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Perspectives on the Community Living Assistance Services and Support (CLASS) Act

The implications of the new long-term care law for individuals, employers,
insurers and providers, and the federal government



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AN INTRODUCTION TO THE CLASS ACT AND ITS IMPLICATIONS FOR INDIVIDUALS

Although the date that enrollments may begin is not yet known, a proposed benefit plan must be published by October 1, 2012, with a public comment period following.

Title VIII of the Patient Protection and Affordable Care Act (PPACA) is entitled the CLASS Act. CLASS is an acronym for Community Living Assistance Services and Support. The PPACA was signed into law in 2010. Although the date that enrollments may begin is not yet known, a proposed benefit plan must be published by October 1, 2012, with a public comment period following.

The CLASS Act was established as a voluntary long-term care insurance program to help individuals with functional limitations maintain their personal and financial independence and to help alleviate the burdens of family caregivers. Requirements for *enrollment* include:

- Must be 18 or older
- Must receive wages, or self-employment income, upon which a tax is imposed
- Must be actively employed
- Must not be confined in a hospital, long-term care facility, or mental institution, and must not be confined in a correctional facility

For those who have enrolled, the following requirements must be met before a claim for benefits can be made:

- Must pay premiums for 60 months
- Must earn, during at least three calendar years of the initial 60-month period, an amount equal to the wages and self-employment income that an individual must have in order to be credited with one-quarter of Social Security coverage
- If there has been a lapse in coverage for more than three months, premiums must be paid for at least 24 consecutive months prior to eligibility

Benefits are paid into a Life Independence Account that is established for the enrollee. The eligible beneficiary utilizes the cash benefits through a debit card. The cash benefits may be used to purchase non-medical services and supports that enable the beneficiary to stay at his or her home (or at least in the community) including, but not limited to:

- Home modifications
- Assistive technology
- Accessible transportation
- Homemaker services
- Respite care
- Personal assistance services
- Home care aides
- Nursing support

CLASS Act benefits must be paid only through premiums collected for the benefits of the CLASS Act and interest collected from the CLASS Act reserve fund.

Funding for the CLASS Act is not to come from taxpayer funds—that is, CLASS Act benefits must be paid only through premiums collected for the benefits of the CLASS Act and interest collected from the CLASS Act reserve fund (CLASS Act Independence Fund). There are several key limitations:

- Initial premiums will be level and based on a 75-year pricing period, with the exception of: a) full-time students under age 22 and b) those whose earnings do not exceed the poverty line (both must be actively employed). For these exceptions, the initial premium will be \$5 per month, adjusted by the CPI.
- Each year, premiums for new entrants will be set to cover expected benefit funding for 75 years.

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- After 10 years, the fund reserves cannot decrease on an annual level, until the fund can be shown to cover annual expenses with expected annual premiums and interest earned from the fund. At this point the reserve fund may be decreased.
 - A rate increase may be given if premiums are projected to be insufficient for the next 20-year period beginning the next year (note that some enrollees may be exempted from this increase).
 - Reserves will be invested in obligations of the United States.
 - All benefits shall be paid from premiums and the reserve fund (i.e., no taxpayer funds shall be used to pay benefits).

With traditional long-term care insurance, lapses may be reinstated within a certain period of time, usually 60-90 days. Reinstatement after this time period is only available with further underwriting. Upon reinstatement, coverage is usually provided at the original issue-age premium, back premium due must be paid, and the period of lapse is excluded from coverage. The CLASS Act has limited underwriting. To prevent adverse selection, there are limitations to lapsing and re-enrolling:

- Premium payment lapsed for more than 90 days: enrollee may reenter at his or her current attained age.
- Premium payment lapsed for more than 90 days but less than five years: a credit is given for each month of paid premiums prior to the premium lapse.
- Reenrollment after a five-year lapse: enrollee may reenter at his or her current attained age and must pay a penalty equal to a) 1% per month that premium was not paid, or b) an actuarial penalty for the length of lapse.

