Backgrounder

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No CLASS: How Congress Saddled Taxpayers with Another Costly Entitlement

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Abstract: *The Community Living Assistance Services and Support (CLASS) program is an actuarially unsound and fiscally irresponsible misadventure by Congress. Congress should never have enacted this new government-run long-term care insurance program. It places CLASS participants at risk of benefit cuts and American taxpayers at great risk of being forced to bail out this poorly designed program. Congress should promptly repeal the CLASS program and then make a serious effort to address the problem of financing the long-term care of the nation's population in the context of an overall reform of federal entitlements.*

> *"…a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of."*[1]
>
> —Senator Kent Conrad (D–ND),
> Chairman of the Senate Budget Committee

Rising national debt and the prospect of substantial future tax increases show the necessity of scaling back government obligations. Largely the problem is driven by Washington's failure to reform Medicare, Medicaid, and Social Security. Seemingly undeterred by the exploding federal deficit, Congress inserted a long-term care (LTC) entitlement into the Patient Protection and Affordable Care Act of 2010 (PPACA).

Under Section 8002 of the PPACA, Congress created the Community Living Assistance Services and Support (CLASS) program, a new government-run, LTC insurance option for employees. This program, which technically takes effect in January 2011, is actu-

Talking Points

- The CLASS program, a new federal long-term care entitlement created by Congress, faces a severe risk of unraveling because of adverse selection.
- CLASS grants enormous powers to the Secretary of Health and Human Services and mandates that participating employers enroll all employees in the program.
- CLASS was bundled with the larger provisions of the health care law as a budgetary gimmick. There is bipartisan concern about its impact and real potential for broad bipartisan support to repeal it.
- If initial CLASS premiums are actuarially appropriate, too few people will enroll in CLASS, and it will not alleviate the burden of long-term care financing on Medicaid. However, if initial premiums are lower than is actuarially appropriate, then taxpayers will be at significant risk of paying for a CLASS bailout, and participants will be at risk of benefit cuts.

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arially unsound and fiscally irresponsible. Both the Office of the Actuary in the Centers for Medicare and Medicaid Services (CMS) and the American Academy of Actuaries have warned that the CLASS program has a substantial risk of failure.[2] The problem is that programs, such as CLASS, that are guarantee issue and that ban medical underwriting are likely to unravel from severe adverse selection. Healthy individuals who desire LTC insurance will find better quality products at lower prices in the private market, leaving a risk pool for CLASS that will overwhelmingly consist of the working disabled. This places American taxpayers at great risk of paying for a future bailout.

Since extremely few healthy individuals are expected to participate in the CLASS program as enacted, high premiums will be necessary to fund the anticipated benefits. This will further dissuade relatively healthy individuals from enrolling in the CLASS program. However, if premiums are initially underestimated to fund benefits—as is likely given the political incentives that often govern Congress—several undesirable outcomes are possible. First, premiums could be raised to cover the expected benefits, but that would exacerbate the adverse selection problem. Second, the benefit package could be cut, harming participants who were expecting a certain type of benefit. Third, participation could be made mandatory. While this would alleviate the adverse selection problem, it would saddle many individuals with a government product that they do not value at its cost. Finally, Congress could bail out the CLASS program at taxpayers' expense. Before one or more of these scenarios unfold, Congress should repeal CLASS.

Key Provisions of the CLASS Program

The PPACA defines the CLASS program as a federally administered LTC insurance program with the stated purpose to:

- "[P]rovide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports";
- "[E]stablish an infrastructure that will help address the Nation's community living assistance services and supports needs";
- "[A]lleviate burdens on family caregivers"; and
- "[A]ddress institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community."[3]

Government Premium Setting. The CLASS provisions require the Secretary of Health and Human Services (HHS) to develop at least three actuarially sound benefit plans. The secretary will then choose one of the three plans for all enrollees, which will be designated the CLASS Independence Benefit Plan. An actuarial analysis will then be conducted to estimate the premiums necessary to maintain the program's actuarial balance[4] for 75 years. This analysis will be repeated annually, and the premiums will be adjusted accordingly. The stated purpose is to finance the program from participant premiums without any federal subsidies or taxpayer money. Underwriting and risk adjustment is prohibited, and initial premiums can vary solely by age at enrollment.

