCE ADVISORY PANEL.—

[(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human

Services shall establish a Personal Care Attendants Workforce Advisory Panel for the purpose of examining and advising the Secretary and Congress on workforce issues related to personal care attendant workers, including with respect to the adequacy of the number of such workers, the salaries, wages, and benefits of such workers, and access to the services provided by such workers.

[(2) MEMBERSHIP.—In appointing members to the Personal Care Attendants Workforce Advisory Panel, the Secretary shall ensure that such members include the following:

[(A) Individuals with disabilities of all ages.

[(B) Senior individuals.

[(C) Representatives of individuals with disabilities.

[(D) Representatives of senior individuals.

[(E) Representatives of workforce and labor organizations.

[(F) Representatives of home and community-based service providers.

[(G) Representatives of assisted living providers.

[(d) INCLUSION OF CLASS PROGRAM INFORMATION IN THE NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION; EXTENSION OF FUNDING.—Section 6021(d) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396p note) is amended—

[(1) in paragraph (2)(A)—

[(A) in clause (ii), by striking “and” at the end;

[(B) in clause (iii), by striking the period at the end and inserting “; and”; and

[(C) by adding at the end the following:

[(iv) include information regarding the CLASS program established under title XXXII of the Public Health Service Act and information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.”; and

[(2) in paragraph (3), by striking “2010” and inserting “2015”.

[(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (d) take effect on January 1, 2011.

[(f) RULE OF CONSTRUCTION.—Nothing in this title or the amendments made by this title are intended to replace or displace public or private disability insurance benefits, including such benefits that are for income replacement.】

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SOCIAL SECURITY ACT

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

* * * * *

STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

(1) * * *

* * * * *

(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States; *and*

[(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible beneficiaries under the CLASS program established under title XXXII of the Public Health Service Act as the Secretary shall establish;

[(82) provide that, not later than 2 years after the date of enactment of the Community Living Assistance Services and Supports Act, each State shall—

[(A) assess the extent to which entities such as providers of home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for medical assistance under the State plan, and nonprofit organizations, are serving or have the capacity to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas;

[(B) designate or create such entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers to ensure an adequate supply of the workers for individuals receiving benefits under the CLASS program, including in rural and underserved areas; and

[(C) ensure that the designation or creation of such entities will not negatively alter or impede existing programs, models, methods, or administration of service delivery that provide for consumer controlled or self-directed home and community services and further ensure that such entities will not impede the ability of individuals to direct and control their home and community services, including the ability to select, manage, dismiss, co-employ, or employ such workers or inhibit such individuals from relying on family members for the provision of personal care services; and]

[(83)] (81) provide for implementation of the payment models specified by the Secretary under section 1115A(c) for implementation on a nationwide basis unless the State demonstrates to the satisfaction of the Secretary that implementation would

not be administratively feasible or appropriate to the health care delivery system of the State.

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DEFICIT REDUCTION ACT OF 2005

* * * * *

TITLE VI—MEDICAID AND SCHIP

Subtitle A—Medicaid

* * * * *

CHAPTER 2—LONG-TERM CARE UNDER MEDICAID

* * * * *

Subchapter B—Expanded Access to Certain Benefits

SEC. 6021. EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM.

(a) * * *

* * * * *

(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

(1) * * *

(2) DUTIES.—

(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

(i) * * *

* * * * *

(iv) *not* include information regarding the CLASS program established under title XXXII of the Public Health Service Act [and] *or* information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.

* * * * *

(3) [APPROPRIATION] *FUNDING*.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, \$3,000,000 for each of fiscal years 2006 through [2015] 2012. *There is authorized to be appropriated to carry out this subsection \$3,000,000 for each of fiscal years 2013 through 2015.*

* * * * *

DISSENTING VIEWS

We, the undersigned members of the Committee on Energy and Commerce, oppose the passage of H.R. 1173, the *Fiscal Responsibility and Retirement Security Act of 2011*, a bill to repeal Title XXXII of the Public Health Service Act (relating to the Community Living Assistance Services and Supports Program, generally known as the CLASS Program) as well as other provisions included in Title VIII of the *Affordable Care Act* (relating to the National Clearinghouse for Long-Term Care Information and the Personal Care Attendants Workforce Advisory Panel). Accordingly, we submit the following comments to express our concerns about this ill-conceived and ill-advised legislation.

INTRODUCTION

Committee Democrats and Republicans alike agree: The United States is facing a long-term care crisis that demands our immediate and full attention¹—a crisis that will only grow worse as the nation’s baby boomers begin to age.²

¹See the comments of various Committee members during the hearings and markups on CLASS and H.R. 1173 in which they recognize the enormity of the U.S. long-term care problem:

From the July 2009 full Committee markup on H.R. 3200, *America’s Affordable Health Choices Act of 2009* (the House of Representatives’ precursor legislation to the *Affordable Care Act*) (House Committee on Energy and Commerce, *Markup on H.R. 3200, America’s Affordable Health Choices Act of 2009*, 111th Cong. (July 17 and 20, 2009) (transcript of the proceeding)):

- “[T]his is [a] major issue. . . .” (Rep. Frank Pallone, p. 17) (July 17, 2009)
- It [long-term care] is definitely something we need to do.” (Rep. Joe Barton, p. 269) (July 20, 2009)

From the March 2011 Health Subcommittee hearing on the implementation of CLASS (Subcommittee on Health, House Committee on Energy and Commerce, *Hearing on the Implementation and Sustainability of the New Government-Administered Community Living Assistance Services and Supports (CLASS) Program*, 112th Cong. (Mar. 17, 2011) (transcript of the proceeding)):

