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Obamacare and the CLASS Act: Creating a Long-Term Care Entitlement Burden

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The Patient Protection and Affordable Care Act (PPACA)[1] created a new entitlement program, the Community Living Assistance Services and Support (CLASS) Program, to provide assistance for individuals who have difficulty with activities of daily living[2] and need long-term care (LTC) services.[3]

But actuaries who have analyzed CLASS believe it is poorly designed and will lead to an overabundance of unhealthy and disabled individuals in the risk pool. This adverse selection problem will likely cause either spiraling premium increases for enrollees or a taxpayer-financed bailout. The deficit commission appointed by President Barack Obama has recommended that CLASS be either revamped or repealed.

Summary. Section 8002 of PPACA amends the Public Health Service Act by adding Title XXXIII and establishing CLASS. CLASS is a voluntary, government-run LTC insurance program that offers participants a single benefit plan with a daily cash benefit of $50, indexed to inflation. Beneficiaries can use the money to purchase *nonmedical* services to use either at home or at their chosen residence. There is no limit on how long a person can receive benefits through CLASS.

If employers choose to participate in the CLASS Program, their employees are automatically enrolled. The employee may then opt out. Employers will be responsible for withholding premiums through payroll deductions. The Secretary of Health and Human Services (HHS) is required to develop an alternative enrollment process for individuals who are self-employed or whose employers do not participate in CLASS.

An annual actuarial review will estimate the premiums necessary to maintain the program's actuarial balance for 75 years. Premiums for enrollees can vary solely by age at enrollment. Premiums will increase over time if current ones are found insufficient to maintain the program's solvency,[4] as the law dictates that CLASS will be financed only with participants' premiums. When incoming premiums exceed benefits paid out, the surpluses will be spent by the government with U.S. Treasury bonds placed in the CLASS Independence Fund as IOUs.

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. The Secretary of HHS will determine the minimum standard to qualify for benefits. Eligibility for benefits will not affect an individual's eligibility or benefits for other programs, including Social Security, Medicaid, and Medicare. If an individual is receiving LTC services paid by Medicaid, CLASS will reimburse Medicaid 95 percent for benefits received in an institution and 50 percent for care delivered in a home or a community-based setting.

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Impact. Most Americans are not well-prepared for potential LTC expenses. While CLASS is an attempt to address this concern, it misdiagnoses key problems, creates an unworkable insurance product, and places Americans at risk of compulsory CLASS participation or a future taxpayer-financed bailout. According to President Obama's deficit commission:

> 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 that 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.[5]

A Budget Gimmick. CLASS reduces the deficit in the short run because the government collects premiums for five years (2012–2016) but pays no benefits.[6] The Congressional Budget Office (CBO) estimates that premium payments into CLASS will exceed benefit payments out of CLASS only until 2030; the Centers for Medicare and Medicaid Services (CMS) estimates that this will happen in 2025.

After that, CLASS adds to yearly federal budget deficits. When CLASS runs deficits, a share of benefits—which will increase over time—will be paid out of general tax revenue, since the previous premiums collected will have already been spent. This will make it easier to hide a redirection of general tax revenue into the CLASS Independence Fund.

Adverse Selection Spiral. Insurance products that must offer coverage to any applicant at a uniform rate (i.e., guaranteed issue) and are voluntary are likely to unravel from adverse selection. CLASS creates such a product. Healthier individuals who desire LTC insurance will find a variety of products, most with lower prices, in the private market.

The result for CLASS will be a risk pool of mostly working disabled persons with costly needs. Richard Foster, Chief Actuary at CMS, stated that "there is a very serious risk that the problem of adverse selection will make the CLASS program unsustainable."[7] The American Academy of Actuaries echoed this concern by stating that "given the way the pro-

1. Congress cannot build sound market-based health care reform on the foundation of a flawed health care law. Therefore, the health care law must be repealed in its entirety.