There are key *dates* regarding the establishment of the CLASS Act:

- January 1, 2010:
 - Establish eligibility assessment system
 - Agreements with states regarding protection and advocacy system
 - Agreements for public and private entities to provide advice and assistance counseling
 - Issue regulations to establish eligibility determination process and benefit payment amounts
- October 1, 2012: Benefit plan to be announced (followed by a comment period)

The CLASS Act has a number of *similarities* to traditional long-term care insurance:

- Benefit triggers will be two or three of six activities of daily living (ADLs) and/or cognitive impairment
- ADLs: bathing, continence, dressing, eating, toileting, and transferring
- Functional limitation must be expected to last for at least 90 consecutive days
- Triggers will be certified by a licensed health care practitioner
- Premiums are payable for life
- Premiums are not guaranteed (unless you are 65 or older, retired, and have paid premiums for at least 20 years)
- Tax treatment for benefits (benefits paid under the CLASS Act should be treated as a qualified long-term care insurance contract for qualified long-term care services)
- A key ingredient to lowered premiums is the return on reserves

The CLASS Act has limited underwriting. To prevent adverse selection, there are limitations to lapsing and re-enrolling.

Differences when comparing the CLASS Act to typical long-term care insurance include:

- No medical underwriting.
- Must pay premiums for 60 months prior to benefits becoming eligible.
- Premiums must be paid monthly.
- The minimum average daily benefit will be \$50, indexed to the Consumer Price Index for All Urban Consumers (CPI-Urban). Any increase resulting from the CPI-Urban occurs on the claim anniversary, not enrollment anniversary; increases resulting from a change in the functional status may take place during the year.
- Benefits paid based on level of disability; at least two and up to six levels may be defined.
- Benefits paid will coordinate with any benefits paid under the PPACA.
- Premiums cannot be increased for any active enrollee who meets all of the following:
 - Age 65 or older
 - Has paid premiums for at least 20 years
 - Is not actively employed
- Actively employed refers to an employee's regular duties (no minimum hourly requirement).
- Benefits are paid into a Life Independence Account established on behalf of each eligible beneficiary.
- Benefits in the Life Independence Account can be utilized through the use of a debit card. Special rules apply for beneficiaries on Medicaid or enrolled in the Program of All-Inclusive Care for the Elderly (PACE).
- Benefits can be paid to family caregivers (with no limiting rules).
- Is not regulated by the National Association of Insurance Commissioners (NAIC) as are most insurance plans.
- Under certain circumstances, premiums paid for traditional long-term care insurance may be a deduction for adjusted gross income when computing federal income tax (and also for state income tax). Premiums paid for the CLASS Act are not deductible for any taxes.
- Administrative expenses are limited to 3% per calendar year. Private long-term care insurance carriers do not have this limitation. It appears that the administrative expenses include expenses of: benefit plan and premium development, premium redevelopment, premium collection, claim payment, CLASS Act Independence Fund management (e.g., reserve fund investment expenses), advocacy services, advice and assistance counseling services, Independence Advisory Council, board of trustees for the CLASS Act Independence Fund, actuarial, enrollment, marketing and education, and annual report development.
- Premiums must be invested in government securities, which provide a lower return than the investments of private insurance companies.

For enrollees, there are some *advantages* to the CLASS Act when compared to purchasing typical long-term care insurance:

- Available to employed individuals, 18 or older
- No medical underwriting

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- No lifetime maximum benefit
 - Full-time students (under age 22) and enrollees who do not exceed the poverty line will have monthly premiums initially set at \$5 (increased annually by the CPI-Urban for years after 2009)
 - Those who are disabled but can otherwise qualify for enrollment may begin receiving benefits in five years
 - Premiums cannot be increased for enrollees who are 65 or older, have paid premiums for at least 20 years, and are not actively employed

Likewise, there are a number of *disadvantages* for enrollees in the CLASS Act versus traditional long-term care insurance:

- Five-year waiting period.
- Must have earned the Social Security minimum wage for at least three calendar years of the initial five-year period.
- Benefits are funded entirely by premiums paid by enrollees.
- Subsidies may occur for those who:
 - Cannot receive a premium increase, e.g., enrollees who: a) are age 65 or older, b) have paid premiums for at least 20 years, and c) are not actively employed.
 - Pay less than the full monthly issue-age rate, e.g., full-time students and those with income below the poverty line.
 - Adversely select, e.g., employees who are disabled yet are actively at work; these people may enroll and begin receiving benefits after five years.
- Administrative expenses cannot be more than 3% of premium per year (an aggregate requirement); administrative expenses include advocacy services and advice and assistance counseling (the 3% probably includes marketing expenses and debit card expenses and it may include investment expenses). Many people have pointed out that the claim expense alone can be over 3% of premium. However, the 3% limitation is for the entire block of business, not just those on claim. That being said, it appears the Department of Health and Human Services' (HHS) expectation is that the 3% will not cover the enrollment expenses in the early years.

