

**THE IMPLEMENTATION AND SUSTAINABILITY OF
THE NEW GOVERNMENT-ADMINISTERED COM-
MUNITY LIVING ASSISTANCE SERVICES AND
SUPPORTS (CLASS) PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON HEALTH
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
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C O N T E N T S

	Page
Hon. Joseph R. Pitts, a Representative in Congress from the Commonwealth of Pennsylvania, opening statement	1
Prepared statement	2
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas, opening statement	3
Hon. Frank Pallone Jr., a Representative in Congress from the State of New Jersey, opening statement	4
Hon. Joe Barton, a Representative in Congress from the State of Texas, opening statement	10
Prepared statement	10
Hon. Phil Gingrey, a Representative in Congress from the State of Georgia, opening statement	11
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement	12
Hon. John D. Dingell, a Representative in Congress from the State of Michigan, opening statement	13
Hon. Fred Upton, a Representative in Congress from the State of Michigan, prepared statement	130
Hon. Edolphus Towns, a Representative in Congress from the State of New York, prepared statement	135
WITNESSES	
Kathy Greenlee, Assistant Secretary, Administration on Aging	25
Prepared statement	28
Allen J. Schmitz, Principal, Consulting Actuary, Milliman, American Academy of Actuaries	70
Prepared statement	73
Joseph Antos, William H. Taylor Scholar in Health Care and Retirement Policy, The American Enterprise Institute	78
Prepared statement	80
Mark J. Warshawsky, Social Security Advisory Board, Director of Retirement Research, Towers Watson	95
Prepared statement	97
William Lawrence Minnix, Jr., CEO, LeadingAge, Chair, Advance CLASS, Inc.	104
Prepared statement	106
Anthony J. Young, Senior Public Policy Strategist, NISH, AbilityOne	112
Prepared statement	114
SUBMITTED MATERIAL	
“Running Out of Time, Money, and Independence?,” article dated January 2011, by Michael Ogg, Health Affairs, submitted by Mr. Pallone	6
Statement, undated, from The Jewish Federations of North America, submitted by Mr. Waxman	15
Statement of AARP, dated March 17, 2011, submitted by Mr. Dingell	18
Report, undated, from the National Council on Aging, submitted by Ms. Schakowsky	51
Report, dated March 15, 2011, from Congressional Research Service, submitted by Mr. Gingrey	61

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OF THE NEW GOVERNMENT-ADMINISTERED
COMMUNITY LIVING ASSISTANCE SERVICES
AND SUPPORTS (CLASS) PROGRAM**

THURSDAY, MARCH 17, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2322 of the Rayburn House Office Building, Hon. Joseph R. Pitts (chairman of the subcommittee) presiding.

Members present: Representatives Pitts, Burgess, Shimkus, Murphy, Gingrey, Latta, Cassidy, Guthrie, Barton, Pallone, Dingell, Towns, Capps, Schakowsky, Weiner and Waxman (ex officio).

Staff present: Clay Alspach, Counsel, Health; Howard Cohen, Chief Health Counsel; Brenda Destro, Professional Staff Member, Health; Paul Edattel, Professional Staff Member, Health; Julie Goon, Health Policy Advisor; Debbie Keller, Press Secretary; Ryan Long, Chief Counsel, Health; Jeff Mortier, Professional Staff Member; Katie Novaria, Legislative Clerk; Monica Popp, Professional Staff Member, Health; Heidi Stirrup, Health Policy Coordinator; Kristin Amerling, Democratic Chief Counsel and Oversight Staff Director; Phil Barnett, Democratic Staff Director; Alli Corr, Democratic Policy Analyst; Ruth Katz, Democratic Chief Public Health Counsel; Purvee Kempf, Democratic Senior Counsel; Karen Lightfoot, Democratic Communications Director, and Senior Policy Advisor; Karen Nelson, Democratic Deputy Committee Staff Director for Health; and Mitch Smiley, Democratic Assistant Clerk.

Mr. PITTS. The subcommittee will come to order. The chair will recognize himself for an opening statement.

OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

The Community Living Assistance Services and Supports program, the CLASS program, a government-run long-term care insurance entitlement, was included in last year's health reform law, seemingly as part of a budget process to make the law look less expensive than it really is. Since participants will have to pay into the program for 5 years before becoming eligible for any benefits, CBO estimates including the CLASS Act in Obamacare reduced the 10-year cost of the legislation by \$70 billion. With CBO estimating

that the CLASS program will begin running a deficit by 2030, and CMS' own actuaries estimating that the program will go into deficit in 2025, a taxpayer bailout may look very attractive to future Congresses, when premium increases and benefit cuts can no longer make up the shortfall.

While Obamacare specifically prohibits using taxpayer funds to finance CLASS, Congress can always pass a new law to allow the practice. Additionally, Congress can redirect funds from general revenue into the CLASS Independence Fund, if it needs to.

The concerns about this program are not limited to Republicans. In October of 2009, Senators Kent Conrad, Joe Lieberman, Blanche Lincoln, Mary Landrieu, Evan Bayh, Mark Warner and Ben Nelson sent a letter to Senate Majority Leader Harry Reid asking him to strip the CLASS Act out of the pending health care reform legislation. They argued "We have grave concerns that the real effect of the provisions would be to create a new Federal entitlement with large, long-term spending increases that far exceed revenues." And Kent Conrad, the Democratic Chairman of the Senate Budget Committee, famously called the CLASS Act "a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of."

More recently, on February 16, Secretary of Health and Human Services Kathleen Sebelius testified before the Senate Finance Committee and admitted in an exchange with Senator John Thune that the CLASS Act is "totally unsustainable." Those are her words.

It seems the concerns with the CLASS program are widespread, and I believe we can all agree that we do have a serious long-term care problem in this country as the costs are driving people into bankruptcy and weighing down the Medicaid program. We do need to address the issue, and the private sector, which already offers long-term care products, must be at the center.

[The prepared statement of Mr. Pitts follows:]

PREPARED STATEMENT OF HON. JOSEPH R. PITTS

The Community Living Assistance Services and Supports (CLASS) program, a government-run long-term care (LTC) insurance entitlement, was included in last year's health reform law, seemingly as part of a budget gimmick to make Obamacare look less expensive than it really is.

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It seems the concerns with the CLASS program are widespread and I believe we can all agree that we do have a serious long-term care problem in this country as LTC costs are driving people into bankruptcy and weighing down the Medicaid program.

We do need to address the issue, and the private sector, which already offers LTC products, must be at the center.

Mr.PITTS. I now yield to my distinguished vice chairman, Dr. Burgess, for the remainder of the time.

**OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr.BURGESS. I thank the chairman for yielding.

I too have concerns with the CLASS Act. I feel it is not sustainable as presently drawn, and perhaps my biggest concern is that it gives people the wrong impression of what they now have under the Patient Protection and Affordable Care Act. We heard multiple people testify back in 2005 when we last looked into this that there was a concern that people were anesthetized as to their requirements for having some type of long-term care insurance, and I fear that this CLASS Act does again give people the false impression that now the government is going to pick up this expense, and in fact, nothing could be further from the truth. And then of course from the standpoint of employers, yet again another Congressional mandate placed upon them.

The CLASS Act is not an answer in search of a problem. We all know the problem exists. Unfortunately, this committee last really debated long-term care and long-term care issues in 2005. We never really got a chance to cover it during the debates on the Patient Protection and Affordable Care Act. It is just a fact of life: Some of us are going to get older. As we get older, the likelihood that we will need some type of long-term care assistance grows, and I have to tell you, I have got a long-term care insurance policy. I bought it just after I turned 50, long before I ever ran for Congress, and I didn't buy it because I read an article in Health Affairs, I didn't buy it because I saw something on C-SPAN that impressed me that I ought to have it, I bought it because my mother told me if I didn't want to be a burden on my children, I would attend to that while I could.

So for some people, unexpectedly early in life, an injury happens and well over 4 million people under age 65 are in need of such care. Nine million Americans over 65 need some type of long-term care. The care can be costly and the segment that the government picks up through Medicaid is an impressive number. A figure that was produced back in 2005 when we had hearings on this that if we could move a third of projected seniors off of Medicaid into long-term care insurance in the latter 5 years of the 10-year budget window, which would be now, the Federal Government would save in excess of \$150 billion, something that in fact could be quite useful today.

The problem is hard. The answer is elusive. Market knowledge is important but it can be confusing for the consumer, but I believe with the CLASS Act, we have taken a step in the wrong direction because we have given people the impression that they now have something which in fact they may not have.

I thank the chairman for the consideration. I will yield back the balance of my time.

Mr.PITTS. The chair thanks the gentleman and yields 5 minutes to the ranking member, Mr. Pallone, for an opening statement.

Mr.PALLONE. Thank you, Mr. Chairman.

OPENING STATEMENT OF FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

You know, Mr. Chairman, I have a great deal of respect for you and also for Dr. Burgess, but I have to start out by dispelling some of the things that both of you said. I mean, first of all, I have to say, I am getting very frustrated because it seems like almost every hearing is an effort to repeal or debunk or defund something that is in the Affordable Care Act and suggest that somehow it is not real, and this is just another example of it. I mean, the CLASS Act is very real. It is providing community-based services, cash so that people can actually get community-based services. It is real. It is not something that is fiction that we are kidding people about. They will be paying into a trust fund. They will get the money back when they become disabled and need to go out and use that cash to buy community-based services so they can stay in the community.

The other thing that really bothers me is that I don't hear any alternatives coming from the other side. I mean, Dr. Burgess correctly said that there is a real need for long-term care and support services, and this he says is no good. Well, what is the alternative? I don't hear it.

We made a concerted effort, myself, Mr. Dingell and the late Senator Kennedy, who was the Senate sponsor of this bill, to come up with a program that offers an alternative to provide services for disabled Americans so they can remain in their homes and in their communities. It was not put in as an effort to try save money for the health care reform. We have been advocates for this for many years. You talk about three people, I am the youngest of the three. I have only been here 23 years. Mr. Dingell and the late Senator Kennedy were here for a lot more years advocating for this legislation. It just happened to be that there was an opportunity to move this in the context of the Affordable Care Act, and we did it because we know that there are 10 million Americans in need of long-term services and that number is expected to increase to 26 million by 2050. Meanwhile, more than 200 million adult Americans lack any insurance protection against the cost of long-term services. As a result, nearly half of all funding for these services is now provided through Medicaid, which is a growing burden on States and requires individuals to become and remain poor to receive the help they need, which is a terrible way to operate.

So as Americans continue to age, we are faced with an impending crisis in long-term care. The implementation of CLASS offers

a new approach that builds upon our existing safety-net system and helps our elderly and disabled finance the long-term care they need to remain active and productive members of their communities for as long as possible. Now, I know this doesn't address nursing home care. I am fully aware of that. But the need for community-based care is just as important as a method of financing long-term care in the nursing home. The nursing homes are paid for by Medicaid but a lot of these services that people would be able to access through the CLASS Act are not even provided by Medicaid. That is why it is necessary. It is a voluntary self-financed program designed to assist Americans who choose to participate to proactively prepare for their future. People are taking on responsibility, basically saying I want to prepare myself, I am willing to take the responsibility. It focuses on personal responsibility, ensures as many choices as possible are available to those needing future services.

I know my Republican colleagues have concerns about the program's sustainability and its impact on the budget deficit, but to them I would say that the Secretary has the tools she needs in the bill to make sure this program does not grow into a new entitlement. The chairman said it is an entitlement. It is not. In fact, the law requires that she certify the program to be actuarially sound and deficit-neutral. If anything, this program helps alleviate deficit problems. As the CBO noted in its analysis, CLASS could save Medicaid \$2.5 billion in the first 10 years, possibly additional savings after that, and conversely, the CBO estimates that repeal of CLASS would add \$86 billion to the Federal deficit. I continue to remind my Republican colleagues, if you start repealing the provisions of the Affordable Care Act, CLASS or some of the others, you are going to increase the deficit, and I strongly believe CLASS is an important step in the evolution of public policy because it is a framework based on the principles of independence, choice and empowerment. CLASS is about ensuring you have the services and support you need to remain independent members of society, which is what all of us want.

Now, I was going to yield to Mr. Dingell but I think he is going to come later, so let me ask unanimous consent, Mr. Chairman, to enter into the record a narrative essay by Michael Ogg from New Jersey titled "Running Out of Time, Money and Independence?," which I think powerfully illustrates the realities of the current long-term care environment.

Mr.PITTS. Without objection, so ordered.

Mr.PALLONE. Thank you.

[The information follows:]

NARRATIVE MATTERS



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Running Out Of Time, Money, And Independence?

A professor forced into retirement by a severe disability finds his personal care assistants essential. But he may not be able to afford their help much longer—and he faces going on Medicaid and possibly becoming institutionalized.

BY MICHAEL OGG

It's 9:28 p.m. Serge punches the code into the digital lock and enters my front door, just as he does every night, seven days a week, asking the same question in his Haitian-accented French about how my day has been: "*Comment était votre journée?*" Serge has a formality that's a bit remote yet friendly: Neither of us seems sure whether to use the formal pronoun *vous* or the more familiar

tu. He reaches for my phone and pushes the preprogrammed number, accessing his agency's automated time clock and recording his arrival time. Serge's duty hours technically start at 9:30, but he always comes precisely at 9:28.

Serge's arrival interrupts whatever I'm doing—reading a book, listening to music, talking with friends—and I must always be home when he arrives. I resent these constraints and intru-

sions. This rigid schedule precludes spontaneity or unpredictability in my evening activities. Yet I have no choice: I need his help.

Serge is one of several personal care assistants, or PCAs, who are essential for me to live in my New Jersey home alone despite severe disability. They get me up in the morning and put me to bed at night. They bathe me, dress me, place me on the toilet, clean up my spills, clear away my dirty dishes, bring in and open my mail, do my laundry, and keep my house tidy. Sometimes they cook me meals and feed me. Without Serge and my other personal care assistants, I couldn't live independently, which is what I wish to do.

Serge, Nelita (my personal care assistant in the morning), and their colleagues are among that growing number of "formal" or paid caregivers who provide the most intimate personal services to their clients, allowing me and other people in my situation to remain in our homes. These numbers will expand further as baby boomers age and "informal" care networks of relatives or friends are absent or strained.

The interpersonal demands and dynamics of personal care relationships are challenging enough. Finding people willing to provide these services, ensuring that they are fairly compensated, and paying for these services over the long term are also daunting. Although my experiences with personal care assistants have been largely positive, I worry about the future.

My Life Today

I'm fifty-six years old, and I have primary progressive multiple sclerosis, known as PPMS. The minority variant of multiple sclerosis (it makes up 10 percent of cases), the condition has no treatment, and it causes increasing disability from the moment it starts.

Mine arrived when I was forty-two, and after about eight years, I was unable to move my legs or left arm and retained only partial use of my right arm and hand (I'm left-handed). Today, my trunk

Illustration By Brett Ryder

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JANUARY 2011 • 50:1 HEALTH AFFAIRS 173

NARRATIVE MATTERS

and neck muscles are too weak to keep my head erect, so my high-tech power wheelchair must not only move me but also keep my seated body positioned upright and straight.

My arms and legs sometimes move uncontrollably in repeated, spastic motions, causing significant discomfort. I can't control when my bladder empties and, therefore, I have a suprapubic tube. This is an "indwelling" catheter, inserted through my abdominal wall into my bladder, slightly above my pubic bone. It continuously drains my urine into a strong plastic bag that's secured with an elastic strap around my right thigh.

According to the assessment scale that neurologists routinely use to measure multiple sclerosis disability, I qualify as "essentially restricted to bed or chair." Of the five standard activities of daily living—feeding, bathing, dressing, using the toilet, and walking—used to evaluate disability levels, I can do only one independently: eating. On a bad day, sometimes I can't even do that. Otherwise, I'm perfectly healthy. Years of long-distance cycling, speed skating, and cross-country skiing made my heart strong.

I'm determined to remain active in my home and community, not to go into a nursing home or assisted living facility. The problem is that I live alone, without the "informal" caregivers—typically wives, mothers, sisters, or daughters, although men are increasingly assuming this role—who provide the majority of personal assistance services to their disabled relatives in the United States. I was born in England and came to America for postdoctoral research after obtaining my physics doctorate from Oxford University. Since then, I've lived and worked in Canada and the United States for nearly thirty years, while all my adult relatives remain in Britain.

I could return to England, which offers considerable support for people with disabilities living in communities. In addition to free health care, I would get the maximum disabled living allowance, which isn't determined on the basis of income. I would be entitled to home health aides, free accessibility modifications to my home, and free stays in respite homes. But there are compelling reasons to remain where I



am. Although my marriage ended as my disability progressed, I have two young daughters, whom I cherish. They live a mile away, and I want to be part of their growing up. I want them to visit me in my own home, where I'm living my life as I wish.

After disability stopped me from working at age fifty, I took most of my savings and bought a one-story, ranch-style house. I renovated it extensively, making it as accessible as possible. The accessibility features cost me more than \$150,000 out of pocket. Health insurance doesn't cover such costs. The limited exception is some Medicaid programs, which occasionally cover purchasing, but not necessarily installing, grab bars and ramps.

The renovations to the house mean that while seated in my wheelchair, I can easily reach my kitchen sink, stove top, refrigerator, storage cabinets, all bathroom fixtures, and other items I might need. I installed an electric lifting device with a ceiling-mounted track leading from my bedroom to the bathroom, which my assistants use to help move me. The exterior doors, side and rear, have ramps. These modifications allow me to get by with relatively little human help; nonetheless, I still need some to meet my needs. My personal care assistants, who come morning and evening, day after day, allow me to live alone in my home. They give me independence.

The Realities Of Finding And Managing Assistants

People use different strategies to find and manage personal care assistants.

The "consumer control" approach has people with disabilities independently interviewing and hiring their own assistants, then negotiating and managing schedules and services. Although this approach offers important advantages, vetting candidates and ensuring reliable coverage of essential times are hugely challenging. Personal care assistants are sometimes sick and don't show up, and some of them occasionally abuse or steal from clients.

I choose instead to use the "agency-directed services" approach. In my case, the agency is a local franchise owned by someone with multiple sclerosis, whom I know. I trust the owner and thus trust the agency to do well by me. The agency performs background checks and hires, schedules, and manages personal care assistants. It continually monitors staff performance. Once the agency had to fire a PCA whom I liked, because she had stolen from another client.

Long-term care insurance from my last job covers the cost of my assistants. At the same time, the dollar amount available limits how much help I can have. My costs are \$1,800 a month, but that amount pays only for three hours of assistant services each day. Personal care assistants earn low wages. Although the agency I use pays more generously than many, it doesn't give its employees health insurance or other benefits.

Most personal care assistants are women, but some, like Serge, are men. Virtually every assistant I've known is either African American or an immigrant, generally from the Caribbean or Africa. Serge is Haitian and doesn't speak any English; we communicate entirely in French. Personal care assistants have told me distressing stories about how certain clients won't let a black person look after them or treat black assistants in demeaning and disrespectful ways.

Although I no longer work, my days are full. I audit courses at the noted local university. I conduct community accessibility projects for various groups—checking and advocating compliance with the Americans with Disabilities Act for pedestrian crossings, accessibility of parks and mass transit, and so on. I take the train into New York City and Philadelphia to attend concerts and visit

museums.

I do the usual errands, too, which always take me extra time to complete. For some of them, such as grocery or other shopping, I take the bus or simply go by wheelchair. I buy some groceries online, but the selection and freshness is better at my local supermarket and farmers' market. I can do most bill paying and banking online, which makes a huge difference because writing is almost impossible for me.

To accomplish all of these activities, I must start my days early. But finding personal care assistants willing to arrive at an early hour is difficult. I've been lucky with Nelita.

Morning: Nelita

Nelita arrives at 6:00 a.m. Her bright smile and cheerful demeanor make the early start easy. Although Haitian like Serge, she has been in this country long enough to have become Americanized, and she prefers speaking English to French. (As with most Haitians, her first language is Haitian Creole; she learned French in school.)

When Nelita arrives, I'm in bed. Even though I can't move my legs or left arm, I can raise the head of my hospital bed with the push of a button, bringing myself almost to a sitting position. To get me out of bed, Nelita places hooks from the ceiling lift device under each of my legs, tucks supports under my armpits on either side of my chest, and then presses the controls to raise me off the bed, transport me along the overhead track, and lower me into my power wheelchair, which has been charging its batteries overnight at an outlet in my bedroom.

This entire procedure takes about two minutes. Once I'm in the power chair, my first stop is the kitchen for a cup of coffee—both to help me wake up and to stimulate muscular contractions in the bowel. The next stop is the toilet.

It's said that people with disabilities seem obsessed with bladder and bowel functioning. But here's my reality: Once Nelita leaves, I'm alone in my wheelchair for the rest of the day, and I can't get in or out of it by myself, even using the lift device. So each morning when Nelita uses the lift to place me on the toilet, I have only one opportunity to move my

bowels. After that, I must wait for close to fourteen hours—until evening, when Serge arrives. (The suprapubic tube leading to the leg bag takes care of my urinary incontinence.) This arrangement requires that I be completely in tune with my body, including eating well and healthily.

Not all personal care assistants understand the importance of thoroughly cleaning the anal area after a bowel movement, but Nelita does. Perineal hygiene (cleaning the area between the anus and the scrotum) is especially important, as I remain seated the entire day. So the next step is using the lift to move me from the toilet onto the shower commode chair and into the roll-in shower, where Nelita bathes me head to toe, especially my perineum. Personal care assistants have told me about clients who are too embarrassed to allow a thorough cleaning, especially around their genitals and anus. This cleansing—as well as careful visual inspection of the buttocks—is critical to the prevention and early detection of pressure ulcers or skin infections.

Whenever I can, I still shave my face myself, moving the razor blade down through the shaving cream, leaving my skin feeling clean. Shaving myself is, admittedly, irrational. Nelita sometimes must support my torso while I shave, and occasionally I fail, leaving her to finish the job. But I persist with shaving, mostly because I don't want to give up the last little bit of self-care that I can do.

After thoroughly drying me, Nelita performs her final personal care task: getting me dressed. Most adults never consciously consider their specific dressing preferences—tucking in a shirt this way, adjusting trousers that way. But I can't adjust anything myself. So how Nelita dresses me in the morning is how I'll stay all day. During our time together, she's learned what I like.

Before she leaves, around 7:45, Nelita sometimes helps me get breakfast or does other chores, like laundry or taking out the garbage. After she leaves, I'm alone.

Daytime: Alone With No PCA

No other personal care assistant comes until Serge arrives at 9:28 p.m. Of course, they could: It's only a question

of money. But I can't afford more care, so I must make do. Sometimes, when my right arm is too weak to lift a cup or grab a snack bar, I must wait for Serge to arrive to have water or food. I'd be safer with some care during the day, but if something goes seriously wrong, I can count on my personal care assistant agency to provide emergency help.

In a recent week, I had two experiences that underscore these concerns. I'd just heated my dinner—chicken curry with a nice, steaming hot sauce—and was moving the bowl from the stove top to my lap tray. I dropped it. The sauce doused my left hand. Because of spasticity, I can't move my left arm or hand, and the steaming sauce began scalding my flesh. I couldn't put my hand under the cold water in my sink. I tried using my right hand to direct the faucet hose onto my left hand, but I succeeded only in soaking my clothes and wheelchair.

I called 911 with my cell phone, and the police arrived right away, followed by emergency medical technicians (EMTs). I've registered as disabled with local emergency services and given them the digital lock combination for my front door. The EMTs immediately applied an ice pack, stopping the burning, and my left hand appeared relatively unscathed. There was no blistering, and the ice pack eased the pain, so I declined their offer to take me to the hospital. Because I was soaked and the kitchen a mess, I dialed the agency's number. I reached the on-call supervisor, and Serge arrived within thirty minutes and cleaned me up.

A few days later, I positioned my wheelchair seat in maximum tilt, about 45 degrees, which I do periodically to take weight off my buttocks and to prevent pressure ulcers. Coming out of tilt, my wheelchair lost its power. It was dead. Unmovable. With my cell phone, which I always have with me, I called the wheelchair vendor. It doesn't have emergency service, and all it could offer was to send a technician to my home as soon as possible.

I was completely stuck, staring at the ceiling. My laptop computer was a frustrating three inches from my fingertips, and I'd forgotten to place a book in my wheelchair's pouch. Food and water might as well have been miles away. After two hours of sitting, stranded, I

NARRATIVE MATTERS

called the agency to see if they could send someone over.

Shortly thereafter, the wheelchair technician arrived. The connector of the joystick, located on the right armrest and used to maneuver the wheelchair, had gotten dislodged—something easily fixed. As the technician was doing this, the husband of the agency's owner showed up. He'd been deployed to help me but, fortunately, was no longer needed.

Worries About The Future

I plan to watch my daughters grow up and live many years as adults. But within a few years, I won't have the money to afford personal care assistants. My long-term care insurance will run out in five years or so. Having worked primarily as a university professor, I have only modest savings, most of which I spent to purchase and renovate my home. I easily qualified for Social Security Disability Insurance, as I'm a permanent US resident, and after the obligatory two-year waiting period, I began receiving Medicare. But Medicare doesn't cover personal care assistants.

Through a county-administered program, I qualified to receive disability support from my state, New Jersey, with the stipulation that my assistants be supplied from state-designated agencies. (When my county's Office on Disability Services assessed my personal care assistant needs, it determined I need about twenty-eight hours of help a week. To stretch my funds, I use only twenty-one hours.) But I don't use the designated agencies.

The state pays these agencies only 62 percent of what I pay my private agency, and I don't trust those lower-paid service agencies to be as reliable as the one I use. In addition, personal care assistants from those state-designated agencies wouldn't be free: I'd still need to pay some fraction of the costs. With the agency I use, I know that I won't be stranded, that I won't have to spend the whole day unwashed and undressed.

That assurance allows me to live as normal a life as possible. It's no exaggeration to say that it's the thread that holds me from the slippery slope of self-pity and despair. Nonetheless, I'm a realist, and I know I need to plan for the future.

In contrast to Medicare, Medicaid does cover personal care assistance as a core benefit, and the federal program requires all states to offer it. Yet the actual amount of Medicaid coverage for personal care assistance varies from state to state, and that amount often plummets during periods of recession, as states cut Medicaid costs to balance budgets.

New Jersey is among the less generous states for Medicaid coverage of long-term care services. But it's my only option; I need to be in New Jersey. By putting my house into a trust and making other financial arrangements, I'll be able to become eligible for Medicaid in five years, by the time my long-term health insurance runs out. With New Jersey's current budget crisis, and pending severe funding cuts to services statewide, the status of personal care assistance five years hence is uncertain. Despite that, given my limited financial resources, I'm working to organize Medicaid eligibility.

In the not-too-distant future, having personal care assistants through Medicaid will be the only way I can live in my home. I'll have exhausted my ability to pay for assistants myself. If Medicaid's personal care assistant coverage is inadequate to my needs, I might be forced into an institution, like other people without sufficient resources to pay for assistants.

It's too late for me, but the Community Living Assistance Services and Supports (CLASS) Act, part of the 2010 health care reform, could provide significant long-term care benefits in the future for people in a situation similar to mine. The program will start in 2011, and the secretary of health and human services is expected to set benefits and commence enrollment in October 2012. Enrollees must pay premiums for five

years and work for at least three before they can receive benefits, so no benefits will be paid until 2017. On the other hand, there is no lifetime payment limit; nor is there any pre-existing condition exclusion.

Evening: Serge

It's 9:28 p.m., and Serge arrives. Tonight, I don't resent his coming. I've just shopped online for groceries, and a friend brought by some items from the local Asian supermarket. I'm an adventurous cook, but I lack the requisite physical abilities. Serge happily serves as my *sous-chef*, slicing and dicing as we prepare Thai food that will last me for days.

Later on, he'll do much of what Nelita did earlier, but in reverse: emptying urine from my leg bag, getting me undressed, helping me brush my teeth, lifting me out of my wheelchair, and positioning me in bed. Once placed in bed, I can't move until Nelita comes the next morning, so I put this moment off as long as I can.

Before then, we discuss Serge's wife. She was visiting in Haiti on January 12, 2010, when the massive earthquake struck, and she sustained minor injuries. Serge was desperate to bring her back to the United States. Unable to speak English, he couldn't make the necessary inquiries with the airline and organize her flights. This is something that I could do for him.

I was able to get her on a flight from Santo Domingo, and she has now returned to the United States. Serge is grateful for this help. But so am I grateful to Serge and my other personal care assistants. The job they perform—the assistance they provide—allows me to live as normal and fulfilling a life in my own home and community as I can. ■

Michael Ogg (ogg.michael@gmail.com) is a retired physics professor who lives in West Windsor, New Jersey.

The author thanks Louis Serge Michel and Nelita Dossous for allowing him to include their names and tell his story. Additionally, he thanks Lisa Iezzani for encouraging him to write this essay.

Mr. PITTS. The gentleman's time is expired. The chair recognizes the chairman emeritus of the committee, Mr. Barton, for 5 minutes.

**OPENING STATEMENT OF JOE BARTON, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Thank you, Mr. Chairman. I am going to yield some of that time to Dr. Gingrey.

Last April, a month after PPACA was signed into law, the Centers for Medicare and Medicaid Services' chief actuary, Richard Foster, released a report entitled "Estimated Financial Effects of the Patient Protection and Affordable Care Act." He estimated that by 2025, 15 years after PPACA was signed into law, projected benefits of this program would exceed revenues. CBO has estimated that benefits paid out will exceed premium payments by 2030, and Health and Human Services Secretary Kathleen Sebelius deemed the program as being totally unsustainable. Let me repeat that, totally unsustainable. Regardless of when this program is expected to become insolvent, we need to examine the CLASS Act to ensure that we are not creating another Federal entitlement program which will simply be a burden on our Federal budget. Last Congress, as the ranking member of this committee, I asked then-Chairman Waxman to bring Mr. Foster in to testify regarding this report and the sustainability of the program. Chairman Waxman was not able to do that, so I am very glad that Chairman Upton and Chairman Pitts have agreed to do it in this Congress.

With the state of our economy being what it is right now and the massive debt that we are incurring, I think it is imperative that we rein in spending in order to protect our country's financial stability. Long-term care is a serious issue, and I believe that myself and all Republicans are very willing to support some sort of a program for long-term care but it must be one which is sustainable and which is fiscally responsible. The program that we have in current law is not sustainable and it is not fiscally responsible. Therefore, we need to review it and hopefully reform it.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON

Mr. Chairman, thank you for holding this important hearing. Last April, a month after PPACA was signed into law, the Centers for Medicare & Medicaid Services' chief actuary, Richard Foster, released a report entitled "Estimated Financial Effects of the Patient Protection and Affordable Care Act." He estimated that by 2025, 15 years after PPACA was signed into law, projected benefits of this program would exceed revenues. The Congressional Budget Office (CBO) has estimated that benefits paid out will exceed premium payments by 2030. And the Health and Human Services Secretary, Kathleen Sebelius, has deemed the program as being "totally unsustainable."