1. Lori Montgomery, "Proposed Long-Term Health Insurance Program Raises Questions," *The Washington Post*, October 27, 2009, at *http://www.washingtonpost.com/wp-dyn/content/article/2009/10/27/AR2009102701417.html* (July 21, 2010).
2. P. J. Eric Stallard and Steven Schoonveld, "Actuarial Issues and Policy Implications of a Federal Long-Term Care Insurance Program," letter from American Academy of Actuaries to Committee on Health, Education, Labor, and Pensions, U.S. Senate, July 22, 2009, at *http://www.actuary.org/pdf/health/class_july09.pdf* (July 21, 2010), and Centers for Medicare and Medicaid Services, "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act,' as Amended," April 22, 2010, at *https://www.cms.gov/ActuarialStudies/Downloads/PPACA_2010-04-22.pdf* (July 21, 2010).
3. Patient Protection and Affordable Care Act, Public Law No. 111–148, § 8002(a).
4. Being in "actuarial balance" means that the total of expected insurance premium payments plus the interest earned on premium income equals or exceeds expected cash payments for future benefits and the administrative costs of operating the program. Douglas W. Elmendorf, letter to Representative George Miller (D–CA), November 25, 2009, p. 3, at *http://www.cbo.gov/ftpdocs/107xx/doc10769/CLASS_Additional_Information_Miller_letter.pdf* (July 21, 2010).

The CLASS program is both voluntary and guaranteed-issue for all adult (age 18 or older) workers with taxable wages in excess of one-fourth of Social Security coverage for that year, which would be $1,120 for 2010. The CLASS program limits participation to workers, including the self-employed, to reduce adverse selection by excluding individuals who are unable to work for health reasons. An individual earning minimum wage could qualify for the CLASS program by working only three hours per week.

While the CLASS Act's provisions establish the goal of keeping premiums level over an individual's lifetime, they must increase if current premiums are found insufficient to maintain the program's solvency. Premiums can also increase if individuals let their policies lapse. Two groups of individuals—people with incomes below the federal poverty level and full-time students ages 18 to 21—will receive subsidized premiums of $5 per month. When such a participant no longer meets the criteria for a subsidized premium, he or she is subject to the same monthly premium as an individual of the same age who is enrolling in CLASS. The law exempts three groups from the premium increases: individuals over 65, individuals who paid premiums for at least 20 years, and individuals who are not actively employed. CLASS limits administrative costs to 3 percent of all premiums paid during each year.

If employers choose to participate in the CLASS program, all of their employees are automatically enrolled.

If employers choose to participate in the CLASS program, all of their employees are automatically enrolled. The program is voluntary because employees can opt out. If a person enrolls in the CLASS program, his or her employer is responsible for withholding premiums through payroll deductions. The HHS Secretary is required to develop procedures for an alternative enrollment process for individuals who are self-employed or whose employers do not participate in CLASS.

The Benefits. To be eligible for CLASS benefits, a participant must meet a five-year vesting requirement. To remain an active participant, a person must continue to pay premiums beyond the five-year period. A person can begin receiving CLASS benefits if he or she has a functional limitation that is expected to persist for a continuous period of at least 90 days and has been confirmed by a licensed health care practitioner. The HHS Secretary will determine the minimum standard: whether impaired ability to perform two activities of daily living (ADLs)[5] would be sufficient to qualify for benefits or impaired ability in three ADLs would be required.

CLASS benefits will be paid in cash and are allowed to vary based on the beneficiary's cognitive impairment or degree of limitation in ADLs. The CLASS program's minimum daily cash benefit is $50, indexed to the Consumer Price Index.