- “[W]e can all agree that do have a serious long-term care problem in this country. . . .” (Rep. Joe Pitts, p. 4)
- “We all know the problem exists.” (Rep. Michael Burgess, p. 6)
- “The [long-term care] problem has been with us for a long time, and it is growing.” (Rep. Henry Waxman, p. 20)
- “[W]hat is the best thing for us . . . to serve a terrifying unmet need for all of our people.” (Rep. John Dingell, p. 23)

From the October 2011 joint Oversight and Investigations Subcommittee and Health Subcommittee hearing on the financial sustainability of CLASS (Subcommittee on Oversight and Investigations and Subcommittee on Health, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An Unsustainable Program and Its Consequences for the Nation’s Deficit*, 112th Cong. (Oct. 26, 2011) (transcript of the proceeding)):

- “[W]e have got to keep looking for solutions to the long-term problem, and we have got to do it in a bi-partisan way.” (Rep. Diana DeGette, p. 15)
- “Really the question . . . everybody agrees we need to come up with a solution for the problem of long-term care. I don’t think any of us argue that.” (Rep. Bill Cassidy, p. 122)

From the November 2011 Health Subcommittee markup on H.R. 1173 (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong. (Nov. 15, 2011) (transcript of the proceeding)):

- “[L]ong-term care reform, [is] an issue that is important to all of us as we hear from constituents regularly about the growing cost of long-term care services.” (Rep. Fred Upton, pp. 19–20)
- “[T]he issue of long-term care as a critical hole in our health care system is agreed upon by both sides of this committee. (Rep. Lois Capps, p. 26)

From the November 2011 full Committee markup on H.R. 1173 (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong. (Nov. 30, 2011) (transcript of the proceeding)):

- “I was impressed by the level of bipartisan support for finding an affordable and sustainable solution to this [long-term care] problem.” (Rep. Ed Towns, p. 223)
- “[Y]ou [Committee Democrats] are right. There is a huge need to address long-term care.” (Rep. John Shimkus, p. 226)

²United States Census Bureau, *The Older Population in the United States: 2010 to 2050* (May 2010) (online at <http://www.census.gov/prod/2010pubs/p25-1138.pdf>).

In response to this concern, Congress established the Community Living Assistance Services and Supports Program—or CLASS—as part of the *Affordable Care Act* (ACA)³ in 2010. CLASS represents the federal government’s first and to date, only major—albeit limited—attempt to begin to address our pressing long-term care problem. Its purpose is clear: To provide a national, voluntary, and self-sustaining insurance program for the purchase of assistance services and supports to aid functionally impaired elderly and disabled people. Its goal—to allow these individuals to live independently at home and in the community for as long as possible without impoverishing themselves—is warmly embraced by both parties.⁴ Nonetheless, the Program’s implementation has been anything but straightforward or uniformly supported; indeed, we readily acknowledge that CLASS has not yet been formerly launched and is now wholly opposed by our Republican colleagues.⁵

In its October 2011 report, *A Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program*, the Department of Health and Human Services (HHS) lays out the various reasons behind its decision not to move forward with the implementation of CLASS at this time.⁶ While disappointing, in light of the issues raised, we believe the Department has acted responsibly. But neither HHS⁷ nor we believe that the appropriate response to the Report is a wholesale dismantling of CLASS. Most importantly, despite the setbacks, the people for whom CLASS was enacted do not think this is the right approach either.⁸ Yet, this is precisely what H.R. 1173 sets out to do—rather than take on the Program’s flaws identified in the Report, the bill would repeal CLASS altogether. At the same time and consistent with the Republican mantra “just say no” to all ACA-related programs, the legislation fails to put forward

³The ACA is comprised of two public laws, P.L. 111–148 and P.L. 111–152.

⁴See, e.g., remarks of Rep. Joe Pitts (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 24 (Nov. 29, 2011) (transcript of the proceeding)); Rep. Henry Waxman (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 15 (Nov. 15, 2011) (transcript of the proceeding)); Rep. Frank Pallone (Subcommittee on Health, House Committee on Energy and Commerce, *Hearing on the Implementation and Sustainability of the New Government-Administered Community Living Assistance Services and Supports (CLASS) Program*, 112th Cong., p. 9 (Mar. 17, 2011) (transcript of the proceeding)); Rep. Phil Gingrey (Subcommittee on Health, House Committee on Energy and Commerce, *Hearing on the Implementation and Sustainability of the New Government-Administered Community Living Assistance Services and Supports (CLASS) Program*, 112th Cong., p. 16; (Mar. 17, 2011) (transcript of the proceeding)); and Rep. Lee Terry (House Committee on Energy and Commerce, *Markup on H.R. 3200, America’s Affordable Health Choices Act of 2009*, 111th Cong., p. 290 (July 20, 2009) (transcript of the proceeding)).

⁵CLASS was adopted—on a bipartisan voice vote—as an amendment to H.R. 3200, *America’s Affordable Health Choices Act of 2009*, during the Committee’s mark up of that legislation. H.R. 3200 was the House of Representatives’ precursor legislation to the ACA (House Committee on Energy and Commerce, *Markup on H.R. 3200, America’s Affordable Health Choices Act of 2009*, 111th Cong., p. 293 (July 20, 2009) (transcript of the proceeding)). Now, however, Republicans are united in their opposition to the Program (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., pp. 259–266 (Nov. 30, 2011) (transcript of the proceeding)).