Regardless of when this program is expected to become insolvent, we need to examine the CLASS program now to ensure that we are not creating another Federal entitlement program that will overwhelm our Federal budget. Last Congress, I asked then-Chairman Waxman to bring Mr. Foster in to testify regarding this report and the sustainability of this program. I'm glad Subcommittee Chairman Pitts has decided to examine this program.

With the state of our economy right now, and the massive debt we are incurring, it is imperative that we rein in spending in order to protect our country's financial stability. Long-term care is a serious issue and should be addressed. But it must be addressed in a fiscally responsible manner, one which creates a solvent program

which benefits those who need care, and does not just create another massive entitlement program.

Mr.BARTON. With that, I would like to yield 3 minutes to Dr. Gingrey of Georgia.

Mr.GINGREY. Mr. Chairman and the gentleman from Texas, I thank you for yielding.

Mr. Chairman, if we could stop the clock just for a second to let me ask you a question? Are we each going to get 2 minutes for an opening statement or not?

Mr.PITTS. No, we were just——

Mr.GINGREY. OK. Thank you, Mr. Chairman, and I thank the gentleman from Texas.

OPENING STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

The CLASS Act attempts to address an important public policy concern, the need for non-institutional long-term care, but that is not why we are here today. We are here today because the CLASS Act, according to CBO, the President's own debt commission and even the Administration is financially unsustainable and a potential time bomb for the Federal budget and our economy. To quote the President's debt commission, "Sustaining the program over time will require increasing premiums and reducing benefits to the point that the program is not able to accomplish its stated function of caring for the sick and disabled." Absent reform, the debt commission concluded, "The program is likely to require large general revenue transfers or collapse under its own weight."

To sum it up, the CLASS Act is a new entitlement nightmare created by or included in, as the gentleman from New Jersey said, Obamacare that when it fails it could harm disabled patients that would depend on it as well as Medicare seniors who are currently facing an unsustainable Medicare program of their own. So Senator Conrad, current chairman of the Senate Budget Committee, called the CLASS Act, and I quote him "a Ponzi scheme for the workers who are encouraged to sign up. The perpetration of a Ponzi scheme requires an ever increasing flow of money from investors, American workers in this case, to keep this thing going and it is ultimately destined to collapse." So my question is, is Senator Conrad right? This country does not need another Bernie Madoff fraudulent investment scheme, especially one run by the Secretary of the Health and Human Services.

And I want to close with the debt commission recommendation for CLASS. The commission advised the CLASS Act be reformed in a way that makes it credibly sustainable, and if that is not possible, we advise it to be repealed.

Mr. Chairman, I am not seeing anything that would lead me to think this program can be made credibly sustainable, and if I am not convinced otherwise after today's hearing, and certainly we will listen carefully to the witnesses, I will be dropping a bipartisan bill today with my good friend, Dr. Charles Boustany, the gentleman from Louisiana, to repeal this program once and for all, and I yield back.

Mr.PITTS. The chair thanks the gentleman.

Mr.BARTON. With that, I would like to yield to Mr. Shimkus the remaining time.

Mr.SHIMKUS. Thank you, Mr. Chairman, Mr. Ranking Member.

The national government is headed off a cliff. Our budget consists of Medicare, Medicaid, Social Security, interest on the debt and the discretionary budget. All are following the actions of the Congress today just trying to get to the end of a budget fiscal year. How in the world do we add another entitlement to the mix? How do we take 5 years of revenue making promises that we can't fulfill?

This is a crazy process and I am glad we are having the hearing, and I yield back.

Mr.PITTS. The chair thanks the gentleman. The gentleman's time is expired. The chair recognizes the ranking member, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr.WAXMAN. Mr. Chairman, today's hearing is about much more than the nuts and bolts of the CLASS Program. At its core, this meeting is about an issue that has touched virtually every person in this room, public and private alike: the indignity, the burden and the expense of long-term-care services and supports and our lack of a decent, reasonable and accessible program for those in need of this kind of assistance.

The problem has been with us for a long time, and it is growing. With the aging of the Baby Boomers, the numbers are, indeed, quite staggering, and I am sure we will hear much more about that point from today's witnesses. But rather than facing the challenge, we have pushed the problem aside year after year, pledging to those in need that with just a bit more time, we could get a good program in place. And if the Republicans decide they want to repeal this program, I would like to know what they are going to put in its place. We still haven't heard what they want to put in place for the health care reform that they want to repeal and replace. We know they want to repeal. What do they have to offer?

Almost a year ago, we tried to keep the promise. In creating the CLASS Act, a voluntary, self-sustaining, privately financed and beneficiary-driven effort, we set in motion a process that will allow the elderly and the disabled to be able to stay in their homes and in their communities when they are no longer able to do so independently. Shame on those who would take this promise away and put nothing in its place.

Having said that, all of us who support the CLASS program—members of Congress, HHS, advocacy organizations—all readily agree that much work needs to be done before the program is ready to go live in 2012. That is what the 2 years of preparation time and the Secretarial discretion and flexibility provided for in the enacting legislation is all about.

So let us get on with that task. Let us learn today about where the program is and where the program is going and how it plans to get there, and let us be assured that the requirements of the law will, in fact, be met. But along the way, let us not forget who and

what brought us to this point: the Tony Youngs of America—Tony, we are going to hear from later, is one of our witnesses—their families, and the discouraging and often devastating experience of simply wanting to stay put and remain engaged and productive, and being told that is not possible.

The CLASS program is designed to change all that. Let us give the CLASS Act a chance and keep our promise to those who have waited so long for meaningful reform.

I want to yield the balance of my time to Mr. Dingell.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr.DINGELL. Mr. Chairman, I thank my good friend, Mr. Waxman, for giving me this time, and I commend you for having this hearing. Oversight is an extremely important undertaking, and this will enable us to come to conclusions as to what is the best thing for us to do with regard to the CLASS Act and how it can best be made to enable us to serve a terrifying unmet need for all of our people.

This is a proposal that was put into law, as you will remember, by the ranking member of the Health Subcommittee, Mr. Pallone, and by my dear friend, Senator Kennedy, and I, and it is vital program and part of the health reform law. It will fill an enormous unmet need in our society: affordable long-term care services and support for 10 million Americans in need of long-term care now and some projected 15 million Americans that are going to need that by 2020. Currently, Americans in need of long-term care, whether they are functionally disabled or elderly, find themselves with few options, if any. Private long-term care insurance is available but options are limited and costs are too burdensome for many families. This legislation, the CLASS Act, is not an entitlement program, it is a voluntary program, and in our review today, if we will work together, we can come up with an intelligent way of making it work and be acceptable in terms of the budget constraints and concerns that we have, and I call on my friends to approach it that way rather than to seek to repeal a program which has so much opportunity to help and benefit our people who have desperate needs and their families who suffer.

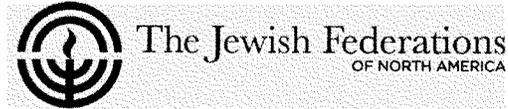
Medicaid cannot continue to be the only affordable long-term care service available to Americans, and I would call on my colleagues to know that the CLASS Act enables people to pay a part of their costs through premiums which they pay prior to the time that they have need of the program. That is an extremely important difference between it and Medicaid, and my urging to my colleagues on both sides of the aisle, particularly the Majority, is let us work together to make this a good thing, to make it work for all the people and to stop some of this nonsense about fighting about legislation of this kind when in fact we could work together to make things better for Americans in a fiscally responsible and proper way.

I thank you for holding these hearings and I thank my colleague for yielding me this time.

Mr.PITTS. The chair thanks the gentleman. The gentleman's time is expired.

Mr.WAXMAN. Mr. Chairman, may I ask unanimous consent that the statement from the Jewish Federations of North America be inserted in the record?

Mr.PITTS. Without objection, so ordered.
[The information follows:]



Statement of The Jewish Federations of North America

The Jewish Federations of North America (JFNA) welcomes this hearing on the Community Living Assistance Services and Supports (CLASS) program. We hope that the members of this Committee will carefully consider the reform recommendations put forward by Secretary Sebelius in February. JFNA believes that these revisions will strengthen the CLASS program and ensure its fiscal sustainability for generations to come.

JFNA is the umbrella organization uniting 157 Jewish Federations and 400 independent communities across North America. Our interest in health and long-term services and supports stems from Jewish teachings that inform us that the life and health of all community members are of infinite value. Providing health care is a Jewish obligation and, according to the noted philosopher Maimonides, one of the most important services that a community can make available to its residents. In Washington, JFNA works to ensure that the voice of the Jewish federations is a prominent force in health and human service policy decisions with special attention paid to the long-term care and disability populations.

The CLASS Act is a sensible blend of public sector oversight built upon a foundation of personal responsibility. This combination will prove to be crucial as the nation grapples with the retirement of 78 million Boomers by the year 2030. By educating, engaging, and empowering Americans about the need to put aside money for their future in a CLASS plan, the nation will be in a stronger position to control the growth of entitlement programs such as Medicaid. Given the fact that payment remitted to the beneficiary through the CLASS plan is direct and not through a third-party, consumers will be empowered to oversee the services they receive. This will undoubtedly offer Americans more choices and empower them to seek the care they feel is most optimal for them.

This Committee faces an important question: Should Congress repeal an imperfect plan that makes strides toward helping generations of Americans plan for their long-term care or should CLASS be reformed to ensure its fiscal health in the years to come?

JFNA takes sustainability questions seriously but firmly believes that CLASS can be effectively reformed given the flexibility and authority that the Department of Health & Human Services was provided under the Patient Protection and Affordable Care Act (Public Law 111-148). JFNA fully supports the following:

- The CLASS premium, which was anticipated to be flat once the policy holder began to pay into the program, will likely be adjusted so as to account for inflation.

- CLASS will continue to be guaranteed issue with no underwriting performed. However, the minimum earnings level required to participate in CLASS will likely be raised in order to ensure that the program has beneficiaries who are consistently active workers. The result will be greater long-term financial stability and lower near-term premiums.
- Fraud, waste, and abuse provisions will be strengthened under the Secretary's recommendations. The program will also close loopholes to guard against beneficiaries who intermittently pay into the program during their working life.
- The Department of Health & Human Services' continued evaluation of ways to make the CLASS program more flexible to ensure that the diverse long-term services and supports needs of Americans are met. JFNA hopes that the Department issues guidelines to private insurance companies for wraparound plans that will cover the costs exceeding the maximum CLASS benefit.

For years, JFNA has been engaged in policy debates on health and long-term care. Jewish Americans comprise the fastest aging population in the United States due to low birth rates and overall longevity. Strengthening the nation's long-term care safety net is an issue of paramount importance. We are grateful that the Committee is having this constructive hearing on the CLASS program and hope that after a thoughtful analysis, this Committee will be able to support Secretary Sebelius' recommendations to strengthen the CLASS program.

For further information, please contact Jonathan Westin, Health Policy Director at (202) 736-5860 or jonathan.westin@jewishfederations.org

The Jewish Federations of North America represents 157 Jewish Federations and 400 Network communities, which raise and distribute more than \$3 billion annually for social welfare, social services and educational needs. The Federation movement, collectively among the top 10 charities on the continent, protects and enhances the well-being of Jews worldwide through the values of tikkun olam (repairing the world), tzedakah (charity and social justice) and Torah (Jewish learning).

Mr.DINGELL. Mr. Chairman, may I make a similar unanimous consent request? The AARP has an excellent statement which they have presented to me to ask me to have it submitted to the committee by unanimous consent, and I ask unanimous consent that that excellent statement be inserted in the record.

Mr.PITTS. Without objection.
[The information follows:]



STATEMENT FOR THE RECORD
SUBMITTED TO THE
Energy and Commerce Health Subcommittee
United States House of Representatives
on
The Implementation and Sustainability of the New, Government-
Administered Community Living Assistance Services and Supports
(CLASS) Program

March 17, 2011

AARP
601 E Street, N.W.
WASHINGTON, D. C. 20049

For further information, contact:
Rhonda Richards
(202) 434-3770
Government Relations & Advocacy

AARP continues to be a strong supporter of the Community Living Assistance Services and Supports (CLASS) Program. This voluntary national insurance program has the potential to help millions of Americans pay for long-term services and supports (LTSS) that enable them to live in their homes and communities. We've surveyed our members and we know that 86 percent want to stay in their homes for as long as possible, and yet too few are able to get the services they need to continue living independently.

Participation in the CLASS Program is voluntary for both individuals and employers. Individuals whose employers participate would be enrolled through automatic payroll deduction of monthly premiums, though they can opt out if they do not wish to participate. Individuals whose employers do not participate in CLASS, who are self-employed, or have more than one employer will be able to participate through an alternative mechanism. Persons must be age 18 and older and working, earning a certain amount annually for a certain number of years. In order to receive benefits, participants must have paid premiums for at least five years; meet the earnings and work requirements; have a functional limitation certified by a licensed health care practitioner, expected to last for at least 90 continuous days; and meet other eligibility criteria. The minimum benefit to pay for services and supports must not be less than an average of \$50 a day. The Secretary of Health and Human Services (HHS) will determine the specific premiums and benefits.

The CLASS Program enjoyed bipartisan support in the Energy and Commerce Committee in the last Congress. AARP urges continuation of that bipartisan support to

ensure proper implementation of the CLASS Program. Repealing CLASS or stopping its implementation would take away a choice -- that would otherwise be available to many Americans -- to help them take responsibility to plan and pay for the services they need rather than rely on public funding through the Medicaid program. In addition, the Congressional Budget Office (CBO) last month noted that "Repeal of the CLASS provisions would increase federal deficits by \$86 billion over the 2012-2021 period."

CLASS Provides Medicaid Savings

According to the Kaiser Commission on Medicaid and the Uninsured, Medicaid accounted for 43 percent of total long-term care spending in 2009 -- about \$103 billion. The CLASS Program can help reduce Medicaid expenditures over time. The Congressional Budget Office (CBO) estimated about \$2 billion in federal savings to Medicaid due to CLASS, and this was just in the first few years of CLASS paying benefits. This figure does not include the savings that would also accrue to states, given the state share of Medicaid spending. It is possible that over time, as more individuals enroll in CLASS and become eligible for CLASS benefits, that CLASS would have a larger impact in reducing Medicaid spending that may have otherwise occurred. Receiving CLASS benefits may help delay or prevent potential spend down to Medicaid eligibility, because CLASS will help cover long-term services and supports costs in the home instead of often more costly institutional settings. In addition, for individuals who are eligible for both CLASS benefits and Medicaid LTSS, CLASS would pay first for institutional care before Medicaid and first for home and community-based services if

the state meets certain criteria. CLASS has the potential to save both the federal and state governments money on Medicaid once CLASS benefits are being paid to eligible individuals.

CLASS Supports Family Caregivers

CLASS would also help support family caregivers who are caring for their loved ones. In 2007, the estimated economic value of family caregivers' unpaid contributions was about \$375 billion, according to AARP's Public Policy Institute. This figure is larger than total Medicaid spending in 2007, including both state and federal contributions for both medical and long-term care. Family caregivers provide the bulk of LTSS in this country. In doing so, family caregivers can face physical, emotional, mental, and financial challenges. CLASS benefits could help pay for respite care or adult day care, for example, that could allow a family caregiver a temporary break in their caregiving responsibilities to take care of their own needs or to work in paid employment. Thus, CLASS benefits could help support family caregivers in their caregiving roles, benefiting both the care recipient and the family caregiver, as well as the employer of the family caregiver. In addition, CLASS benefits could help pay family caregivers who provide care for their loved ones, and help to delay or prevent premature institutionalization in a nursing home.

Need for CLASS Will Grow

The need for CLASS will only grow with time as our country's population ages. About 70 percent of persons over age 65 will require at least some type of long-term care services in their lifetime. According to the National Clearinghouse for Long-Term Care Information, this year about 9 million Americans over age 65 will need long-term care, a number that will increase by 33 percent to 12 million in just nine years. While age is a factor in the need for LTSS, forty percent of those currently receiving LTSS are adults younger than age 65. CLASS gives many working Americans a new option to help plan and pay for the services that most of them will need at some point in the future.

CLASS Flexible Benefits Enable People to Remain Independent

CLASS would also provide a flexible benefit that gives consumers the choice and control that is essential to remaining independent. CLASS' cash benefits allow the consumer to use the benefit for what the consumer most needs whether that is a home care aide, assistive technology, accessible transportation, or home modification. CLASS is a person-and family-centered approach that will enable individuals to tailor services and supports to meet their individual needs and preferences.

People Support CLASS

The CLASS Program also enjoys broad public support across all parties and age groups. A Kaiser Family Foundation/Harvard School of Public Health survey, *The*

Public's Health Care Agenda for the 112th Congress, included a question on CLASS that showed 76 percent of those surveyed favorable to CLASS across party lines and age groups, including 69 percent among Republicans, 71 percent among Independents, and 87 percent among Democrats. The Kaiser Health Tracking Poll for February 2011 found that majorities across party lines want to keep the CLASS Program and not repeal it.

CLASS Sustainability, Participation, and Education

The CLASS Program is designed to be self-sustaining. CLASS benefits would be paid by premiums and interest on the premiums. The law specifically requires that no taxpayer funds can be used to pay for benefits. The HHS Secretary is required by law to set the premiums based on an actuarial analysis of the program that ensures solvency over a 75-year period. The Secretary must ensure the solvency and sustainability of the program while at the same time striking a balance to provide affordable premiums and meaningful benefits. As HHS works to implement CLASS, it has the needed flexibility to help ensure that CLASS is a sustainable, solvent, and affordable program. Much has yet to be determined about the specifics of the CLASS Program, including the specific premiums and benefits and details of eligibility and enrollment. These and other specifics of implementation will give a clearer picture of what CLASS will look like and how it will work.

Participation in the program of both employers and individuals will be important, as a large and diverse risk pool is important to any type of insurance. Of critical importance will be education and awareness campaigns to increase consumer awareness of the risks and potential needs for LTSS, the lack of Medicare coverage of LTSS, and the terms of CLASS insurance. CLASS has the potential to help millions of Americans pay for the support they need to live at home, but it is not for everyone, such as individuals who are retired and not returning to the workforce, as they would not meet the work requirement in CLASS. AARP is committed to giving our members and all Americans the information they need in the coming months and years to decide if CLASS is right for them.

Conclusion

AARP strongly urges members of the Health Subcommittee on both sides of the aisle to support implementation of the CLASS Program. CLASS has the potential to help millions of Americans live in their homes and communities where they want to be and help pay for cost effective home and community-based services. We look forward to offering HHS input on behalf of our members and all Americans to ensure that CLASS works for them and future generations. We appreciate the opportunity to share our support for the CLASS Program as the Subcommittee examines the implementation of CLASS.

Mr.BURGESS. Mr. Chairman, may I ask unanimous consent that our side could be allowed to see those letters?

Mr.PITTS. If you can pass those down, we will take a look at them.

All right. We have two panels today, and I would like to introduce the first panel at this time. Assistant Secretary Kathy Greenlee was appointed by President Obama and later confirmed by the Senate in June 2009 to serve as the Assistant Secretary for the Administration on Aging, an agency within the U.S. Department of Health and Human Services. In January of this year, Assistant Secretary Greenlee was designated as the Administrator of the Community Living Assistance Supports and Services, more commonly referred to as the CLASS, program. Prior to joining the Administration, she served as the Secretary on Aging in Kansas and as the General Counsel of the Kansas Insurance Department. In addition, Ms. Greenlee served as Chief of Staff and Chief of Operations for then-Governor Kathleen Sebelius.

Your written testimony will be entered into the record and we ask that you summarize your statement in 5 minutes and then be available for questioning. We look forward to your testimony. The witness is now recognized for 5 minutes.

**STATEMENT OF KATHY GREENLEE, ASSISTANT SECRETARY,
ADMINISTRATION ON AGING**

Ms.GREENLEE. Thank you, Mr. Chairman.

Chairman Pitts, Ranking Member Pallone and members of the subcommittee, thank you for the opportunity to discuss the implementation of the Community Living Assistance Services and Supports Act, or what we all commonly call the CLASS Act.

Today, approximately 10 million Americans need long-term services and supports ranging from having an aide visit for a few hours a week to living in a nursing home around the clock. As America ages, that number is rising steadily. By 2020, it is expected that 15 million Americans will need some kind of long-term care. We know that one out of six Americans who surpass the age of 65 will spend more than \$100,000 on long-term care and far more will need less extensive but substantial care. More than one of five persons who enter a nursing home will spend down their own resources and qualify for Medicaid after virtually exhausting their savings.

Unfortunately, only 8 to 10 percent of Americans have private long-term care insurance, and new enrollment is declining while major long-term care competitors have exited the market. Taken together, this means that many Americans are not well prepared to finance long-term care services and supports that they will need.

There are a number of reasons for this reluctance to prepare. First, four out of five Americans mistakenly believe that Medicare will provide them with extensive coverage for long-term care, and it does not. In addition, while Medicaid is the primary payer for long-term care, paying approximately 50 percent of all nursing home expenditures in this country, Medicaid requires that individual impoverish themselves in order to qualify for long-term services and supports with only modest protections for the needs of a spouse who remains in the community.

Americans also frequently misjudge the likelihood that they or a spouse will someday need long-term services and supports, and many people are unaware of the cost of these kinds of supports. A year of nursing home care costs around \$75,000. But it isn't just individual budgets that are stretched. Recent data from the CMS Office of the Actuary showed that in 2009, Medicaid spent \$111.2 billion on long-term care, and spending on those services is projected to increase as the population ages, stressing both Federal and State budgets.

Prior to coming to Washington, as the chairman acknowledged, I had the honor of serving as the Secretary of Aging in Kansas. The Secretary of Aging in Kansas has a unique portfolio. I oversaw community aging programs as well as the Medicaid-funded programs for both nursing home services and home and community-based services for frail elders. I also had the opportunity during my service in Kansas to spend 8 years as an insurance regulator, serving half of that time as the General Counsel for the Kansas Insurance Department. I have visited dozens of nursing homes and spoken to thousands of seniors. I have managed a Medicaid budget. And what I know with certainty is that all people regardless of age hope to maintain their independence for as long as possible. I know and respect many nursing home providers. Their particular task is difficult. But for all of us, we hope to postpone nursing home admission for as long as possible, and some people swear that they will never go to a nursing home.

Fortunately, for policymakers, people prefer to live in the setting that is the least, not the most, expensive. In most cases, that setting is home. How then do we help people prepare for the costs associated with aging and disability and increase their access to home and community-based services and community supports that they so desperately need? The CLASS program offers one new tool to support Americans' long-term care needs and help them remain independent. Its goals are to provide an opportunity for individuals to take responsibility and to prepare financially for their own long-term care needs, support consumer choice related to their own care and their living arrangements and facilitate independence and community living.

President Obama and Secretary Sebelius have pledged to use the discretion provided in the law to protect the solvency of this program. There are changes that we intend to make through the Secretary's regulatory authority to guarantee the solvency. We are committed, as the Secretary said in a recent speech, that we will do everything we can to make these changes to ensure the solvency. And as the Secretary has outlined, and I can spend more time discussing with you, there are a number of things that we have in mind that we will change by regulation.

We need to change the employment and earning requirements for the program. We need to close loopholes that allow people to skip payments and then enroll at a later time. We need to explore options for indexing the premiums along with the benefits. We need to tailor the benefits to more closely meet the individual needs and preferences. We need to educate the public about long-term care and we need to partner with employers, and also protect against fraud and abuse. We will do all of this in full view of the public

with a transparent process. We will do everything we can as we move forward to implement this law responsibly and protect its solvency. Thank you.

[The prepared statement of Ms. Greenlee follows:]



Statement by

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Before the

Committee on Energy and Commerce

Subcommittee on Health

United States House of Representatives

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Chairman Pitts, Ranking Member Pallone, and Members of the Subcommittee, thank you for the opportunity to discuss the implementation of the Community Living Assistance Services and Supports Act or the CLASS Act.

Today, approximately 10 million Americans need long-term services and supports, ranging from having an aide visit for a few hours a week to living in a nursing home with around-the-clock care. As America ages, that number is rising steadily. By 2020, it is expected that 15 million Americans will need some kind of long-term care.

We know that one out of six people who reach the age of 65 will spend more than \$100,000 on long-term care – and far more will need less extensive but still substantial care as well. And 22 percent of those who enter a nursing home will spend down their own resources and qualify for Medicaid after virtually exhausting their savings. Unfortunately, only about 8-10 percent of Americans have private long-term care insurance coverage, and new enrollment is declining while major long-term care competitors have exited the market. Taken together, this means that many Americans are not well prepared to finance the long-term services and supports they will need.

There are a number of reasons behind the reluctance to prepare. The first is misunderstanding of the available resources. Four out of five Americans mistakenly believe that Medicare provides them with extensive coverage for long-term care. It does not. In addition, while Medicaid is the nation's primary payer for long-term care, paying approximately 50 percent of the nation's nursing home expenditures, qualifying for long-term services and supports under Medicaid requires that individuals impoverish

themselves, with only modest protections for the needs of one's spouse. Second, Americans frequently misjudge the risk that they will need long-term services and supports. There is a natural impulse not to think about becoming dependent on others as a result of physical or cognitive decline. Third, many people are unaware of the costs of these kinds of services and supports. Even if they understand that a year of nursing home care now costs about \$75,000, they are unlikely to have considered the costs of home health aides that can help people remain more independent and living in their homes. A year of home health care costs about \$18,000.

But it isn't just individuals' budgets that are stretched by long-term care services and supports – these costs are a key source of financial stress on public budgets. Recent data from the CMS Office of the Actuary show that in 2009 Medicaid spent \$111.2 billion on long-term care services and that spending growth on these services is projected to accelerate as the population ages, stressing both federal and state budgets.

Prior to coming to Washington, I had the honor of serving as the Secretary of Aging in Kansas – which oversaw both community aging programs and Medicaid-funded long-term care services and supports. I also served as the General Counsel for the Kansas Insurance Department. Over the past six years, I have visited dozens of nursing homes and spoken to thousands of seniors. I have managed a Medicaid budget. What I know with certainty is that all people, regardless of age, hope to maintain their independence for as long as possible. I know and respect many nursing home providers – they play a critical role in caring for our most vulnerable seniors. But, all of us hope to postpone nursing home admission for as long as possible and many people swear to never cross

that threshold. Fortunately for policymakers, people prefer to live in the setting that is least, not most, expensive. How, then, do we help people prepare for the costs associated with aging and disability, and increase access to in-home and community supports so people can remain in their homes?

The Community Living Assistance Services and Supports or CLASS program offers a new tool to support Americans' long-term care needs and help them remain as independent as possible, for as long as possible. Its goals are to create an opportunity for individuals to prepare financially for their own long-term needs, support consumer choices related to their own care and living arrangements, and facilitate independence and community living.

President Obama and Secretary Sebelius have acknowledged that the CLASS program needs improvement. Many of the changes proposed to the Senate health reform bill that would have improved the CLASS program's financial stability were not included in the final legislation or reflected in the Congressional Budget Office's assumptions that scored the CLASS program. Therefore, it was not unexpected that the President's Fiscal Commission identified these same unresolved issues in December and recommended "reform or repeal CLASS." Given the critical unmet needs of long-term care that I noted earlier, we should not repeal CLASS until we have made every effort to reform the program.

The Secretary has the responsibility to ensure the program is fiscally sound. Fortunately, the law provides her the discretion and flexibility necessary to seek that objective. The

law clearly states that the program must be able to pay for benefits with the premiums it takes in and that no taxpayer dollars may be used to pay for CLASS benefits.

HHS has spent the last year studying this law, the implementation options available, and the relevant actuarial and economic research in the field. Our highly skilled staff has discussed these studies with actuaries, economists, program and policy experts, and other stakeholders in and outside of government. These efforts are helping us chart a path forward to develop a benefit plan that achieves two goals while ensuring fiscal solvency.

These two goals are:

- Consumers can choose to direct their own services. This program is about giving people more control over their own lives, and we will make sure that freedom is not taken away.
- There will be no medical underwriting. CLASS should be open to all American workers who meet the requirements, regardless of their health history.

We are exploring several areas within our statutory flexibility to strengthen the CLASS program to help enrollees plan for their future while ensuring program solvency. These activities and flexibilities to strengthen the program include:

- **Partnering with employers to disseminate outreach information and enroll their employees.** We are also looking at ways to fully implement the alternative enrollment system the statute envisions. CLASS contains neither an employer nor an individual mandate, yet we are determined to engage with employers to make enrolling in CLASS as easy as possible.

- **Changing the employment and earnings requirements for the program.** The CLASS program was designed to protect today's workers against future needs. That is why it included a requirement that people earn a certain amount of money in order to participate. But if that standard is set too low, we may have too many enrollees who will quickly make claims on program benefits, thereby threatening CLASS's financial viability. That is not the intent of this program, so we will look closely to make sure we have picked the right earnings requirement
- **Closing loopholes that could allow people to skip premium payments and then re-enroll in the program without paying any penalty.** All participants should pay their fair share.
- **Exploring options for indexing premiums for inflation so they would rise along with benefits.** The approach to indexing would be completely transparent so that participants could plan ahead.
- **Tailoring benefits more closely to individual needs and preferences.** We are looking at ways to make the program appealing for Americans with a wide range of long-term care needs. A CLASS program that does not take a "one-size-fits-all" approach will not only serve people better, it will also be attractive to larger numbers of people.
- **Attracting a broad base of enrollees.** We need to raise awareness about the potential risks of needing long-term care services and supports and the availability of this program.

- **Developing robust waste, fraud, and abuse regulations and procedures.**

Program integrity is critically important. We are exploring information technology solutions in the areas of enrollment, eligibility, and claims processing to protect the program's integrity.

We will pursue these reforms in full public view. Consistent with the law, we will present three solvent benefit plans as certified by the CMS Office of the Actuary to the CLASS Independence Advisory Council. The public at large will also have an opportunity to comment on the benefit plans and the implementing regulations through notice-and-comment rulemaking. The feedback will be considered before the Secretary designates a final benefit plan by October 1, 2012.

At some point in our lives, nearly 70 percent of us will need daily help because of a disability. CLASS is not the equivalent of private long-term care insurance but it certainly should be one of the tools in our toolbox to help Americans plan for and afford long-term services and supports and remain independent as long as possible.

This Administration is doing everything in its power to give Americans the choice of a financially strong CLASS program, and I look forward to working with this committee to ensure we implement the law responsibly.

Thank you.

Mr.PITTS. The chair thanks the gentlelady. We will now begin our questioning, and the chair recognizes himself for 5 minutes for questions.

Madam Secretary, some have suggested that in order to have a sustainable program, the monthly premium may have to be at least \$240 a month or higher. When will your agency announce what the monthly premium will be, and is it possible the premium could be as high as \$240 a month?