In comparison, the average daily benefit in the private LTC insurance market ($142) is significantly higher and does not vary by functional limitation.[6] The majority of private LTC insurance plans offer benefit durations between three years and five years. However, CLASS has no limit on benefit duration, which will increase CLASS premiums relative to private LTC insurance plans.

CLASS beneficiaries will be able to access their benefit with a debit card, and the government will make daily or weekly payments into their accounts. Beneficiaries can use their accounts to purchase nonmedical services to maintain their independence at home or their chosen residence. Such services could include home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing supports. Beneficiaries may also use their cash benefit to obtain assistance with decision-making on medical care.

5. Federal law identifies six ADLs: eating, toileting, transferring, bathing, dressing, and continence. Internal Revenue Code, 26 U.S. Code § 7702B(c)(2)(B) (2010).
6. America's Health Insurance Plans, "Who Buys LTC Insurance?" April 2007, p. 29, at *http://www.ahipresearch.org/pdfs/ltc_buyers_guide.pdf* (July 21, 2010).

Finally, eligibility for benefits will not affect an individual's eligibility or benefits for any other program, including Social Security, Medicaid, and Medicare.

CLASS was intended to relieve some of Medicaid's liability for LTC expenses. CLASS will become the primary payer of LTC expenses for plan participants who are also eligible for Medicaid. For individuals receiving Medicaid benefits for LTC in an institution, 95 percent of the CLASS benefit would be used to reimburse Medicaid. For home or community-based care, 50 percent of the CLASS benefit would be used to reimburse Medicaid.

How CLASS Will Generate Big Problems

CLASS is poor public policy. First, CLASS was not thoroughly debated and was mainly included in the broader PPACA as a budgetary gimmick to increase the bill's initial revenues and secure a more attractive budget score from the Congressional Budget Office (CBO). Second, CLASS is likely to unravel from severe adverse selection—a feedback loop between greater concentrations of less healthy individuals in the risk pool and rising premiums. Third, CLASS is unnecessary because the private sector already provides a variety of alternatives for LTC insurance. Finally, CLASS constitutes a greater intrusion of the federal government into the national economy.

Budget Gimmick. The CLASS Act creates a trust fund, deemed the CLASS Independence Fund, in name only. Unlike private insurance, premiums paid by participants will not be deposited into this account to build reserves for future benefits. Instead, the government will spend all of the premiums on other programs, technically borrowing the money from the trust fund with the purchase of government securities. For the first five years (2012–2016), the program will collect premiums, but pay no benefits because of the vesting period.[7] Because incoming premiums will far outweigh outgoing benefits in the next several years, including the CLASS Act in the PPACA reduced the 10-year (2010–2019) cost of the health care legislation by $70 billion according to CBO projections and by $38 billion according to CMS projections.[8]

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However, these initial cost savings are illusionary because the premiums cannot simultaneously be saved to fund future benefits and used to pay for health insurance subsidies and Medicaid expansion. The CMS estimates that premiums will exceed benefits until 2025,[9] at which point the program adds to yearly budget deficits. (See Chart 1.)