⁶Department of Health and Human Services, *A Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program* (Oct. 2011) (online at <http://aspe.hhs.gov/daltcp/reports/2011/class/index.shtml>).

⁷“We [HHS] feel that repealing CLASS would serve no useful purpose at this point.” (Testimony of Kathy Greenlee, HHS Assistant Secretary for Aging, Subcommittee on Oversight and Investigations and Subcommittee on Health, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An Unsustainable Program and Its Consequences for the Nation’s Deficit*, 112th Cong., p. 102 (Oct. 26, 2011) (transcript of the proceeding)).

⁸Letter from 56 organizations in opposition to H.R. 1173 to Reps. Fred Upton, Chair, Committee on Energy and Commerce; Rep. Henry Waxman, Ranking Member, Committee on Energy and Commerce; Rep. Joe Pitts, Chair, Subcommittee on Health, Committee on Energy and Commerce; and Rep. Frank Pallone, Ranking Member, Subcommittee on Health, Committee on Energy and Commerce (Nov. 14, 2011).

an alternative solution to the very problem its supporters claim they want to fix.

In our view, H.R. 1173 is precisely the wrong way to go. While a “timeout” for CLASS may be fitting at this juncture in the Program’s brief history, “throwing in the towel” completely simply is not the answer. HHS and Congress should instead learn from experts about how best to make CLASS work and then take the necessary steps to ensure that happens. And until then, CLASS should remain on the law books. For these reasons and more, we join in opposing H.R. 1173.

BACKGROUND AND ORIGINS OF CLASS

The nation’s long-term care crisis has been present and fully recognized for some time now. Numerous blue ribbon panels have been assembled and dozens of reports have been written—all calling for a national response to the problem.⁹

Until the enactment of CLASS, Congress failed to meet this challenge. Without it—or some other similar program in place—our long-term crisis will only be exacerbated. The numbers and statistics speak for themselves:

- Currently, there are over 10 million Americans who need long-term care, and this number is expected to grow to 15 million by 2020.¹⁰ Sixty percent of these individuals are aged 65 or older, and 40% are aged 18–64.¹¹
- People who reach age 65 have a 40% chance of entering a nursing home.¹²
- Today, some 1.7 million people reside in nursing homes; another 520,000 live in assisted living facilities or institutions.¹³
- More than two-thirds of individuals who reach the age of 65 will require long-term services and supports at some point before they die.¹⁴
- The vast majority of Americans in need of long-term care remain at home. An estimated 52 million unpaid caregivers bear the burden of providing this care. Their role is crucial in keeping their loved ones out of nursing homes and hospitals and at home with their families and friends.¹⁵

But population data alone do not make the case for the need to address the country’s long-term care concerns. The costs associated with long-term care services are exorbitantly high and also continue to grow. For example, in 2011, the annual cost of a nursing

⁹See, e.g., National Council on Disability, *The State of 21st Century Long-Term Services and Supports: Financing and Systems Reform for Americans with Disabilities* (Dec. 2005) (online at www.ncd.gov); and The Pepper Commission, U.S. Commission on Comprehensive Health Care, *A Call for Action: Final Report* (U.S. Government Printing Office (Sep. 1990).

¹⁰U.S. Department of Health and Human Services, *Remarks as Prepared for Delivery by Secretary Kathleen Sebelius at the Kaiser Family Foundation* (Feb. 7, 2011) (online at <http://www.hhs.gov/secretary/about/speeches/sp20110207.html>).

¹¹National Clearinghouse for Long-Term Care, *What is Long-Term Care?* (online at http://www.longtermcare.gov/LTC/Main_Site/index.aspx) (accessed Oct. 24, 2011).

¹²*Ibid.*

¹³Alliance for Health Reform, *Covering Health Issues, 5th Edition* (online at <http://www.allhealth.org/sourcebookcontent.asp?CHID=72>) (accessed Oct. 24, 2011).

¹⁴Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, p. 2 (Nov. 14, 2011) (R40842).

¹⁵AARP Public Policy Institute, *Valuing the Invaluable: The Economic Value of Family Caregiving* (2008) (online at http://assets.aarp.org/rgcenter/il/i13_caregiving.pdf).

home stay was some \$70,000, and the average cost of personal unskilled home health services was \$19 an hour.¹⁶

Although much of the public believes otherwise,¹⁷ Medicaid is the primary payer for long-term care in the United States.¹⁸ Nationwide, Medicaid accounts for at least 40% of all long-term care spending.¹⁹ In FY 2010, state and federal dollars for long-term care services within Medicaid totaled approximately \$120 billion.²⁰ And by 2027, when the baby boomers have aged into retirement, state Medicaid long-term care expenditures alone are projected to reach \$115 billion annually.²¹ Clearly, as many members commented during the hearings and mark-ups on H.R. 1173, we cannot continue to rely on Medicaid as the primary source for financing these services.²²

Beyond these figures is the emotional and financial toll that Medicaid long-term care coverage entails. Medicaid eligibility for such care depends upon an individual's meeting limited income and asset tests.²³ Thus, for too many seniors and disabled people in need of long-term care, Medicaid only becomes an option after they have suffered devastating financial losses, and have been forced to spend-down their income and assets into poverty.²⁴ As a matter of personal dignity and basic fairness, members also agree that Medicaid should not be the national answer to our long-term crisis.²⁵

¹⁶Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, pp. 2–3 (Nov. 14, 2011) (R40842).