Ms.GREENLEE. Mr. Chairman, there are two pieces of that I would like to address. In terms of the plans for announcing the monthly premium, the proposal going forward is that we will submit three plans as recommended in the law to the Independence Advisory Council for their submission to the Secretary. We will then publish in a reg, most likely this fall, our initial assessment of those three plans. I do not know at this point whether or not that initial publication will include specific pricing information but it will provide information about the specific plans that we are looking at. We know that the best way to protect the solvency of the program is to ensure high participation, and participation will be a function of several things, including the price of the product.

Mr.PITTS. Thank you. On the Administration on Aging's authority to increase premiums, do you believe the Secretary has the authority to increase CLASS program premiums, and if so, on what basis, and are there limitations?

Ms.GREENLEE. Mr. Chairman, it is clear in looking at the law that the Secretary was given many protections once the program is enacted in order to adjust or make changes to the premiums. The list of recommendations that I have suggested are things that we need to do early through a regulatory process, not just to adjust premiums but to deal with the indexing of the premiums to help protect the financial solvency. So she has the authority both after the program is adopted and now.

Mr.PITTS. The President's fiscal year 2012 budget request includes \$120 million to begin the implementation of the CLASS program. However, just last month Secretary Sebelius admitted the CLASS program to be "totally unsustainable." Madam Secretary, do you agree with Secretary Sebelius that the program in its current form is unsustainable? Yes or no.

Ms.GREENLEE. Mr. Chairman, if I could elaborate beyond a yes or no I could be more responsive. The Secretary is referring to the conclusion we have come to by a plain reading of the specific statute without adjustment. We are committing to making reforms to the program so that we can hit the financial targets that she is required to hit to make sure that the program is solvent.

Mr.PITTS. Can you please explain why the Administration requested \$120 million for FY 2012 of which nearly \$94 million was for outreach and enrollment efforts when the Administration's chief health official clearly does not believe the program is sustainable in its current form?

Ms.GREENLEE. Mr. Chairman, the Secretary's comment with regard to not sustainable in its current form is her explanation as to why we will reform the program. We don't intend to implement the program without those changes. The request for the \$120 million is start-up funds so that we can begin the program. This is a new

program. It is a type of product that has never been offered to the American public. As I said earlier, participation is key and we will need to do an education and outreach effort to America to describe not just the program but the need that they have that is currently unaddressed.

Mr.PITTS. And can you please provide more information on the changes you believe you will need to make to the program in order to make it more sustainable, including premium increases and your intended timeline for doing so?

Ms.GREENLEE. Certainly.

Mr.PITTS. The chair yields to the vice chairman, Dr. Burgess.

Mr.BURGESS. Yes. Secretary, thank you for being here. Do we have an idea—Secretary Sebelius testified to the fact that the program as drawn may be unsustainable. Do you have an idea as to when that realization occurred, when that information became available to the Secretary?

Ms.GREENLEE. During the past year, after the law was passed, we have worked to develop two actuarial models that include the best of actuarial science as well as economics. Each of those models has led us to the conclusion that to protect the solvency, there are some changes that we need to make to the program.

Mr.BURGESS. And will those changes likely be on raising the premium, reducing the benefit, a combination of both, or draw on the Federal Treasury?

Ms.GREENLEE. Congressman, the changes I mentioned briefly, they are more fully described in my written testimony, but they are changes that can be made with regard to earnings, anti-gaming, fraud protections and indexing the premiums, which will help strengthen the program.

Mr.BURGESS. I will get to that in just a moment, but we do need to pursue that a little bit. Thank you.

Mr.PITTS. The chair thanks the gentleman. Time is expired. The chair recognizes the ranking member, Mr. Pallone, for 5 minutes for questioning.

Mr.PALLONE. Thank you, Mr. Chairman, and I want to ask questions, but I have to say, and again, not meant with any disrespect to you or the Republicans on the other side, but it just seems that we know we have a huge problem out here with people not having these community-based services and the Democrats come up with a plan to try to address it, and it just seems like everybody on the other side is so scared like there is this fear of a new program and, you know, we are going to get the word out about it. I mean, the bottom line is, when you have a problem, you try to address it and yes, it is going to new and there are going to be some problems in implementation and outreach, but that is what happens when you try to do something new, address something that hasn't been addressed before, and I appreciate the Assistant Secretary for pointing that out, that we are trying to do something that has never been done before and so naturally there are going to be some kinks in it, but that is what happens when you try to address something that hasn't been addressed.

Now, I just wanted to ask some brief questions, if I could. First, I wanted to start with this decision that we made to put the program in your agency, the Administration on Aging. Some suggest

that that is not the proper place for it. Why is the program being housed there and how prepared do you feel you are, and did we make the right choice? Quickly, because I want to get to another one.

Ms.GREENLEE. Congressman, the Secretary has the authority to reorganize Department of Health and Human Services, which gives her the authority to place it in the Administration on Aging. This is a different kind of program than AoA has run in the past but the connection is that we have long expertise in providing services in the community that help support independence, and I believe that I also have the credentials to help make this possible.

Mr.PALLONE. Thank you. Now, we heard statements here, the Republicans referenced the Secretary's statements about loopholes and sustainability and the need to strengthen the program, but I see the basis for the Secretary exercising flexibility and discretion given to her in the law to implement it and make program improvements that address these loopholes and sustainability. Would you tell us where the Administration is in reviewing some of these criticisms, you know, statements that were made by the chairman about loopholes, sustainability? How are these being addressed?

Ms.GREENLEE. As I had mentioned earlier, we have spent the last year analyzing the law as written so that we have a fundamental science to the analysis. We have hired an actuary for the CLASS staff, who will now build on that to develop solvent programs that we can take moving forward, but we know there are changes that we need to make to protect the solvency. The Secretary not only has the authority, she has the responsibility to roll out a solvent program, and we take that very seriously.

Mr.PALLONE. OK. And then the last thing I wanted to ask is, the process by which the requirements, the guidelines, the nuts and bolts of the programs, if you will, will be disclosed and subject to review by the relevant stakeholders. In other words, how will the department go about publicizing the framework of the program and at the same time seeking advice of those with an interest in its operations?

Ms.GREENLEE. There are two primary ways. We will work with the CLASS Independence Advisory Council, which is clearly set forth in the law to be a place where we go for additional public input, stakeholder input, and we will go through the Federal rule-making process so that we will publish regs and have full opportunity for the general public to comment. We will review those comments and address them as we move forward.

Mr.PALLONE. Well, I appreciate that. I just wanted to point out a couple other things, and again, I am trying to sort of address some of the criticisms that were made by my colleagues on the other side. Statements were made about how this is a mandate to employers. That is not true. Employers decide whether they want to have their employees participate in this. It is voluntary. Now, obviously, as you have said, Madam Secretary, we want as many employers as possible to participate because the price, if you will, will be lower if more people participate and it is very important. But is it not mandated. The law specifically says that employers can decide whether to sign up, and obviously you are going to try

to get as many of them as you possibly can, but if you would comment on that?

Ms.GREENLEE. That is correct. Both employers and employees will have a choice about whether or not to participate. We will work actively with the employer community to make it as easy as possible for them to participate or to help individuals participate because we need a large number and a broad risk pool of people to apply.

Mr.PALLONE. And I appreciate that. And I have about 10 minutes left here. Again, I just want to stress—oh, I don't? Oh, 10 seconds? I am sorry. Now I have nothing left. No, I just want to say again, you know, we are trying to address something that hasn't been addressed. You said that. We are going to have some kinks, but let us move forward. Let us not repeal it. I really feel strongly that way. Thank you.

Mr.PITTS. The gentleman's time is expired. The chair recognizes the vice chairman, Dr. Burgess, for 5 minutes for questioning.

Mr.BURGESS. Again, thank you, Secretary Greenlee, for being here, and your testimony is important and certainly underscores some of the testimony we had when we last had hearings on this in 2005, and that is the general lack of knowledge of the general public about the importance of having long-term care insurance, your reasons why people don't pursue it, not wanting to think about unpleasant things in the future, thinking that some other Federal agency is going to pick this up at some point. So all of this is extremely important. I guess the question just comes up, you have mentioned the \$120 million budget that is spent this first year on developing the program. What do you think we could have done with \$120 million just sort of increasing awareness, increasing the general public's awareness of this as a problem and what options are out there for them? Could we have done a better job?

Ms.GREENLEE. I want to make sure I understand, without a program attached to it, just a general—

Mr.BURGESS. There are programs available. I bought one in the year 2000. Again, it wasn't because I read an article in Health Affairs. It wasn't because I saw somebody on C-SPAN who looked smart. My mother told me that, hey, if you don't want to be a burden on your children like I am on you, then perhaps you will consider long-term care insurance, and indeed, I investigated it and made a decision to purchase it. Now, it wasn't particularly—you know, it was one of those bets I hope that will never get covered, but at the same time, if more people are aware of the importance of having this, what the implications are of not having this, do you think we could have perhaps done some good with \$120 million as a public outreach program, even employing old Andy Griffith to tell us about it?

Ms.GREENLEE. You know, the private long-term care insurance market has been selling for 30 years and they have only reached penetration of probably 10 percent in the market. Clearly, there is a need for more people—

Mr.BURGESS. But, if I could, we make it extremely hard. There is no tax deductibility for long-term care insurance like there is for some of the employer-sponsored insurance. You can't pay the premium out of a medical savings account or health savings account.

These are all after-tax dollars that have to be invested. There are things we could do on the policy side absent the CLASS Act that would have made a difference in the number of participants. I am not saying it would have solved the entire problem. Surely there are still going to be people who are going to need a medical safety net. Medicaid is obviously not going to go away. But it always seems like the default position is, we are going to expand those Federal programs. You talk about fraud and abuse and wanting to be able to clamp down on that. I salute you for that. I want you to do that. But at the same time, when you look at those third-party payment programs that are subject to fraud and abuse, it is never United Health Care that you read about in the front of the page of the newspaper that has a problem with too many wheelchairs going out, it is Medicaid, it is Medicare. It is those public programs that seem to be so vulnerable. Why not try to partner with those people who are already out there offering private long-term care insurance and try to build on that, perhaps remove some of the obstacles, work with policymakers to remove some of those obstacles to purchase of long-term care insurance?

Ms.GREENLEE. Congressman, the product that the CLASS Act represents is a different market than what the long-term care insurance market has ever addressed. This is for a different group of individuals with a limited benefit. The private market has always offered comprehensive long-term care insurance, which many people need, and I agree that there are new opportunities, new ways to reach that market. That is not the same market that the CLASS product is designed for.

Mr.BURGESS. Well, let me ask you this: Do you think when people look at—and granted, people’s understanding of things sometimes is more superficial than I think it should be, but as people look at the Patient Protection and Affordable Care Act, say aha, they have got the CLASS Act in there, are they going to be more or less inclined to more seriously look into private long-term care insurance should they be able to afford it or is there going to be an acknowledgement in people’s minds now that, yes, the government is taking care of that for me, I don’t have to worry about it?

Ms.GREENLEE. This is a supplemental program, not comprehensive needs, so the answer for an individual would depend on what they could afford to purchase for themselves, but whether or not there—

Mr.BURGESS. But do you think there is a general awareness that this is a supplemental program? It is not the way I hear it talked about in the media.

Ms.GREENLEE. That is part of the reason for the budget request so that we can very clear with the public so they know that this is for a supplemental supportive program and not a comprehensive product.

Mr.BURGESS. Look, I grant you that H.R. 3200 never saw the light of day after it left the House floor, but when we marked up the health care bill in this committee, the CLASS Act was brought in at the last minute as kind of a shell bill. It was to be filled out by other committees. And in fact, it was put together as a hodgepodge on the Senate floor on Christmas Eve. That is why we have got the problems that we have, and we ought to be honest about

addressing that, fix what we can but understand that this was not an ideal program, was never properly vetted by the United States Congress.

I will yield back, Mr. Chairman.

Mr.PITTS. The gentleman's time is expired. The chair recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes for questions.

Mr.WAXMAN. The gentleman was correct about private long-term care insurance. It is what we hope people would buy to take care of themselves, otherwise we end up with people on Medicaid and in nursing homes right now, which is the most expensive place for long-term care, 70 percent is paid for by Medicaid, and I don't think that means 30 percent is paid for by long-term care insurance, it means a much smaller percentage of the 30 because a lot of people are there still under Medicare or they are paying it out of their own pockets. So long-term care insurance has not been a great success so far. The Federal Government allows employees to buy long-term care insurance and it is negotiated by the OPM, office of something management, whatever it is, program management?

Ms.GREENLEE. Personnel Management.

Mr.WAXMAN. Personnel Management. OK. Do you have an estimate of how many Federal employees have taken up long-term care insurance?

Ms.GREENLEE. Mr. Waxman, I can get that. I don't have that with me here.

Mr.WAXMAN. OK. I would like to have that for the record.

Ms.GREENLEE. But it is a small percentage, around 5 percent, but I would need to verify.

Mr.WAXMAN. I think when we look at the fact that very few people put away money for their retirement, which is pretty astounding, to get them to buy long-term care insurance that they may never use and are in a state of denial, if they are in a state of denial about retirement, they are even in a greater state of denial about long-term care needs. So I don't see that long-term care insurance is the way we are going to solve the problems.

You answered a question I had. This is not a replacement for private insurance. It dovetails quite nicely with that market because it is a supplement to long-term care insurance. Isn't that accurate?

Ms.GREENLEE. Actually I would say it is the reverse, that it is the first step for an individual to protect themselves from a cost, and if they want to protect themselves further, the private market would be there to help.

Mr.WAXMAN. Medicaid has been the primary safety-net provider for the poor and elderly and disabled people, and elderly and disabled become poor once they start paying for the high costs of long-term care. It pays 40 percent of the costs of long-term care services. It is the largest payer therefore of these services in the Nation. There are a million nursing home residents under Medicaid. That is 70 percent of all nursing home residents. In addition, there are 2.8 million individuals receiving community-based care services from Medicaid. So Medicaid is the biggest payer for long-term care services, and it comes at a high price. Each year we expect to add \$44 billion to the price tag of Medicaid due entirely to an increas-

ing demand for long-term services among an aging population. These are vital services but they take an enormous toll on State and Federal budgets, especially during the times of economic downturns as we are now experiencing.

In the 2009 CBO analysis of the CLASS Act, there are some Medicaid savings because at least in the last 2 years of the 10-year window that come to \$2.5 billion in those 2 years. Do you believe this program has the potential to save even more Medicaid dollars?

Ms.GREENLEE. Yes, sir. There are two primary ways that we will see Medicaid savings. People who receive both CLASS and Medicaid, depending on whether they are in the community or in the nursing home, will pay a portion of that back to the State for Medicaid. But even more importantly for savings, the CLASS program can help people prevent spend-down to Medicaid, use their own resources with the CLASS program resources to stay in the community without asking for Medicaid.

Mr.WAXMAN. Well, I would say to my Republican and Democratic colleagues, if we look down the road of how to deal with this problem without humiliating people to have to go through the indignity of becoming a Medicaid recipient after they have exhausted all their money, we can go one of two ways. We can require people to buy private insurance for long-term care, we can require them to pay the money and buy it and then they will be covered. But I hear a lot from my Republican colleagues that they don't like a mandate, and that would certainly not be a real popular idea, I would expect. The other is to say everybody should pay into a fund. This is a real clear, insurable event. If everybody paid into a fund, it would be a small amount to pay for a relatively limited use of these funds for those who are going to need long-term care, unlike Medicare, which serves everybody who becomes eligible for it because they need health care services. Long-term care is like a catastrophic kind of coverage for people who need these services, and that might be a real good social insurance system. I just hope my Republican colleagues don't look down their nose at all ideas of social insurance because I don't know what other choices we have because Medicaid is not sustainable with this burden.

So I thank you for what you are doing and let us hope that this little program—it is a little program and it is no answer, as far as I am concerned, to the big issue—can help. I yield back.

Mr.PITTS. The gentleman's time is expired. The chair recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr.SHIMKUS. Thank you, Mr. Chairman, and I appreciate Chairman Waxman's calm approach. I mean, we all know this is a major issue, and I am an original "mi casa" guy. When we had Federal dollars following the individual and helping people remain independent as long as they can and have them make the decisions based upon dollars versus government making that decision. So don't take these questions as being harsh or accusative.

We have got a couple issues here. You are going to hire an actuary. You are promising it is going to maintain solvency. An actuary, if it goes out of solvency, the actuary is going to have to decide one or two things: raise revenue or cut benefits. Is the Secretary willing to do that?

Ms.GREENLEE. Mr. Shimkus, we have already hired an actuary.

Mr.SHIMKUS. I know. I made that statement. That was my statement.

Ms.GREENLEE. Right. And before we move forward, as the law requires, we will work with the CMS actuary as put forward. The Secretary is only willing to move forward to implement the law if we can demonstrate that it is solvent to the standards of the law from the very beginning.

Mr.SHIMKUS. So we are having 5 years of revenue, no payouts. Initially, that is going to be an easy decision. Our concern is year 10, year 15, and then I follow up with a question again. If then there is a solvency issue, will she be willing to raise premiums or cut benefits?

Ms.GREENLEE. The law requires the CMS actuary by way of this other work that we have done to certify for both 25 and 75 years that the program is solvent, and we are committed to that before we start the program. Thereafter, both the Secretary and the board of trustees have the ongoing fiscal oversight of the program and the authority to make the changes that they might need, but we won't start the program unless we think it is solvent from those modelings before we begin.

Mr.SHIMKUS. Well, I hope, Mr. Chairman, we are able to have the Administration back numerous times to help you all review your actuary and your numbers to make sure it is solvent because in my opening statement, I mean, we are concerned about making promises that we can't deliver. We have done it in our entitlement programs and they are bankrupting us. And so that is the concern.

So the actuary is going to calculate payments out based upon payments in and people in the pool. What about the annual expense that your budget requests or the budget request is \$120 million for this program, is that part of the actuary numbers?

Ms.GREENLEE. The program is designed to be self-sustaining, to pay benefits only from premium dollars. So once the program is up and running, then that is how it will operate.

Mr.SHIMKUS. What about the overhead?

Ms.GREENLEE. And that is contained within the premium revenue structure that I just described.

Mr.SHIMKUS. So we won't see another additional annual request for money to administer this program?

Ms.GREENLEE. No, the current request is for start-up funds.

Mr.SHIMKUS. Do you ever feel that the Secretary can go into the \$17.5 billion health care slush fund which is under section 4002, Prevention and Public Health Fund, which is \$17.5 billion? Might she tap into that? It is at her discretion.

Ms.GREENLEE. I have never had a conversation where that even came up in discussion of the CLASS Act.

Mr.SHIMKUS. Would you ask her for us?

Ms.GREENLEE. I can follow up with you.

Mr.SHIMKUS. Good. That would be great, because that is our concern. In the fiscal environment, we already got the Secretary to admit 2 weeks ago that she double counted \$500 billion, which really addresses the fact that the statements that the health care law pays down the deficit and the debt is untrue. It could be true if you double count \$500 billion. It is untrue when you adequately put the \$500 billion in its proper concerns. If we want to help our

citizens, we have to have sustainable funds. Government doesn't have a good record. We are hoping that you can prove us wrong in this, and we will be following closely.

Thank you, Mr. Chairman. I yield back.

Mr.PITTS. The chair thanks the gentleman.

We are voting on the floor. We have two votes. Let us take one more 5-minute questioning from the ranking member emeritus and then we will recess until immediately after the second vote. The chair recognizes the gentleman Mr. Dingell for 5 minutes.

Mr.DINGELL. Mr. Chairman, thank you for your courtesy. We commend you for this hearing, which is a very useful thing.

I begin by welcoming the Secretary and I ask, do you have all of the authority you need in the department to ensure that this program gets off to a start in an actuarially sound manner?

Ms.GREENLEE. Yes, we do.

Mr.DINGELL. And you lack nothing?

Ms.GREENLEE. No. We can make it solvent. We have the authority.

Mr.DINGELL. Very good. Now, I am going to make a statement and you tell me yes or no. Ten million Americans are in need of long-term services now, and in 2020, 15 million Americans will be needing long-term health care services. Is that correct?

Ms.GREENLEE. That is correct.

Mr.DINGELL. Now, Madam Secretary, it is my understanding there are a number of long-term insurers in the United States are leaving or planning to leave the market. Is that true?

Ms.GREENLEE. Yes.

Mr.DINGELL. In my opinion, this seems to offer individuals in need of long-term insurance much more limited options. Do you agree?

Ms.GREENLEE. Yes.

Mr.DINGELL. Isn't it true that the goal of the CLASS program is to help Americans prepare for the unexpected and allow them to participate in a choice that offers them services and allows them to remain in the community rather than to go into the nursing home?

Ms.GREENLEE. Yes.

Mr.DINGELL. So if I understand the program correctly, and I was one of the authors of it, it is going to allow an individual to buy into this program at an early time. Is that correct?

Ms.GREENLEE. Yes.

Mr.DINGELL. And so that individual will pay money into the program before that individual begins to draw benefits?

Ms.GREENLEE. That is correct.

Mr.DINGELL. That is conventional insurance practice, is it not?

Ms.GREENLEE. Absolutely.

Mr.DINGELL. And you will see to it that it is done actuarially soundly?

Ms.GREENLEE. Yes, we will.

Mr.DINGELL. Now, that will absolve Medicaid of providing the same benefits in a nursing home, will it not?

Ms.GREENLEE. Congressman, it will help buffer the costs of Medicaid but it won't cover the full amount—

Mr.DINGELL. It will help the individual stay home. Am I right?

Ms.GREENLEE. It will help the individual stay home.

Mr.DINGELL. OK. And instead of the taxpayer paying 100 percent on Medicaid, the individual who derives benefits under the plan will be paying into the plan so he will be actually paying a significant part of the cost instead of that coming out of the pocket of the taxpayers by way of Medicaid. Is that correct?

Ms.GREENLEE. He or she will be paying, yes, a portion of the CLASS benefits back to the Medicaid program.

Mr.DINGELL. Now, as you said, AARP says in their rather excellent statement it is going to save about \$2 billion to Medicaid due to the CLASS Act. Is that correct?

Ms.GREENLEE. Yes, that is consistent with the CBO score as well.

Mr.DINGELL. Is that an actuarially sound statement by AARP?

Ms.GREENLEE. I haven't looked at their methodology but I do know it was the CBO score as well.

Mr.DINGELL. Now, Madam Secretary, as you said in your testimony, Medicaid now pays for about 50 percent of the Nation's nursing home expenditures, and in 2009 spent \$112 billion on long-term care services. Isn't it probable that by offering the ability to individuals to remain in the community and not the nursing home that it will help Medicaid to reduce its costs and also it will help reduce nursing home costs?

Ms.GREENLEE. Congressman, it will help individuals use their own resources and the CLASS resources to postpone the need for Medicaid.

Mr.DINGELL. So wouldn't I be fair in assuming that the CLASS Act will fill an unmet need in terms of providing long-term affordable health care services and to support people in need?

Ms.GREENLEE. Yes.

Mr.DINGELL. Now, do you believe that the CLASS Act will help today's workers to prepare for and provide for their personal long-term needs in the future?

Ms.GREENLEE. Yes.

Mr.DINGELL. Mr. Chairman, I note that I am returning to the committee 33 seconds. I yield back the balance of my time.

Mr.PITTS. The chair thanks the gentleman. And on the unanimous consent request of the gentlemen, Mr. Waxman and Mr. Dingell, without objection, the documents are entered into the record. So ordered.

Without objection, so ordered.

We will now recess until immediately after the second vote. I trust the witnesses will bear with us. We will get back as soon as possible. Thank you. The committee is in recess.

[Recess.]

Mr.PITTS. The recess time having expired, we will go back to questioning, and the chair recognizes the gentleman from Louisiana, Dr. Cassidy, for 5 minutes for questioning.

Mr.CASSIDY. Thank you, Mr. Chairman.

I can't help but notice that Mr. Waxman pointed out the indignities of people being on Medicaid and yet the PPACA put 16 million people on Medicaid by design and more by effect, and so I found that an interesting comment. And I also will remark that the people on the other side of the aisle who are frightened of weather

forecasts 100 years from now are so sanguine about realistic predictions of bankruptcy within 11 years. Now, I am a physician who works in a public hospital so I am very familiar with people, politicians overpromising and underfunding. Do I call you Secretary or Assistant Secretary?

Ms.GREENLEE. Either one is appropriate.

Mr.CASSIDY. Madam Secretary, I just want to take the logic from the other side of the aisle and go through this. Their argument about an individual mandate is that if you don't force people to be in the insurance program, only those who are sickest will take the policies and it enters the so-called death spiral where only the sickest are in it but those who would have to support them by not being sick and paying premiums get out because of expense. Now, you by law are mandated to keep this actuarially sound for 75 years. Let us assume the logic is correct that we are going to enter into a situation where only those who are going to benefit wish to be in and those who frankly don't see it in their financial interest to do so choose not to join. Now, you have to obviously by law make the premiums effective. So it seems to me, and tell me if you disagree, if there is this adverse selection that progressively you will have to raise the premiums so much so that you will enter into the death spiral we heard so much about regarding the private health insurance market.

Ms.GREENLEE. Congressman, as you have heard me testify, we are absolutely committed to the solvency of the program, and the key to the solvency will be broad participation—

Mr.CASSIDY. But keep in mind my presumption. My presumption is that they are right, that without a mandate only those who benefit financially choose to participate, and if you will, drop out those who don't see it in their financial interest to pay a lot in and get a little out.

Ms.GREENLEE. The underlying question is, what is the method by which you gain broad participation so that you can avoid—

Mr.CASSIDY. No, my underlying question is, is this at risk of entering the death spiral?

Ms.GREENLEE. We must have broad participation and not only people who could access the benefit early in order for it to be financially—

Mr.CASSIDY. And is it possible—Mr. Waxman spoke about potentials, so is it potentially true that again we would have a lot of non-working spouses who would participate, which I gather would be thought to be at a higher risk for claiming benefits without paying in over the long hauls, someone actively working, etc., that people over 65 cannot have their premiums adjusted upward, all those things that obviously limit your ability to raise premiums on anybody but the younger working class, that as those younger people see wow, this premium is \$240 a month for a benefit that I am supposed to get when I am 70 years old. I have to buy a car. Is there the potential for this adverse selection process to occur?

Ms.GREENLEE. Congressman, you are describing an adverse selection death spiral that would occur if the program only attracted those individuals. We are familiar—

Mr.CASSIDY. Is there the potential—because I tell you, the second panel, when I read the testimony of the second panel, four out of

whatever, six, agreed that there is a strong potential for that death spiral to occur.

Ms.GREENLEE. It comes back to the question of broad participation, and all of the actuaries, the actuaries we work with, all of the actuaries that will testify after me also understand that a basic insurance sort of fundamental principle is broad participation in the method by which—

Mr.CASSIDY. So let me ask you, have you put into your models, if you have premiums of \$240 a month how broad your participation will be?

Ms.GREENLEE. We have looked at different pricing mechanisms, of different pricing options and looked at what a similar product looks like in the marketplace and understand to get broad participation we must be competitive both in product design and in price. I might return to something you said just to tell you that non-working spouses are not eligible in this program. I believe that was considered in an earlier bill that came through Congress but that actually wasn't a feature that was—

Mr.CASSIDY. So let me finish up by saying again, I will see patients on Monday at a public hospital in which politicians overpromise and underfund and I see that it is ultimately the patient who pays the penalty. So it is very easy for us to promise when future generations have to pay, but I will tell you, it won't just be future generations that pay, it will be future so-called beneficiaries. Unless you can convince me there is not a death spiral, I have to admit I have to be more skeptical of this than a 100-year forecast. Thank you.

Mr.PITTS. The chair thanks the gentleman. The gentleman's time is expired. The chair recognizes the gentlelady from California, Ms. Capps, for 5 minutes for questions.

Mrs.CAPPS. Thank you, Mr. Chairman. One general comment, if I may, to begin. While I appreciate hearing from this Administration on the topic of aging and certainly on your testimony, Madam Secretary, about the importance of strong long-term care and program accessible to all Americans, I can't ignore the fact that this hearing is yet another in a long line organized by those on the other side of the aisle obsessed with repealing the Affordable Care Act. When repeal doesn't work, they try to defund. When defunding doesn't work, they try to find targets like school-based health centers or the CLASS program to cut off. As the ranking member said, it is like déjà vu all over again, so I will continue myself to ask for a hearing on the number one issue to our constituents, which is jobs, and I will continue to ask for this subcommittee to come together and support our health care workforce.

I also find it concerning that while the Republican members of this committee are declaring the program we are discussing today unsustainable, actually they should be taking credit for the flexibility that will be the key to ensuring its success. In fact, there is a political article today which describes how the CLASS program flexibility came to be. It was an amendment by then-Senator Judd Gregg and it was accepted unanimously by the Senate Health Committee. In fact, after it was agreed to, Senator Gregg went on to say that his amendment ensures that the program will be fiscally

solvent and that we won't be passing the buck to future generations.

So Hon. Secretary Ms. Greenlee, considering the amount of flexibility in the program design that you have already discussed, do you agree with Senator Gregg in his assessment?

Ms.GREENLEE. Congresswoman, as I understand, in response to Senator Gregg's concern, the 75-year requirement was placed into the law so that we look long term, and we are required to look long term from the very beginning to know that we can hit that marker before we ever start the program.

Mrs.CAPPS. Thank you. Now, I acknowledge in this committee a strong difference of opinion among some of us on the substance of this program but the overall issue should be one we can easily agree on: The current system for affordable long-term care is not just broken, it is all but nonexistent. Long-term care insurance is far too expensive for most individuals and Medicare does not cover the range of care needed. Instead, we ask Americans to spend down their savings, sell their assets and purposely become impoverished so that they can access the Medicaid program, the primary long-term care provider in most of our country.

Two weeks ago, this committee heard how expensive Medicaid is both to the Federal Government and to the States. This is particularly true in regards to long-term care but right now what other option is there for most Americans? My colleague, Mr. Waxman, accurately described how Medicaid costs could be lessened by this program. Before many families get to this point, they often struggle to find needed care for their loved ones themselves. I think it is fairly clear and straightforward how the CLASS program would benefit people who might need assistance with such activities of daily living as dressing, toileting, eating, and sometime in the future this could be the case for all of us but the program also promises to help those individuals who provide this kind of assistance to those in need, family caregivers whose own lives are often disrupted or put on hold while they care for a loved one. So would you describe how the CLASS program would affect and benefit individuals such as family members?

Ms.GREENLEE. Family caregivers in specific—as you probably know from talking to your constituents, family care-giving is a tremendous burden both physically and financially. One of the ways that the CLASS program would help provide the family member themselves with cash benefits so that they can purchase assistance—respite care, the kinds of things right now that are often borne by family caregivers both in terms of physical work and expense to provide care to their loved one.