The CLASS Act will influence five major categories of parties very differently. Each of these have specific items of enthusiasm/concern:

- **Individual:** There are two primary items of enthusiasm for an individual: the lack of underwriting and lifetime benefits. Being able to enroll during any open enrollment period will be a huge advantage to those who cannot pass the underwriting restrictions of private carriers, especially those who are already chronically impaired yet are currently employed (i.e., the working impaired). Likewise, the lure of guaranteed insurability will help those who think they will never need long-term care. For these people, they only need to remember that they need three full years of employment and five years of premium payments prior to being eligible for benefits. When their outlook toward the future changes (and keeping these deadlines in mind), they will enroll. Lifetime benefits will be especially advantageous to those working impaired.

The primary areas of concern for an enrolling individual are the level of premium charged, rate increases, adequacy of benefit levels, and the continued long-term viability of the program. The individual will want the premium charged to be as low as possible with little risk of a premium increase.

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They will also want the CLASS Act to be a viable program until they are no longer in a position to be eligible for claims (e.g., they have either dropped out of the program or they have died).

- **Employer:** There are two primary items of enthusiasm for employers: the lack of underwriting and ready availability of the benefits. Employers, particularly those with a sizeable portion of their employee population that is disabled, will now be able to provide ready access to benefits that employees likely could not obtain otherwise. Furthermore, the CLASS program is available without the usual need to search for and vet the offerings of competing carriers—one-stop shopping.

The primary disadvantage for employers is the potentially false sense of coverage employees might feel once they join the plan. The CLASS program benefits may be much less than the level required to provide full coverage of long-term care expenses. Employees with this coverage may not seek supplemental coverage until they need services, only to find that they are now uninsurable. Another disadvantage is the potential additional administrative burden required of employers who offer the CLASS program to their employees.

- **Insurer:** Insurance companies can be enthusiastic about the potential exposure that the CLASS Act will give to LTC insurance. The potential exists for increased sales, as employers and employees weigh in on whether or not to enroll in CLASS, and for sales of new products designed to complement CLASS.

On the other hand, the possibility of increased government intervention in private LTC is possible, if CLASS enrollment is low. If CLASS premiums are low and enrollment is high, the potential LTC market could shrink.

- **Government:** The federal government is clearly enthusiastic about encouraging long-term care coverage, and aims to accomplish this, at least in part, with the introduction of the CLASS program.

The secretary of Health and Human Services (HHS) needs to be concerned about participation. Increasing and broadening participation is the counterweight to adverse selection. As the LTC insurance industry has learned, it is difficult to get people to plan for the consequences of aging or disability—events most people don't want to think about and see as taking place far in the future, if ever.

However, the secretary of Health and Human Services (HHS) needs to be concerned about participation. Increasing and broadening participation is the counterweight to adverse selection. As the LTC insurance industry has learned, it is difficult to get people to plan for the consequences of aging or disability—events most people don't want to think about and see as taking place far in the future, if ever. And because the government currently pays for most LTC in the United States, many mistakenly believe the government will be there in the long run. Marketing and education are essential, as group LTC providers in the private market have learned.

Participation also depends on cost; and partly because most people do not see it as an urgent need, the LTC insurance market is very price-sensitive. To increase participation, it will be important for the CLASS act to take any steps possible to reduce premiums.

- **Providers:** Providers have reason to be enthusiastic about the likelihood that future patients will have some type of insurance coverage to a much greater extent than they do now. Furthermore, the fact that most people do not currently have some sort of coverage may become more widely understood as a result of the CLASS program.

Providers will have to wait for their CLASS program dollars, however, because benefits will not be provided for five years after the effective date of the first CLASS policy. In the meantime, providers should be aware that several provisions of the Act require action within the next two years focusing on the availability and quality of services.