¹⁷Most Americans—especially middle-aged and senior individuals—believe that Medicare provides extensive coverage for long-term care services. (AARP, *Planning for Long-Term Care: A Survey of Midlife and Older Women* (Oct. 2010) (online at <http://assets.aarp.org/rgcenter/general/ltc-planning-women.pdf>); and AARP, *The Costs of Long-Term Care: Public Perceptions Versus Reality in 2006* (Dec. 2006) (online at http://assets.aarp.org/rgcenter/health/ltc_costs_2006.pdf). This is not correct: Medicare offers only short-term skilled nursing home care and limited home health services. (Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, p. 3, (Nov. 14, 2011) (R40842)).

¹⁸Kaiser Family Foundation, *The Community Living Assistance Services and Supports (CLASS) Act* (Oct. 2009) (online at <http://www.kff.org/healthreform/upload/7996.pdf>).

¹⁹Kaiser Family Foundation, *Medicaid and Long-Term Care Services and Supports* (Mar. 2011) (online at <http://www.kff.org/medicaid/upload/2186-08.pdf>).

²⁰The Congressional Budget Office, *March 2011 Baseline: Medicaid* (online at <http://www.cbo.gov/budget/factsheets/2011b/medicaid.pdf>).

²¹America's Health Insurance Plans, *State Medicaid Expenditures for Long-Term Care 2008–2027* (Sept. 2008) (online at <http://www.ahip.org/content/default.aspx?docid=24597>).

²²See, e.g., remarks of Rep. Frank Pallone (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 209 (Nov. 30, 2011) (transcript of the proceeding)); Rep. Phil Gingrey (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 228 (Nov. 30, 2011) (transcript of the proceeding)); Rep. Joe Barton (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 9 (Nov. 15, 2011) (transcript of the proceeding)); Rep. Michael Burgess (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 46 (Nov. 15, 2011) (transcript of the proceeding)); Rep. Joe Pitts (Subcommittee on Health, House Committee on Energy and Commerce, *Hearing on the Implementation and Sustainability of the New Government-Administered Community Living Assistance Services and Supports (CLASS) Program*, 112th Cong., p. 4 (Mar. 17, 2011) (transcript of the proceeding)); and Rep. John Dingell (Subcommittee on Health, House Committee on Energy and Commerce, *Hearing on the Implementation and Sustainability of the New Government-Administered Community Living Assistance Services and Supports (CLASS) Program*, 112th Cong., p. 24 (Mar. 17, 2011) (transcript of the proceeding)).

²³Kaiser Family Foundation, *Medicaid: A Primer* (2010) (online at <http://www.kff.org/medicaid/upload/7334-04.pdf>).

²⁴Judith Feder, Harriet L. Komisar, and Paul Van de Water, *The Opportunities of CLASS, The American Prospect* (Sept. 22, 2010) (online at http://prospect.org/cs/articles?article=the_opportunities_of_class).

²⁵Rep. Diana DeGette summed up this view best: “[T]he present situation [Medicaid] is both fiscally and morally wrong.” (Subcommittee on Oversight and Investigations and Subcommittee on Health, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An*

Republicans argue that private long-term care insurance is the best option.²⁶ Although we agree that there is an appropriate role for the private market, we believe the record clearly demonstrates that private insurance has not lived up to its billing. Premiums tend to be too expensive for most individuals to afford, particularly those with pre-existing conditions.²⁷ Even for those who are able to purchase coverage, private policies often impose restrictions on covered services and providers, limitations on maximum benefits, and uncertainty about future rate increases.²⁸ As a result, fewer than 10% of Americans aged 50 or older currently own these policies.²⁹

Republicans also promote the HHS Long-Term Care Partnership Program to underscore their support for a market-based approach to our long-term care problem.³⁰ Originally conceived in the early 1990s,³¹ this state-based program is designed to reduce Medicaid long-term care expenditures. Under the Program, states guarantee Medicaid coverage to people whose state-approved private long-term care insurance policy does not, over time, sufficiently cover the costs of their long-term care—while also allowing such individuals to protect a specified amount of personal assets. The Program was re-instated as part of the Deficit Reduction Act of 2005.³² In 2005, four states (California, Connecticut, Indiana, and New York) operated programs with a total of 172,000 Partnership participants.³³ While at least 40 states now run Partnership programs, the number of individuals taking part in them has increased to only some 280,000 people,³⁴ hardly a significant number given the millions of Americans in need of long-term care.

Unsustainable Program and Its Consequences for the Nation's Deficit, 112th Cong., p. 15 (Oct. 26, 2011) (transcript of the proceeding).

²⁶The Republican position on private long-term care insurance is captured well by Rep. Michael Burgess: "There is no one who believes in private long-term care insurance more than I do. . . . I think it is the correct response of my generation to that generation that is coming after us." (House Committee on Energy and Commerce, *Markup on H.R. 3200, America's Affordable Health Choices Act of 2009*, 111th Cong., p. 274 (July 20, 2009) (transcript of the proceeding)).

²⁷Testimony of Kathy Greenlee, HHS Assistant Secretary for Aging, Subcommittee on Oversight and Investigations and Subcommittee on Health, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An Unsustainable Program and Its Consequences for the Nation's Deficit*, 112th Cong., pp. 50–51 (Oct. 26, 2011) (transcript of the proceeding). See also LeadingAge, *Long Term Care Solutions—The Problem* (online at <http://www.aahsa.org/article.aspx?id=308>) (accessed Oct. 24, 2011).