Mrs.CAPPS. One more question, or comment and question. There is a notion that the CLASS program won't work because there is no room for it and that is because of the existence of a private market, as limited as it is, provides the potential market for long-term care is limited. The fact that there isn't more of a market for it must mean that people don't want this, yet this fails to take into consideration that government programs often spur private markets. For example, the implementation of Medicare led to the creation of what is now a successful Medi-gap market. As the former General Counsel for the Kansas Insurance Department, how do you

see the CLASS program impacting the private market? Do you see any room for collaboration? Do you think this will be a growth industry in the future?

Ms.GREENLEE. Thank you. As I mentioned earlier, the private market has been around for about 30 years. They started with comprehensive nursing home insurance and then added and changed really to include community-based services but it has always been designed to be a comprehensive product. Nothing like the CLASS program has ever existed in the private market so these are complementary but different markets and I think there is plenty of both need and room for both to exist as we move forward.

Mrs.CAPPS. Thank you very much. I yield back.

Mr.PITTS. The gentlelady's time is expired. The chair recognizes the gentleman from Pennsylvania, Dr. Murphy, for 5 minutes for questioning.

Mr.MURPHY. Thank you. Thank you, Madam Secretary.

I appreciate the comments from my colleagues about good intentions, and all of us want to make sure that those who are disabled have the care that they need, but good intentions do not necessarily cause good law, and I may intend to pay all of my bills, but if I don't, the bank isn't going to accept my intentions as a reason to not foreclose on my home or my car. So it is important that we have these numbers, and I appreciate your patience in helping us understand this.

With regard to the health care bill, the latest CBO and Joint Commission on Taxation estimates are that for the first decade on the health care bill, it would cause a net increase in Federal deficits of \$210 billion over the period of 2012 to 2021. Now, last March the CBO and JCT estimated it would actually be \$124 billion, it would reduce deficits, so we are off here by almost \$300 billion in those estimates. They also note that the repeal of the CLASS Act provisions would increase Federal deficits by \$86 billion, meaning that that money was counted as part to pay the bills for the health care bill. For the first 5 years, I believe the revenue would be collected from people on a voluntary basis as long as they didn't opt out. Am I correct on that?

Ms.GREENLEE. You are correct on that, yes.

Mr.MURPHY. And that would be a defined contribution, you would set the rates of what someone would pay. Am I correct?

Ms.GREENLEE. Yes.

Mr.MURPHY. And it is a defined benefit of \$50 a day. Am I correct on that?

Ms.GREENLEE. There will be a defined benefit. That is what we are still developing.

Mr.MURPHY. We still don't know how much that will be. Will there be lifetime caps on that?

Ms.GREENLEE. We are working with the law, which says an average of \$50 a day with a lifetime benefit in the product design but I don't have specifics other than that to give you.

Mr.MURPHY. Well, given this information we have that in order to pay for the health care bill overall, the other day Secretary Sebelius was speaking to us and under questioning from Mr. Shimkus she acknowledged that the health care bill actually by borrowing the \$500 billion from Medicare really was double count-

ing that money to pay for the health care bill but we still had to pay back Medicare. So I ask a similar question here. This money which is going towards helping to offset the cost of the health care bill, is it also double counted?

Ms.GREENLEE. Congressman, truthfully, I am aware of the CBO budgeting process. My responsibility really is to help advise how we make this particular program solvent and not—I don't do as much with what the CBO counting of the score and certainly not for the overall bill.

Mr.MURPHY. I appreciate that, but isn't that money also being counted to offset the health care costs of the rest of the bill?

Ms.GREENLEE. As I understand the CBO scoring, for the first 5 years as you described, there would be money coming in and that has been considered in the CBO scoring as you have described.

Mr.MURPHY. So that is double counted. That money is also to help pay for the health care bill as well as to cover the CLASS Act?

Ms.GREENLEE. I would have to go back to the CBO description but that sounds accurate, but I would just refer back to what CBO did themselves—

Mr.MURPHY. Yes, it is double counting. I am taking that as an answer. In that case, don't we have to pay back that money to cover the CLASS Act, that \$80 billion plus, and not just take it out? You also need that as you are going through to define the benefits and contributions and the caps. I am assuming that you are hoping that money comes back and isn't just taken out and it never returns.

Ms.GREENLEE. Certainly, we will only move a program forward if there are premiums, and we have modeling to indicate that the premiums will cover the benefits as designed, so by inference we are assuming that will have premiums to collect and that they are accounted for in the Federal Government that we can draw upon to pay the benefits.

Mr.MURPHY. I am trying to help you, because you have a very difficult job here. If \$80 billion plus is taken out to pay for health care but you still need to have \$80 billion in there to pay for your benefits, the question is, where is that money going to come from? And I liken it this way: If I went to the State of Pennsylvania and I said I want to start up a long-term care insurance company and so what I am going to do is, I am going to collect benefits from people but I am going to spend that money on other things but I promise you the day it starts I am going to have money to pay for that. I am sure they would say you are not going to do this, and if you try to, we are going to put you in jail because you don't have the money to do that. I think you have been given an impossible situation here where you are going to have to come up with this plan that someone is already taken \$80 billion plus for something else, and I hope there is a mechanism, I don't know what it is, where the money is going to come from to help you. Do you have any idea how that is going to work out?

Ms.GREENLEE. Congressman, I am understanding your question. To me, this is the difference between the budget methodology and the financial accounting that we need to do in order to run a solvent program. I have much more authority and responsibility with

regard to the basic accounting and fundamental science of the plan—

Mr.MURPHY. I appreciate it, and my concern is also for the people. I hate to promise people a benefit and then say, "By the way, there is no money to pay for it so we are going to have to raise your premiums, raise your co-pays, reduce your benefits and set caps." That is concerning to me because that is a promise unkept.

I am out of time. Thank you.

Mr.PITTS. The gentleman's time is expired. The chair recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes for questioning.

Ms.SCHAKOWSKY. The gentleman just described exactly what we have with private insurance right now, that kind of uncertainty that is in the private market, and I have confidence that the CLASS Act will actually address this problem.

I am happy to meet you and to see you here. I have been working on the issue of long-term care since I was in the State legislature starting in 1991 in Illinois and helped to pass the prevention from spousal impoverishment that people didn't have to lose their homes, spend down every single asset in order to have their spouse go to a nursing home. The issue of the cost of long-term care not just for persons with disabilities, who I see are here today and I welcome them, but certainly for most families or many families, anyway, you know, face this really frightening prospect right now of not being able to have the care that they need, having to move from one place to another, find some place that will accept Medicare, and so I wanted to, Mr. Chairman, put into the record and then refer to the National Council on Aging has "Top 10 Reasons Why Conservatives Should Love the CLASS Program," and I would like unanimous consent to place this in the record.

Mr.PITTS. Without objection, so ordered.

[The information follows:]



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FOR IMMEDIATE RELEASE

Top 10 Reasons Why Conservatives Should Love the CLASS Program

*Voluntary program in health reform provides affordable, meaningful long-term care coverage
for Americans with no mandates or taxpayer dollars*

Washington, DC (March 16, 2011) – The Affordable Care Act has come under attack from some conservatives who claim it costs too much and requires individuals to purchase insurance. But there is at least one part of health reform that conservatives should embrace.

The Community Living Assistance Services and Supports (CLASS) program will provide affordable, meaningful long-term care coverage for millions of Americans and their families—right in their own homes and communities—at no cost to taxpayers.

“CLASS represents a historic and fiscally responsible opportunity for Americans to plan for their own futures and invest in long-term care coverage that works,” said Howard Bedlin, vice president for public policy and advocacy at the National Council on Aging (NCOA). NCOA was instrumental in including CLASS in health reform and is working to ensure its implementation.

CLASS will be discussed in the Energy and Commerce Subcommittee on Health in Washington, D.C. on Thursday, March 17.

Why CLASS Matters

Today, Medicare and employer-based health policies cover little or no long-term care. Medicaid pays for nearly half of all long-term care, but it requires individuals to become and remain poor to receive the help they need. Moreover, two-thirds of Medicaid spending goes to nursing homes and other institutions—instead of home and community-based services.

“CLASS provides coverage for long-term care where people want it most—in their own homes and communities,” Bedlin said. To qualify for benefits, individuals must be unable to perform activities of daily living—such as eating, bathing, or dressing. They then receive a flexible cash benefit that they can use to pay for services to keep them independent longer. Unlike private long-term care insurance, no one can be turned down for CLASS coverage because of a pre-existing illness or disability, and the benefits can last a lifetime.

Top 10 Reasons Why Conservatives Should Love CLASS

1. **CLASS provides flexibility to ensure fiscal solvency.** Thanks to an amendment from former Sen. Judd Gregg (R-NH), the plan includes strong provisions to guarantee fiscal solvency for 75 years. Statutory language was purposefully written to provide flexibility in benefit design, eligibility triggers, and work requirements, which will help reduce adverse selection and ensure solvency.
2. **No federal tax funds will be used to pay benefits.** Section 3208(b) states: “No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan.”
3. **CLASS has no mandates.** It is optional for both employers and consumers.
4. **CLASS will increase business productivity** by reducing caregiver absenteeism and permitting people with disabilities to work. A recent survey found that 74% of caregivers have had to change their job or stop working because of their caregiving responsibilities.
5. **Americans across party lines strongly support CLASS.** According to the most recent Kaiser Family Foundation poll in February, 74% of Americans support the program, with only 20% opposed. Among Independent voters, 75% support and 19% oppose. Among Republicans, 57% support and 36% oppose—a 21-point margin.
6. **CLASS will likely jumpstart a flat private long-term care insurance market,** in which sales have declined and many companies have had to increase premiums on current policyholders. Just as implementation of Medicare led to the creation of a successful Medigap market, implementation of CLASS should lead to a successful market for supplemental “wrap-around” private insurance. When France implemented a proposal similar to CLASS, sales of private plans increased annually by 15%, largely because the public debate increased awareness of long-term care risk.
7. **CLASS will empower consumers, promote independence and choice, and avoid federal bureaucracy** through a flexible cash benefit. CLASS provides a defined contribution, which most conservatives prefer, not a defined benefit. Monthly cash benefits will allow consumers to choose and pay for their own services and spur innovations in service delivery.
8. **CLASS will reduce the federal budget deficit by \$86 billion over the next 10 years,** as well as in the following decade, according to a recent estimate from the Congressional Budget Office (CBO). Confusion regarding this estimate reflects a misunderstanding of long-term care insurance products in general, which are designed to build reserves in early years so that benefits can be paid later. Private insurance products accomplish this through a restrictive underwriting process, refusing to sell to those with pre-existing conditions. In contrast, CLASS builds reserves and helps guard against adverse selection through a five-year vesting period. This important design feature is the primary reason behind the CBO estimate.

9. **CLASS will cut Medicaid costs.** According to CBO, federal and state Medicaid costs will be reduced by about \$3.5 billion between 2016 and 2019, with larger savings after that can bend the long-term cost curve.
10. **CLASS promotes personal responsibility and planning.** The voluntary option allows individuals to plan ahead if they should need assistance in the future.

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About NCOA

The National Council on Aging is a nonprofit service and advocacy organization headquartered in Washington, DC. NCOA is a national voice for older Americans—especially those who are vulnerable and disadvantaged—and the community organizations that serve them. It brings together nonprofit organizations, businesses, and government to develop creative solutions that improve the lives of all older adults. NCOA works with thousands of organizations across the country to help seniors find jobs and benefits, improve their health, live independently, and remain active in their communities. For more information, please visit www.NCOA.org.

Ms.SCHAKOWSKY. I wanted to go over a couple of them and welcome your comments. It says, one, CLASS provides flexibility to ensure fiscal solvency, and thanks to an amendment from former Senator Judd Gregg, the plan includes strong provisions to guarantee fiscal solvency for 75 years. Statutory language was purposefully written to provide flexibility in benefit design, eligibility triggers and work requirements which help reduce adverse selection and ensure solvency. I wondered if you wanted to comment or expand or just assure its accuracy.

Ms.GREENLEE. Congresswoman, the Secretary has the responsibility to guarantee solvency and the authority to make adjustments that we need to in order to get us to that point. The amendment by Senator Gregg certainly gives us the guideposts that we must make sure that this is solvent in the long run for 75 years.

Ms.SCHAKOWSKY. Let me go to the second one. No Federal tax funds will be used to pay benefits. Section 3208 states, "No taxpayer funds shall be used for payment of benefits under CLASS independent benefit plan."

Ms.GREENLEE. That is correct. The premiums have to cover the benefits.

Ms.SCHAKOWSKY. Three, CLASS has no mandates. It is optional for both employers and consumers.

Ms.GREENLEE. That is correct.

Ms.SCHAKOWSKY. CLASS will increase business productivity by reducing caregiver absenteeism and permitting people with disabilities to work. A recent survey found that 74 percent of caregivers have had to change their job or stop working because of their caregiving responsibilities.

Ms.GREENLEE. Well, as you know, the main purpose of the law is to provide cash to an individual who needs assistance. There is a parallel there for additional support for the caregivers who are providing that assistance. Care-giving is a huge burden, and as we know, many people struggle to both maintain their own work and care for a loved one, so helping the person needing care will help both people.

Ms.SCHAKOWSKY. Americans across party lines strongly support CLASS. Let me just give you some figures. The Kaiser Family Foundation poll in February, 74 percent of Americans support the program. Only 20 percent oppose it. Among independent voters, 75 percent support, 19 percent oppose. Among Republicans, 57 percent support, 36 percent oppose it, 21 percent margin. I will go on, six, CLASS will jump-start a flat private long-term care insurance market. I think you talked a bit about that. I know that Congresswoman Capps suggested that this actually could do this. I want to just give you one fact. When France implemented a proposal similar to CLASS, sales of private plans increased annually by 15 percent, largely because the public debate increased awareness of long-term care risk. So you stated earlier that you hoped that and thought that would be the result?

Ms.GREENLEE. Certainly. One of the major issues that we need to address and that is part of the plan for the budget is to market to the American public the problem, that there is a need for support for long-term services. CLASS is one option. Private insurance would be another.

Ms.SCHAKOWSKY. I am going to skip to, CLASS will reduce the Federal budget deficit by \$86 billion over the next 10 years.

Ms.GREENLEE. Yes, that was the CBO score.

Ms.SCHAKOWSKY. My time is expired. Thank you.

Mr.PITTS. The chair thanks the gentlelady and recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes for questioning.

Mr.LATTA. Thank you, Mr. Chairman, and Assistant Secretary, thanks very much for being here today. I really appreciate it.

Just kind of the line of questions that some of the other members asked a little bit earlier but maybe I could just follow up on. One is, I just want to make sure I understand it, did the Secretary say at a Senate hearing that the program will not start unless we can be absolutely certain that it will be solvent and self-sustaining into the future? Did she make that—I just want to make sure I have got that correct.

Ms.GREENLEE. Yes.

Mr.LATTA. OK. And also in your testimony, you stated on page 4, you said that “President Obama and Secretary Sebelius have acknowledged that the CLASS program needs improvement. Many of the changes proposed to the Senate health reform bill that would have improved the CLASS program’s financial stability were not included in the final legislation were reflected in the Congressional Budget Office assumptions that scored the CLASS program. Therefore, it was not unexpected that the President’s fiscal commission identified that these same unresolved issues in December and recommended reform or repeal of CLASS. Given the critical unmet needs of long-term care that I noted earlier, we should not repeal CLASS until we have made every effort to reform the program,” and that was in your testimony.

And the next question is, is it my understanding that the President is requesting in fiscal year 2012 \$120 million?

Ms.GREENLEE. That is correct.

Mr.LATTA. OK. And may I ask, what exactly does he want to spend the \$120 million on?

Ms.GREENLEE. Ninety-three point five million would be for education and outreach efforts to both inform the public about the new program as well as the larger issue of the need for long-term care. The other two expenses are for administrative costs and—

Mr.LATTA. OK. Let me ask this question. If we have a program that everybody acknowledges is broken, why do we want to spend money educating people on something that might not work in the present form? Let me give you this example. If someone in the private market makes a defect product and puts it on the market, should that person have done that?

Ms.GREENLEE. I am trying to draw a connection to CLASS here.

Mr.LATTA. If someone goes out and makes a defective product, knowingly knows that they put something out on the market that is defective, should they have done that?

Ms.GREENLEE. We don’t intend to market a defective product.

Mr.LATTA. OK. Well, let me ask this, though. We are going to educate people on \$120 million on something that is broken, you know, in the private market what would happen is, we would have every State attorney general, we would have the ABCs of the Federal Government, we would have private individuals filing class

lawsuits against someone that would have done that. And so I guess, you know, I am not saying good or bad about this program. What I am saying is, why do we in the Federal Government want to spend money on something that we already know right now isn't working and we are going to go out and market it to tell people—are we going to tell people this is defective? Should we use the statement from the Secretary and her testimony before the Senate Finance hearing saying the program will not start unless we can be absolutely certain that it will be solvent and self-sustaining into the future?

Ms.GREENLEE. We spent a year since the law was adopted analyzing through two actuarial models what the law would look like, and that led us to the conclusion that there are changes and improvements that we need to make so that we can go to market with a product—

Mr.LATTA. Pardon me. Should that be the first statement we should put out in any notice to anybody, we should put a disclaimer, a caveat to the American people saying that this program will not start unless we can be absolutely certain that it will be solvent and self-sustaining into the future?

Ms.GREENLEE. I think we should tell the American public that this program will be solvent because we won't start if it won't, and provide them information so they know what they are participating in if they choose to.

Mr.LATTA. You know, and again, though, maybe my logic is off, but we are going to spend money on something out there that is defective. Shouldn't we first improve the product, then market it?

Ms.GREENLEE. To me, that is the description of what we are telling you that we are in the process of doing, that we did the initial modeling. There are improvements that we need to make. Both the President and Secretary have discussed that in terms of reform in response to the debt commission, and we will not, again, using your language, go to market until those improvements are made and we know it is solvent.

Mr.LATTA. OK. Do you all have the authority to make all the reforms in it beforehand?

Ms.GREENLEE. There are between 35 and 40 different places in the law where the Secretary is given both authority and responsibility to make the program work.

Mr.LATTA. Do you have to come back to Congress to have any forms implemented?

Ms.GREENLEE. No, we don't have any proposals at this point.

Mr.LATTA. But at the same time, we are going to spend \$120 million. How long do you think it is going to be before you could go out to market and actually have a product that people can say on our side that it is something that is totally done, that we don't have to worry about telling people that it is not incorrect?

Ms.GREENLEE. The statute requires the Secretary to publish a final plan in October 2012, and we will hit that marker and have a product at that point that we could support and go to market shortly after that. That is the scheduled described in the law.

Mr.LATTA. Thank you, Mr. Chairman.

Mr.PITTS. The gentleman's time is expired. The chair recognizes the gentleman from New York, Mr. Weiner, for 5 minutes for questions.

Mr.WEINER. Thank you, Mr. Chairman.

This morning I woke up to a phone call from my brother, Jason, who told me that my mom, who is 75 years old, who skis every weekend and who takes long walks, tries not to drive anywhere, walks up and down her stairs, and she lives in a four-story walkup, had to be taken to the doctor because she fell. Jason is going to eventually have to go to work. I have to figure out whether I am going to be able to cast votes tonight because I am going to have to run home to see if I can take care of her when she gets done with the doctor. Nothing remarkable about this story.

Ms.GREENLEE. No.

Mr.WEINER. Every single day people are trying to figure out how you deal with an increasingly healthy, longer-living, aging society, something we should be very proud of, something that was largely the result of the Medicare Act, which many people objected to. They said it is socialized medicine, what are we doing, we should stay out of people's business. But we created that program and now we have healthier people, and a lot of them women because husbands die, you know, actuarially die earlier so a lot of women like my mother. She didn't choose to fall and hurt her hip. No one chooses to have Alzheimer's because they are Democrat or Republican. No one gets up one morning and says the free market leads me to decide that today I am going to go shopping for a broken hip. It doesn't happen.

You know, there is an expression that it takes a great man to build a barn but any jackass can kick one down, in this case, a great woman to build a barn. In this case, my friends on the other side of the aisle are kicking down their own barn. They are the ones that have continually said throughout the health care debate, well, if you just give people money back and let them decide the smart way to spend it, then that is the way to structure a program. That is what the CLASS Act did. It imbued the idea that my friends had and yet here they are saying, you know what, we can't do that. Now, it is funny how they all stipulate so comfortingly, oh, of course, it is a big problem, oh, yes, it is a very big problem because they know every one of their constituents literally sits in anxiety like I do and like my brother, how are we going to balance this. We don't want my mother to be in an institution. That would cost a great deal, and she doesn't really need it. But how do we provide this seam of care? I am very lucky. Jason is very lucky. We are both gainfully employed. We have some flexibility. But what about the families that don't? They know that it is not a partisan thing about whether your loved one gets sick. It is not a party thing. If we can step back for one moment and say well, wait a minute, if we all concede and stipulate that this is a problem that needs to be solved, let us think of the foundation on how we try to solve it.

Now, I believe in a single-payer system like Medicare that covers things like this, that covers people 65 and older, also covers 55, also covers 35 and 45. I believe in that. Now, some of my Republican friends say, no, we don't believe in that, we don't like Medi-

care, we don't like programs like it, we believe in the private model, let us double down on private insurance. And so Secretary Greenlee, you are here to say well, we have come up with a program that tries to address something you stipulate is a need in a model that you stipulate you like more, doesn't have a guaranteed anything except that we are going to try to make sure everyone gets at least \$50 a day and now we are saying, oh, this is a very big problem but we don't like this idea. We don't like this way. OK. Where is your idea? Well, we heard earlier there is no Republican idea. This is an entirely deconstructionist agenda. And I want to say to my friends and to my colleagues, for 99 percent of the American public, they see politics as kind of this white noise in their background. They just want to tune in every once in a while and say, you know what, they get it. They watch this debate today on C-SPAN 6 or whatever it is on. They watch this debate today and they listen to you say, well, I want to see a guarantee. Well, if you are dealing with a loved one who has hurt themselves and needs care and needs to be taken care of maybe for the first time in your life, you are not thinking that way. You are thinking, you know what, let us see if we can try to help out a little bit, and we have to return to this place where we try and solve problems, not constantly deconstruct the solutions that other people are coming up with.

And I say to my colleagues on the other side of the aisle, good and decent people, God willing you live that life where none of your senior loved ones get sick. God willing. I wish that to you. But on the off chance that one of your constituents, even one of them, faces this problem, let us try to come up with a solution, and we are bludgeoning this poor person who is trying to say, you know what, I stipulate to the idea, it might not be perfect. It is a tough challenge. We are trying to fix it. We are using a model that you suggested, using flexibility that you demanded and we are trying our best and we are committed to trying to solve the problems.

And what is the answer? Oh, you can't say with metaphysical certitude you will solve the problems today before you leave the room? Well, in that case, let us hear from the four panelists who we paid to come here to say this program stinks. Let us listen to them. That ain't the way to run a country.

Mr.PITTS. The chair will ask the audience to please restrain themselves.

The gentleman's time is expired. The chair recognizes the gentleman from Georgia, Dr. Gingrey, for 5 minutes for questioning.

Mr.GINGREY. Mr. Chairman, thank you, and I will take a lot of my time to maybe give a speech as well, and even if the audience were permitted their applause, I am not sure that I would get any, but I will take the privilege anyway.

Let me just say this, that my friend from New York made a comment in regard to this side of the aisle being in opposition to Medicare and Medicaid and SCHIP, and he didn't say it but probably Social Security as well, and that is absolutely not true. That is absolutely not true. I have spent my whole adult professional life practicing medicine, 31 years, and I was a freshman in medical school when Medicare passed. So this side of the aisle truly believes in the importance of the safety-net programs that we have.

But we also firmly believe, Madam Secretary, that we need to pay for these programs, and if we don't and if we use gimmicks and certainly we feel and can point to the evidence in the Patient Protection and Affordable Care Act that there was a funny accounting used, double counting. We brought that out a number of times in this particular hearing. And all of this is what leads to \$14.3 trillion worth of debt and deficits of \$1.63 trillion and the need to raise taxes in the President's current budget that he submitted to us last month by \$1.6 trillion.

So, you know, you go off a cliff. As important as these programs are—and I have talked to some of you between the break, and I understand that this CLASS Act has great merit and maybe some potential but clearly with this double counting, the gentleman from Pennsylvania on our side brought that up and I am going to bring it up again, Madam Secretary, because this is the kind of thing that is wrecking this country and pushing us toward the precipice of bankruptcy, and so that is why we say if a program like this doesn't work, let us don't start it, and I plead with you not to do that. I wish this bill was a stand-alone provision that we could really vet and make sure before we started anything like this that it was not just another situation where you have the big Federal Government raiding the trust funds, whether it is Social Security or Medicare.

So let me, Madam Secretary, address that once again. My numbers say that the CBO found that something like \$39 billion—Mr. Murphy had a higher figure—the total costs of Obamacare, would be paid for by the total net savings from the CLASS Act. So do you know why CBO—again, he asked you that question and I will give you a second opportunity to answer it—why the CBO counted the \$39 billion toward paying for Obamacare and yet you say the importance of raising that money earlier before this program goes into effect in essentially 5 years, where is that money going to come from when it is needed for these seniors that Mr. Weiner and others are compassionately talking about?

Ms.GREENLEE. Congressman, I hope to be able to describe accurately to you how I believe the program will operate. I don't have any involvement with the CBO scoring, and I know that is something that you realize. The money will be collected for a number of years, 5 years, before the money is paid back out, and it is clear that there will be an obligation to the American public that they pay premiums, we will pay their benefits. I am simply not involved in the CBO scoring process or how the budget impacts the actual accounting of the program. We will make sure the accounting works and continue to be involved, follow up with you if there is something that we need to readdress with regard to the CBO—

Mr.GINGREY. Well, Madam Secretary, you have said that a number of times, and I appreciate that, and I think you are very honest in your testimony, and being an honest woman and somebody with a lot of experience going back to your days in Kansas, do you think it is fair for the Administration to spend whatever dollar amount, whether it is \$40 billion or \$80 billion, put into the CLASS Act trust fund and then take it out and use it as part of the CBO score to make the Obamacare numbers work?

Ms.GREENLEE. I just don't have a comment on that, sir.

Mr.GINGREY. Well, Madam Secretary, let me go a little bit further on that and say this. The Secretary of Health and Human Services has stated that she has the regulatory authority to make changes to this program. Do you believe under that authority that she has the ability to increase the program's income eligibility standards? It is a fairly straightforward yes or no question. And I think my time is about to expire. Yes or no.

Ms.GREENLEE. Yes, there are requirements in the law she must follow. She has the authority to do that.

Mr.GINGREY. Mr. Chairman, if you will bear with me just for a second then, I would like to ask unanimous consent to put into the Congressional record this CRS report that questions whether or not the Secretary has that authority, and that questions the overall viability of the program, and I admit this to the record.

Mr.PITTS. Without objection, so ordered.

[The information follows:]



MEMORANDUM

March 15, 2011

To: Hon. Charles Boustany, Jr.
Attention: Mike Thompson

From: Edward C. Liu, Legislative Attorney, x7-9166

Subject: Authority of the Secretary of HHS to Make Exceptions to Minimum Earnings Requirement for Eligibility Under the CLASS Act

This memorandum responds to your request for an analysis of the scope of the authority of the Secretary of Health and Human Services to define exceptions to the minimum earnings requirement for purposes of being considered an eligible beneficiary under § 3202(6)(C) of the Public Health Service Act (PHSA) as added by the Community Living Assistance Services and Supports Act (CLASS Act).¹

Background

The CLASS Act was enacted as Title VIII of the Patient Protection and Affordable Care Act (PPACA)² to create a federal long term care (LTC) insurance program. Individuals who are actively employed may enroll in the program. Enrollees who meet the criteria to be considered eligible beneficiaries may receive benefits under the CLASS Act in the event that they are certified as experiencing a functional limitation with respect to at least two or three activities of daily living (ADLs).³ The Secretary is given the authority to decide whether benefits will be triggered by an inability to perform two or three ADLs.⁴

Among the requirements that must be met for enrollees to be considered eligible beneficiaries is a minimum earnings requirement which provides that enrollees must have earned, with respect to at least three calendar years during the first 60 months for which the individual has paid premiums under the program, at least the amount necessary to be credited with a quarter of coverage under the Social Security Act.⁵ The CLASS Act also provides that the Secretary of HHS "shall promulgate regulations specifying

¹ 42 U.S.C. § 30011 *et seq.* This memorandum does not discuss the scope of the Secretary's authority to modify the CLASS program under other provisions of law that may provide additional administrative flexibility.

² P.L. 111-148, §§ 8001-8002.

³ 42 U.S.C. § 30011-2(a)(C)(i). The statutory definition of ADLs encompass eating, toileting, transferring, bathing, dressing, and continence. 42 U.S.C. § 30011-1(3).

⁴ 42 U.S.C. § 30011-2(a)(C)(i).

⁵ 42 U.S.C. § 30011-1(6)(A)(ii). Such amount is determined pursuant to 42 U.S.C. § 413(d), and for 2011 is set at \$1,120. 75 Fed. Reg. 74123, 74125-74126 (Nov. 30, 2010).

exceptions to the minimum earnings requirement [described above] for purposes of being considered an eligible beneficiary for certain populations.”⁶

Analysis

Specifically, you have asked whether, hypothetically speaking, the Secretary could use her delegated authority to define exceptions under § 3202(6)(C) to modify the minimum earnings requirement for eligible beneficiaries so that enrollees would be required to earn more than is currently required by the text of the CLASS Act.⁷ As described above, § 3202(6)(C) explicitly authorizes the Secretary to make exceptions to the statutory minimum earnings requirement for certain populations.⁸ Therefore, the question of whether the type of modification described in the hypothetical above is within the Secretary’s authority appears to turn on whether an increase in the amount that an enrollee would need to earn in order to become an eligible beneficiary would be considered an exception to the existing minimum earnings requirement. In turn, answering this question requires examining the precise scope and meaning of “exceptions” as used in § 3202(6)(C).

The Supreme Court has held that, except where Congress has unambiguously expressed its intent, courts should defer to an agency’s interpretation of a statutory term, if such an interpretation is a reasonable one.⁹ However, “[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”¹⁰ Therefore, the initial question that must be answered is whether Congress’s use of the word “exceptions” is unambiguous in the context of § 3202(6)(C).

The CLASS Act does not provide an explicit definition of the word “exceptions.” However, English language dictionaries define an exception variously as the “exclusion or restriction (as of a class, statement, or rule) by taking out something that would otherwise be included;” “a case to which a rule does not apply;” or as “the act of excepting.”¹¹ The verb *except* means “to take or leave out from a number or a whole.”¹² Similarly, legal dictionaries define an exception as “something that is excluded from a rule’s operation.”¹³ In the absence of any other factors suggesting that the term is ambiguous, the consistency of dictionary definitions could be viewed by a court as evidence that the term “exceptions” is unambiguous, and that it refers to situations in which a rule of general applicability shall not be applied.