Outstanding questions include:

- Benefit plan to be offered.
- When enrollments may begin.
- Premiums for the plan that will be made available to enrollees.
- Benefit levels (between two and six) that will be paid to eligible enrollees.
- Will benefit levels be high enough to cover the expense of long-term care?
- Will enrollees of the CLASS Act need to supplement its benefits with private long-term care insurance?
- How a person qualifies for the different benefit levels.
- For lapses longer than five years, one penalty to be offered is 1% per month of lapse duration. Other penalties may be offered—these are not yet known.
- Enrollments, after the first, may occur, but not more often than biennially. The frequency is not known.
- What happens if administrative expenses are greater than 3% of premiums in any year?
- What happens if adverse selection becomes rampant?
- Will companies who sponsor the CLASS Act program also sponsor a private long-term care plan?
- How long will premiums remain level?
- Viability of the CLASS Act into the future. The CLASS Act has the potential for severe anti-selection; if anti-selection becomes overbearing, it is possible that it cannot be funded through enrollee premiums only.
- Will the sales of private long-term care insurance increase due to the added exposure?
- Will the sales of private long-term care insurance decrease because those who enroll in the CLASS Act will ignore any remaining financial risk that is due to long-term care?
- Will carriers group their long-term care programs' focus primarily on sales to preferred risks?
- How will private insurance carriers react to the CLASS Act?

Conclusion

The CLASS Act has the potential to help many people who are working employees and self-employed. Key to the program and its continuing effectiveness are its ability to have competitive products and stable rates.

Note that the CLASS Act can have positive attributes even if it is not an effective, ongoing program. The CLASS Act would be regarded to have a positive influence if it induces the public to embrace any form of financing for long-term care, other than Medicaid. However, for the program to be effective and ongoing, it will have to have many more healthy people than disabled people. The key to attracting healthy people will be low premiums; the key to a successful program will be premiums that are high enough. Minimal underwriting requirements will establish the CLASS Act as a program with rich benefits for those employees who are currently disabled. Low expense ratios will make it difficult to educate employees who have little knowledge of the expense of long-term care or their risks to self-sufficiency without protection from these expenses.

The key to attracting healthy people will be low premiums; the key to a successful program will be premiums that are high enough.

Recent estimates of the required premium level vary from \$123 per month (Congressional Budget Office), to \$160 per month (American Academy of Actuaries), to \$240 per month (CMS actuary).

CLASS ACT: CONSIDERATIONS FOR EMPLOYERS

The Community Living Assistance Services and Supports (CLASS) Act provides for long-term care (LTC) coverage for actively-at-work enrollees. The benefit will vary by level of functional disability, but the average benefit is guaranteed to be a minimum of \$50 per day. Recent estimates of the required premium level vary from \$123 per month (Congressional Budget Office), to \$160 per month (American Academy of Actuaries), to \$240 per month (CMS actuary). Once employees enroll in the program, they become eligible beneficiaries after paying the premium for a minimum of five years. Employers can participate in the program such that their employees are automatically enrolled in the CLASS Act program and can pay premiums by way of automatic payroll deduction. For self-employed workers or employees whose employer does not choose to participate, enrollment in the program is still an option but such people must enroll directly.

Advantages and disadvantages of the CLASS Act program for employers and employees

CLASS Act program is an option for uninsurable employees

Enrollment in the CLASS Act program is not subject to underwriting as are most LTC insurance policies, and it is therefore generally expected that the enrollees will be more expensive than the average population in terms of LTC needs. An employee who is already eligible for benefits based on the criteria of needing assistance with two or three of six ADLs—a paraplegic employee who could currently qualify for example—is more likely to choose to join the program than an employee who has no current or imminent need.

The premium for the benefits provided is therefore almost certain to be more expensive than a comparable insured product available through the commercial market, possibly much more expensive. This, in turn, would make the program less appealing to employees who would be able to pass underwriting and therefore could purchase an LTC policy for a less expensive premium elsewhere.

To the extent that an employer has a high proportion of employees who might have current or imminent LTC needs, joining the program may make sense. For other employers it still might make sense, although the advantage to employees of doing so is less obvious. For all employers, any benefits to employees from this program are predicated on the CLASS program maintaining its long-term financial viability.

While the decision for an employer to join the CLASS Act program should consider the advantages to employees who need the benefits, employers should also be cautioned about several issues related to the presence of the CLASS Act program.

CLASS Act benefits are lean

The CLASS Act benefits provided will not cover much LTC expense, much less than what would be required to fully cover a nursing home stay for example. According to the Genworth 2010 Cost of Care Survey, the national median daily rate for a semi-private room in a nursing home is \$185, a 5.7% increase over the cost in 2009. Note that the parallel rates vary widely across the country. For example, figures for Texas and Connecticut are \$121 and \$346, respectively.