²⁸Judith Feder, Harriet L. Komisar, Robert B. Friedland, *Long-term Care Financing: Policy Options for the Future*, Georgetown University Long-term Care Financing Project (June 2007) (online at <http://ltc.georgetown.edu/forum/ltcfinalpaper061107.pdf>).

²⁹Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, p. 3 (Nov. 14, 2011) (R40842).

³⁰See, e.g., remarks of Rep. Phil Gingrey (p. 189) and Rep. Michael Burgess (p. 190) (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., (Nov. 30, 2011) (transcript of the proceeding)).

³¹Robert Wood Johnson Foundation, *Long-Term Care Partnership Expansion: A New Opportunity for States* (May 2007) (online at http://www.chcs.org/usr_doc/Long-Term_Care_Partnership_Expansion.pdf).

³²P.L. 109–171, Section 6021.

³³Letter from John E. Dicken, Director, Health Care, U.S. Government Accountability Office to Sen. Charles Grassley and Sen. John Rockefeller regarding the Long-Term Care Partnership Program (Sept. 9, 2005) (online at <http://www.gao.gov/new.items/d051021r.pdf>).

³⁴Rep. Phil Gingrey, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., pp. 188–189 (Nov. 30, 2011) (transcript of the proceeding).

CLASS PROGRAM

Program description

It was against this backdrop that the Committee included legislation³⁵ to establish the CLASS Program as part of the health reform package passed by the Committee in 2009. The legislation was adopted as an amendment—on a bipartisan vote—during the markup of that package³⁶ and subsequently, was included as part of the ACA that was signed into law in 2010.

Under the ACA, CLASS is housed in a new Title XXXII of the Public Health Service Act (PHSA). Title XXXII establishes a process for the HHS Secretary to develop the CLASS Program to provide a cash benefit that eligible enrollees can use to purchase various long-term care services and supports (LTSS). Unlike medical treatments, LTSS assist individuals in their day-to-day activities of daily living such as bathing, dressing, eating and toileting. They include a wide range of health and social services and supports to people who have functional disabilities or cognitive impairments over an extended period of time, with the goal of maximizing their independence.³⁷

Title XXXII requires the HHS Secretary to develop and designate a CLASS Independence Benefit Plan through which LTSS would be available to eligible enrollees. The Plan must be designed to best balance price and benefits to meet the needs of its enrollees in an actuarially sound manner while optimizing the probability of the long-term sustainability of the program.³⁸ In developing such Plan, the Secretary is also required to consult with the CLASS Independence Advisory Council that is established under Title XXXII as well. The Advisory Council is to be comprised of 15 experts in long-term care (including long-term care insurance and actuarial science) and is specifically charged to advise the Secretary “on matters of general policy in administration of the CLASS Program.”³⁹

As currently structured, CLASS is open to working adults 18 years of age or older who are not currently living in a nursing home or other institution. To qualify for benefits, enrollees are required to have paid premiums for at least five years and have been actively working for a minimum of three of those years. To receive benefits, enrollees must be unable to perform at least two or three activities of daily living, and this limitation must be expected to continue for at least 90 days. Over a life-time, a Program enrollee could have several separate instances of qualifying for benefits.⁴⁰

The CLASS Program would provide enrollees with a cash benefit averaging at least \$50 per day. The Program also specifies payment rules for enrollees who are Medicaid beneficiaries, applying a portion of the cash benefit towards the facility cost (in the case of institutionalized beneficiaries), or towards a state’s cost of providing

³⁵H.R. 1721, a bill to establish CLASS, was introduced by Rep. Frank Pallone and Rep. John Dingell on Mar. 25, 2009. Its Senate companion piece, S. 697, was introduced by Sen. Ted Kennedy on the same day.

³⁶House Committee on Energy and Commerce, *Markup on H.R. 3200, America’s Affordable Health Choices Act of 2009*, 111th Cong., p. 293 (July 20, 2009) (transcript of the proceeding).

³⁷Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, p. 2 (Nov. 14, 2011) (R40842).

³⁸PHSA Section 3203(a)(2)(B).

³⁹PHSA Section 3207(c). To date, HHS has received over 140 applications for appointment to the Council; no members have yet been named.

⁴⁰PHSA Sections 3202 and 3203.

home and community-based services (in the case of non-institutionalized beneficiaries). The cash benefit is not subject to any annual or lifetime limits and continues until the enrollee no longer has a qualifying disability.⁴¹

As required by law, CLASS must be self-sufficient. Financial support for the Program is to come entirely through enrollee premiums and the Program must be demonstratively solvent over 20- and 75-year periods. Taxpayer funds are specifically prohibited from being used to pay for benefits.⁴²

Program implementation

Since its inception, concerns have been raised about the long-term financial viability of CLASS—as it is currently designed.⁴³

In response to these concerns (as well as criticism about the overall implementation process), HHS recently released a report to update Congress, Program advocates, and other interested parties on the status of CLASS. The report, titled *A Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program*,⁴⁴ details the Department's efforts over the past 19 months to ensure that CLASS is designed to be actuarially sound and financially solvent, while meeting other statutory requirements. Among its many CLASS-related actions during this time, the Department convened an interagency long-term care work group; commissioned external analyses and conducted its own analyses on benefit plan design and other issues central to Program implementation; conducted over 75 stakeholder meetings; began to develop implementing regulations; and initiated marketing research.

As part of this effort, HHS modeled eight different benefit plans, including one that is based on the most natural reading of the CLASS authorizing statute. Each such plan is described in the Department's Report. As noted in the Report, some of the benefit plans and features evaluated by the Department would require additional statutory authority to implement. The Department's comments offer important insight into potential adjustments to current law that could potentially allow CLASS to move forward as intended—both substantively and financially.