If the meaning of a term is unambiguous, then courts and agencies are bound by that meaning.¹⁴ But, it is still necessary to determine whether an agency’s action is consistent with that understanding of the statutory text. In the context of § 3202(6)(C), application of the meaning of the term “exceptions” described above would mean that the Secretary of HHS would be authorized to promulgate regulations

⁶ 42 U.S.C. § 30011-1(6)(C).

⁷ For purposes of this hypothetical, it is assumed that the minimum earnings requirement would be raised for all enrollees, or for groups of enrollees based on income or other economic metrics.

⁸ 42 U.S.C. § 30011-1(6)(C).

⁹ *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 (U.S. 1984)

¹⁰ *Id.*

¹¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 791 (1976); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY, TENTH EDITION 403 (1996).

¹² *Id.*

¹³ BLACK’S LAW DICTIONARY 644 (9th ed. 2009).

¹⁴ *Chevron*, 467 U.S. at 843.

specifying cases in which the minimum earnings requirement does not apply for purposes of being considered an eligible beneficiary under the CLASS Act.

Defining exceptions in this way would appear to permit the Secretary of HHS to lower or eliminate the minimum earnings requirement in certain cases, but it is not clear that it would similarly permit the Secretary to require enrollees to earn more than is statutorily required before they may be considered eligible beneficiaries. On one hand, requiring an enrollee to earn more than would be required under the statutory minimum earnings requirement would technically fit the definition because it would be a case in which the general rule did not apply. But, on the other hand, a distinction might be made between preventing a rule's operation in a particular case compared with imposing additional requirements that are in excess of what would have satisfied the original rule.

In support of this distinction, a potential litigant might cite the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Public Citizen v. Health and Human Services*.¹⁵ In this case, the court was interpreting the agency's authority under § 1160(a)(2) of the Social Security Act (SSA).¹⁶ That section provides that information collected by Quality Improvement Organizations¹⁷ in response to complaints by Medicare beneficiaries

shall not be disclosed to any person except ... in such cases and under such circumstances as the Secretary [of HHS] shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care....¹⁸

HHS issued a manual, under this authority, which created an additional circumstance in which information could not be released, specifically if an identifiable health care provider objected to disclosure.¹⁹ The plaintiffs in the *Public Citizen* case argued that this provision in the manual conflicted with another section of the SSA, that directed QIOs to "inform the individual ... of the [quality improvement] organization's final disposition of the complaint."²⁰

In holding that that HHS exceeded its authority in permitting nondisclosure of the QIOs final determination if identified providers' did not consent, the court stated that "[§ 1160(a)(2) of the SSA] does not permit the Secretary to impose his own nondisclosure requirements; rather, it authorizes the Secretary to promulgate regulatory exceptions to the general nondisclosure requirement." Based on this language, it appears that the court made a distinction between a delegation to an agency to create exceptions to a general rule and a delegation to that agency of the authority to promulgate regulations that are more stringent than what the general rule would have required.

As mentioned above, there is a possibility that a court presented with this issue would find that an increase in the minimum earnings requirement constituted a valid exception to the statutory standard. However, based on the ordinary meaning of the word "exceptions" and the opinion in *Public Citizen v. HHS*, it appears that there is a basis upon which a court could conclude that § 3202(6)(C) alone would not

¹⁵ *Public Citizen, Inc. v. HHS*, 332 F.3d 654 (D.C. Cir. 2003).

¹⁶ 42 U.S.C. § 1320c-9(a)(2).

¹⁷ Quality Improvement Organizations are entities that contract with Medicare to review the quality, reasonableness, and efficiency of medical services provided under Medicare, as well as to determine whether the services provided are within Medicare's statutory coverage. 42 U.S.C. §§ 1320c-3(a)(1) and 1395y(g).

¹⁸ 42 U.S.C. § 1320c-9(a)(2).

¹⁹ *Public Citizen v. HHS*, 332 F.3d at 656.

²⁰ 42 U.S.C. § 1320c-3(a)(14).

provide the Secretary with sufficient authority to raise the minimum earnings requirement for eligible beneficiaries under the CLASS Act.²¹

²¹ Although beyond the scope of this memorandum, there may be additional limits on the ability of the Secretary to make exceptions to the minimum earnings requirement for certain populations. For example, if the Secretary were to raise the minimum earnings requirement for certain populations based on health status, that might be found to be in conflict with other provisions of the CLASS Act that prohibit medical underwriting. 42 U.S.C. § 3001i-2(b)(3).

Mr.GINGREY. I yield back.

Mr.PITTS. The gentleman's time has expired. The chair recognizes the gentleman from New York, Mr. Towns, for 5 minutes for questioning.

Mr.TOWNS. Thank you very much, Mr. Chairman and Ranking Member, for holding this hearing. And we have long agreed that our country simply does not have an established framework to provide long-term care for those in need.

Nursing home care is extremely expensive. When paid for by Medicaid, taxpayers are spending over \$200 per person per day on these expenditures. At a time when both the Federal and State budgets are extremely tight, we need to be looking for ways to alleviate these issues. Programs like CLASS can pose one solution so long as we can work together to ensure that it remains financially sound.

Let me ask you, Ms. Greenlee, what is HHS doing to ensure the fiscal soundness of this program? Now, this question might have been asked and I am sorry.

Ms.GREENLEE. I am certainly willing to answer. Since the law was passed a year ago, we have been involved in putting together two different actuarial models so that we can check them against each other to determine how the program works from the actuarial point of view. It is from those models that we have come to the conclusion that we need to make some changes to the program. We will now move forward using the new assumptions so that we can develop the plans that we need to prepare for presentation to the advisory council and to the Secretary. All of that will be a very public and transparent process so we continue to move forward and build on what we have learned so far.

Mr.TOWNS. Thank you very much. You mentioned in your written testimony that many of the changes proposed to the Senate health reform bill that would have improved the CLASS program's financial stability were not included in the final legislation. Can you give me at least two examples?

Ms.GREENLEE. Indexing of the premiums would be one example.

Mr.TOWNS. Yes.

Ms.GREENLEE. I was not a participant in those conversations. As we have come to the conclusion that we need to make some changes, revisiting that Senate list was the first place we looked for ideas and some of those things on the list are ones that we are proposing now.

Mr.TOWNS. You know, Mr. Chairman, we are getting a lot of criticism on the other side, and it bothers me because I am not getting any suggestions or ideas from the other side when it is a known fact that people are now living longer and they need this care at the end of their days, and if we are not going to work together to come up with some ideas, how do we reject what is already there? I mean, I just want to get a little answer because I am really troubled, because this is a very serious issue and I am not sure it has been treated in a serious fashion, and I direct that to you, Mr. Chairman, not to the witness on this one.

Mr.GINGREY. Mr. Towns, if you would yield to me?

Mr.TOWNS. I would be delighted. I will yield to anybody that might be able to help me.

Mr.GINGREY. Well, I appreciate, and I think in my time and the remarks that I made and the questions that I asked of the Secretary is to further outline and shine a little light on the fact that we are very much concerned, Mr. Towns, in regard to this program, if it were stand-alone and we could get it right—

Mr.WEINER. Will the gentleman yield?

Mr.GINGREY. Yes.

Mr.WEINER. I appreciate the gentleman yielding. I mean, the fact of the matter is, we had 75 hours of hearings, hours and hours of markups and basically every single time it was greeted with "No, we are against it." Mr. Towns, you are correct in pointing out, they don't have—this repeal and replace is a fiction. It is just repeal. Earlier you missed it, Dr. Burgess said no, we don't have a bill. I would ask, Dr. Gingrey, is there a bill? We will take a look at it right now. Let us hold it up and take a look at it. They said read the bill. It won't even take you much time to read their bill, Mr. Towns. They don't have one. They are bankrupt of ideas but they do know that for all the people that are going to get care under the CLASS Act, they want them to be out of luck. That is clear, Mr. Towns, and I yield back to you.

Mr.TOWNS. I thank the gentleman, and I must admit that I agree with your statement, and I think it is unfortunate because this is a very serious issue and I don't think it has been handled in a very serious fashion, and that bothers me.

Mr.BURGESS. Will the gentleman yield?

Mr.TOWNS. I would be delighted to yield. Do you have any kind of solution?

Mr.BURGESS. Well, I just—

Mr.TOWNS. If you do, I will yield to you.

Mr.BURGESS. Well, the solution is the hearing that we are having today, but I would just point out, this is a hearing that we were promised when we marked the bill up in the middle of the night without having a hearing on this subject, and Chairman Pallone at that time promised a hearing after the bill passed. That seemed odd to me, but I was willing to go along with it. Well, now we are having the hearing, but unfortunately, the bill was passed and signed into law, and as we know, the Gregg amendment over in the Senate was slapped together at the last minute. The Gregg amendment did protect the draw on the Treasury but that can be over-written by the Secretary of Health and Human Services. Is that not correct?

Mr.TOWNS. Thank you, Mr. Chairman.

Mr.PITTS. The gentleman's time has expired. The chair thanks the gentleman and yields 5 minutes to the gentleman Mr. Guthrie from Kentucky for questions.

Mr.GUTHRIE. Thank you, Mr. Chairman. I appreciate that. And we are concerned. You know, people do have issues when they are older and we need to prepare financially for that. And like all the members here, I am willing to work with whoever we need to help people. People can't use health savings accounts, they can't use pre-tax dollars for long-term planning, and that is where we need to go with it.

But on the premium side of it, if you look at the questions we are asking, I mean, Kentucky today, the legislature is in general

assembly and special session to close \$100 million gap in Medicare and looking at cutting education to do so. So when something passes and the Secretary of Health and Human Services says in its current form is not solvent, I think it would be absolutely irresponsible for us seeing what is happening in the budget not to sit down and ask these questions, and you are giving some answers that are comforting.

A couple of things, one, on the premium. It is going to be self-sustaining so the premium that goes in pays the benefit?

Ms.GREENLEE. That is correct.

Mr.GUTHRIE. And so there is no—well, the premium may be high. That is the question once you start figuring out what it is going to be, maybe, you know, if it is unaffordable. It won't be any, well, we are going to save Medicaid here, therefore we can—the law doesn't allow you to say this premium will pay this but there is a gap but we are going to have savings in Medicaid and therefore it is a self-funding program. You know what I'm saying, just booking savings in other categories to—

Ms.GREENLEE. No, the analysis is self-contained within the CLASS Act itself. I mean, the Medicaid savings are important to watch but they don't in some way offset what is happening within the CLASS program itself.

Mr.GUTHRIE. Now, if I understand this, the first 5 years people will pay in but you can't receive a benefit for 5 years because you have to pay in 5 years to receive a benefit.

Ms.GREENLEE. That is correct.

Mr.GUTHRIE. So the money paid in has been scored to support other parts of the health care bill?

Ms.GREENLEE. Yes.

Mr.GUTHRIE. So when you say a premium is going to pay benefits, you have to account for that? Because that money is not going to be there in year five to pay so the premium will have to be higher to cover the benefits in the CLASS Act alone because you are taking money out to subsidize something else, right?

Ms.GREENLEE. This is—

Mr.GUTHRIE. You have to factor that into that.

Ms.GREENLEE. As I described earlier, the difference between budgeting and the budgeting process and the accounting that we have to do in the receipts and expenditures in the CLASS program itself. They are not the same thing. They are related but they are not the same thing in terms of the solvency of the program.

Mr.GUTHRIE. Well, I know you are not budgeting, I mean, I know you are not CBO but you are going to have to account in the value of the premium for the fact that you are not going to have the first 5 years of dollars to spend for benefits.

Ms.GREENLEE. No, the program must be credited with the premiums that come in.

Mr.GUTHRIE. OK. So you are going to count the premiums that are spent somewhere else as part of the benefit?

Ms.GREENLEE. It will have to—

Mr.GUTHRIE. You are not going to have the money there.

Ms.GREENLEE. But it has to be a part of the accounting that we make for the program. I mean, it is very clear in the law that the premiums that come in have to cover the benefits and there will

be a request for benefits. I mean, that is the program design. If there is a budget methodology that accounts for that in a different way, it does not change the fundamental—

Mr.GUTHRIE. So now we are going to have to cover the first 5 years of money?

Ms.GREENLEE. Five years it will be there, but again, these are kind of different financial mechanisms that we are interchanging.

Mr.GUTHRIE. I have worked in family business and provided benefits to our workers and looked for ways for people to plan for their long-term care. If a business doesn't auto-enroll, is there an alternative process to enroll individuals? If a business chooses not to offer it as an auto-enroll benefit, then what is the alternative process?

Ms.GREENLEE. The key here is that both the employers and the individuals have a choice. The law describes an employer opt-in methodology, which is up to the employer if they want to participate, and we also have to come up with an alternative mechanism for individuals. We are seriously interested in engaging the business community about what would work for them. If they choose not to opt in, are there other kinds of information, other kinds of ways that they could help their employees gain access to the program, and we will be engaged with the employer community in a robust fashion because their support is helpful to us as we gain the large numbers of—

Mr.GUTHRIE. Well, that is just a way to reach access.

Ms.GREENLEE. That is how we get the numbers we need.

Mr.GUTHRIE. Like when you do immunizations, you get them at school because you know you are going to get everybody coming in.

Ms.GREENLEE. And we need to be engaged with them and plan to do that.

Mr.GUTHRIE. I have just about a minute, but I understand you have the 3 months so you don't want to pay in early, drop out and then get back in and try to get in at your earlier rate so if you drop out for 3 months, then you come back, you are reassessed at the age and the time and actuarially at the time you come back in, so if you buy a policy at 20, it should be cheaper than if you buy a policy when you are 60 because you have got longer—hopefully, unless you are disabled, have a longer time to pay. So currently we have had people on unemployment for 2 years so we have these kinds of situations, but if somebody dropped out, lost their job and couldn't get a job for 3 months and a day, when they show back up they would be reassessed at their new age. So if they started at 20, they get 40, they lose their job, they come back at 40, 3 months and a day later they get reassessed. Is that how—

Ms.GREENLEE. There are two things we have to achieve together in that—

Mr.GUTHRIE. I mean, that is just a real issue that—

Ms.GREENLEE. Right, the fact that people may come in and out of the program in a very legitimate way that we need to price but we also need to protect from gaming the program at the same time.

Mr.GUTHRIE. Thanks. I appreciate it.

Mr.PITTS. The gentleman's time has expired. Madam Secretary, thank you for your testimony and your response to the questions. Earlier this month, Secretary Sebelius promised Dr. Gingrey dur-

ing her testimony before this committee that HHS would engage in a transparent process in the development of the CLASS program. My hope is that you will share information with this committee as you develop the program's structure.

Ms. GREENLEE. Yes.

Mr. PITTS. Thank you, and that concludes the first panel, and the chair thanks the Secretary for your very informative testimony and responses.

Mr. DINGELL. Mr. Chairman?

Mr. PITTS. Yes, Chairman.

Mr. DINGELL. Very briefly. Thank you for having this hearing. It has been very useful and it is moving us towards seeing to it this program works well. This is the purpose for which oversight was designed and it is our responsibility, and I commend you for it. Thank you.

Mr. PITTS. Thank you, Mr. Dingell, for those comments.

So you are excused at this time and we will call the second panel to sit at the table, and I will introduce them at this time. Thank you. And let me introduce the witnesses and they will testify in this order, and I ask that they will summarize with 5-minute statements each. We will make your written testimony part of the record. First of all, Mr. Allen Schmitz is a Principal and Consulting Actuary with the Milwaukee office of Milliman, focusing primarily on long-term care insurance. Mr. Schmitz was part of a team of actuaries from the American Academy of Actuaries that has provided actuarial analysis and review of the CLASS program. Mr. Schmitz has also recently served on the Society of Actuaries' long-term care insurance section council and currently leads the International Actuarial Association long-term care team.

Dr. Joe Antos is Wilson H. Taylor Scholar in Health Care and Retirement Policy at the American Enterprise Institute. Dr. Antos is also a Commissioner of the Maryland Health Services Cost Review Commission, a help advisor to the Congressional Budget Office and an Adjunct Professor at the Gillings School of Global Public Health at the University of North Carolina at Chapel Hill. Before joining AEI, he was Assistant Director for Help and Human Resources at the Congressional Budget Office. Dr. Antos received his PhD in economics from the University of Rochester.

Mr. Warshawsky currently serves as the Director of Retirement Research at Towers Watson, a global human capital consulting firm. He conducts and oversees research on employer-sponsored retirement programs and policies, Social Security financial planning and health care financing. In addition, Mr. Warshawsky was confirmed by the Senate to serve as a member of the Social Security Advisory Board for a term through 2012. He previously served as Assistant Secretary for economic policy at the U.S. Treasury Department.

Mr. William Minnix, Jr., has served as the President and CEO of LeadingAge since 2001. LeadingAge is an association of 5,400 not-for-profit organizations focused on advancing policies that support the empowerment of people to live fully as they age. For more than 35 years, Mr. Minnix has been an advocate for innovation in not-for-profit aging services, and during his tenure with

LeadingAge established the LeadingAge Center for Aging Services Technologies.

Mr. Tony Young is the NISH Senior Public Policy Strategist addressing employment issues as they affect individuals with significant disabilities. Mr. Young is particularly involved with the AbilityOne program, whose mission is to provide employment opportunities for people who are blind or have severe disabilities in the manufacture and delivery of products and services to the Federal Government. In 1998, Mr. Young received the Disability Achievement Award by the American Public Health Association's Disability Forum. This award is given to a person who has a long history of making substantial achievements in the field of disability science or policy benefiting persons with disabilities.

So welcome. We look forward to your testimony, and Mr. Schmitz, you are recognized for 5 minutes.

STATEMENTS OF ALLEN J. SCHMITZ, FSA, MAAA, PRINCIPAL, CONSULTING ACTUARY, MILLIMAN, AMERICAN ACADEMY OF ACTUARIES; JOSEPH ANTOS, PH.D., WILLIAM H. TAYLOR SCHOLAR IN HEALTH CARE AND RETIREMENT POLICY, THE AMERICAN ENTERPRISE INSTITUTE; HON. MARK J. WARSHAWSKY, CURRENT MEMBER OF THE SOCIAL SECURITY ADVISORY BOARD, DIRECTOR OF RETIREMENT RESEARCH, TOWERS WATSON; WILLIAM LAWRENCE MINNIX, JR., LEADINGAGE, CEO, ADVANCE CLASS, INC., CHAIR; AND ANTHONY J. YOUNG, SENIOR PUBLIC POLICY STRATEGIST, NISH, THE ABILITYONE PROGRAM

STATEMENT OF ALLEN J. SCHMITZ

Mr. SCHMITZ. Thank you, Chairman Pitts and Ranking Member Pallone, for the opportunity to testify today.

My name is Al Schmitz, and I am here on behalf of the American Academy of Actuaries. We published an analysis of the CLASS Act legislation in 2009, which modeled an earlier version of the program. Based on that analysis, we concluded that the program would not be sustainable in the long term and that it would be unlikely to cover more than a small percentage of the intended population. Those same concerns persist with the CLASS program as enacted.

The CLASS program is a voluntary, guaranteed-issue, employment-based program. It is important to note that the CLASS program is required to be actuarially sound over a 75-year period with no support from taxpayers. Nevertheless, the actuarially sound requirement will be very difficult to achieve under the current program design.

A primary concern is the considerable potential for adverse selection in this program. Without addressing many of the program's issues, the program will be unsustainable in the long term. An effective, actuarially sound public long-term care program will limit the effect of adverse selection, and this is critical in a voluntary program in which participants may opt in and opt out. Those with greater need for long-term care coverage are more likely to opt in and those individuals without that need are more likely to opt out. This adverse selection increases the average insured risk and re-

sults in higher average premiums which in turn may lead to less participation from healthy individuals and even more adverse selection. This can result in a premium spiral.

Important provisions in the CLASS Act that affect adverse selection include guaranteed issue with a weak actively-at-work requirement, opt-out and opt-in provisions that allow participants to delay coverage until it is needed, premium subsidies requiring a premium of only \$5 per month for students and those below the poverty line, a waiting period that is not long enough to control adverse selection, rate increase limitations for certain individuals older than age 65, and benefit design features such as cash benefits and unlimited lifetime maximums that have been and continue to be problematic in the private long-term care insurance market because they are susceptible to induced demand and may drive higher premiums and lower participation.

There has been significant focus on participation levels as a critical yardstick in measuring the viability and success of this program, and while higher participation generally makes it easier to obtain a reasonable spread of risk, it should be made clear that it is the mix of individuals with different risk characteristics enrolled in the program at any one time and not participation alone that is key to long-term sustainability. High participation from only higher-risk individuals will threaten the program.

Key factors influencing participation are affordability and marketing. The premium levels must be affordable, competitive with what is available in the private long-term care insurance market and of good value to consumers. But the CLASS program design includes features that increase adverse selection and result in relatively unaffordable premiums. A strong marketing program would significantly increase participation and aid in obtaining a reasonable spread of risk. In addition, it would encourage individuals to plan for their future long-term care needs, and getting people to plan for their future long-term care needs could help reduce pressure on government which currently pays a majority of long-term care. A sustainable voluntary program will have provisions to address many of the adverse-selection concerns I have outlined.

On behalf of the academy, I offer the following recommendations for modifying the CLASS program: an actively-at-work definition with the minimum requirement of 20 to 30 hours of scheduled work or comparable requirement, restrictions on the ability to opt out and subsequently opt in with the use of either a long second waiting period or alternative underwriting mechanism, the use of benefit elimination period and duration limits, benefits that are paid on a reimbursement rather than cash basis, and an initial premium structure that provides for schedule premium increases at either Consumer Price Index or alternative rate.

These modifications along with an effective marketing effort will improve the sustainability of this voluntary long-term care program. Without these modifications, the program is likely to be unsustainable. We are encouraged that Congress and the Administration are considering changes to the program design that could help address adverse selection. Significant additional changes, however, are necessary to address the concerns I have raised here today or the CLASS program may not be sustainable.

Again, I thank you for the opportunity to appear before you today and would welcome any questions.
[The prepared statement of Mr. Schmitz follows:]



AMERICAN ACADEMY of ACTUARIES

**Committee on Energy and Commerce
Subcommittee on Health
U.S. House of Representatives**

Hearing on
The Implementation and Sustainability of the
New Government-Administered
Community Living Assistance Services and Supports (CLASS) Program

March 17, 2011

Statement of
Allen J. Schmitz, MAAA, FSA
Member, Joint Academy/Society of Actuaries
CLASS Act Task Force
American Academy of Actuaries

The American Academy of Actuaries (Academy) is a 17,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Thank you, Chairman Pitts and ranking member Pallone, for the opportunity to testify today on the sustainability of the Community Living Assistance Services and Supports (CLASS) Act as enacted under the Affordable Care Act (ACA).

My name is Allen Schmitz, and I'm here today on behalf of the American Academy of Actuaries. A joint task force of the Academy and Society of Actuaries published an analysis of the CLASS Act legislation in 2009, which modeled an earlier version of the program.¹ Based on that analysis, it was concluded that the program would not be sustainable in the long term and that it would be unlikely to cover more than a small proportion of the intended population. Those same concerns persist with the CLASS program enacted as part of ACA.

The CLASS program is a voluntary, guaranteed issue, employment-based program. It's important to note that the CLASS program is required to be actuarially sound over a 75-year period with no support from taxpayers.

And, while it is commendable for its inclusion, the actuarially sound requirement will be very difficult to achieve under the current program design. A primary concern is the considerable potential for adverse selection in this program, which could necessitate significant future increases in premiums and/or reductions in benefits. Without addressing many of the issues I will outline in the remainder of my testimony, the program is unsustainable in the long term.

¹ American Academy of Actuaries and Society of Actuaries analysis of the Community Living Assistance Services and Supports Act as included in section 191 of the *Affordable Health Choices Act*, which was introduced on June 9, 2009 in the Senate Committee on Health, Education, Labor and Pensions:
http://www.actuary.org/pdf/health/class_july09.pdf

An effective, actuarially sound public long-term care (LTC) program will limit the effect of adverse selection. This is critical with a voluntary program in which participants may opt in and/or out—those individuals with greater need for long-term care coverage are more likely to opt in, while individuals without that need are more likely to opt out. This adverse selection increases the average insured risk and results in higher average premiums, which in turn may lead to less participation from healthy individuals and even more adverse selection. The process may continue and spiral, ultimately to a level at which it cannot be priced or the premium is so high it is equal to the prepaid cost of care.

Important provisions in the CLASS Act that affect adverse selection include:

- Guaranteed issue with a weak actively-at-work requirement;
- Opt-out and opt-in provisions that allow participants to delay coverage until it is needed;
- Premium subsidies requiring a premium of only \$5 per month for students and those below the poverty line;
- A waiting period that is not long enough to effectively control adverse selection;
- Rate increase limitations for those who are older than age 65, have paid premiums for 20 years and are no longer working; and
- Benefit design features, such as cash benefits and unlimited lifetime maximums that have been and continue to be problematic in the private LTC insurance market because they are susceptible to induced demand and may drive higher premiums and lower program participation.

There has been a significant focus on participation levels as a critical yardstick in measuring the viability and success of the program. While higher participation generally does make it easier to obtain a reasonable spread of risk necessary to sustain the program, it should be made clear that it is the mix of individuals with different risk characteristics enrolled in the program at any one time, and not participation alone, that is the key to long-term sustainability. High participation from only higher-risk individuals will threaten the program.

Key factors influencing participation are affordability and marketing.

The premium levels must be affordable, competitive with what is available in the private long-term care insurance market, and of good value to consumers. But the CLASS program design includes features that increase adverse selection and result in relatively unaffordable premiums.

A strong marketing program would significantly increase participation and aid in obtaining a reasonable spread of risk. In addition, it would encourage individuals to plan for their future long-term care needs—and getting people to plan for their future LTC needs could help reduce pressure on the government, which currently pays for a majority of long-term care.

A sustainable voluntary program will have provisions to address many of the adverse selection concerns I have outlined. On behalf of the Academy, I offer the following recommendations for modifying the CLASS program:

- An actively-at-work definition with a minimum requirement of 20 to 30 hours of scheduled work or a comparable requirement;

- Restrictions on the ability to opt out and subsequently opt in with the use of either a long second waiting period for benefits or an alternative underwriting mechanism(s);
- The use of a benefit elimination period or duration limits;
- Benefits that are paid on a reimbursement rather than cash basis;
- An initial premium structure that provides for scheduled premium increases for active enrollees at either a consumer price index or alternative rate.

These modifications, along with an effective marketing effort, will improve the sustainability of this voluntary long-term care program. Without these modifications, the program is likely to be unsustainable.

We are encouraged that Congress and the administration are considering changes to the program design that could help address adverse selection. Significant additional changes, however, are necessary to address the concerns I have raised here today, or the CLASS program may not be sustainable. Again, I thank you for the opportunity to appear before you today and would welcome any questions you might have.

Mr.PITTS. The chair thanks the gentleman and recognizes Dr. Antos for 5 minutes.

STATEMENT OF JOSEPH ANTOS

Mr.ANTOS. Thank you, Mr. Chairman, and thank you, Ranking Member Pallone.

CLASS is a new Federal long-term care program that is financed solely through enrollee premiums. Because the program collects premiums in advance of benefit payments, CLASS reduces the budget deficit in the near term. Over the longer term, CLASS increases the deficit and worsens the fiscal crisis we are already facing due to the mounting costs of Medicare, Medicaid and Social Security.

The goals of CLASS are laudable. The program aims to provide persons with functional limitations cash assistance to help them remain living in their communities, but few people will benefit unless the program is attractive to a broad population who can share the cost and keep premiums affordable. CLASS will primarily enroll an older, sicker population, which will drive premiums up sharply. This adverse selection will create a death spiral of rising premiums and declining participation that will doom the program as it is now structured.

The technical defects in CLASS arise from the intention to make long-term care benefits readily available including to persons who already have disabilities but are still able to work. Underwriting is prohibited and enrollees of the same age are charged the same premium regardless of their health or disability status. Moreover, low-income people would pay a \$5 monthly premium. Consequently, premiums for other enrollees will be high to begin with and grow rapidly as healthier people refuse coverage or drop out of the program. Automatic enrollment and the minimal work requirement will have very little impact on this situation.

Premiums are hard to predict. CBO estimates that premiums would be \$123 a month for a \$75-a-day benefit. The CMS Chief Actuary estimates \$240. That tells you that there is fundamental uncertainty about what is going on with this program. By comparison, however, private premiums average about \$184 for a daily benefit, somewhat larger than \$150. There are differences, but nonetheless that tells you something about the state of the market. With high CLASS premiums and better deals elsewhere, it is not surprising that participation is estimated at 2 to 3-1/2 percent of the market.

It will soon become obvious to many workers that prompt enrollment in CLASS is not in their best interest, even for those few who are actively interested in purchasing long-term care insurance. A 40-year-old who waits 10 years would save about \$15,000 in premiums with only a small risk of becoming unable to qualify for CLASS by the time she reaches 50. Consequently, there will be few younger, healthier people in the program to subsidize those who will soon draw benefits.

The law requires premiums to be set to keep the CLASS trust fund solvent over 75 years. That guarantees steep price hikes as the mix of enrollees shifts towards those with greater risk. Even if solvency is achieved, the program will generate budget deficits in coming years. CBO says the deficit will appear sometime after

2030. The CMS Actuary says 2025. The question is not whether there will be deficits but rather when and how much.

As with Medicare, the trust fund does nothing to protect the CLASS program. Surpluses that accumulate in the fund are invested in non-marketable Treasury securities, essentially IOUs that obligate Treasury to find funds to cover the operation of CLASS when premiums are no longer sufficient to cover expenses. That money is of course used, the surpluses are used immediately by the Treasury to fund the ongoing operations of the Federal Government. It is standard operating procedure. Although premiums would be set to maintain a positive fund balance for 75 years, that balance includes the excess premiums from the first few years that were in fact spent and it includes imputed interest on Treasury Secretaries that is not in fact new money.

If adverse selection is not addressed, CLASS will face a funding crisis. Unless Congress reneges on a public promise, it fails to pay benefits after having collected billions in premiums, it would have no choice but to provide a financial bailout rivaling anything we have seen to date. Congress could take action to mitigate adverse selection by, for example, toughening the work requirement or permitting some form of underwriting. I know that Secretary Sebelius has said that she has the authority to take the necessary actions and the CRS analysis that was introduced strongly indicates that that is not the case. Congress could also ignore the structural defects of CLASS and force workers to buy it, despite the fact that very few people now buy long-term care insurance today, which says something about how people view the situation regardless of what we analysts think is right.

There is no guarantee that even legislative changes, even dramatic legislative changes, can cure the CLASS program's serious defects. Repeal is a logical alternative. It is far better as a public policy matter to repeal a defective program than to let it repeal itself through fiscal failure.