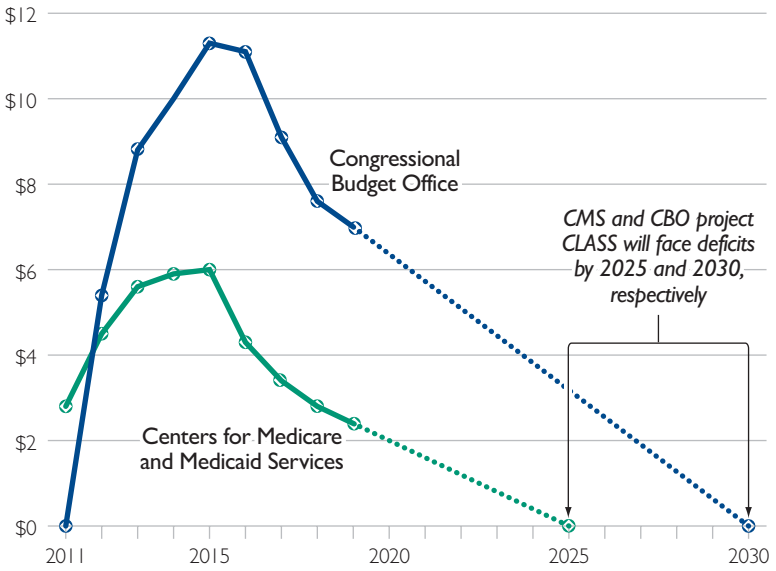
Adverse Selection Spiral. The problem of adverse selection is endemic to health insurance products. Individuals with anticipated medical care needs are more likely to desire health insurance coverage. For a voluntary market to function, individuals who represent higher risks to the insurance company must be charged higher premiums to compensate the insurers for assuming the additional risk. Traditionally, insurers obtain information, such as the applicant's age, medical history, and smoking behavior to price the risk appropriately. However, if an insurer is required to charge individuals identically, people who are receiving a bad deal—relatively healthy individuals—are prone to leave the market.

7. Most independent analysts do not believe that CLASS will begin in 2011 because the HHS Secretary is not required to determine the governing regulations until October 2012. While the program can technically begin to collect premiums in January 2011, it is unclear who will join the program before the benefit and premium amounts are clarified. However, both the CBO and the CMS scored the legislation to have limited enrollment beginning in 2011.
8. The CBO estimates that CLASS will collect more premiums in the first year, assuming that 3.5 percent of the adult population enrolls in the program with an estimated premium of $123 per month for an average daily benefit of $75. The CMS estimates that 2.0 percent of eligible adults will enroll with an estimated premium of $240 per month for an average daily benefit of $50.
9. The CBO estimates that this will happen in 2030.

A Clear Picture of the CLASS Program

Participants in the CLASS program would pay premiums for five years before gaining eligibility to receive benefits. That is why both the CBO and the CMS project CLASS funds will rise dramatically for five years, then quickly decline, before facing budget deficits soon thereafter.

Effect of the CLASS Program on the Federal Budget, in Billions of Dollars



Sources: Douglas W. Elmendorf, Director, Congressional Budget Office, letter to Speaker of the House Nancy Pelosi, March 20, 2010, p. 18, Table 2, at *http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf* (July 22, 2010), and Richard S. Foster, "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act,'" Centers for Medicare and Medicaid Services, Office of the Actuary, p. 2, at *https://www.cms.gov/ActuarialStudies/Downloads/PPACA_2010-04-22.pdf* (July 22, 2010).

Chart 1 • B 2444 heritage.org

LTC insurance protects against major financial loss from future custodial care needs. LTC insurance products are particularly vulnerable to adverse selection because the vast majority of healthy individuals see little value in purchasing LTC insurance, unlike health insurance. Many individuals are skeptical about LTC insurance, especially given that the costs (premiums) are upfront and the benefits—which are highly uncertain—are generally far in the future. Additionally, individuals have rational expectations that if they need LTC, someone else will foot the bill, probably through Medicaid and Medicare. Although Medicare payments for LTC expenses are limited by law and Medicaid generally underpays providers of care, these two programs pay the vast majority of the LTC expenses of Americans.