Nonetheless, the HHS report concluded that as presently structured, CLASS cannot be carried out in a manner that would meet its statutory requirements. Accordingly, HHS Secretary Sebelius has instructed that implementation of CLASS be suspended.⁴⁵ However, in her memo accompanying the Report, Assistant Secretary for Aging Kathy Greenlee clearly states that HHS intends to continue to work with Congress and long-term care stakeholders

⁴¹ PHSA Section 3205.

⁴² PHSA Section 3208.

⁴³ Congressional Research Service, *Community Living Assistance Services and Supports (CLASS) Provisions in the Patient Protection and Affordable Care Act (ACA)*, p. 15, (Nov. 14, 2011) (R40842).

⁴⁴ Department of Health and Human Services, *Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program* (Oct. 2011) (online at <http://aspe.hhs.gov/daltcp/reports/2011/class/index.shtml>).

⁴⁵ Letter from Kathleen G. Sebelius, HHS Secretary to Rep. John Boehner, Speaker of the House regarding the CLASS Program (Oct. 14, 2011) (online at <http://www.hhs.gov/secretary/letter10142011.html>).

to explore ways to address the nation's pressing long-term care needs.⁴⁶

ADDITIONAL LONG-TERM CARE PROVISIONS IN TITLE VIII OF
THE ACA

National Clearinghouse for Long-Term Care

Established under Section 6021(d) of the 2005 Deficit Reduction Act,⁴⁷ the HHS National Clearinghouse for Long-Term Care Information is designed to educate consumers on their long-term care options, including Medicaid and private long-term care insurance.⁴⁸ Under the 2005 law, the Clearinghouse was authorized at a mandatory funding level of \$3 million for each of the years from FY 2006 through FY 2010.

HHS utilized these funds to launch its “Own Your Future” initiative in partnership with both the National Governors Association and the National Conference of State Legislatures to promote awareness among recent and near retirees about the importance of planning ahead for their long-term care needs.⁴⁹ The initiative used direct mail (including a letter from state governors) and media spots to encourage individuals between ages 50 and 70 to request a long-term care planning kit developed by HHS. Five states (Arkansas, Idaho, Nevada, New Jersey, and Virginia) initially participated in the program; it was later expanded to include 20 states and the District of Columbia.⁵⁰ All told, “Own Your Future” reached over 18 million residents in 26 states during the Clearinghouse’s initial authorization period, with approximately 1.5 million individuals requesting further information on long-term care planning.⁵¹

Title VIII of the ACA reauthorizes the National Clearinghouse through FY 2015, making \$15 million in total mandatory funding (\$3 million for each of FY 2011 through FY 2015) available for this resource.⁵² Such funding would allow the Clearinghouse to build on its previous work with the states in providing important and unbiased information about both the need for long-term planning and the availability of various long-term care options.

In FY 2011, HHS issued the Promoting Long-Term Care Awareness solicitation to renew the “Own Your Future” initiative and transition from direct mail to Internet-based activities, including use of social media. HHS reports that it has recently awarded a one-year contract, with an option for renewal, to continue work on this project.

⁴⁶ Memorandum on the CLASS Program from Kathy Greenlee, HHS Assistant Secretary for Aging to Kathleen Sebelius, HHS Secretary (Oct. 14, 2011) (online at <http://aspe.hhs.gov/daltcp/reports/2011/class/CLASSmemo.shtml>).

⁴⁷ P.L. 109-171.

⁴⁸ Department of Health and Human Services, National Clearinghouse for Long-Term Care Information (online at http://www.longtermcare.gov/LTC/Main_Site/index.aspx) (accessed Nov. 9, 2011).

⁴⁹ Department of Health and Human Services, *Final Report: “Own Your Future” Consumer Survey* (Nov. 30, 2006) (online at <http://aspe.hhs.gov/daltcp/reports/2006/OYFsurvey.htm>).

⁵⁰ Additional states included Colorado, Georgia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, and Washington.

⁵¹ Department of Health and Human Services, *“Own Your Future” Long-Term Care Awareness Campaign Response Summary* (July 28, 2010).

⁵² ACA, Section 8002(d).

Personal Care Attendants Workforce Advisory Panel

Title VIII also establishes the Personal Care Attendants Workforce Advisory Panel to provide counsel to the Congress and the HHS Secretary on workforce issues related to personal care attendant workers.⁵³ Personal care attendants are individuals trained to enable the elderly and people with disabilities to continue to reside in their homes or within their communities by assisting with activities of daily living. This discipline is an important part of ensuring the adequacy of LTSS since a high proportion of people with long-term care needs reside outside of institutions.

The 15 inaugural members of the Advisory Panel have already been named; their work is expected to get underway shortly.

H.R. 1173: “JUST SAY NO”

The Republican response to all of this—to CLASS, to the National Clearinghouse for Long-Term Care and to the Personal Attendants Workforce Advisory Panel—is to “just say no.” And that is exactly what H.R. 1173 sets out to do—to terminate the only significant federal program dedicated to the provision of LTSS; to end the guaranteed funding mechanism for the National Clearinghouse; and to stop a workforce advisory group that has already been appointed. This despite Republican claims that they join with us in recognizing that: (1) the United States is facing a potentially catastrophic long-term care crisis;⁵⁴ (2) Medicaid can no longer be viewed as the answer to this crisis;⁵⁵ (3) CLASS seeks to address an important policy goal;⁵⁶ and (4) the National Clearinghouse is an essential tool in educating the public about long-term planning and long-term care options, including private insurance policies.⁵⁷

What would Republicans put in place instead? Absolutely nothing. For those in need of LTSS, Republicans would keep the status quo—reliance on Medicare that offers very little coverage of these services; on Medicaid that robs the elderly and disabled of their dignity and financial resources; and on the private long-term care insurance market whose policies are far too costly for most Americans to afford. And for those seeking guidance on how best to prepare for a time when long-term care services may be needed, Republicans would allow the National Clearinghouse to be zeroed out altogether during the annual appropriations process. Enactment of H.R. 1173 would produce both of these results.