Likewise, the 2010 national median hourly rate for the services of a home health aide is \$19, a 2.7% increase over the cost in 2009. If the minimum daily benefit ultimately offered by the CLASS Act is the stated average of \$50 per day, this would cover roughly two hours of home health aide services each day at the median hourly rate. The bulk of home healthcare is provided by home health aides, so this may be adequate for many eligible beneficiaries.

For skilled care in the home, services such as those provided by a nurse or a physical therapist may cost three times that amount, according to the Bureau of Labor Statistics. Again, the hourly rates vary widely across the country.

In areas of the country where cost of care is lowest, the CLASS Act benefits might provide more adequate coverage making enrollment in these areas more appealing.

For employees with current home healthcare needs, the proposed average minimum benefit of \$50 per day is probably very helpful. An actively-at-work person with ADL impairments is no doubt fairly high-functioning compared to other ADL-impaired persons, and such a person also has an ongoing source of income. Any financial help with home healthcare needs is an immediate and obvious benefit and will be worth the high premium. This is better than no insurance benefits, which is what ADL-impaired employees would receive otherwise because they could not pass underwriting and get more comprehensive LTC insurance elsewhere.

More severely impaired beneficiaries will receive more benefit dollars per day, but how the amount will vary is not yet known. Employees should not enroll in the program assuming that they will receive the maximum daily benefit paid under the CLASS Act program since they will not typically be able to predict their level of ADL impairment if and when they make a claim, which will be five years after joining the program at the earliest.

CLASS Act program enrollees may be underinsured

For more seriously impaired persons such as the frail elderly, however, a benefit of this level is likely to be inadequate to cover LTC expenses. Therefore, enrollees without supplemental LTC insurance are likely to be underinsured for more serious LTC needs that are common later in life. It is very important that enrollees understand this for two reasons:

- First, so that they don't believe they are fully covered for LTC expenses if and when the time comes, most likely during retirement. They might then find that they are not adequately covered and their retirement funds must be spent to supplement their benefits to pay for LTC expenses.
- Second, so that employees who are underinsured understand this fact while they are still able to pass underwriting in order to purchase the additional coverage they will require. Realizing that benefits are too small to cover necessary expenses when the need is imminent is too late to do anything about it.

Need for employee education

There are widespread misconceptions about how LTC services are reimbursed, so it is important that employers make sure to educate employees to help them avoid the above situations. Common misconceptions include the belief that long-term care will be covered by Medicare (it does not cover custodial care, only skilled care, which is different) and short-term in duration. For the sake of ensuring that employees understand LTC financing, some level of employee education on the topic would be good to implement now that the CLASS Act has made LTC benefits part of the national healthcare reform discussion.

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CLASS Act program is available even if an employer does not join

For employers who elect not to join the CLASS program, there is still a responsibility to inform employees about it in the event that they want to join the program individually. Recall that employers can choose to join the CLASS program such that employees are automatically enrolled in the program and their premiums are paid through payroll deduction. If they do not join as an employer, however, employees can still decide to enroll in the program and pay their premiums directly.

Because this program has the flavor of an employee benefit, whether an employer officially joins the program or not, employees are likely to direct questions about it to their human resources contacts. Furthermore, not informing employees of the availability and features of the program could be problematic later if eligible employees miss the government's enrollment window. This would require a delay in enrollment until the next enrollment period, which is scheduled to be available no more frequently than every other year. This delay will have two downsides for the interested enrollee: premiums for the coverage are based on issue age so a delay in enrollment will be accompanied by an increase in monthly premium, and the coverage date for the benefit will start later than it otherwise would have. The latter would harm employees who have, or develop, a need for the covered services within the first five years of the initial offering.

Also notable is the provision in the CLASS Act stating that enrollees can only disenroll from the program (other than for nonpayment of premium) during an annual disenrollment period. Employees who are

automatically enrolled in the program by an employer who has joined the CLASS program will need to be adequately educated about the program and the automatic enrollment feature in order to be given the opportunity to opt out if desired. Employees who don't want to join and who miss the opt-out opportunity can then expect to have premiums automatically deducted from their paychecks until the next disenrollment period.

Employers will need to be ready to provide employee education on the CLASS program whether they join the program or not. The opportunity to have disgruntled employees can be from either automatically enrolling unwilling employees, or from not informing interested employees soon enough.