The demand for private LTC insurance is low, especially among younger people. In 2005, an estimated 7 million Americans over the age of 20 (3.3 percent of the age group) had LTC insurance. Only 200,000 Americans between 20 and 50 (0.2 percent of this age group) were covered by a LTC insurance plan.[10] Furthermore, the participation rate for the opt-in federal LTC insurance program is only 5 percent.[11] The refusal of most Americans to purchase LTC insurance is a problem for them if they experience functional limitations for a prolonged period. It is also a public finance problem given the large public expenditures on LTC. In 2005, Americans spent $207 billion—more than one-tenth of national health care spending and about $700 per capita—on LTC expenses. Public spending accounted for 72 percent: 49 percent ($101 billion) from Medicaid, 20 percent ($42 billion) from Medicare, and 3 percent ($5 billion) from other public sources.[12]

10. Judith Feder, Harriet L. Kosimar, and Robert B. Friedland, "Long-Term Care Financing: Policy Options for the Future," Georgetown University, Long-Term Care Financing Project, June 2007, p. 12, at *http://ltc.georgetown.edu/forum/ltcfinalpaper061107.pdf* (July 21, 2010).
11. American Academy of Actuaries, "Community Living Assistance Services and Supports Act," *Critical Issues in Health Reform*, November 2009, p. 1, at *http://www.actuary.org/pdf/health/class_nov09.pdf* (July 21, 2010).
12. Harriet Kosimar and Lee Shirley Thompson, "National Spending for Long-Term Care," Georgetown University, Long-Term Care Financing Project, February 2006, at *http://ltc.georgetown.edu/pdfs/natspendfeb07.pdf* (July 21, 2010).

One goal of the CLASS Act is to provide budgetary relief for Medicaid with a greater number of individuals financing a larger part of their long-term care needs through premium payments during their working years. However, these savings are dubious because only a small number of individuals are projected to enroll in CLASS. Any reasonably healthy individual would be unwise to participate in CLASS.

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If a reasonably healthy individual desires LTC insurance, they will seek out policies in the private market. Since premiums in the private market are allowed to vary based on health history, healthy individuals, who would expect to have lower future claims, will pay a lower premium than less healthy individuals will. Therefore, in the private market, premiums will be matched reasonably well to risk and adverse selection will be mitigated.

In the CLASS program, premiums will be identical for individuals of like age enrolling in the same year. Mathematically, this must result in higher-than-actuarially-fair premiums for the relatively healthy individuals and lower-than-actuarially-fair premiums for the relatively unhealthy. Therefore, risk-averse, healthy individuals who desire LTC insurance will largely choose not to participate, choosing instead to purchase the cheaper private option.

Students and very poor individuals (those with incomes below the federal poverty level) pay a $5 monthly premium to enroll in the CLASS program. Since the least healthy students and poor are most likely enroll in the program, these very low premiums will need to be cross-subsidized by other program participants. Additional cross-subsidization will occur because individuals who are over age 65, who have paid premiums for at least 20 years, or who are not actively employed are exempt from the premium increases.[13] This cross-subsidization will further increase overall plan premiums and amplify adverse selection.

As adverse selection unravels the market, the only likely CLASS participants will be the working disabled. The CMS estimates that the CLASS participation rate will be just 2.0 percent of potential participants. CMS Chief Actuary Richard Foster stated that "there is a very serious risk that the problem of adverse selection will make the CLASS program unsustainable."[14] The American Academy of Actuaries echoed this concern: "[G]iven the way the program is structured, severe adverse selection would result in very high premiums that are likely to be unaffordable for much of the intended population, threatening the viability of the program."[15]

A survey commissioned by the American Council of Life Insurers points out how unpopular the CLASS program will be.[16] Of respondents, 9 percent indicated that they would enroll if the monthly premium was $85 per month, 5 percent would enroll at $110 per month, and only 3 percent would enroll at $160 per month. Even these enrollment percentages are likely too high because respondents were asked only whether they would participate, and they did not actually have to put money on the table. The survey also shows that adverse selection