This scorched-earth approach to the entirety of Title VIII of the ACA was clearly demonstrated throughout the full Committee mark up of H.R. 1173. Indeed, during the proceedings, Republicans:

⁵³ ACA, Section 8002(c).

⁵⁴ *Supra*, footnote 1.

⁵⁵ *Supra*, footnote 22.

⁵⁶ *Supra*, footnote 4.

⁵⁷ At the full Committee markup, Rep. Lee Terry offered an amendment (that was adopted) to restore funding authority for the National Clearinghouse that would have been taken away completely under H.R. 1173. During the debate on the amendment, Republicans spoke in strong support for the Clearinghouse. *See, e.g.*, remarks of Rep. Lee Terry (p. 180), Rep. Phil Gingrey (p. 189), and Rep. Michael Burgess (p. 190) (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong. (Nov. 30, 2011) (transcript of the proceeding)). For further commentary on the Terry amendment, see footnote 61, *infra*.

- Rejected a process through which CLASS could be reviewed and evaluated by experts (the CLASS Independence Advisory Council) and adjusted and improved by Congress;⁵⁸
- Rejected the establishment of an alternative long-term care program to replace CLASS;⁵⁹
- Rejected penetration of the private long-term care insurance market as the standard by which repeal of CLASS should be measured;⁶⁰ and
- Rejected current law (which Republicans originally supported) to provide mandatory spending for the National Clearinghouse for Long-Term Care.⁶¹

In sum: While our Republican colleagues have joined us in recognizing that we face an immediate and pressing long-term care challenge as a nation, they have refused to join us—or their constituents in need—in meeting this challenge. Instead, they place their faith in what is not working and argue that it is best to put off debate on the issue until another day. We believe such a position is both misguided and untenable and, therefore, must be rejected. Consistent with this view, we must also reject H.R. 1173.

AN ANTI-HEALTH REFORM IDEOLOGICAL AGENDA

The “just say no” view expressed through H.R. 1173 is consistent with the Republican anti-health reform ideological agenda. What Republicans have not been able to achieve in whole cloth,⁶² they are now attempting to do piece by piece.⁶³ H.R. 1173 puts the CLASS Program in the frontline of this ongoing assault.

⁵⁸ See debate on the amendments offered by Rep. Frank Pallone (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., pp. 203–221 (Nov. 30, 2011) (transcript of the proceeding)).

⁵⁹ See debate on the amendment offered by Rep. Ed Towns (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., pp. 222–240 (Nov. 30, 2011) (transcript of the proceeding)).

⁶⁰ See debate on the amendment offered by Rep. Eliot Engel (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., pp. 241–257 (Nov. 30, 2011) (transcript of the proceeding)).

⁶¹ See debate on the amendment offered by Rep. Lois Capps. (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Act of 2011*, 112th Cong., pp. 182–202 (Nov. 30, 2011) (transcript of the proceeding)).

The Capps amendment was offered as a second degree amendment to the amendment offered by Rep. Lee Terry that would retain the ACA’s extension of the authority for the National Clearinghouse through FY 2015, but would also convert its funding stream from mandatory spending to discretionary spending, subjecting the Clearinghouse to the vagaries of the annual HHS appropriations process. It should be noted that the Terry Amendment was filed nearly three hours after the Capps Amendment was released, suggesting that Republicans chose to reverse course only upon learning that their position on the National Clearinghouse would be challenged and calling into question their firm conviction that private long-term insurance is the best way to solve the country’s long-term care problem.

⁶² Although the House of Representatives has passed a bill to repeal the ACA (H.R. 2), that legislation will not become law since the Senate has defeated the proposal. (H.R. 2 passed the House on January 22, 2011 (Congressional Record, H322–323). The Senate defeated a similar proposal the following month on February 2, 2011 (Congressional Record S475)). In any case, President Obama has made clear that he will veto any such legislation. (Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy: H.R. 2—Repealing the Affordable Care Act* (Jan. 6, 2011) (online at http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr2r_20110106.pdf)).

⁶³ Efforts in the House of Representatives to repeal or otherwise destroy individual parts of the ACA include: H.R. 358, *Protect Life Act* (passed the House on Oct. 13, 2011 (Congressional Record, H6885–6903)); H.R. 1214, *To Repeal Mandatory Funding for School-Based Health Center Construction* (passed the House on May 4, 2011 (Congressional Record H2969–2977)); H.R. 1216, *To Convert Funding for Graduate Medical Education in Qualified Teaching Centers from Direct Appropriations to an Authorization of Appropriations* (passed the House on May 25, 2011 (Congressional Record H3361–3388; H3396–3401; H3430–3434)); and H.R. 1217, *To Repeal the Prevention and Public Health Fund* (passed the House on Apr. 13, 2011 (Congressional Record H2633–2647)). To date, none of these bills has been considered by the Senate.

