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The Age Wave, the Ocean State, and Long-Term Care

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by Stephen A. Moses

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Executive Summary: Rhode Island's unique "global Medicaid waiver" pursues a potentially dangerous national policy trend: long-term care (LTC) rebalancing without strong eligibility controls. Given the state's already grave budget crisis, potentially explosive increases in Medicaid costs incidental to the global waiver could seriously damage Rhode Island's social safety net. Policy makers can maximize the global waiver's opportunity, minimize its danger, and become a LTC financing model for the country. To do so, they will need to recognize the issues discussed in this report and pursue the recommended additional research and analysis.

Background: In early May 2009, Bill Felkner, president of the Ocean State Policy Research Institute (OSPRI, *www.oceanstatepolicy.org*) contacted Stephen Moses, president of the Center for Long-Term Care Reform (CLTCR, *www.centerltc.com*) about the possibility of conducting a study of Rhode Island's unique "global Medicaid waiver." As no funds were otherwise available to support the project, CLTCR invited its individual and corporate members to sponsor a very limited study intended to identify the key issues and the need for further research. Donors who made this work possible are identified and thanked in the Appendix.

During the week of July 6-10, 2009, Stephen Moses visited Providence, Rhode Island and interviewed a large number of public officials and related professionals about the global waiver, Medicaid eligibility policy, long-term care service delivery and financing, and private financing alternatives for long-term care. A list of respondents and interviewees is included at the end of this report.

CLTCR thanks OSPRI president Felkner and his staff for their invaluable assistance in reaching the right people and facilitating this work in many other ways. We also want to thank Mr. Gary Alexander, Secretary of the Rhode Island Executive Office of Health and Human Services, who met with us and graciously authorized our interviews with staff of his organization.

Overview: Rhode Island (RI) has a "global Medicaid waiver" that is unique in the country. For the first time ever, the Centers for Medicare and Medicaid Services (CMS) has permitted one state wide latitude to experiment with policies not otherwise allowed under federal law and regulations in exchange for the state's accepting a cap on federal Medicaid matching funds that would otherwise be open-ended. The global waiver provides RI a great opportunity (for experimentation) but it comes with a huge danger (of cost over-runs). The state's success or failure is critical to the issue of long-term care service delivery and financing at the state and at the national level. Because of the challenge of aging demographics, exploding health and long-term care costs, and the enormous unfunded liabilities of existing entitlement programs, how Rhode Island deals with this issue under this waiver at this time is a touchstone for the country's future prospects.

Rhode Island intends to use its global Medicaid waiver to pursue a policy of long-term care rebalancing that is sweeping the country. LTC rebalancing involves diverting chronically ill or frail elderly people from expensive nursing home care to less expensive home and community-based services (HCBS). The objective of rebalancing is to save money while providing more desirable services to a larger number of RI residents. Many other states have pursued the same policy with mixed results but under severe federal restraints. With its global waiver, RI may pursue the policy relatively unrestrained for better or worse.

But long-term care rebalancing is highly problematical. Research shows that diverting the frail and infirm elderly from nursing homes to home care does not save money. Home care delays nursing home

care, but does not replace it, resulting in total costs across lifetimes and populations that exceed nursing home care only. Furthermore, Medicaid financial eligibility criteria are so generous and elastic in Rhode Island and nationally that most people who qualify medically also qualify financially with ease for the program's extensive benefits. Consequently, Medicaid LTC benefits already crowd out a market for privately financed HCBS and severely reduce demand for private LTC financing alternatives such as home equity conversion and private long-term care insurance.

Bottom line: by offering more LTC services people want (HCBS) and fewer services they don't want (nursing homes) without controlling already wide-open program eligibility, Rhode Island runs the risk of exploding LTC expenditures, increasing public dependency on government-financed LTC, and reducing the use of private funds and market-based products for financing long-term care. Our purpose with this report is to show how the state can keep costs under control, encourage the public to plan responsibly and pay privately for long-term care, and promote the use of private LTC financing alternatives. If successful in Rhode Island, similar policies could become the model for national long-term care reform in a way analogous to what happened with welfare reform in the 1990s. Wisconsin's public assistance waiver under then-Governor Tommy Thompson became the model for national reform in 1996 that diverted millions away from welfare dependency and saved taxpayers billions of dollars.

FINDINGS:

Issue 1: **Rhode Island's Medicaid long-term care financial eligibility rules allow most people to qualify for LTC benefits without spending down significant assets.**

Recommendation: Conduct the additional research suggested below and pursue corrective action under the global waiver to target scarce Medicaid resources to people most in need.