Solvency of the CLASS Act fund remains to be seen

Estimating the future costs of the CLASS Act plan so as to have adequate funds to cover will be an ongoing concern. Lessons learned from the commercial LTC insurance industry include the big (and painful) lesson that estimating the future costs of covering benefits is difficult when the benefits may occur in the distant future. Underpricing was a problem for the industry generally as it got its *sea legs* and the unfortunate result led to premium rate increases.

The CLASS Act program funding development will have the benefit of this lesson learned from industry and also a number of years of claim experience on which to base its assumptions. But the manner in which this program is attracting its members is largely different from how the commercial industry has done so. It is possible that new issues in determining appropriate premiums for CLASS Act program members will surface, leading to a scramble to keep the fund solvent. It is best that employers and employees are aware that this program might experience growing pains much as the industry did in the 1990s.

It is best that employers and employees are aware that this program might experience growing pains much as the industry did in the 1990s.

In fact, the legislation that puts the program in place makes allowances for monitoring the fund adequacy and the possibility of rate increases to ensure that it remains solvent. Plan enrollees who are age 65 and older, those who have been enrolled in the plan for 20 years or more, and enrollees who are no longer employed would be exempt from these rate increases, making it possible that certain segments of an employer's employee population might find it more beneficial than others to join (e.g., employees near retirement age).

CLASS ACT: IMPLICATIONS FOR INSURERS AND AGENTS

The Community Living Assistance Services and Support (CLASS) Act, signed into law as part of the Patient Protection and Affordable Care Act (PPACA) in March 2010, created a guaranteed-issue long-term care (LTC) program available to actively-at-work employees. The program will be voluntary (employers can choose to opt in, and employees can choose to opt out or in), and the benefits will be minimal (average daily benefit of \$50). Because this is a voluntary program with no underwriting required, expectations are that the participation will be low and premiums will be high. Recent estimates of the required premium level vary from \$123 per month (Congressional Budget Office), to \$160 per month (American Academy of Actuaries), to \$240 per month (CMS actuary).

Insurance companies that are currently offering private LTC insurance, either to groups or to individuals, and agents that sell private LTC have greeted the CLASS Act with mixed reviews. Some view the program as a competitor that will pull away groups and individuals who might otherwise buy private insurance. Others believe the benefits and premiums will be so inferior to private coverage that—with the added publicity associated with the program—private sales will flourish. All agree, however, that the existence of the CLASS Act program will require private insurance companies and agents to rethink how they market their policies and the benefits they offer.

Possible insurer and agent strategies

Insurer and agent reaction to the CLASS Act is likely to evolve over time, as the program specifics are developed and implemented. Likely reactions include the following:

- *Wait and see* (short term, until program details are announced)
- Capitalize on the publicity generated by the CLASS Act program to push private insurance, by:
 - Creating, for individuals and groups, comparisons of CLASS premiums and benefits to the insurer's premiums and benefits
 - Creating publicity pieces that explain the weaknesses and risks of the CLASS Act program, compared to private insurance
- Create a wraparound plan to complement CLASS benefits (similar to Medicare Supplement)
- Create policies with benefits designed to complement CLASS, without wrapping around its benefits

Because many of the details of the CLASS Act program have yet to be established, and because there are some efforts underway to repeal or modify the program, the *wait and see* approach is being followed by many insurers and agents at the current time. However, they should at least be thinking about what other approaches they will take, once details of the program are announced.

Capitalizing on the publicity

When the details of the CLASS Act program are announced and first employers, then employees, are required to make decisions about whether they want to sign up or opt out, there is likely to be a great deal of publicity about the need for LTC insurance. This publicity can be beneficial for private LTC insurance, as long as insurance companies and agents can convince potential buyers that their policy is *better than* the alternative CLASS Act program. *Better than* can be defined in terms of value for the price, projected stability in premiums, and suitability of benefits to a person's needs.

The CLASS Act program will have monthly premiums that are supposed to be actuarially sound, with no underwriting. Actuarial soundness is dependent on getting a large percentage of employees to purchase, so that there is a reasonable spread of risk (i.e., so that a large number healthy insureds purchase). However, expected take-up rates for group LTC are generally low, and are projected by the Congressional Budget Office and the American Academy of Actuaries to be no more than 3% to 5% for

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this program. A participation rate this low would most likely mean that the primary purchasers would be the less healthy, which would result in a potential need for future rate increases and a classic adverse selection spiral. In addition, CLASS premiums are not planned to vary by risk class or marital status.