   The House of Representatives has taken a major step towards full repeal of the Patient Protection and Affordable Care Act (PPACA—otherwise known as "Obamacare"). Until full repeal occurs, Congress must continue to focus on the core failures and consequences of PPACA and block its implementation to allow time to achieve repeal and lay the groundwork for a new market-based direction for health care reform.
2. Generally, activities of daily living are bathing, continence, dressing, eating, toileting, and transferring.
3. Patient Protection and Affordable Care Act of 2010, Public Law 111–148, and Health Care and Education Reconciliation Act of 2010, Public Law 111–152.
4. 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.
5. National Commission on Fiscal Responsibility and Reform, *The Moment of Truth*, December 2010, at *http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf* (January 12, 2011).
6. Most independent analysts do not believe that CLASS will begin in 2011 because HHS is not required to determine the governing regulations until October 2012. The Congressional Budget Office and the Centers for Medicare and Medicaid Services scored the legislation to begin enrollment in 2012. Including the CLASS Act reduced PPACA's 10-year (2010–2019) cost projection by $70 billion according to CBO projections and by $38 billion according to CMS projections. CBO estimates that CLASS will collect more premiums than does CMS. CBO assumes 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. 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. See Douglas W. Elmendorf, Director, Congressional Budget Office, letter to Nancy Pelosi, Speaker, U.S. House of Representatives, March 20, 2010, at *http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf* (June 22, 2010); 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).

gram 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."[8]

Risks to Beneficiaries and Taxpayers. The consensus of the American Academy of Actuaries is that CLASS poses "a significant and likely risk that, in a relatively short time period, the program will either need increased premiums and/or significant reductions."[9]

Premium increases will be unpopular politically, and beneficiaries and providers will likely lobby Congress for relief at the expense of taxpayers. Additionally, premium increases would further exacerbate the adverse selection problem. If CLASS persists and premiums do not increase to fund a shortfall, the likely result will be some combination of three harmful policy changes: (1) cuts in benefits, (2) mandatory CLASS program participation, and/or (3) a taxpayer bailout. PPACA prohibits using taxpayer funds to finance CLASS, but Congress can simply pass a law to change this policy or redirect general revenue into the CLASS Independence Fund.

A New Direction. The CLASS program is actuarially unsound and fiscally irresponsible. If initial premiums are actuarially appropriate, too few people will sign up for CLASS to alleviate the burden on Medicaid of reimbursing LTC expenses or to improve LTC financing policy in general. More significant problems emerge if premiums are set too low to cover eventual benefits: Taxpayers would be at a significant risk of a CLASS bailout, and participants would be at risk of benefit cuts. President Obama's own deficit commission believes that CLASS is likely to cause much greater harm than good.

Congress should adopt sensible reforms of LTC financing policies for the elderly. These policies should reward personal responsibility, reduce the financial burden on taxpayers, and preserve a safety net for those in genuine need. Perhaps most important, Medicaid should be reformed because it enables individual complacency toward prudent financial planning, crowds out the private LTC insurance market,[10] and is growing at an unsustainable rate.

Policy should encourage individuals to be proactive in increasing personal savings to finance likely future expenses and in increasing private insurance rates so that individuals are protected against the possibility of needing LTC services for an extended period of time. Furthermore, states can pursue regulatory reform to loosen mandates that raise the cost of providing LTC insurance coverage.

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7. CMS, "Estimated Financial Effects," p. 15.
8. Alfred A. Bingham, Jr., "Patient Protection and Affordable Care Act (HR 3590) and Affordable Health Care for American Act (HR 3962)," American Academy of Actuaries, January 14, 2010, p. 19, at *http://www.ltcconsultants.com/articles/2010/classactconcern/AAALetterReHealthCareReformJan14.pdf* (July 21, 2010).
9. P. J. Eric Stallard and Steven Schoonveld, "Actuarial Issues and Policy Implications of a Federal Long-Term Care Insurance Program," American Academy of Actuaries, July 22, 2009, p. 1, at *http://www.actuary.org/pdf/health/class_july09.pdf* (July 21, 2010).
10. Medicaid crowds out the purchase of private insurance for about two-thirds of the wealth distribution as Medicaid pays for benefits that simply replace benefits that private insurance would otherwise have paid. 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*, Vol. 98, No. 3 (2008), pp. 1083–1102.