Facts:

1. Anyone (over 65 and medically qualified) with income below the cost of a nursing home ($7,777 per month) qualifies for Medicaid LTC benefits in RI based on income. *The state has only twice ever denied LTC eligibility to an applicant because of excess income.*

   Research needed: Identify ways under the global waiver to target benefits more cost-effectively to lower income people.

2. Applicants qualify for Medicaid LTC benefits with, and recipients may retain, unlimited exempt assets, *e.g.* home equity up to $500,000 and, without any dollar limit: one business including the capital and cash flow, one automobile, prepaid burial plans, term life insurance, home furnishings and other exempt assets.

   Research needed: Identify ways under the global waiver to target benefits more cost-effectively to genuinely needy people.

3. Medicaid estate planning (artificial impoverishment of affluent seniors to qualify them for Medicaid's LTC and other benefits) is rampant in Rhode Island. State eligibility staff report half of Medicaid LTC recipients have done some form of Medicaid planning to qualify.

   Research needed: Identify the Medicaid planning methods used and quantify the costs to the state and federal government from techniques like "reverse half-a-loaf," purchase of "life estates," irrevocable income-only trusts, legal (beyond the 5-year look back) and illegal (fraudulent) transfers of assets, purchase of exempt assets and many other less common practices.

4. Rhode Island permits "mail-order" Medicaid eligibility so that 60% of all applicants are not seen face-to-face and 85% of all applications are completed by someone other than the applicant, often by an attorney with a financial interest in the case.

   Research needed: Examine this practice and estimate the savings to the state of closer and stronger eligibility monitoring.

5. Rhode Island intends to use the same eligibility criteria and methods of determination under the global Medicaid waiver for HCBS (which people want) as it uses for nursing home care (which most people prefer to avoid).

   Research needed: Examine the potential increased costs this practice will likely entail and propose initiatives to reduce them.

Issue 2: **Rhode Island's Medicaid program does not fully recover benefits correctly paid from liens or estate recoveries. To that extent, the program is defacto free inheritance insurance for heirs against the risk of their parents needing long-term care.**

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Consequently, Medicaid LTC benefits already crowd out a market for privately financed HCBS and severely reduce demand for private LTC financing alternatives such as home equity conversion and private long-term care insurance.

Recommendation: Identify, document and quantify methods by which Rhode Island can discover, secure, and recover the cost of LTC benefits paid to people with exempt (sheltered) assets out of their estates or from liens on real property. Propose corrective actions allowable under the global waiver.

Facts:

1. Rhode Island does not pursue TEFRA liens, so the state is unable to track and secure recipients' largest exempt asset, home equity, during the period of their Medicaid LTC eligibility.

   Research needed: Explore the potential savings for RI from the use of property liens as authorized by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA '82) and examine potential expansion under new authority granted by the global waiver.

2. The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required state Medicaid programs to pursue recovery of program benefits correctly paid to anyone 55 years of age or older out of the person's estate or the estate of the person's last surviving, exempt, dependent relative (usually a spouse.) *RI does not pursue this non-tax revenue source aggressively having cut staff and collected only $2 million in the past year*.

   Research needed: Examine estate recovery programs in other states (especially Oregon) to show how *Rhode Island can recover at least $15 million per year* from this source. By so doing, the state should be able to achieve even greater savings from cost avoidance as consumers plan more responsibly to pay privately for LTC in order to stay off Medicaid and avoid estate recovery.

3. Besides not utilizing TEFRA liens and underutilizing estate recovery, Rhode Island has no uniform probate code law, no enhanced definition of "estate" as authorized by OBRA '93, no way to track deaths and estates systematically, no method to ensure recovery of recipients' "nursing home accounts" (up to $4,000), and no recoveries at all from home care benefits which are likely to explode under the global waiver.

   Research needed: Research and propose a combination of state legislative initiatives and program changes to address these specific deficiencies and improve RI's non-tax revenue from these sources.

Issue 3: **As Rhode Island's Medicaid long-term care program rebalances from heavy coverage of institutional services (nursing home care) to vastly more home and community-based care (HCBS), total program costs may increase rapidly.**

Recommendation: Identify, explore and quantify the risks and cost of rebalancing. Consider why measures to reduce excessive program eligibility may be critical to maintain cost-effectiveness under this global waiver initiative.

Facts:

1. Rhode Island's global waiver proposes to reduce nursing home dependency by providing services in the community (HCBS) to more people at less cost.

   Research needed: Find, enumerate and elucidate the extensive literature that demonstrates HCBS will not save money. Use this information to develop ways that total costs can be reduced while funding less nursing home care and more HCBS by controlling eligibility, maximizing estate recovery, and encouraging private financing of long-term care.