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13. Premiums cannot be raised for individuals over age 65, individuals who have paid premiums for at least 20 years, or individuals who are not actively employed.
14. Centers for Medicare and Medicaid Services, "Estimated Financial Effects," p. 15.
15. Alfred A. Bingham Jr., "Patient Protection and Affordable Care Act (HR 3590) and Affordable Health Care for America Act (HR 3962)," letter to Speaker of the House Nancy Pelosi and Senate Majority Leader Harry Reid, American Academy of Actuaries, January 14, 2010, p. 19, at *http://www.ltcconsultants.com/articles/2010/classactconcern/AAALetterReHealthCareReformJan14.pdf* (July 21, 2010).
16. American Council of Life Insurers, "CLASS Act Survey: Report of Findings," October 2009, at *http://www.acli.com/NR/rdonlyres/2CC3FC7F-3CC1-4473-969F-3E9459F81C8B/21899/CLASSActReport1023092.pdf* (July 21, 2010).

will likely be a severe problem because individuals who believe that they will likely need LTC are three to 10 times more likely to indicate that they would enroll at realistic premiums than individuals who believe they are unlikely to need LTC.

Better Private Alternatives. Private LTC insurance plans will offer lower premiums for individuals who are relatively healthy. Policies offered in the private market will be superior to the government plan for four additional reasons. First, the government will only offer a single plan, while in the private market an individual can choose among dozens of plans with different benefit terms and options. Second, an individual does not need to be employed for five consecutive years for private LTC insurance. Indeed, the CLASS Act does not specify what happens to an individual's contributions if he or she becomes disabled before paying 60 months of premiums. Third, an individual in the private market does not need to be employed to purchase coverage. The CLASS Act is also unclear about what happens if an individual pays premiums for several years, but then becomes unemployed for a significant period. Finally, unlike the government plan in which unused benefits expire each year, in most private plans unused LTC benefits are carried over from year to year.

The average monthly premium for private LTC insurance in 2007–2008 was $184.[17] This is about 25 percent less than the estimated average premium of $240 for the CLASS program as calculated by the CMS Office of the Actuary.[18] However, the plans are not direct comparisons. The CMS assumes an average daily benefit of $50 per day for an unlimited period. By comparison, most private offerings pay benefits of $120 to $400 per day, averaging $165 per day. Furthermore, most private plans limit benefits to a period of three to five years.[19] Indeed, the average length of a nursing home stay is a little more than two years.[20]

Government Intrusion. The CLASS program constitutes excessive intrusion by the federal government in three specific ways. First, the legislation mandates the creation of a government product to compete with products in the private sector. Second, the legislation gives the HHS Secretary additional authority to intervene in the health sector of the economy, including the creation of three government panels. Third, the legislation mandates that participating employers involuntarily enroll all of their employees in the program.

Government intervention in the voluntary transactions of individuals is most appropriate to address market failures or coordination problems. A significant policy concern does exist with respect to LTC because most Americans fail to adequately save for LTC expenses, refuse to purchase private LTC insurance, and then rely on other individuals to pay for their long-term expenses. Government has contributed to this problem by incentivizing individual myopia and irresponsibility through Medicaid's payment of LTC expenses. If society values providing a social safety net that pays for individuals who need LTC services but lack the resources, part of this problem is unavoidable. The ideal public policy would mitigate this moral hazard problem, while encouraging individuals to save for anticipated LTC needs.

The CLASS Act does not remedy these problems. Instead, it creates a government product when the private market already provides a multitude of similar products. Furthermore, unlike private-sector plans, government can use taxpayer funds to advertise its product and can tap taxpayer funds to bail out insolvent programs.

Concentrated Power. An additional concern about the CLASS Act is that it gives the HHS Secretary the role and power of the chief executive officer of an insurance company. The secretary not only has the power to establish premiums and benefit levels,

17. U.S. Department of Health and Human Services, "National Clearinghouse for Long-Term Care Information," Web site, at *http://www.longtermcare.gov/LTC/Main_Site/Paying_LTC/Private_Programs/LTC_Insurance/index.aspx* (July 27, 2010).
18. Centers for Medicare and Medicaid Services, "Estimated Financial Effects," p. 15.
19. Stallard and Schoonveld, "Actuarial Issues and Policy Implications," pp. 6–8.
20. Errold F. Moody Jr., "Nursing Home Statistics," at *http://www.efmoody.com/longterm/nursingstatistics.html* (July 21, 2010).

but she decides who can represent beneficiaries and determines the process for individuals to opt out of coverage. She is required to enter into agreements with each state's Protection and Advocacy System to provide advocacy services to beneficiaries. The HHS Secretary is also required to enter into agreements with public and private entities to provide advice and assistance counseling services. The CLASS Act also adds three government panels to the bureaucracy: the CLASS Independence Advisory Council, the Board of Trustees of the CLASS Independence Fund, and the Personal Care Attendants Workforce Advisory Panel.