But in this instance, Republicans have gone beyond their “just say no” mantra and have asserted an additional line of attack in opposition to CLASS. Time and again, Republicans claim that CLASS was only included in the ACA as a “budget gimmick”; as a way to help pay for the ACA⁶⁴—this despite unequivocal testimony to the contrary.

At the October 2011 hearing on CLASS, in response to questions on this issue, the HHS Assistant Secretary for Planning and Evaluation testified that the Administration supported CLASS because of “the indisputable need to protect people from the cost of long-term care services” and that the estimated savings attributed to CLASS by the Congressional Budget Office (CBO) during the health reform debate⁶⁵ were “certainly encouraging,” but in no way were the definitive argument for including CLASS within the ACA.⁶⁶ The Assistant Secretary went on to state that even after discounting the savings CBO initially projected for CLASS, the ACA would still save more than \$120 billion during the next 10 years and over one trillion dollars in the subsequent decade.⁶⁷ She also underscored the point that over 30 million Americans are expected to gain health insurance when the ACA is fully implemented and detailed the ACA benefits already experienced by seniors, small businesses, and young adults—none of which would be impacted by the Department’s decision to defer work on CLASS.⁶⁸

Nonetheless, Republicans have persisted in misrepresenting both the relevance of the initial CBO score for CLASS in paying for the ACA and the fiscal impact of suspending the Program’s implementation.⁶⁹ In our view, this is nothing more than part of the Republican strategy to disrupt, dismantle, and ultimately destroy the ACA. For this reason as well, we oppose H.R. 1173.

⁶⁴ See, e.g., Sen. John Thune, Rep. Fred Upton, Rep. Joe Pitts, Rep. Cliff Stearns, Rep. Denny Rehberg et al., *CLASS’ Untold Story: Taxpayers, Employers, and States on the Hook for Flawed Entitlement Program* (Sept. 2011) (online at <http://energycommerce.house.gov/media/file/pdfs/class/classuntoldstoryreport.pdf>). See also remarks of Rep. Joe Pitts (p. 3); Rep. Marsha Blackburn (pp. 19–20); Rep. Michael Burgess (pp. 23–24); and Rep. Charles Boustany (p. 45) (Subcommittee on Oversight and Investigations and Subcommittee on Health, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An Unsustainable Program and Its Consequences for the Nation’s Deficit*, 112th Cong. (Oct. 26, 2011) (transcript of the proceeding)).

⁶⁵ In December 2009, CBO estimated CLASS provisions would reduce deficits by \$72 billion over the 10-year period from 2010 through 2019, including \$2 billion in Medicaid savings. (Letter from Douglas W. Elmendorf, Director, Congressional Budget Office to Sen. Harry Reid, Leader, Senate (Dec. 19, 2009) (online at http://www.cbo.gov/ftpdocs/108xx/doc10868/12-19-Reid_Letter_Managers_Correction_Noted.pdf)). CBO most recently estimated that prior to HHS’ announcement to suspend implementation of the Program, CLASS would have reduced the deficit by \$81 billion over the 10-year period from 2012 through 2021. The estimate does not include \$2 billion in savings to Medicaid. (Congressional Budget Office Cost Estimate of H.R. 1173, *Fiscal Responsibility and Retirement Security Act of 2011* (Dec. 2, 2011)).

⁶⁶ Testimony of Sherry Glied, HHS Assistant Secretary for Planning and Evaluation, Subcommittee on Oversight and Investigations and Health Subcommittee, House Committee on Energy and Commerce, *Joint Hearing on Class Cancelled: An Unsustainable Program and Its Consequences for the Nation’s Deficit*, 112th Cong., pp. 75–76 (Oct. 26, 2011) (transcript of the proceeding).

⁶⁷ *Ibid* at p. 74.

⁶⁸ *Ibid* at pp. 91–93.

⁶⁹ See, e.g., remarks of Rep. Fred Upton (House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 8 (Nov. 29, 2011) (transcript of the proceeding)); Rep. Joe Pitts (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 3 (Nov. 15, 2011) (transcript of the proceeding)); and Rep. Tim Murphy (Subcommittee on Health, House Committee on Energy and Commerce, *Markup on H.R. 1173, the Fiscal Responsibility and Retirement Security Act of 2011*, 112th Cong., p. 13 (Nov. 15, 2011) (transcript of the proceeding)).

CONCLUSION

We agree that the CLASS statute has not been crafted perfectly—no complicated piece of legislation is, especially one that is as novel and unique as CLASS. But regrettably, Republicans—as part of their all out war on the ACA—have chosen to tear CLASS down altogether rather than work with us and HHS to make it right. That is what we can and should do in order to achieve the goal we all share—ensuring that Americans who require long-term services and supports are able to get what they need without the threat of impoverishment.

We stand ready to take up the challenge of long-term care with our Republican colleagues and hope they will join in such an effort. In the meantime, we also stand by the long-term care framework presented by CLASS and in turn, must oppose H.R. 1173.

HENRY A. WAXMAN.
EDOLPHUS TOWNS.
TAMMY BALDWIN.
G.K. BUTTERFIELD.
DIANA DEGETTE.
BOBBY L. RUSH.
EDWARD J. MARKEY.
DONNA M. CHRISTENSEN.
ANNA G. ESHOO.
KATHY CASTOR.
FRANK PALLONE, Jr.
LOIS CAPPES.
JAN SCHAKOWSKY.
JOHN D. DINGELL.
JAY INSLEE.
ELIOT L. ENGEL.
GENE GREEN.
DORIS O. MATSUI.
MIKE DOYLE.
CHARLES A. GONZALEZ.