2. RI Medicaid historically and currently provides LTC benefits mostly in nursing homes (90%) and much less in HCBS (10%). The state plans under the waiver to expand HCBS vastly and reduce nursing home care. Yet nursing homes have already lost 1200 beds statewide; seen their occupancy decline from 97% to 90%; and suffered reimbursement cuts so that current Medicaid payments are now $16.21 per bed day (12 percent) less than allowable costs, while their Medicaid census has increased to 73% and their private-pay census has plummeted to 10%.

   Research needed: Explore these problems and propose solutions that avoid further damaging an already fragile service delivery system.

3. The Rhode Island global waiver contemplates assisted living facilities (ALF) and home care providers picking up the extra care recipients who will no longer qualify for nursing home care due to increased acuity of care requirements. Yet few ALF beds are available in the state and home caregivers are in very short supply. ALF and home care providers say Medicaid pays too little to enable them to provide services to the kinds of higher-need recipients under the global waiver who otherwise would have received care in nursing homes.

Research needed: Examine and quantify these problems and suggest ways to eliminate them by improving Medicaid eligibility, estate recovery and public education programs.

Issue 4: **Medicaid is the dominant payer for long-term care in Rhode Island because easy eligibility, almost nonexistent estate recovery, and a lack of positive incentives for private financing alternatives has left the public largely unaware of the need to plan, save, invest or insure for long-term care risk and cost.**

Recommendation: Develop a plan to implement, integrate and publicize stricter income and asset eligibility rules, stronger lien and estate recovery policies, and the need for consumers to plan early and save, invest or insure for long-term care. Use some of the resulting savings to educate the public about long-term care planning and private LTC financing options.

Facts:

1. Despite widespread home ownership and high property values in Rhode Island, reverse mortgage lenders report that borrowers rarely (perhaps 5%) use the proceeds of home equity conversion to pay privately for home care and related medical and custodial services.

   Research needed: Determine to what extent Rhode Island's $500,000 home equity exemption encourages Medicaid use and discourages home equity conversion as a means of financing LTC privately. Estimate potential savings to the state of limiting the home equity exemption and incentivizing the use of reverse mortgages to fund home care. (See especially the National Council on the Aging's study titled "Use the Home to Stay at Home.")

2. Long-term care insurance producers in Rhode Island report that too few policies are in force; the market is flat or down; the state has no tax incentives to encourage the purchase of LTC insurance; Medicaid planning after the insurable event has occurred is commonplace; and, although RI has approved a "long-term care partnership" program, no policies are being sold.

   Research needed: Carefully examine and consider implementing policies to encourage early LTC planning, utilize tax incentives for the purchase of private insurance for long-term care, and eliminate Medicaid eligibility policies that have the effect of anesthetizing the public to the risk and cost of LTC.

SUMMARY

Rhode Island's current plan under the global Medicaid waiver to expand home and community-based services while reducing nursing home use without controlling the state's wide-open LTC eligibility system is, however unintentionally, highly likely to increase costs and undermine private-sector LTC financing sources.

Careful study and further review of the issues raised in this report will identify corrective actions that can reduce costs by targeting Medicaid benefits under the global waiver to people most in need and by encouraging private, market-based solutions based on savings, investment and insurance to fund long-term care. ■

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ADDITIONAL RESOURCES

1. Center for Long-Term Care Reform's extensive Web site and "LTC Blog" are here: *www.centerltc.com*

2. The Ocean State Policy Research Institute's Web site is here: *www.oceanstatepolicy.org*

3. The primary researcher's professional biography is here: *http://www.centerltc.com/steves_bio.pdf*

4. An electronic handout with links to many of Stephen Moses's published articles, speeches and reports is here: *http://www.centerltc.com/Handout-print.pdf*

5. See especially the Cato Institute monograph titled "Aging America's Achilles' Heel: Medicaid Long-Term Care" here: *http://www.cato.org/pubs/pas/pa549.pdf*

6. See reports for HCFA (1985) and the federal DHHS, Inspector General (1988) that resulted in federal statutory changes in 1993 (OBRA '93) and laid the groundwork for 2005 legislation (DRA '05) on Medicaid and LTC financing issues here (*http://www.centerltc.com/mer_study.pdf*) and here (*http://oig.hhs.gov/oei/reports/oai-09-86-00078.pdf*), respectively.

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APPENDIX

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A Word from … the Underwriting & Claims Track

I am honored to have the opportunity to serve as an Affiliate Council Member and co-chair of the Underwriting & Claims Track for the LTCI section. I believe that this section of the SOA plays an integral role in the leadership, research and education of actuaries and many other professionals involved with the development, sales, management and future of the LTC insurance industry. I am pleased to have the opportunity to foster the direction and initiatives of this section as well as act as a liaison for the broad base of members from all functions and disciplines within this market. I look forward to the upcoming year! ■

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