[The prepared statement of Mr. Antos follows:]



Statement to the House Committee on Energy and Commerce, Subcommittee on Health

The Implementation and Sustainability of the Community Living Assistance Services and Supports (CLASS) Program

Joseph R. Antos, Ph.D.

Wilson H. Taylor Scholar in Health Care and Retirement Policy
American Enterprise Institute

March 17, 2011

The views expressed in this testimony are those of the author alone and do not necessarily represent those of the American Enterprise Institute.

Summary

The Community Living Assistance Services and Supports (CLASS) program would provide persons with functional limitations cash assistance to help them remain living in their communities. CLASS is financed solely by enrollee premiums, with no federal subsidy. The program is unsustainable and will add substantially to the budget deficit in the coming years. Without major program changes, CLASS will face a financial crisis that could lead to a financial bailout rivaling anything we have seen to date.

- Because CLASS prohibits underwriting and charges the same premium to enrollees of the same age regardless of their health status, the program will primarily attract people who are most likely to need benefits—a problem known as adverse selection.
- To keep the CLASS Independence Fund solvent, premiums will rise sharply as healthier people refuse coverage or drop out of the program. That will create a death spiral of rising premiums and declining participation that will cause CLASS to fail.
- Despite remaining solvent, CLASS will generate growing budget deficits. Premium receipts will not keep pace with program outlays, even though no benefits will be paid for the first five years.
- Warnings about defects in the design of CLASS have been raised by CBO, the CMS chief actuary, the President's Fiscal Commission, the American Academy of Actuaries, and the Secretary of Health and Human Services. Proposed changes may be too little too late.
- Repeal is the only logical alternative. It is far better to repeal a defective program than to let it repeal itself through fiscal failure.

Thank you, Chairman Pitts, Ranking Member Pallone, and members of the Subcommittee for the opportunity to speak this morning on the fiscal consequences of the Community Living Assistance Services and Supports (CLASS) Program.

I am Joseph Antos, the Wilson H. Taylor Scholar in Health Care and Retirement Policy at the American Enterprise Institute (AEI), a non-profit, non-partisan public policy research organization based in Washington, D.C. I am also a member of the panel of health advisers for the Congressional Budget Office (CBO), and I was formerly the Assistant Director for Health and Human Resources at CBO. My comments today are my own and do not necessarily reflect the views of AEI, CBO, or other organizations with which I am affiliated.

CLASS is a new federal long-term care program that is financed solely through enrollee premiums. Because the program collects premiums in advance of benefit payments, CLASS reduces the budget deficit in the near term. Over the longer term, CLASS increases the deficit and worsens the fiscal crisis we are already facing due to the mounting costs of Medicare, Medicaid, and Social Security.

The goals of CLASS are laudable. Persons with functional limitations need assistance if they are to remain living in their communities. CLASS would provide a cash benefit that could help those individuals purchase a variety of non-medical services and supports, such as personal assistance services, housing modifications, and transportation. That could relieve the burden on families and delay the need for institutionalization.

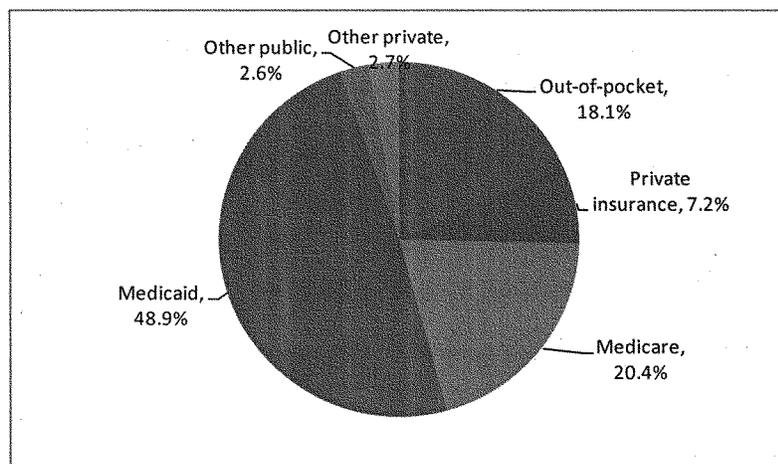
But few people will benefit unless the program is attractive to a broad population who can share the cost and keep premiums affordable. Instead, CLASS will primarily enroll an older and sicker population who will take full advantage of the benefit. Younger, healthier people are much less likely to enroll in CLASS, which will drive up premiums sharply. This adverse selection will create a death spiral of rising premiums and declining participation that will doom the program as it is now structured.

Long-Term Care Insurance and the CLASS Program

Government programs, and particularly Medicaid, cover the bulk of long-term care expenses (see Fig. 1). Private insurance, which is purchased by about seven million people, pays for just over seven percent of the total.¹ This low take-up rate reflects weak demand in the market for long-term care insurance that will also impact sales of CLASS coverage.

A major factor reducing demand for private long-term care insurance is the prospect that Medicaid will pay for services when the need arises, perhaps coupled with an unwillingness to actively plan for the distant possibility of becoming disabled. Long-term care needs are difficult to predict and may not arise for decades. Many consumers appear willing to gamble that their care will be paid for (or that they may not need such care) rather than paying thousands of dollars in premiums.

Figure 1. Long-Term Care Spending by Source of Payment, 2005



Source: *Fact Sheet: National Spending for Long-Term Care*, Health Policy Institute, Georgetown University, February 2007.

Willingness to buy coverage increases with age. About 50 percent of consumers who apply for private long-term care insurance are between age 50 and 64, undoubtedly because the prospect of needing services is more plausible to older persons who may also have the financial means to pay the premiums.²

CLASS offers a less generous benefit at a price that might initially be somewhat lower than typical in the private insurance market. A cash benefit of at least \$50 a day is paid to enrollees through a debit card account. The benefit amount will be based on the number of functional limitations that an individual has. In contrast, two-thirds of private policies offer daily

benefits ranging from \$100 to \$199. CLASS benefits continue for as long as the individual needs care, whereas private coverage typically limits the benefit period—generally five years or less.³ However, enrollees in CLASS may not draw a benefit until they have paid premiums for 5 years (3 of which while they are still working). Private insurance generally requires a 90 day waiting period before benefits will be paid.

Premiums are intended to be affordable, under the assumption that the program will be broadly popular. Once someone enrolls in CLASS, his premiums remain constant over time unless there needs to be an upward adjustment to ensure the program's solvency for 75 years.⁴ Premiums may also increase if an enrollee drops out for three or more months and re-enrolls.

There is considerable uncertainty regarding how CLASS coverage will be priced since a product with similar features has not been marketed previously. CBO estimates that the average monthly premium would be \$123 for benefits of \$75 a day.⁵ The chief actuary of the Centers for Medicare and Medicaid Services (CMS) estimates that an average premium level of about \$240 per month would be required to adequately fund the CLASS program.⁶ Those estimates compare to private premiums that average \$184 for a daily benefit that is likely to be somewhat larger than \$150.

All workers age 18 or older are eligible for CLASS, as long as they earn enough to pay Social Security taxes for one quarter—about \$1,200 a year currently. CLASS coverage is guaranteed issue, which means that no one can be rejected because of pre-existing conditions.

CLASS will be sold through participating employers, with all employees automatically enrolled unless they opt out.

An Unworkable Program

With these specifications, CLASS is not going to be an easy sell. The “nudge” of auto-enrollment will not work. It may make workers more aware of long-term care insurance and future needs, but only the first time it is raised. After that the CLASS form will be largely ignored, just like the rest of the routine paperwork associated with hiring. Moreover, unlike automatic enrollment in 401(k) savings plans which typically requires a minimal contribution, CLASS premiums will be substantial and difficult to overlook.

The cost of CLASS will make it a nonstarter for the vast majority of workers, particularly those who are younger and healthier. Premiums are lower for those who enroll at younger ages, since they will have more years to pay into the program. But everyone in an age cohort pays the same premium regardless of their risk of needing long-term care services. The only exception is any enrollee with an income under 100 percent of the federal poverty level, who pays \$5 a month (inflation-adjusted after the first year). Other enrollees’ premiums must be increased to subsidize those individuals.

This premium structure exacerbates the adverse selection that can be a problem in any insurance market. Those who are at greater risk will pay favorable rates, and are more likely to enroll. Those who are healthier will pay unfavorable rates, and are less likely to enroll. A

healthy person who wants long-term care insurance is likely to find a better deal in the private market.

Since CLASS is guaranteed issue with no underwriting, it will soon become obvious to many workers that prompt enrollment when the program is first offered is not in their best interests. The calculation for a 40 year-old illustrates the point. If she enrolls then, she will pay premiums for perhaps another 40 years before receiving CLASS benefits. If she waits until she is 50, she pays a higher premium but for fewer years. A ten-year delay in enrollment could save \$15,000 in premium payments, which must be weighed against the greater risk of becoming disabled before qualifying for benefits if she delays.⁷

Given these imponderables, many middle-aged people are likely to refuse enrollment when first offered, if only because the proper course is unclear. Younger workers will have less difficulty deciding not to enroll immediately, knowing that they cannot be refused later on. Reflecting these facts, CBO assumes that 3.5 percent of the adult population will participate in CLASS, as compared with four percent participation in the current employer-sponsored private long-term care insurance market.⁸ The CMS chief actuary assumes a more conservative two percent participation rate.⁹

The framers of the CLASS legislation wanted to make it easy for people to get coverage, but they ignored economic realities. Guaranteed issue with no underwriting virtually guarantees a selection death spiral, with premium increases that will drive out all but those who are most likely to need services.

Ironically, this problem is exacerbated by the requirement that premiums be set to ensure solvency over 75 years. That guarantees steep price hikes as the mix of enrollees shifts toward those with greater health risk. As premiums rise sharply, healthy people do not enroll and those who did will drop their coverage as the net value of the coverage declines. Continued shifts in the composition of the covered population will necessitate even steeper premium increases, reinforcing the financial pressures on CLASS and ultimately leading to collapse.

The rules of the program could be changed to mitigate the impact of adverse selection on CLASS, but there are no easy fixes. The most obvious cure is to allow underwriting, perhaps coupled with an initial open enrollment period. A longer waiting period before benefits are available during which premiums are paid—perhaps 10 or 15 years—would also reduce selection, although it is notable that private insurers generally do not require long waiting periods.¹⁰

Some argue that CLASS needs more funds to advertise its product. The President's 2012 budget requests \$93 million to fund an advertising campaign for the program. Such an effort would only be effective if the product is attractive to consumers.¹¹ To accomplish that, the government should hand the reins over to private insurers who have an incentive to develop products that can sell. But the potential market is limited, as our current experience with private long-term care insurance demonstrates. Private companies could run this program more efficiently, but if Congress wants millions of additional people to have coverage it will have to find the money to subsidize them.

Congress also could move from persuasion to compulsion by mandating CLASS purchase by all workers or perhaps everyone.¹² That eliminates the adverse selection problem, replacing it with a host of other problems that plague the health insurance mandate—without the possibility that competition among private plans could promote efficiency.

If adverse selection is not addressed, CLASS will face a funding crisis. Unless Congress reneges on a public promise and fails to pay benefits after having collected billions in premiums, it would have no choice but to provide a financial bailout rivaling anything we have seen to date.

Budget Impact

At the time of enactment, the Congressional Budget Office estimated that the CLASS program would reduce the federal deficit by \$70 billion through 2019.¹³ More recently, CBO estimated that CLASS will collect \$112 billion in premiums and spend \$28 billion over the 2012-2021 period, resulting in a reduction in the federal budget deficit of \$84 billion.¹⁴

In the near term, the CLASS program reduces the federal deficit because premiums are collected in advance of benefit payments. Individuals must be enrolled in CLASS for at least five years before they may collect benefits. Over the longer term, the CLASS program increases the federal deficit as premiums fall short of outlays. CBO estimates that the program will generate budget deficits during its third decade of operation, while the CMS chief actuary projects deficits starting in 2025.

This seems to contradict one of the key protections built into the law. The Patient Protection and Affordable Care Act (PPACA) requires the Secretary of Health and Human Services to set premiums annually that ensure that the program is solvent over the subsequent 75-year period. If the program is solvent, how can it generate budget deficits? The explanation lies in the difference between budget and trust fund accounting.

PPACA establishes a trust fund known as the CLASS Independence Fund (“Fund”) that will receive premium payments and disburse benefit amounts, in the same way that Medicare’s Supplementary Medical Insurance Trust Fund operates. Surpluses that accumulate in the Fund are invested in nonmarketable Treasury securities—essentially IOUs that obligate Treasury to find funds to cover the operation of CLASS when premiums no longer cover expenses.

That money does not sit idle in a bank account. Instead, Treasury uses the Fund’s surpluses to finance other ongoing operations of the federal government. Although premiums would be set to maintain a positive Fund balance for 75 years, that balance includes the excess premiums from the first few years that were *in fact* spent, and it includes imputed interest on Treasury securities that is not *in fact* new money.

Solvency means that annual CLASS program expenses would be met through a combination of premium income and interest earnings on the assets of the Fund. The federal budget impact, in contrast, is the difference between premium receipts and program outlays. The CMS chief actuary observes that if the Fund is adequately financed and program solvency is

maintained, the federal budget would have a net savings each year prior to 2025 and a net cost each year thereafter.¹⁵

An argument can be made that CLASS should be financed through an independent insurance fund outside of government that invests its reserves privately.¹⁶ While that would prevent the diversion of CLASS premiums into other federal programs, it is a half measure at best. Without changing the program rules to ameliorate adverse selection, CLASS would still face a financial crisis in the years to come. Retaining CLASS as a federal program would make a federal bailout virtually inevitable regardless of where its funds are invested.

Conclusion

The defects in the design of CLASS are widely recognized. Both CBO and the Office of the Actuary in the Centers for Medicare and Medicaid Services (CMS) agree that program spending will exceed revenue in the next 15 or 20 years.¹⁷ The President's National Commission on Fiscal Responsibility and Reform ("Fiscal Commission) calls CLASS unsustainable.¹⁸ The American Academy of Actuaries and other experts point to serious defects in the program that will lead to its failure to remain self-funded and actuarially sound.¹⁹ Even prominent members of the Senate raised concerns that enacting CLASS would not be fiscally responsible.²⁰

In a hearing before the Senate Finance Committee on February 16, 2011, HHS Secretary Kathleen Sebelius agreed that the CLASS program as legislated is "unsustainable absent massive

taxpayer infusion” of funds.²¹ She indicated that the administration is considering making some changes to the CLASS program. Such changes may include tighter eligibility standards to ensure that only active workers may enroll in CLASS and replacing flat lifetime premiums with premiums that increase with inflation.²²

There is no guarantee that such adjustments to the CLASS program would resolve the financial instability that is built into the program. Indeed, there is a risk that attempts to fix problems caused by adverse selection in CLASS could unintentionally exacerbate them.²³ Instead, more fundamental issues must be addressed, including the role of Medicaid in crowding out private long-term care insurance.²⁴

Repeal is the only logical alternative. The Fiscal Commission advised the President that if the CLASS program cannot be made credibly sustainable over the long term, it should be repealed. Dr. Alice Rivlin and Rep. Paul Ryan (R-Wisc.) recommended repeal of CLASS in their health reform proposal, noting that the program is “a new unfunded entitlement [that] should be repealed because it will increase the deficit over the long term.”²⁵ It is far better to repeal a defective program than to let it repeal itself through financial failure.

Good intentions will not prevent fiscal ruin. The CLASS program aims to help pay for personal care for the frail elderly and others with disabilities, but the program is fundamentally flawed and inadequately financed. Congress should not wait for a crisis to act.

¹ Estimates of the number of active long-term care insurance policies vary; see American Association for Long-Term Care Insurance, 2008 LTCi Sourcebook, available at <http://www.aaltci.org/long-term-care-insurance/learning-center/fast-facts.php>, and Anne Tumlinson, Christine Aguiar, and Molly O'Malley Watts, *Closing the Long-Term Care Funding Gap: The Challenge of Private Long-Term Care Insurance*, Kaiser Commission on Medicaid and the Uninsured, June 2009.

² American Association for Long-Term Care Insurance, previously cited.

³ Ibid.

⁴ As discussed in the concluding section of this testimony, HHS Secretary Kathleen Sebelius recently indicated that the department is considering indexing premiums to inflation.

⁵ Congressional Budget Office, "Additional Information on CLASS Program Proposals," letter to the Honorable George Miller, November 25, 2009.

⁶ Centers for Medicare and Medicaid Services, "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act,' as Amended," memorandum from Richard S. Foster, April 22, 2010.

⁷ Author's calculation based on Alicia H. Munnell and Josh Hurwitz, "What is 'CLASS'? And Will It Work?" Center for Retirement Research at Boston College, February 2011. Monthly premiums are estimated to be \$150 and \$159 for enrollees between 40 and 49 and between 50 and 59, respectively. The undiscounted amount of premium payments for an enrollee between age 40 and age 80, when benefits are assumed to begin, is \$72,000. The comparable figure for an individual enrolling at age 50 is \$57,240. Similar results can be calculated using estimates from American Academy of Actuaries, "Critical Issues in Health Reform: Community Living Assistance Service and Supports Act (CLASS Act)," November 2009.

⁸ Congressional Research Service, "Community Living Assistance Service and Supports Act (CLASS) Provisions in the Patient Protection and Affordable Care Act," June 4, 2010.

⁹ Centers for Medicare and Medicaid Services, previously cited.

¹⁰ This was suggested in American Academy of Actuaries, "Re: Actuarial Issues and Policy Implications of a Federal Long-Term Care Insurance Program," letter to the U.S. Senate Committee on Health, Education, Labor, and Pensions, July 22, 2009.

¹¹ Munnell and Hurwitz, previously cited.

¹² This was also suggested by the American Academy of Actuaries, 2009, previously cited.

¹³ Congressional Research Service, 2010, cites a letter from the Congressional Budget Office to Senator Harry Reid dated March 11, 2010. The latter document does not appear to be publicly available.

¹⁴ Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, January 2011.

¹⁵ Centers for Medicare and Medicaid Services, previously cited.

¹⁶ This idea has been advanced by Howard Gleckman, "Don't Repeal Long-Term Care Program," McClatchey-Tribune, March 8, 2011, available at <http://www.vindy.com/news/2011/mar/08/don8217t-repeal-long-term-care-program/?print>.

¹⁷ Congressional Budget Office, "Additional Information on CLASS Program Proposals," letter to the Honorable George Miller, November 25, 2009; and Centers for Medicare and Medicaid Services, previously cited.

¹⁸ National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, December 2010.

¹⁹ American Academy of Actuaries, "Re: Patient Protection and Affordable Care Act (H.R. 3590) and Affordable Health Care for America Act (H.R. 3962)," letter to the Honorable Nancy Pelosi and the Honorable Harry Reid, January 14, 2010; Munnell and Hurwitz, previously cited.

²⁰ Senators Conrad, Lieberman, Landrieu, Bayh, Lincoln, Ben Nelson, letter to the Honorable Harry Reid, October 23, 2009 (available at http://www.politico.com/static/PPM145_chris_memo1.html).

²¹ A clip of the exchange between Secretary Sebelius and Senator John Thune (R-S.D.) is available at http://tcipartners.typepad.com/group_longterm_care_insur/2011/02/class-act-senate-exchange-hhs-secretary-sebelius-and-sen-john-thune.html.

²² Robert Pear, "Long-Term Care Needs Changes, Officials Say," *New York Times*, February 21, 2011.

²³ This point is made by Allen Schmitz, "Adverse Selection and the CLASS Act," Milliman Health Reform Briefing Paper, December 2009.

²⁴ Jeffrey R. Brown and Amy Finkelstein, "The Interaction of Public and Private Insurance: Medicaid and the Long-Term Care Insurance Market," *American Economic Review*, June 2008.

²⁵ Alice Rivlin and Paul Ryan, "A Long-Term Plan for Medicare and Medicaid," November 17, 2010, available at <http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/MemberStatements.pdf>.

Mr.PITTS. The chair thanks the gentleman and recognizes the gentleman, Mr. Warshawsky, for 5 minutes.

STATEMENT OF MARK J. WARSHAWSKY

Mr.WARSHAWSKY. Chairman Pitts, Ranking Member Pallone, other members of the subcommittee, I appreciate the opportunity to share information and thoughts with you on the new voluntary long-term care insurance program to be offered by the Federal Government in 2012 called CLASS. I am Director of Retirement Research at Towers Watson, a firm consulting on employee benefits, and a member of the Social Security Advisory Board. In this testimony, however, I am not representing either organization. Rather, I am speaking as somebody who has done research and written on long-term care insurance and disability risk for more than 15 years and most recently about the CLASS legislation.

In this statement, I hope to set forward a framework that could be used by employers in deciding whether or not to participate in the CLASS program. First, however, I thought it would be helpful to provide some statistics about current offerings of private long-term care insurance by employers to workers. According to our benefits data source at Towers Watson, as of 2010 about 50 percent of large employers offer but do not subsidize long-term care insurance to their workers. Another 4 percent provide such insurance with either a partial or full subsidy. The fact that the vast majority of employers either do not subsidize or even offer long-term care insurance to their workers despite a tax advantage to the worker for many employer subsidies reflects that this insurance is considered a convenience benefit to employees. That is, long-term care insurance is not a core benefit for employers because it is not thought to provide a significant business advantage to the employer offering it beyond goodwill and convenience to the employee.

Moreover, experience to date with take-up by employees and employer-offered long-term care insurance plans has been quite modest. Even in large organizations with well-paid and well-informed employees for whom Medicaid is unlikely to be thought a source of long-term care coverage, take-up rates have not exceeded 5 or 6 percent, and that is at the upper end of the spectrum. This is despite the fact that employer-offered policies have the advantage over commercial individual policies that little or no underwriting is done in the workplace.

We have had extensive discussion about the intended structure of the CLASS program so I won't go into that, but I will note that one aspect is that it provides that workers can be enrolled in the program via one of two methods. The employers who can decide to participate in the program would automatically enroll their workers through payroll deduction with the workers having the right to opt out. Such automatic enrollment is now common in many 401(k) plans. Self-employed workers and those whose employers do not participate could join through an individual enrollment mechanism. According to my understanding of the language of the law, employers could only participate in the program if they agreed to automatically enroll their employees. Also, according to my understanding of the legislative expectations of the program and the score given to the program by the CBO, as part of the broader

health reform legislation, it is thought that most of the enrollment in the program projected by the CBO to be 6 percent of the Nation's working population in 2010 will be through employers.

Now, the framework, and I will have to be quick. The overall important consideration to employers is whether the government aggressively promotes the need and the benefits of long-term care insurance per se directly with workers. In other words, they have to make a sale to the American public that this is the right thing to do as a long-term care insurance benefit. For example, is it possible for the government to add informative and candid inserts into regular communications that workers get from the Federal Government? Absent such promotions, many employers, even those currently offering long-term care insurance, are unlikely to want to participate in an automatic enrollment program when the vast majority of workers are likely to opt out.

I have in my testimony discussion of the adverse selection problem, which would concern employers as well, but I think that has been very accurately and ably discussed.

So let me discuss in terms of some benefits and drawbacks of the Federal program per se. Obviously, the employers will be comparing the benefits and premiums of the administration of the Federal program with those available in the private sector. This will be an intensely facts-and-circumstances evaluation and I can't speculate on how it will come out, but there are sort of two opposing factors. One would favor the government program and others would favor the private long-term care insurance. The fact that the government program pays cash benefits that can be used for any purpose I think is an attractive feature of the program because it provides flexibility but the level of benefits that are contemplated in the government program, \$50 to \$75 a day, is unlikely to cover the actual costs of care for many disabilities, nursing home, home health care. But in private insurance, that is a parameter in the policy and can be selected to be appropriate to the region of the country and a level of care desired by the insureds. Also, an advantage to the private insurance is that there is no 5-year waiting period.

Let me conclude by saying that CLASS program employers will need to evaluate at the time whether to offer it to their workers on an automatic enrollment basis, and it is worth noting that employers have a lot on their plate at this time with health care reform and so this is just another issue.

[The prepared statement of Mr. Warshawsky follows:]

Statement of the Honorable Mark J. Warshawsky, Ph.D.

Director of Retirement Research, Towers Watson, and Member, Social Security Advisory Board

Before the House Committee on Energy and Commerce, Subcommittee on Health

March 17, 2011 Hearing on "The Implementation and Sustainability of the New, Government-Administered Community Living Assistance Services and Supports (CLASS) Program"

"A Framework for Employers in Deciding Whether or Not to Participate in the CLASS program"

Chairman Pitts, Ranking Member Pallone and other Members of the Subcommittee, I appreciate the opportunity to share information and thoughts with you on the new voluntary long-term care insurance program to be offered by the federal government in 2012 called CLASS. I am Director of Retirement Research at Towers Watson, a firm consulting on employee benefits, and a Member of the Social Security Advisory Board. In this testimony, however, I am not representing either organization; rather, I am speaking as someone who has done research and written on long-term care insurance and disability risks for more than fifteen years and, more recently, about the CLASS legislation.¹

In this statement, I plan to set forth a framework that could be used by employers in deciding whether or not to participate in the CLASS program. I cannot be more specific than this broad framework at this time because the actual considerations by employers can only be made after the details of the program are finalized, become widely available and are explained by the Department of Health and Human Services (DHHS). Nonetheless, I hope the framework gives you some indication of the types of questions that employers are likely to want answered if they are to offer insurance to their workers through this federal program.

¹ See Mark J. Warshawsky, "Will the 'CLASS' Program Succeed? Is It Sustainable?" *Towers Watson Insider*, December 2009.

Some Background about Current Employer Offerings and Employee Behavior with Respect to Long-term Care Insurance

First, however, it will be helpful to review some statistics about current offerings of private long-term care insurance by employers to workers. According to the Benefits Data Source of Towers Watson, as of 2010, about 50 percent of large employers offer but do not subsidize long-term care insurance to their workers; another 4 percent provide such insurance with either a partial or full subsidy to workers. The fact that the vast majority of employers either do not subsidize or even offer long-term care insurance to their workers, despite a tax advantage to the worker from any employer subsidy, reflects that this insurance is considered a convenience benefit for employers. That is, long-term care insurance is not a core benefit plan nor is it generally thought to provide a significant business advantage to the employer in offering it, beyond good will and convenience to employees. By contrast, other benefit plans are highly subsidized and are near-universal among large employers because the plans are considered to give significant advantages to the employer – for example, health insurance – to maintain the health and productivity of current workers – or retirement plans – to encourage retirement of workers when their productivity begins to decline. Also the demand for, and take-up of, health and retirement benefits is high among workers because the benefits are well-understood and appreciated widely.

By contrast, experience to date with take-up by employees in employer-offered long-term care insurance plans has been quite modest. Even in large organizations with well-paid and well-informed employees for whom Medicaid is unlikely to be thought a source of long-term care coverage, take-up rates have not exceeded 5 or 6 percent. This is despite the fact that employer-offered policies have the advantage over commercial individual policies that little or no underwriting is done in the workplace. Indeed, aside from Medicaid or, in a limited way, Medicare, most long-term care insurance coverage to

households currently comes through insurance policies sold to individuals and couples in the commercial market, often around the time of retirement, and not through employer plans.

Other witnesses at this hearing have already described or will describe the intended structure of the CLASS program – its benefits, premium structure, eligibility, budget impact, governance, and so on. For my purposes here, it is important to note that the legislation provides that workers can be enrolled in the program via one of two methods. Employers who decide to participate in the program would automatically enroll their workers, through payroll deduction, with workers having the right to opt out; such automatic enrollment is now common in many 401(k) plans. Self-employed workers and those whose employers do not participate in the program could join through an individual enrollment mechanism to be established by the federal government. According to my understanding of the language of the law, employers could only participate in the program if they agree to automatically enroll their employees, although it is unclear whether this would apply to all current employees or just new employees – most 401(k) plans employing automatic enrollment choose the latter approach. Also, according to my understanding of the legislative expectations for the program and the score given to the program by the Congressional Budget Office (CBO) as part of the broader health reform legislation, it is thought that most of the enrollment in the program (projected by CBO to be 6 percent of the Nation's working population in 2019) will be through employers.

A Framework for Employer Choice to Participate in the Program

An important overall consideration for employers is whether the DHHS, as the primary administrator of the program, will aggressively promote the need for, and the benefits of, long-term care insurance, directly with workers. For example, will the Department, within the legislative restrictions on marketing expenses by the program, or others put forward clever and effective advertising campaigns directed to the public? Will DHHS get expert and celebrity endorsements, and

orchestrate extensive speaking tours by senior government officials, again directed to the public? Is it possible to add informative and candid inserts from DHHS into the various regular communications workers get from the federal government? Absent such promotions, many employers, even those currently offering long-term care insurance, are unlikely to want to participate in an automatic enrollment program when the vast majority of workers are likely to opt-out. Such participation would be viewed as a bother and nuisance and cost to both the employer and the worker – far from the convenience benefit desired.

As a related matter, it is widely recognized that the extent of adverse selection from high-risk workers that the program is likely otherwise to experience would be mitigated, perhaps even eliminated, if demand for the benefit plan and therefore enrollment in the program by healthy workers is high. Adverse selection, that is the tendency of those more likely to claim benefits, such as people with chronic conditions or disabilities, to purchase insurance, threatens the viability of the program. Employers would want to avoid putting their employees in possible scenarios where benefits would be cut and premiums increased by the government in the future if adverse selection turns out to be even worse than expected. This is relevant to employers also because there is a good alternative – private insurance, where adverse selection is controlled through either selective offering to only employees with significant labor force participation (and therefore a high likelihood of good health at time of purchase) or underwriting.

It is worth spending a few moments to better understand why the CLASS program, as structured in law, is particularly subject to adverse selection. The program is available to students and to all workers, even those with quite limited attachment to the labor force, regardless of health status. Moreover, the program allows the non-payment of premiums for extensive periods of time while preserving eligibility to benefits. And, while there will be an adjudication process, of unknown

stringency, for claims, benefits would be paid automatically if the individual were discharged from a hospital (for long-term care), nursing home, or an institution for mental diseases. So, for example, a 55-year-old individual worker could be partially retired and already modestly disabled by a chronic disease that is likely to grow worse with time, pay premiums consecutively for 24 months, stop paying premiums for a couple of years, have worsened disabilities, pay 12 months of premiums on and off for a couple of years, become severely disabled, retire completely, pay for two more years, get discharged from a hospital for long-term care, and then automatically get full benefits. The fact that this program is designed to be so open, even to those with disabilities, is precisely what poses the threat to the viability of a voluntary program, without subsidies, when there are private market alternatives constructed to avoid adverse selection. HHS Secretary Sebelius recently gave a speech promising to fix some of these design issues in the program; employers and others will be looking closely at whether the fixes, within the constraints of the law, are sufficient to the acknowledged problem.