The legislation further overreaches by requiring employers to automatically enroll their employees into CLASS. Automatic enrollment into retirement plans has generally been lauded for increasing the amount that individuals save for retirement. However, the automatic enrollment in CLASS is very different from 401(k) or 403(b) auto-enrollment. Auto-enrollment into a self-funded retirement account that is owned by the individual encourages self-reliance and farsightedness. In contrast, auto-enrollment into CLASS would put individuals in an unsound government program loaded with uncertainty.

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Looming Trouble for Taxpayers

If CLASS is to be self-financing without relying on taxpayer bailouts, the problem of adverse selection will likely lead the secretary to raise premiums continually. Because premiums on the very poor and certain students are capped and because several groups including seniors are exempted from premium hikes, premiums will need to be set very high for the remaining enrollees. These enrollees, even the higher-risk participants, will likely opt out of CLASS and obtain cheaper private-sector alternatives. The released actuarial reports on the CLASS program describe this as a likely scenario. According to the American Academy of Actuaries, "The opt-out and guaranteed issue provisions of the plan pose a significant and likely risk that, in a relatively short time period, the program will either need increased premiums and/or significant reductions."[21]

It is easy to imagine that premium increases will be very unpopular politically and that beneficiaries and certain providers will lobby Congress for relief at the expense of the taxpayers. Furthermore, premium increases would further exacerbate the adverse selection problem. If the CLASS program persists and premiums do not increase to fund this shortfall, then some combination of three harmful policy changes will likely result: cuts in benefits, mandatory CLASS program participation, and/or a taxpayer bailout.

Cuts in Benefits. CLASS is not a contractual obligation. The HHS Secretary can change the benefit amounts depending on the amount of reserves in the CLASS Independence Fund. Thus, if premiums are estimated at less than what is required for program solvency, participants risk receiving a lower benefit than what they initially expected when they enrolled.

Mandatory Participation. Proponents would justify mandatory enrollment in CLASS with the same reasoning used to justify the PPACA's mandate for individuals to purchase health insurance coverage. Since the design of the CLASS program produces severe adverse selection, a government mandate to participate in CLASS would add healthy individuals to the risk pool and reduce overall plan premiums. The American Academy of Actuaries reports that "an individual mandate would eliminate the impact of participants waiting until an immediate need for LTC benefits arises and would enable program coverage of a full cross-section of risk."[22] However, this mandate would force individuals to purchase a government product that many of them do not value at its cost. The result would be a loss of individual freedom.

21. Stallard and Schoonveld, "Actuarial Issues and Policy Implications," p. 1.
22. American Academy of Actuaries, "Community Living Assistance Services and Supports Act," Critical Issues in Health Reform, November 2009, p. 3, at *http://www.actuary.org/pdf/health/class_nov09.pdf* (July 21, 2010).

Taxpayer Bailout. The PPACA specifically prohibits using taxpayer funds to finance CLASS, but Congress can simply pass a law to change this policy, or it can redirect general revenue into the CLASS Independence Fund. Furthermore, a large share of CLASS benefits will be paid out of general tax revenue because the previous premiums collected will have already been spent by the government. This will make it easier to hide a redirection of general tax revenue in the CLASS Independence Fund.

Given the plethora of taxpayer-financed bailouts in 2008 and 2009, this option will be on the table if CLASS becomes insolvent.