Employers will be comparing the benefits and premiums and administration for the federal program with those available in the private sector. This will be an intensely facts and circumstances evaluation and it is idle to speculate now on how it will come out. But it is worth noting that there are two structural considerations now known – one favoring the government program and one favoring private long-term care insurance. The government program will pay cash benefits that can be used for any purpose, even to pay family members for care, for the lifetime of the beneficiary. This desirable flexibility is in contrast to most private policies which must be used for specific types of care, such as nursing home or home health care given by licensed providers. By contrast, the level of benefits contemplated in the government program -- \$50 to \$75 a day -- is unlikely to cover the actual cost of care for many disabilities – nursing home care exceeds \$250 a day in many parts of the country, and home health care costs \$15 or more an hour, and so on. Policy parameters in private insurance, on the

other hand, can be selected to meet the expected costs appropriate to the region of the country and level of care desired by the insured.

Finally, employers must evaluate whether any long-term care insurance, public or private, is appropriate for their workers. Although most experts agree that insurance is conceptually an appropriate vehicle to protect against the uncertain costs of disability, when other government social welfare programs, such as Medicaid, are available, it is clear that the purchase of insurance is not always optimal.² In particular, for low- and moderate-wage workers who are unlikely to build up significant asset holding, Medicaid functions as reasonable long-term care insurance coverage, particularly considering the sacrifice that the insurance premium, estimated by the CMS actuary to be as much as \$250 monthly or more, otherwise would represent during the working lifetime. As we climb up the wage ladder, this consideration is less important, but it might even apply to middle income workers who have large expenses during their working careers and do not mind the prospect of having to spend down to Medicaid eligibility.

Conclusion

The CLASS program for voluntary long-term care insurance sold by the federal government to workers is scheduled to come on-line by October 2012. Employers will need to assess at that time whether to offer this program to their workers on an automatic enrollment basis. Those organizations currently offering group long-term care insurance will also have to decide whether to drop such offerings or to ask their insurers to amend them to wrap-around the federal program. Employers will want to know whether the government will effectively promote the need for long-term care insurance directly to workers. Employers should compare benefits and premiums and administration for the

² See Jeffrey R. Brown and Amy Finkelstein, "The Interaction of Public and Private Insurance: Medicaid and the Long-Term Care Insurance Market," *American Economic Review*, 2008, 98(3), pp. 1083 – 1102 for a rigorous demonstration of this observation.

CLASS program with those in group long-term care insurance offered in the marketplace or even individual policies available. The cost and extent of coverage available in CLASS will be an important consideration. Employers should also evaluate the possibility that the CLASS program will not be stable – that because of structural flaws, premiums increases, benefit cuts or other curtailments could occur in the future. In this regard, the likelihood of such occurrences will be influenced importantly by the details of design fixes that Secretary Sebelius has promised. Finally, employers would need to judge whether there is room in their employees' paychecks for \$200 to \$250 monthly premiums for a voluntary long-term care insurance program when Medicaid coverage is available to many workers, and health care costs continue to rise rapidly. And, it is worth noting, employers must make this choice at the same time that other consequential change in the health care insurance and provision marketplace is occurring as the larger health care reform plan is being implemented.

Mr. PITTS. The chair thanks the gentleman and recognizes Mr. Minnix for 5 minutes.

STATEMENT OF WILLIAM LAWRENCE MINNIX, JR.

Mr. MINNIX. Thank you, Mr. Chairman, and I want to thank especially Congressman Dingell and Congressman Pallone for their leadership on this issue.

My organization represents not-for-profit aging services sector. They have been in your communities on average for 75 years. They are the Jewish and Catholic and Lutheran and Masonic and labor-sponsored organizations. We joined with a large coalition. I want to remind everyone that we are 270 consumer service organizations that supported CLASS. Senator Dodd said as far as he knew, that was unprecedented. So we come to the table today with a lot of people that want this program. Why? Because they see the need for it inside out.

Long-term care is something most families will face and nobody wants to talk about. We have been discussing risk. Here is where the big risk is: It is the single biggest risk that most American families face today. Just ask those that have been through it and they are not insured for it. So it is hard to talk about but who will benefit from CLASS is potentially every American family. Disabling conditions are not respecter of political party, age, socioeconomic status, living venue, background, genetics, what have you. It is the 20-year-old that took the dive at beach week and is now a paraplegic. It is the veteran who comes back from the war as a double amputee. It is the Alzheimer's person who moves in with the family.

Families spend 35 hours a week care-giving, and that mostly involves women who also work full time. They spend on average out of their own pockets \$5,500 a year in that job, \$9,000 if they are a long-distance caregiver. So Mr. Weiner's situation is becoming more and more commonplace. Those who are poor or have to spend down, we do have Medicaid and we need to do all we can do to make sure Medicaid is there for people who need it.

For private long-term care insurance, I own it just like Dr. Burgess. I bought it 10 years ago. My wife couldn't get it, through no fault of her own. My premiums just went up 60 percent. I can't wait for CLASS to roll out for me and my wife. Every poll or focus group I have seen about CLASS, when you ask real people, Democrat, Republican, especially women, say the time has come for a program like this. We need a choice not available in the marketplace. What is wrong with giving people a chance to choose something that may help them because the options they have today are simply not there for the masses? So when we talk about risk, we better be talking about the risk of real people trying to live out their lives every single day.

Now, who will benefit from CLASS? Consumers, we have talked about, the taxpayer. It is a self-contained program. Business will benefit from it. We have had discussions with the business community. A MetLife study says that it is costing business, care-giving is costing business \$17 billion a year, and when I talk to business leaders, many of them say, you know, we know this is happening but we are really not sure about what to do about it. Part of Ad-

vance CLASS, which is a group that formed out of these 270 groups, is committed over the next several years to educating the public. These 270 groups, touches the lives, has communication with tens of millions of people every year, and one of the things that is paramount for all of us to do over the next several years is educate the public because the more people enroll, the better the effect on Medicaid. It puts money back in families' pockets that are willing to assume responsibility for care-giving, and it will help the taxpayer. It also will help business, because whether we like it or not, the need for care-giving is not going away. It will increase.

You know the history of CLASS and we have had on both sides of the aisle conversations about this ad nauseam. The biggest unknowns about CLASS, the biggest one is that no one can be sure how many people will sign up. I heard Secretary Greenlee say they are going to roll out a plan and that is the actuarial study we ought to all be looking at, because the day the plan rolls out and you can say here is what it looks like, here are the options, here are the premiums, then we have all got a big education role. The biggest risk is status quo, doing nothing. The risk of moving forward with CLASS is minimal compared to what we face otherwise.

Thank you for your interest in this issue.

[The prepared statement of Mr. Minnix follows:]



Testimony of LeadingAge
William L. Minnix, Jr., President & CEO

Before the Energy and Commerce Health Subcommittee
March 17, 2011

The Implementation and Sustainability of the New, Government-Administered Community Living Assistance Services and Supports (CLASS) Program

As President and CEO of LeadingAge and the chair of Advance CLASS, I thank the subcommittee for the opportunity to discuss the implementation of the CLASS program. This is one of the most important measures ever enacted because it addresses a need that most families at some point will encounter, coverage for long-term services and supports.

LeadingAge is an association of 5,500 not-for-profit organizations dedicated to expanding the world of possibilities for aging. We advance policies, promote practices and conduct research that supports, enables and empowers people to live fully as they age.

Advance CLASS is the premier national advocacy organization dedicated to the implementation of a strong and vital long-term services and supports program. The group is an independent not-for-profit corporation comprised of prominent national organizations which specialize in serving the most vulnerable in both the aging and disability communities.

Long-term care is something most families will face, and no one wants to talk about. It is potentially the biggest financial risk of family life and yet none of us wants to think that someday we may need help with the simplest activities of daily life – eating, bathing or moving around.

The Community Living Assistance Services and Supports (CLASS) program creates a consumer-financed, premium-based, voluntary insurance plan to help people finance whatever long-term services and supports they come to need.

After decades of debating how the nation might better address appropriate financing for these critical services and after more than five years of legislative development, debate, and hearings, the CLASS Act was signed into law in 2010 as part of the Affordable Care Act. It received bipartisan support during its development by House and Senate committees and was endorsed by over 270 consumer, provider, and faith-based organizations from AARP and the Alzheimer's Association to Easter Seals and the Paralyzed Veterans of America.

Who needs the CLASS plan?

We all do. Disabling conditions are no respecter of age, socio-economic status, living venue, background or genetics. Examples include the 21 year old who took that dangerous dive during beach week and is now a paraplegic. The returning war veteran who is now a double amputee. The successful lawyer born with muscular dystrophy and working full-time who faces future problems in bathing and dressing for work. The 80 year old with Alzheimer's disease who lives with her daughter and family. We know these people. They are us.

In a speech delivered at the Kaiser Family Foundation on February 7, Health and Human Services Secretary Kathleen Sebelius told the story of Michael:

“Fourteen months ago, when he was 42, Michael was diagnosed with multiple sclerosis. Since then, he has lost movement in his legs and left arm. His neck muscles have weakened...He has lost ability to control his bladder... Michael can live independently, as he strongly prefers to do, because he has part-time personal care assistance to help with daily tasks...He pays for these assistants with long-term care insurance...But his policy runs out soon, forcing him to rely on Medicaid...If it can't cover the services he needs, his worst fears will come true and he will be forced out of his home.”

We all have fire insurance for our homes. Car insurance against accidents. Many have health and life insurance, even burial insurance and pet insurance. Insurance is an accepted way of hedging against risk. With CLASS, we will have the chance to insure ourselves against perhaps the biggest blank check risk any of us will face: the need for substantial help to live, work and function in a place called home. CLASS goes a long way to mitigate those risks.

Ten million Americans today need long term services and supports—including 4 million under age 65. As the baby boomers age into retirement, these numbers will more than double.

The CLASS plan promotes personal responsibility, puts choice in the hands of consumers, and doesn't rely on taxpayer funds. CLASS is totally voluntary. Its cash benefit approach allows consumers to choose the type of help they want. It not a government entitlement program and stands on its own financial feet. By law, “No taxpayer funds shall be used for payment of benefits under... CLASS...”

The importance of CLASS and the fiscal responsibility of the approach were aptly described by Senator Gregg (NH), who strengthened the program with an amendment requiring that “Beginning with the first year of the CLASS program, and for each year thereafter... 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 insures solvency throughout such 75-year period.”

“Our nation needs to address the growing problem of providing health care services for ... older individuals who have trouble with activities and tasks of daily life....My amendment ensures that instead of promising more than we can deliver, the [CLASS] program will be fiscally solvent, and we won't be handing the bill to future generations.”¹

What's the potential impact of CLASS?

For consumers, it can allow someone with practical deficits to continue work and be more self-sufficient. Because cash is the benefit, affected consumers can buy what they need to stay as independent as possible: an attendant to help with morning bathing and dressing, a driver to take them to work, and that modified bathroom or ramp. For the working daughter whose cognitively impaired mom lives with her, it is the direct care person who visits half a day to assure medication management or lunch so daughter doesn't have to leave work. For the family, it can mean money back in the family pocketbook for other necessities.

¹ Senator Gregg, press release, July 7, 2009.

CLASS helps taxpayers. The law says there can be no tax dollars paid out for benefits. It is a financially self-sufficient program. CLASS helps break the dependency on federal and state programs such as welfare and Medicaid. Often people need some resources to afford long-term services and supports to maintain the possibility of working. But if their incomes increase, they lose eligibility for Medicaid or other assistance. CLASS allows them to purchase—with cash—just the services they need to stay independent and continue working. And were a person to need Medicaid and become eligible, 95 percent of the CLASS benefits would go to repay the Medicaid program for institutional care or 50 percent for home- and community-based services.

The CLASS plan also is important to employers, including small businesses. MetLife estimated the cost of lost productivity for employees who must take time off for family caregiving to be \$17 billion annually.² In a John Hancock survey, 50 percent of small business employers reported a negative impact on business because employees had to deal with long-term care issues and 60 percent believe their employees are concerned about the ability to afford long-term care.³ A newly-released study found that employees who are caring for an older relative are more likely to report health problems like depression, diabetes, hypertension or heart disease, costing employers an estimated average additional health care cost of 8 percent per year, or \$13.4 billion annually.⁴

CLASS can help these employed family caregivers hire needed help for those for whom they are responsible, easing stress and reducing the caregivers' own health problems, reducing the cost of their employer-sponsored health care.

How did CLASS come to be?

Political veterans of health policy remember that the bipartisan Pepper Commission a generation ago concluded that long-term care was an insurable set of circumstances and that addressing it should be a priority.

Groups representing younger people with disabilities worked for years with legislators of both parties on legislation to provide an alternative to Medicaid coverage of long-term services and supports. The first version of CLASS was introduced in 2005 with bipartisan sponsorship.

LeadingAge's work on a new way of financing long-term services and supports beyond the current "give us more Medicaid money" began back in 2003 at a visit with Senator Max Baucus. He asked, "So, how do we pay for long-term care?"

We embarked on a two-year process of finding an effective answer to Senator Baucus' question. We convened a blue-ribbon panel of the best financial thinkers among our membership. After intensive study of an array of long-term care financing models, they issued a report recommending a voluntary, accessible

² MetLife and The National Alliance for Caregiving, *Cost Study on Productivity Losses to U.S. Businesses* (July 2006), *Impact of Unpaid Caregiving on Businesses*.

³ See: http://www.johnhancock.com/about/news_details.php?fn=july2109-text&yr=2009

⁴ MetLife, the University of Pittsburg, and the National Alliance for Caregiving (February 2010), *MetLife Study of Working Caregivers and Employer Health Care Costs*.

and affordable insurance program substantially along the lines of the CLASS program. With our board's approval, we joined forces with organizations which had already begun work on the CLASS legislation. Together with them, we made the case that health care reform would not be complete unless it addressed long-term care needs.

Ultimately CLASS was included in the Affordable Care Act. I thank the Energy and Commerce Committee for being the champions of CLASS and including it in the House version of the Affordable Care Act. I want to especially recognize the leadership of Congressman Dingell, who has demonstrated a longstanding passion on this issue and of Congressman Pallone for his strong belief in and commitment to CLASS.

What are the unknowns about CLASS?

The biggest question is that no one can be sure how many people will sign up the day it is offered and how rapidly the pool will grow based on how popular it will become based on public perception of benefit and protection.

There seems to be a tipping point of the percentage of the population that has faced these issues personally that makes a program like CLASS acceptable. America may be there, if polls and focus groups are reflective indication. A Kaiser Family Foundation poll released February 24, 2011, indicates, "If the public could pick and choose, 83 percent would institute the new voluntary long-term care insurance program known as the CLASS Act..."

So, plan design, communication and public education now are critical to encourage working people— young and old—to sign up for the program. We fully support the flexibility the ACA gives the Secretary of Health and Human Services to work with the public and stakeholders to initiate the CLASS program in a manner that allows it to both serve the purpose and be sustainable, without federal tax dollars.

What protections does the Affordable Care Act provide for CLASS?

We fully support the numerous mechanisms included in CLASS to ensure the program's integrity, including:

- The CMS Actuary, who is required annually to certify "that the techniques and methodologies used [in developing premiums that will maintain required 75 year solvency] are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable,"
- The Secretary of HHS, who is required to ensure "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," and has both the authority and duty to adjust benefits and premiums to do so,
- The Secretary of the Treasury, who is responsible for managing the trust fund and authorizing payments,

- The Board of Trustees, including two public members (one of each party), which is charged with annually reporting to the Congress 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; reporting immediately to the Congress whenever it believes that the amount of the CLASS Independence Fund is not actuarially sound; and reviewing the management of the CLASS Independence Fund and recommending changes in such policies, including necessary changes in the provisions of law.
- The Secretary of HHS, the Advisory Council, the CMS Actuary, and the CLASS Fund Trustees all have an on-going duty to assure that premiums are set to maintain long-range solvency, to maintain sufficient reserves to pay claims, and to make program adjustments as needed.
- The law requires extensive close monitoring and public reporting, and actions to correct problems before a crisis. The Board of Trustees has authority under the law to recommend congressional action that could include adjustments in monthly premiums or a temporary moratorium on new enrollments if the Board determines that enrollment trends and expected future benefit claims on the CLASS Independence Fund are not actuarially sound, if the Secretary has not already effectively responded.

Will the CLASS plan benefits be generous enough to provide meaningful help?

The CLASS plan is intended to pay a foundational level of benefits. It's important to understand that CLASS benefits continue as long as a plan participant's need continues—this could be for just six months or for a lifetime.

That is critically important for the younger working person who incurs a lifelong disabling condition and for the twenty percent of people turning age 65 who researchers find will need long term services and supports for five or more years.

Second, not everyone who needs long-term services and supports requires nursing home care, the most expensive kind of care setting. CLASS does not have the institutional bias in favor of nursing home care that Medicaid and many private insurance plans have. With the CLASS cash benefit, individuals and their families could choose lower-cost services such as personal care assistants, adult day services, or coverage under a PACE program. We have seen this approach succeed in the Cash and Counseling program.

CLASS fills a critical need and also creates a framework for a public/private partnership, with private long-term care insurance (for those for whom it is appropriate) supplementing a broad-based floor of protection.

Conclusion

The CLASS plan fills a serious and growing gap in the resources available to individuals and families to protect against the substantial cost of long-term services and supports. The need for this program has been forecast for over a generation. CLASS developed on a bipartisan basis with the support and cooperation of a multitude of stakeholders over a period of years that pre-dated the Affordable Care Act.

Numerous surveys and focus groups have found that many Americans do realize that total long-term supports and services are not fully covered. The discussions around the implementation of CLASS, including this hearing, will further increase public awareness of the need for effective planning and personal responsibility.

So, those of us passionate about it believe that our next great step and responsibility is to educate the American public on a need that many already know they have. Those of us who worked to bring about the CLASS program's enactment remain committed to the public education and other efforts that will be essential to the program's success.

Certainly there are risks to any change or new initiative. In the case of the CLASS program, we believe the risks are small relative to the great good that can be achieved. And the risk of the status quo is predictable, unacceptable, and catastrophic.

We thank the subcommittee for your interest in CLASS and we urge your support for its continued implementation.

Mr.PITTS. The chair thanks the gentleman and recognizes Mr. Young for 5 minutes.

STATEMENT OF ANTHONY YOUNG

Mr.YOUNG. Good morning, Chairman Pitts, Ranking Member Pallone and members of the Health Subcommittee. I am Tony Young, as you know, a Senior Public Policy Strategist with NISH. I work in a program called the AbilityOne program. We assist people with very significant disabilities and blindness to obtain jobs through Federal contracts. In FY 2009, the AbilityOne program helped over 47,000 people who are blind or have severe disabilities obtain employment.

The national voluntary CLASS program could help individuals and their families manage the impact when a sudden, unexpected event results in a lifelong need for assistance with basic human functions. Such an event can happen to anyone at any time and most who learn they need long-term services and supports have few options for financing that care. Many try to rely on their own resources or on help from family members for their care. However, unless they are extremely wealthy or they have very good, dedicated family support, they will not be prepared for the financial and emotional costs. That is why I am here today. My experience demonstrates the need of a national voluntary CLASS program.

I was 18 when I acquired my disability while body surfing. In high school, I was very active in sports, lettering in football and track, even selected Second Team All-Met Right Guard for the Washington Post. There were social clubs, school activities, summer jobs, dating, dancing, pool parties and preparing for college. It all ended abruptly and without warning on a hot summer day in August 1970. I went from near-total independence to near-total dependence in the crunch of a C4 vertebra.

After 10 months of medical and physical rehabilitation, I was sent home to live with my parents. There was no information available on how or where to get help. There were long months when my parents managed all of my personal assistance while working full time. We were fortunate enough to have good health insurance at that time so the medical bills did not bankrupt the family. This continued for nearly 3 years.

Slowly we discovered that some services were available. They came from a local visiting nurse service. I received home visits for personal care, physical and occupational therapy and medical monitoring. These services helped to relieve some of the personal care burdens on my family but it soon became apparent that I would need more flexibility and more responsive supports as they aged.

There are three things I would like you to keep in mind during my testimony today. First, I am one of the fortunate few. I was not forced to go into a nursing home. I was not forced to become impoverished in order to be eligible for Medicaid. I was able to obtain the long-term supports and services I needed. [Inaudible.] prior to the accident. Had someone like me had CLASS prior to such an unexpected life-changing accident, my family and I would have some security, that the personal assistance and long-term supports I needed would be available to us. I want the opportunity for my wife and eventually my son to plan for a future disability.

Three: Keep in mind that a person born with a disability, one who acquires a disability in adult life or develops disabilities in later life are not automatically triggered into the CLASS benefits. In order to trigger benefits, an individual must meet a threshold of functional limitations. There are different thresholds and different benefit levels depending on the level of limitations. Some individuals will choose not to trigger the benefits at all.

I know that some of you have concerns over the solvency of the program. Believe me, I want and need CLASS to be solvent too. I want it for my family and for millions of other Americans to have a sustainable program for the future. As we have already heard today, the HHS Secretary has authority, indeed, the responsibility, to ensure that the program is solvent for 75 years. The Secretary has announced important steps to ensure the sustainability of the CLASS program by addressing earnings minimum levels, adjusting premium levels to account for inflation and strengthen the fraud, waste and abuse loopholes that might threaten the program. These reforms are important to the program and I believe that the Secretary must be given the time to make these and other changes to strengthen the CLASS program. Thank you.

[The prepared statement of Mr. Young follows:]

**Testimony of Anthony J. “Tony” Young
to the Subcommittee on Health of the
Committee on Energy and Commerce
hearing on
“The Implementation and
Sustainability of the New, Government-
Administered Community Living
Assistance Services and Supports
(CLASS) Program.” Thursday, March
17, 2011, 9:30 am
2322 Rayburn House Office Building**

Good morning, Chairman Pitts, Ranking Member Pallone, and Members of the Health Subcommittee. Thank you for this opportunity to speak with you. My story shows the value of having a Community Living Assistance Services and Supports (CLASS) Program and how such a national voluntary program can help individuals and their families manage the impact when a sudden, unexpected event results in a life-long need for assistance with basic human functions.

Such an event can happen to anyone—at any time—and most individuals who need long-term services and supports have few feasible options for financing their care. Many typically rely on their own resources or on help from family members for the care they need. However, unless you are extremely wealthy with extensive savings, you will not be prepared for the financial and emotional costs to you and your family. That is why I am here today. My own experience demonstrates the need of the CLASS plan.

I am Tony Young, Senior Public Policy Strategist with NISH. NISH is one of the two Central Nonprofit Agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled, an independent federal agency, to help the Committee to administer the AbilityOne Program. The AbilityOne Program's mission is to provide employment opportunities for people who are blind or have severe disabilities in the manufacture and delivery of products and services to the federal government. AbilityOne helps thousands of people who are blind or have severe disabilities find employment. The program coordinates its activities with nonprofit organizations across the country to employ these individuals and provide goods and services to the federal government at a fair market price.

I work a fulltime job and volunteer in my community. I am married to a fulltime working spouse. We have one six year old child. We pay taxes, a home mortgage, and utilities, save money to send our son to college, and put away some money to live on if we have a chance to retire. At first glance, our life appears to be the same as millions of other taxpaying Americans. As you will read later in my testimony, a deeper look tells a much different story.

The CLASS Plan Offers a Pathway for All to Contribute and Plan for Their Future

There are three things I would like you to keep in mind during my testimony today.

I am one of the fortunate few, perhaps even rare example. I was not forced to live in a nursing home nor become impoverished in order to be eligible for Medicaid obtain the vital long-term supports and services I need. What makes my circumstance different than thousands of other individuals with significant disabilities? I am one of the .05% (1/2 of one percent) of individuals with a significant disability who received SSDI/SSI who now are able to be gainfully employed and no longer need dependent upon public income, Medicaid, or Medicare programs. Now I am a productive taxpayer, and I am not adding to the cost of Federal and state expenditures.

The CLASS program is a huge step forward for the nation. It offers a solution to for all of us to help finance the challenges that lie ahead in preparing for an unexpected event. I wish the CLASS program had been available to me as an 18 year-old student and to my family prior to my accident. Had someone like me had CLASS coverage prior to such an unexpected and life-changing accident, my family and I would have had some security that the personal assistance and long-term supports I needed would be available to me. I want the opportunity for my wife—and eventually my son—to plan for a future disability.

Keep in mind that when a person is born with a disability, acquires one in young adult through an accident, or develops disabilities in their later life, that the person does not automatically trigger CLASS benefits. In order trigger benefits, an individual must meet a threshold of functional limitations. There are different thresholds and different benefit levels depending upon the level of limitations. Some individuals will choose not to trigger their benefits at that time. Also, importantly, individuals must continue to pay premiums while receiving benefits.

I know that some of you have concerns over the solvency of the program. Believe me, I want and need CLASS to be solvent, too. I want for my family and for millions of other Americans to have a sustainable program for their future. As we have heard today, the HHS Secretary has the authority—indeed, the responsibility—to ensure that the program is solvent for 75 years. Secretary Sebelius has announced important steps to ensure the sustainability of the CLASS program by addressing earnings minimum levels, adjusting premium levels to account for inflation, and strengthening fraud, abuse, and waste loopholes that might threaten the program. These reforms are important to the program and I believe that the Secretary must be given the time to make these and other changes to strengthen the CLASS program.

- CLASS is a national program to help insure coverage for future disability.
- It is financed through private contributions. No taxpayer dollars are involved in the contributions or benefits of CLASS. That is important to all of us. That we finally have a program that is not publically financed and that is accessible to all working individuals to take personal responsibility to plan for and provide those vital long-term services when life throws us an unexpected curve.
- Students, young people, and young adults now know disability is a natural part of life—kids see in it schools, parents know child either at birth or laterworking adults know the cost of taking on financial and emotional costs of caretaking without financial resources.
- There would be no “medical underwriting” feature to the program; different from long-term care insurance. This is important so that individuals can not be excluded based on pre-existing health issues or disabilities.

- Cash benefits are available with no life-time caps, unlike benefits from long-term care insurance. The flexibility of cash benefit to use as is needed to purchase just the help that is needed is invaluable
- I believe that the CLASS program will provide new opportunities for jobs—paid assistance in the private sector or paid home modifications.
- I think the ease of enrollment—voluntary employer enrollment or alternate options—and the efforts that HHS is making directly with employers to develop a simple, trouble-free process will be very inviting to individuals of all ages and employers

Background

I require substantial personal services to maintain my daily work and family activities. Every morning an assistant helps me shower, shave, toilet, eat breakfast, dress, and prepare for work. Two evenings a week and on weekend mornings an assistant helps me with bowel and bladder care. This minimal platform of 18 hours per week of paid supports costs more than \$17,000 annually. This money, including the amounts withheld for Federal and State income taxes, FICA taxes, unemployment insurance, and other fees comes from our family budget.

That is not the only expense the family incurs to support me. That initial \$17,000 helps with the Activities of Daily Living—the ADLs. Many other functions need support assistance. A family of three must go food shopping; do laundry; clean house; take out trash; recycle paper, glass, plastic; pay bills; and other routine activities. There is also the evening assistance I need five evenings when we cut down our expenses by not paying for assistance. My six year old helps by doing his chores, but nearly all of these activities must be done by my wife. Even though it can have a financial, physical, and emotional struggle, the process works much of the time.

Life has not always worked this smoothly. I was 18 when I sustained my disability while body surfing. In high school I was very active in sports, lettering in football and track; I was selected as Second Team All-Met Right Guard in 1969. There were social clubs, school activities, summer jobs, dating, dances, pool parties, and preparing for college. It all ended abruptly and without warning on a hot summer day in August. I went from near total independence to near total dependence in the crunch of a C-4 vertebra.

After ten months of medical and physical rehabilitation I was sent home to live with my parents. There was no information available on how or where to get help. There were long months when my parents managed all of my personal care needs while working fulltime. We were fortunate to have good employer health insurance at that time; so medical bills did not bankrupt the family. This continued for nearly three years.

Slowly we discovered that some services were available. They came from a local visiting nurse service. I received home visits for personal care, physical and occupational therapy, and medical monitoring. These services helped to relieve some of the personal care needs of my parents, but it soon became apparent that I needed more flexible and responsive supports.

I wanted to work. I had always worked since I was old enough to responsibly use a lawn mower and other tools. At age 23, I was immobile from the shoulders down with no skills beyond a high school diploma, a senior lifesaver certificate, and a pool manager's license. This skill set was not in high demand by employers at that time, or any time. It was absolutely necessary that I obtain a college degree if I was to work. Fortunately, my Virginia Department of Rehabilitation Services counselor agreed.

When I began scheduling college courses, I encountered problems between the home health system and the higher education system. College courses begin early. Laboratory and library time meets on variable timeframes. This is before the Internet; no online study. Note takers and typists had to be scheduled; papers had to be prepared on a typewriter. The nurses, aides, and therapists all had their own schedules. Generally, these times were not complimentary.

Closing

I am testifying today not on my own behalf but for individuals who are likely to develop disabilities in the future. My experience leads me to strongly believe that the CLASS program is a long awaited opportunity for all Americans to share in the responsibility for preparing for their future long-term services and supports. Unlike forty years ago when my accident occurred, I want Americans to know they have a way to gain some financial and emotional security for an unknown future. Believe me; life is full of unexpected turns.

I urge Congress to allow the Secretary to move forward in her efforts to implement and strengthen the CLASS program. We need it now. I am available to answer any questions you may have.

Mr.PITTS. The chair thanks the gentleman, and we will start questioning. I yield myself 5 minutes for questioning.

Dr. Antos, during Congressional debate on health care reform, we heard bipartisan concerns with the structure of the CLASS program. We have repeatedly heard Senator Conrad's quotes, regularly calling the program a Ponzi scheme. Could you please explain the budget gimmick that was used to claim program savings, even though by most accounts this program will significantly add to the Nation's deficit?

Mr.ANTOS. Thank you, Mr. Chairman. Well, I think it is a time-honored tradition in Congress to use this particular technique, so I wouldn't want to call it a gimmick. But the fact is that premiums will be collected for the first 5 years before any benefits are paid, and there is a 5-year vesting period so that that means even—and I wasn't clear when the program will begin but suppose it starts next year—even after 2017 or 2018, there will still be premiums coming in from an individual before there is any possibility that they could draw down benefits. This idea of collecting the money in advance and putting it in a trust fund is a well-known political concept but it has nothing to do with budget rules. Trust funds are a separate kind of accounting mechanism. The budget follows essentially cash in and cash out. And so in the normal course of events with the government, while this trust fund will accumulate balances, that money is immediately disbursed to finance the other operations of the government, and eventually when money needs to be drawn on that trust fund, the way it works is that the Treasury has to go to its usual sources to find the money, which is generally deficit financing, generally borrowing money from Americans and others who buy government securities.

Mr.PITTS. Thank you.

Mr. Schmitz, one of the challenges of long-term care insurance and health insurance is adverse selection, which occurs when insurance benefits attract a larger number of high-risk participants. The American Academy of Actuaries' analysis noted that the CLASS program in its current form has the potential for adverse selection. Could you please speak to the potential magnitude of that selection and how such an effect could put the viability of the entire CLASS program at risk?