Given the plethora of taxpayer-financed bailouts in 2008 and 2009, this option will be on the table if CLASS becomes insolvent. For politicians, a taxpayer bailout has the advantage of providing concentrated (noticeable) benefits to a small constituency while spreading the costs across all taxpayers, who are less likely to notice the additional burden. The American Academy of Actuaries emphasizes this concern: "[T]he solvency of the program could be threatened if participation is so low that premium increases alone would not be enough to fund benefits—taxpayer funding and/or benefit reductions may be required."[23]

Rescuing Taxpayers: The Urgent Case for Repeal

The CLASS Act should be repealed. It is both an actuarial nightmare and a looming threat to taxpayers. In fact, it is difficult to imagine serious policymakers dreaming up an idea this fundamentally flawed. CLASS, like many other troubling provisions, should never have been included in the PPACA. It was added as a budgetary gimmick to make the bill look more fiscally sound. In the rush to pass the PPACA before the public further soured on it, Congress did not fully vet the CLASS program.

Members of Congress need to revisit this issue and debate the future of CLASS in the context of addressing the large and looming LTC financing issues. If Congress has a serious and open debate on CLASS, there is a strong possibility that Congress would repeal it on a genuine bipartisan basis.

Bipartisan Concerns. Opposition to the CLASS program is bipartisan. Six Democratic Senators and one independent Senator called for its removal from the PPACA during the health care debate. In a letter to the Senate Majority Leader, Senators Ben Nelson (D–NE), Kent Conrad (D–ND), Joe Lieberman (I–CT), Blanche Lincoln (D–AR), Mary Landrieu (D–LA), Evan Bayh (D–IN), and Mark Warner (D–VA) wrote: "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."[24] This letter is evidence that many Democrats who supported the major components of the PPACA—all of these Senators voted for the bill—are skeptical about CLASS. Congress should now act in a bipartisan manner to repeal CLASS and prevent harm to either participants or taxpayers.

A Case for Delay. If political considerations prevent repeal of the CLASS Act this year, Congress should at least delay its implementation. This delay is necessary because of the program's shockingly poor design. Specifically, the government can begin collecting premiums from individuals in January 2011, but the HHS Secretary has until October 2012 to designate the CLASS Independence Benefit Plan. Therefore, individuals could begin paying premiums before the actuaries have even analyzed the chosen plan and estimated the appropriate premiums. Few individuals would pay into CLASS until the benefits and the premiums are determined. Yet the CMS estimates that the government will collect nearly $3 billion in premiums for CLASS in fiscal year 2011.[25] Some individuals might not recognize that they were involuntarily enrolled into the program.

23. Bingham, "Patient Protection and Affordable Care Act," p. 19.
24. Stephanie Condon, "Moderate Senators Oppose Long Term Health Care Proposal," CBS News, October 28, 2009, at *http://www.cbsnews.com/8301-503544_162-5439102-503544.html* (July 21, 2010).
25. Centers for Medicare and Medicaid Services, "Estimated Financial Effects," Table 1.

Conclusion

The CLASS program is an actuarially unsound and fiscally irresponsible misadventure by Congress. It should have never been enacted. Apparently, the CLASS program was not inserted in the comprehensive health care legislation because it is good policy, but merely because it reduced the PPACA's projected 10-year cost with backloaded costs. Only the absurdity of ten-year budget windows shows that CLASS reduces the federal budget deficit.

If initial premiums are actuarially appropriate, too few people will sign up for CLASS, and it will not alleviate the burden on Medicaid or improve LTC financing policy in general. Greater problems would result if initial premiums are lower than is actuarially appropriate and many people sign up for participation. This means that benefits would exceed premiums and the program will lead to a net increase in future budget deficits. Taxpayers would be at significant risk of a congressional bailout of CLASS, or participants would be at risk of benefit cuts. Either way, Congress should repeal the CLASS program and then make a serious effort to confront the problem of financing the long-term care of the nation's population in the context of an overall reform of federal entitlements.

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