Mr.SCHMITZ. Sure. The adverse selection that is potential in the CLASS program as it is designed is driven by a number of things. It is going to be a voluntary program on a guaranteed-issue basis, and to make a voluntary program work, there needs to be risk classification. You need to adhere to actuarial risk classification principles, and the way it is currently designed, the risk classification principles will not be followed because you will have unhealthy individuals who will be more likely to join the program. So you end up with a situation not just because of initial selection but also throughout the program as healthy individuals, they may be the ones who decide to leave and you end up with a group that—the premiums end up rising and you end up with a rate spiral. The other things that are important to look at with respect to this, in order to try to make this program work, there is going to have to be significant marketing of the program. That is going to be a crit-

ical piece in order to get the participation from healthy individuals that it is looking for.

There also needs to be—there is a concern in terms of adverse selection as to what is available in the private long-term care insurance market, because right now, the way CLASS is designed, there is really not a good way to supplement the way it is structured. And so what is going to happen is, the private market is going to end up competing with CLASS and so if there is an individual who is healthy, who is able to get underwritten in the private market, is perhaps married, the private market offers significant marital discounts, that individual is going to find a better deal in the private market. And so what you will end up with is the more unhealthy individuals will end up in CLASS and so there will be a problem with adverse selection from that perspective.

Mr.PITTS. The chair thanks the gentleman and yields 5 minutes to Ranking Member Pallone for questions.

Mr.PALLONE. Thank you, Mr. Chairman.

I wanted to start with Mr. Minnix. Basically you pointed out that there are a lot of things that people pay out of pocket are not covered right now. I could give you just from being a caretaker to my parents that that is certainly true. So explain to us why we need CLASS. In other words, what is wrong with Medicare? What are the limitations with Medicaid? What are the problems with private long-term insurance that even if none of these alone can fully address the long-term needs of the elderly and disabled, and we know that in terms of allowing them to stay at home or in the community—what is wrong with the sort of mix-and-match approach to the problem, which is I think essentially what we are doing with CLASS?

Mr.MINNIX. Sure. Well, Medicare covers acute and some post-acute needs on a limited basis until somebody is to the point, say, of they have rehabilitated to their maximum, and Medicare is a very good program in that regard. Then there are—but Medicare does not cover someone to come in inexpensively to help you get bathed and dressed or someone to monitor your medications if you are living in your daughter's home. Nobody pays for that.

Mr.PALLONE. Exactly.

Mr.MINNIX. If you are fortunate enough to survive underwriting of private long-term care insurance and can afford it, oK, you have got some coverage there. And then there is Medicaid. We have a colleague at our work whose mother moved in with him. She would have been an ideal CLASS kind of person but obviously CLASS wasn't in existence. The woman died. A week later she was notified that she was number 176 on the waiting list for a Medicaid-eligible home and community-based services in her community. Well, that is just crazy. So what do regular people do? They patch it together. They sweat it out. They pool their money if they can. And CLASS comes in beautifully to help look at that need.

One of the issues we found in our studies is that young people have seen this in their own families, and one of the things we think is going to help in the marketplace is younger people because what they have seen in their families may well be willing to say, you know what, I have seen it in my own family, I am willing to pay

premiums. So we are excited about the opportunity of educating people to say I want to get in this early.

Mr.PALLONE. I want to ask another question. Basically in terms of who it targets, the funding mechanism, the benefit package, the things that you think we need to do, do you think the program is designed to achieve the goals and deal with some of these problems that you have spoken about?

Mr.MINNIX. I think the law provides a very good framework, and now what we have to do is see a final plan, and I think we have heard Assistant Secretary Greenlee and Secretary Sebelius say, and we support that. It ought to be a sound plan that it looks like a lot of people will buy into. I am confident that both of those things will happen.

Mr.PALLONE. Now, let me ask Mr. Young, because you are talking from personal experience, would you describe how the program could benefit your family, your wife, who works full time, I believe? In other words, you talked about some of the problems that you have had and difficulties others had. Tell us how CLASS once it goes into effect is going to help, particularly with caregivers, both the patient, I guess, as well as the caregivers.

Mr.YOUNG. The burden, the cost, I should say, of long-term services and supports goes well beyond what we pay out of pocket. I pay \$17,000 a year now for about 18 hours of services in the morning and a couple of hours in the evening. All the rest of the support that I need, whether it is grocery shopping or laundry or preparing meals or, you know, hanging out with my son, any of those activities that makes a family go really fall on my wife, and for our purposes, a little extra would give us an opportunity to bring in that much more assistance that would ease her burden, give her some rest every once in a while. With a six-year-old child and a C4 quadriplegic husband and a full-time job, she doesn't get much downtime, and even a little bit more would be very helpful.

Mr.PALLONE. Thank you. Thank you, Mr. Chairman.

Mr.PITTS. The chair thanks the gentleman and yields 5 minutes to Vice Chairman Dr. Burgess.

Mr.BURGESS. Thank you, Mr. Chairman.

Dr. Antos, you described, I think you called it a death spiral of increasing premiums and decreasing benefits. What happens if you move too far out along that timeline? Will the Secretary have any ability to modify the program as you understand it if that scenario develops?

Mr.ANTOS. Well, Dr. Burgess, I think the prudent thing would be for the Secretary if she has authority to make the changes now. I think there is considerable doubt about how much authority she does have to make the changes, and many of those changes would move in a direction that I believe folks who are looking forward to benefits from this program would find very negative, very unfavorable to them. But the fact is that you have to follow through, they have to follow through on what they said which is they won't start the program unless it is fiscally sound, and that is not just a question of solvency in a trust fund. It is also a question of the impact on our deficit. There is no requirement in the law that says the Secretary has to worry about the deficit, just the trust fund.

Mr.BURGESS. Correct, but when we say if the program is started. My understanding was, the program has started and the passage of the Patient Protection and Affordable Care Act was predicated on the money coming in from the premiums paid into the CLASS Act.

Mr.ANTOS. That is right, but since the regulation isn't coming out until sometime later, I am not sure when, we don't really know all the details of how things will get started. With that said, I believe that the basic structure of the program is so fundamentally flawed that the Secretary I believe does not have the authority to make such dramatic changes and it will have to come back here.

Mr.BURGESS. When we had the initial exposure to the CLASS Act concept when Mr. Pallone brought it late that night when we were marking up H.R. 3200, I seem to recall at that time the discussion was the premium was set at \$50 a month and the benefit was \$50 a day. I get the impression it has morphed a little bit since then. Can you give us further insight as to what the likely premium is going to be?

Mr.ANTOS. Well, there is nothing in the law that says what the premium must be. What is specified is what the minimum benefit must be, \$50 a day. Beyond that, it is a matter of actuarial science and guesswork, I would say, and the—

Mr.BURGESS. Well, then I guess we better ask our actuary.

Mr.ANTOS. I would, but I think the key point is that there is a huge difference of opinion between CBO and the Chief Actuary at CMS, which tells you how fundamentally uncertain this whole thing is.

Mr.BURGESS. And I think that is the point I was actually trying to make, but let us do hear from our actuary. You look like you wanted to say something.

Mr.SCHMITZ. Sure. I think that the current design is structured such that I think the premiums are going to be difficult to price with the current design because of the lack of risk classification and the actually rich type of benefits. This plan is a cash plan, and everybody likes cash. Cash is easy, cash is flexible, but cash is a very expensive way to pay long-term care insurance benefits. People claim earlier, they claim more often. You end up with what the private industry calls ADL creep in that, in order to qualify for benefits, you need assistance with your activities of daily living. Well, people will start to move towards claiming that earlier under a cash plan. You also have lifetime benefits in this plan, and lifetime benefits, there is significant adverse selection that the industry is well aware of that they experience on lifetime benefit plans. So you have these very expensive features in a voluntary guaranteed-issue program that put all together, you know, with what is available in the competitive market, needs to all be taken into account when pricing this program, and it is a very difficult task the way the structure is currently designed.

Mr.BURGESS. Is it possible that the premium could increase under the CLASS as written?

Mr.SCHMITZ. I think it could. I think there is a risk of not pricing this right away. It is so important to take in all these considerations right away because if you don't, we are going to start in the hole, and if we start in the hole, the thing is not going to—you are

not going to be able to—to dig out is going to be almost impossible. It is going to be very difficult to actually right the ship and either increase premiums or lower benefits.

Mr.BURGESS. Could you see premium increases by as much as 60 percent?

Mr.SCHMITZ. Well, because of all the issues going on in this program, it is unknown what the premium increases might be.

Mr.BURGESS. Thank you. I yield back, Mr. Chairman.

Mr.PITTS. The chair thanks the gentleman and recognizes the ranking member emeritus, Mr. Dingell, for 5 minutes for questioning.

Mr.DINGELL. Mr. Chairman, I thank you for your courtesy.

Mr. Minnix, I want to thank you first for your kind words about me and my colleagues who have worked on this matter. I want you to know I intend to continue working with the Administration and with other stakeholders to ensure that the program is successful. Mr. Minnix, you note in your testimony that the CLASS Act will be of assistance to employers, particularly small businesses. Your testimony points out that MetLife estimated the cost of lost productivity for employees to be \$17 billion annually. I gather this is in good part due to employees having to take time off for care of older relatives. Am I correct in that?

Mr.MINNIX. Right.

Mr.DINGELL. Now, on the other hand, Mr. Warshawsky, in your testimony you note that the vast majority of employers do not subsidize or even offer long-term care insurance partly due to the fact that they do not see offering such insurance as providing a significant business advantage. Is that correct?

Mr.WARSHAWSKY. That is correct.

Mr.DINGELL. Thank you. Now, you both discussed the impacts of CLASS Act for employers, and I would like you both, if you please, to respond to the following questions, and if you please again to answer yes or no. If you answer no, would you please for the record submit a detailed explanation to give us a more full picture of your concerns.

Now, Mr. Minnix and Mr. Warshawsky, I have too often heard from adult constituents about financial difficulties of trying to care for their older relatives, mostly their parents, while trying to raise children of their own. Is it true that the CLASS Act allows payments to adult caregivers that would help offset the cost of the care that they are providing? Yes or no.

Mr.WARSHAWSKY. Yes.

Mr.MINNIX. Yes.

Mr.DINGELL. Thank you, gentlemen. Mr. Minnix and Mr. Warshawsky again, is it true that the availability of CLASS Act would allow adult caregivers to hire home care assistants to help in the daily care of their elder relatives? Yes or no.

Mr.MINNIX. Correct. Yes.

Mr.DINGELL. Mr. Warshawsky?

Mr.WARSHAWSKY. Yes.

Mr.DINGELL. Now, Mr. Minnix and Mr. Warshawsky, by hiring these home care assistants to help with the daily care of elder relatives, wouldn't this help to reduce caregiver absenteeism in the workplace? Yes or no.

Mr. MINNIX. Yes.

Mr. WARSHAWSKY. Not to a significant amount.

Mr. DINGELL. Now, Mr. Minnix and Mr. Warshawsky again, in your opinion then, if the CLASS Act will help to relieve the financial burden for adult caregivers and also reduce caregiver absenteeism from the workplace, do you believe that it would help the employers to see in their workforce greater productivity? Yes or no.

Mr. MINNIX. Yes.

Mr. WARSHAWSKY. No.

Mr. DINGELL. No?

Mr. WARSHAWSKY. No.

Mr. DINGELL. OK. Now, Mr. Minnix and Mr. Warshawsky, is it not true that a more productive workforce would be a business advantage for employers? Yes or no.

Mr. MINNIX. Yes.

Mr. WARSHAWSKY. Yes.

Mr. DINGELL. Now, I would like to look at this. We have looked at the costs of this to government and the possibility of failures but we pay for health care for our people out of a lot of different pockets. On Medicaid, we pay for health care particularly in the area of long-term care, and this is an enormous cost for the taxpayers. In that particular program, there is virtually no contribution made by the person who receives the help from the Federal-State combined program. But with the program we are talking about here, we would find that the CLASS Act would allow persons and in fact encourage them to pay into the program. Would this not then ease somewhat the burden on Medicaid, which pays a huge amount of cost and which largely pays costs for institutional care as opposed to home care? Isn't this going to help somewhat with regard to the cost of Medicaid, which is breaking State budgets, causing huge budget difficulties to the Federal Government?

Mr. WARSHAWSKY. Congressman, as I indicated in my written testimony, it is very unlikely that lower or even moderate-income workers will purchase long-term care insurance, because of the availability of Medicaid. There have been many very rigorous, fine studies that have been done on this subject, and they indicate uniformly that that—

Mr. DINGELL. So you don't think that would be a help?

Mr. WARSHAWSKY. Extremely minimal, yes.

Mr. DINGELL. Mr. Minnix, yes or no?

Mr. MINNIX. I have the opposite view.

Mr. DINGELL. Thank you.

Mr. Chairman, you have been courteous. Thank you.

Mr. PITTS. The chair thanks the gentleman and recognizes Dr. Cassidy for 5 minutes for questioning.

Mr. CASSIDY. To all of you whom I question, I apologize. I had to step out of the room, so if it is a repeat question, I am sorry.

Mr. Schmitz, folks on the other side of the aisle kept on saying how this a solution but I think what I am hearing is that if by statute they have to make it work, meaning they have to increase the premiums so that it is actuarially sound, that the way you write how—I think I have a quote here—“based upon this analysis, it was concluded that the program would not be sustainable in the long term and it is unlikely to cover more than a small proportion

of the intended population,” not much of a solution. That said, it also seems as if it would cover even a smaller portion if there is adverse selection, and I think the Assistant Secretary, her absence of comment upon my question kind of affirmed my answer that there would be a great potential for that adverse selection. Can we imagine what would be the uptake of a product, an insurance product that the monthly premiums were \$240 for a benefit that would be accrued when you are 30 years older?

Mr.SCHMITZ. I think the uptake, it is going to really depend—the way it is currently structured right now and those higher premium levels will likely have very low participation. There needs to be—the structure of the program as it is right now on a guaranteed-issue voluntary basis is going to be very expensive.

Mr.CASSIDY. Now, when you say “very expensive,” it could be \$3,000, \$4,000 a year, correct?

Mr.SCHMITZ. I mean, you end up with a situation trying to deal with the premium spiral in that, well, the more you raise premiums, the healthy individuals will keep leaving and so then you have to keep raising premiums and so you get to a point where eventually you are just going to have prepaid care. And so without having risk classification in the program that is going to be adequate to get the participation from healthy individuals that you need, the premium rate spiral potentially will make it unsustainable in the long term.

Mr.CASSIDY. Mr. Warshawsky and Mr. Minnix, Mr. Dingell asked you all a question just now and you said no, you didn’t think it would have much an impact. I think it was about the ability of this payment to offset Medicaid cost. Was that the question that you all differed on?

Mr.WARSHAWSKY. Yes.

Mr.CASSIDY. Now, you quoted data. You said there are multiple studies showing it will not have an impact. Now, Mr. Minnix, you disagree with Mr. Warshawsky. Do you similarly have data or is that just a feeling that you have?

Mr.MINNIX. No, we are going on what the CBO said in their scoring. We also did a—

Mr.CASSIDY. Now, what specifically did the CBO say that you would base that on? Because what I was reading is that it is going to be actuarially unsound in a decade or so.

Mr.MINNIX. What the CBO data said—and I can get the specific figure but I think it is a matter of public record—is beginning the sixth or seventh year out it begins to show Medicaid savings.

Mr.CASSIDY. Now, the \$2 billion Medicaid savings that Mr. Waxman quoted earlier, I tried to look up the number for our national debt for long-term care and Medicaid program. It is huge. And Deloitte, they did an analysis and they were saying that it is going to be, like, 35 percent—I don’t have the article in front of me—of New York’s budget. So \$2 billion over the entire Nation, well, that is a lot of money in absolute terms. As a percent, it doesn’t sound like very much to me.

Mr.MINNIX. Well, you can take it from a conservative standpoint and say—

Mr.CASSIDY. I like that.

Mr. MINNIX [continuing]. That if there is minimal participation, that is all it saves. A study we commissioned independently that I would glad to share with you says that if everyone eligible participated in a similar kind of program—you have to remember, there are different assumptions.

Mr. CASSIDY. Now, it would have to be mandated, right? When you say “everyone”——

Mr. MINNIX. I am talking about the political mandate. I am talking about——everybody is talking theory here.

Mr. CASSIDY. Well, no, no, because actually the thing I am after is, Mr. Warshawsky is quoting data and I think Dr. Antos——

Mr. MINNIX. I am trying to respond. I have got data.

Mr. CASSIDY. But they say 2 to 4 percent. Are you saying there would be 100 percent?

Mr. MINNIX. I am saying that we commissioned a study that shows that if there were 100 percent of the participation that the Medicaid savings if a plan like this were in place today, Medicaid for long-term care would be——

Mr. CASSIDY. Sorry. I am almost out of time.

Dr. Antos——

Mr. MINNIX. A \$50 billion savings.

Mr. CASSIDY. Dr. Antos, do you think it is reasonable based upon any empiric experience that we would have 100 percent uptake in a voluntary program like this?

Mr. ANTOS. None whatsoever.

Mr. MINNIX. I don't think that either.

Mr. CASSIDY. But that is what your study shows. And what do you think would be more likely, Dr. Antos?

Mr. ANTOS. Well, it is hard to argue with the people who have done the estimates so far, and they think that the take-up rate for the total population, not the employed population, will run 2 to 3-1/2 population.

Mr. CASSIDY. Thank you all very much.

Mr. MINNIX. We think it would be significantly more than that over time.

Mr. PITTS. The chair thanks the gentleman and recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes for questions.

Ms. SCHAKOWSKY. Well, first of all, after sitting here not through all the testimony but through this hearing and others like it, I have to question the intention of this hearing. Everyone on the other side of the aisle, on the Republican side of the aisle, has voted it seems like dozens of times to simply repeal the Affordable Care Act and the CLASS Act with it, so I think this is just another effort to try and set up a panel that aside from our two witnesses, Mr. Minnix and Mr. Young, to discredit this program.

I was on the President's Commission on Fiscal Responsibility and Reform, and I started that by saying, you know, it would be pretty easy to balance the budget. You put on your green eyeshade, you bring in the actuaries and a red pencil and you just cut, cut, cut. But that is not who we are as Americans, and today we are talking about a program that is designed to not cost one single dollar of taxpayer funding and we are finding out that, oh, hidden in there is going to be some sort of addition to the deficit reduction. Now,

I would be happy to sit down with actuaries and experts on all the research and design a real program if you don't like what is going on, but that is not what we are talking about. This is an effort to discredit a program that we think by and large, perhaps with some important improvements, could help people.

Now, I want to talk a little bit about money, Mr. Young. You used to be getting Federal support, right, SSDI?

Mr. YOUNG. Yes.

Ms. SCHAKOWSKY. But you aren't anymore?

Mr. YOUNG. Right.

Ms. SCHAKOWSKY. You are now working, paying taxes and contributing. I don't know how much you are reducing the deficit by with your income taxes but it is something. So creating a program—I guess my question is, how will this help people work as opposed to even have to get long-term care insurance or, according to the naysayers, be on the public dole?

Mr. YOUNG. Well, if you can't get out of bed in the morning and you can't get dressed and you can't have supports that work where, you know, if you need to go to the bathroom or have a drink of water, you can't work. That is the bottom line. If there are no supports available for basic bodily needs, nobody is going to be thinking about how to go to work or even being in the workforce because you are worried about basic survival.

Ms. SCHAKOWSKY. So you think that this kind of program available to persons with disabilities could actually make more people as taxpayers as opposed to tax eaters?

Mr. YOUNG. Right. Exactly. And the fact that it is lifelong, it doesn't disappear once you go to work and start earning some money like Medicaid supports do, is invaluable.

Ms. SCHAKOWSKY. Mr. Minnix, this notion of this tiny number of people that is projected to get this insurance I think first assumes that people would rather spend down into total poverty in order to get on Medicaid as opposed to take care of themselves, personal responsibility. But as you said, it will take an education program. Why do you think that there will be more than this miniscule number that they are projecting that would actually enroll in this program?

Mr. MINNIX. I have been serving people in this field for 38 years. I have seen a little bit of everything. And one of the things you see over and over again is, number one, families' willingness to bear responsibility for their loved ones, and secondly, they begin to run out of money doing it, and the sandwich generation in the middle begins to say do I help my children or grandchildren or do I pay for elderly relatives, and there is no program there to do it. And the work we have done with focus groups and polls and other things say the American public is ready to look at this issue. We have talked to younger people, older people and middle-aged people and they say, yes, that is beginning to make sense and I would be willing to pay. So I am looking forward to the day Assistant Secretary Greenlee rolls out this plan and we see who salutes, and I am betting it is going to be more than 2 or 3 percent of the people.

Ms. SCHAKOWSKY. But you are not just waiting, I would hope.

Mr. MINNIX. No.

Ms.SCHAKOWSKY. Can you talk to us about what kind of efforts you see to educate people and to make sure that they know about it, etc.?

Mr.MINNIX. Well, the Advance CLASS Board, which is made up of some leaders of the 270 coalition, we have set up shop. We have got a Web site. We are beginning to get the word out, and just things like this will be a huge education effort so people can talk about it and begin to plan for it. We are determined to get people to plan for it.

Ms.SCHAKOWSKY. Is the disability community going to do that as well, get the word out?

Mr.YOUNG. We are together in this.

Mr.PITTS. The chair thanks the gentlelady. The gentlelady's time is expired. The chair recognizes the gentleman from Georgia, Dr. Gingrey, for 5 minutes of questions.

Mr.GINGREY. Mr. Chairman, thank you, and I am going to read, sort of in response to my colleague from Illinois, from the debt and deficit commission, the National Commission on Fiscal Responsibility and Reform, the official title of their report in December of 2010 of which Ms. Schakowsky was a member, so I am sure she knows exactly what it is in here, but here is what they say in regard to the CLASS Act.

Ms.SCHAKOWSKY. And you know it wasn't adopted.

Mr.GINGREY. Reclaiming my time. "The Community Living Assistance Services and Support, the CLASS Act, established a voluntary long-term care insurance program enacted as part of the Affordable Care Act," Obamacare. "The program attempts to address an important public policy concern, the need for non-institutional long-term care. But it is viewed by many experts as financially unsound. The program's earliest beneficiaries will pay modest premiums for only a few years and receive benefits many times larger so that sustaining the system over time will require increasing premiums and reducing benefits to the point the program is neither appealing to potential customers nor able to accomplish its stated function. Absent reform, the program is therefore likely to require large general revenue transfers or else collapse under its own weight. The commission advises the CLASS Act be reformed in a way that makes it credibly sustainable over the long term. To the extent this is not possible, we advise it to be repealed. Technically repealing the CLASS Act will increase the deficit over the next decade because the program's premiums are collected up front and its benefits are not paid out for 5 years. To address this, we would replace the deficit reduction on paper from the CLASS Act with real options that truly save the Federal Government money and put it on a more sustainable path."

Let me ask Mr. Antos, have you seen the CRS memo that I submitted earlier for the record when I was with the Secretary? Have you seen that? It states that the Secretary does not have the authority to change income eligibility.

Mr.ANTOS. Yes, I have looked at that. I am merely an economist, not a lawyer, so I am not qualified to really opine on this, but I believe that CRS has experts in the law who can make this judgment. If this is in fact the case, then it seems unlikely to me that this program can be put on an actuarially sound basis.

Mr.GINGREY. Well, then it is your opinion, Mr. Antos, I think I understand you correctly, that if the Secretary does not have the authority and the language in the law to make those necessary changes that the first witness said were absolutely essential to put it on a sustainable glide path, if we can't fix it, do you think that we should repeal it as the President's commission, of which Ms. Schakowsky was a member, recommended?

Mr.ANTOS. Well, I think we should deal with the problem. I think that is the problem with this law. It doesn't deal with the actual problem. Mr. Young is a great person who has somehow managed to survive our system. This CLASS Act really doesn't address it, and to have a program that is going to fail with certainty and going to make false promises that can't be kept is a disservice to disabled people.

Mr.GINGREY. And I thank you for that, and of course, that is my concern and that is why I bring up these points. In the minute that I have remaining, I would like, Mr. Schmitz, to ask you, under the law, any individual whose income does not exceed the poverty line and any individual who has not attained age 22, is actively employed and is a full-time student will pay a nominal premium beginning at \$5. What do you believe will happen to the program's sustainability if more low-income individuals enroll at the \$5 premium subsidy than it is actually projected in the bill?

Mr.SCHMITZ. If we end up having more people in the program at the \$5 subsidy, it is the other individuals who are going to have to subsidize them and their premium rates are necessarily going to be higher. It is going to be important to try to understand and estimate those numbers of how many people we will be subsidizing, and that is one of the challenges in pricing this plan is being able to predict that level of adverse selection. There is a lot of unknowns and a lot of assumptions that need to be nailed down in this plan that are pretty volatile to predict.

Mr.GINGREY. I wanted to pursue it further, Mr. Chairman. I see my time has expired, and of course, I yield back.

Mr.PITTS. The gentleman's time has expired. The chair thanks the gentleman.

This has been excellent testimony, an excellent panel. In conclusion, I would like to thank the witnesses, thank the members for participating in today's hearing. I remind members they have 10 business days to submit questions for the record. I would like to ask the witnesses to respond promptly to any questions that are given to you in writing. Members should submit their questions by the close of business on March 31st.

The subcommittee is now adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of Energy and Commerce Committee Chairman Fred Upton
Health Subcommittee Hearing on “Implementation and Sustainability of the New,
Government-Administered Community Living Assistance Services and Supports
(CLASS) Program**

(Remarks Prepared for Delivery)

Mr. Chairman, thank you for holding this hearing today. Next Wednesday marks the one-year anniversary since the President signed his health care reform legislation into law. Over the last year, we have heard from our constituents, industry stakeholders, and taxpayer advocates regarding the potential consequences of the health care reform bill and its incredibly far-reaching policies – an interactive process that I wish had happened prior to the bill’s passage but instead was avoided for reasons unknown.

Today, we will gather more information on just one of the many far-reaching and costly policies that were tucked away into the president’s health reform package. The Community Living Assistance Services and Supports (CLASS) Program is a new government-run benefit program. The Administration on Aging (AOA) has been charged with the implementation of the program and that process is in its initial phases. The lack of clarity around the CLASS program has raised widespread concerns about the program’s structure and long-term sustainability.

However, many of those concerns reflect the unease that many members shared during congressional debate on health care reform more than one year ago.

During that time, advocates of the CLASS program argued that the private market options were too costly and/or too difficult for certain populations to access due to pre-existing conditions and disabilities. However, during that same debate, members on both sides of the aisle raised concerns that the CLASS program was actuarially unsound and fiscally irresponsible — creating a long-term financial risk for the federal government and potential beneficiaries.

During the Senate debate on health care reform, Senator Kent Conrad, a Democrat from North Dakota, called the CLASS Act "a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of." Senator Conrad was not alone in his concerns, and several of his Democrat colleagues joined him in opposing the CLASS program's inclusion in the health care reform bill. Unfortunately, for them and the American taxpayer, the flawed program was tucked into the final piece of legislation.

Most recently, Secretary Sebelius admitted her personal concerns with the CLASS program. In a recent testimony before the Senate Finance Committee, she recognized the program was "totally unsustainable" and just two weeks ago,

reaffirmed her analysis before this committee while testifying on the president's Fiscal Year (FY) 2012 budget.

I am extremely concerned that the CLASS program, in its current form, is nothing more than a budget gimmick and a faulty coverage product that I believe even Secretary Sebelius would have likely rejected during her days as the Insurance Commissioner for the State of Kansas.

The secretary's admission reinforces the conclusion of the Medicare actuary who wrote that the program had "a very serious risk" of becoming unsustainable, and the Fiscal Commission's recommendation that the program is "financially unsound" and likely to "require large general revenue transfers or else collapse under its own weight" — calling on Congress to either repeal or reform the program altogether in order to identify trusted options for individuals to purchase LTC coverage.

We all agree that long-term care costs will pose a challenge for our aging population and the nation's entitlement infrastructure, and we should be committed to identifying innovative solutions that allow Americans the ability to plan for an independent retirement and a dignified and quality lifestyle in their later years. However, creating a new government-run entitlement program on the backs of the

American taxpayers that runs the high-risk of insolvency is not a solution but rather a scam.

According to the Congressional Budget Office, the CLASS program could become insolvent by 2030— a result that will carry significant financial liabilities for the federal government and ultimately, a potential loss for the beneficiaries who enroll in the program. Our constituents deserve better, and I hope that before the administration moves forward with program implementation that this Congress will have another opportunity to revisit the CLASS program.

From my understanding, President Obama has requested approximately \$120 million for Fiscal Year 2012 to initiate the implementation of the CLASS program, including over \$90 million for education about the program. The president's budget request is shocking, and I hope Assistant Secretary Greenlee can help us all understand how the administration, with the nation facing its most historic deficits, could request such a sum of money for a program even the nation's chief health official admits is totally unsustainable.

Today's hearing will provide us with the information we need to better understand where this administration is in implementing the CLASS program. I look forward to hearing from our witnesses on what they believe are the most

significant flaws with the program structure and what changes the administration intends to make to ensure the solvency of the program over the long-term.

Statement for the Record**Rep. Towns****The Implementation and Sustainability of the new, government-administered
Community Living Assistance Services and Supports (CLASS) Program****March 17, 2011**

Chairman Pitts and Ranking Member Pallone, thank you for convening today's health subcommittee hearing on the implementation and sustainability of the Community Living Assistance Services and Supports (CLASS) Program. This program was created as part of the Affordable Care Act to ensure that the elderly and disabled can remain in their homes and in their communities when they are no longer able to care for themselves independently. The program is voluntary, self-financed and has a strong focus on personal responsibility. Individuals must pay into the program to receive benefits when they are needed, and in turn no one who meets basic eligibility criteria will be denied.

We have long agreed that our country simply does not have an established framework to provide long-term care for those in need. Medicaid covers the economically disadvantaged, and those who have had to spend down their savings in order to qualify; however, the remainder of the population simply is not cared for. We all know that nursing homes are extraordinarily expensive. They can cost over \$70,000 per person, per year. If Medicaid is covering these costs, the daily rate paid by taxpayers per patient is over \$200.

In contrast, CBO and the American Academy of Actuaries (AAA) have estimated that premiums for CLASS could range from approximately \$120 per month to \$240 per month, depending on program enrollment and the level of adverse selection that occurs. That amounts to between \$4 to \$8 at the expense of the individual.

There has to be an option provided for working adults who cannot afford to be insured in the private market, or who are denied due to preexisting conditions. Otherwise, individuals will ultimately spend down their savings to qualify for coverage under Medicaid, which will ultimately cost taxpayers hundreds of billions of dollars. Rather than eliminating the only existing option that is on the table, let's work together to strengthen this program to ensure that it is financially sound.

Thank you, Mr. Chairman.