In contrast, private LTC insurance is generally subject to underwriting, and rates usually vary by risk class and marital status. This presents an opportunity for direct premium comparisons that are likely to demonstrate lower premiums for private LTC insurance, at least for those who can qualify as preferred risks and/or who are married.

The CLASS Act has just one benefit option for all—a zero-day elimination period, lifetime benefit period, payable for formal and informal care (i.e., a disability model), with inflation included.

The CLASS Act has just one benefit option for all—a zero-day elimination period, lifetime benefit period, payable for formal and informal care (i.e., a disability model), with inflation included. The daily benefit, while it will vary by the ADL level of the claimant, is expected to average only \$50. In contrast, private LTC insurance offers many elimination and benefit period options, is primarily sold on a reimbursement basis (where only formal care is reimbursed), and has many options available for inflation coverage and other miscellaneous benefits. It would thus be easy for an insurer or agent to argue that its product is more flexible and can be better customized to an individual's needs—in addition to being less expensive.

Lastly, many critics of the CLASS Act believe that it is a program doomed to fail, because of selective enrollment and the likelihood of future rate increases. The public program is supposed to be self-sufficient, relying only on premiums (current and any future possible rate increases) and reserves generated from them and not relying on any tax dollars. Private LTC, in addition to having the right to raise future premiums, also has financial backing from the insurance carrier in the form of risk-based capital being held and company surplus.

While some direct comparison of private LTC to CLASS benefits and premiums are necessary and appropriate, direct attacks on the CLASS Act could ultimately serve to work against the insurance industry. Further regulations—e.g., not allowing risk classification, marital discounts, or underwriting on private LTC insurance—could result in order to level the playing field.

Wraparound LTC

Some have stated that the CLASS Act creates an opportunity for LTC insurers to develop wraparound policies that supplement the benefits of the CLASS Act, in the same way that insurance companies have developed Medicare Supplement products to augment the Medicare program. This could be done either by a product with benefits designed specifically to supplement the CLASS Act program, or by adding a coordination benefit to LTC policies, so that they coordinate with both Medicare and with the CLASS Act program. It should be noted that either structure would necessitate some current regulatory changes.

Adding a coordination of benefits provision would be the simplest way to coordinate with CLASS benefits, but would create inequities between those who sign up for CLASS and those who don't, given that the premium would be the same. Such a policy would need to be priced using an assumption of the average coordination that would occur (which would add some additional variability to the premium). Those who sign up for CLASS would get lower benefits from the policy, while paying the same premium.

Instead, a specific wraparound product could be created, which would only be sold to those who have signed up for CLASS, in the same way that a Medicare Supplement policy is only sold to those enrolled in Medicare Parts A and B. There are, however, a couple of key differences between the Medicare program and the CLASS Act. First, Medicare has specific deductibles and copays that are easy to *wrap around* and fill in, while the CLASS Act pays up-front dollars for a person's lifetime. That means Medicare Supplement policies pay well-defined *first* dollars, while CLASS supplements would pay open-ended *last* dollars. A wraparound product designed for CLASS would have to pay expenses after a daily deductible equal to the CLASS payment (which varies by ADL limitation). To be a true wraparound, it would likely also pay for the same time period (zero-day elimination period and lifetime benefit period) and with the same disability model structure. It is possible that the wrap-around product could have risk classes and underwriting, even though the CLASS program does not. Such a product is likely to be expensive and difficult to price and sell.

A second difference between Medicare and CLASS relates to the *opt-in and -out* feature of CLASS. The ability to move in and out is not allowed in Medicare, and virtually everyone joins and stays in. A person is required to be enrolled in Medicare in order to have a Medicare Supplement policy. With the CLASS Act, people can move in and out at will (with some premium penalties applied). This would either create a situation where a CLASS supplement policy would need to be non-renewable, to be cancelled when a person leaves CLASS, or it would create a great risk for insurance companies that they would be stuck with higher costs (\$0 daily deductible) for those periods when a person has opted out. Added to this is the risk that the federal government could change the benefits of the CLASS Act program (or even discontinue it) at any point in time.

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Lastly, because of the five-year waiting period required before someone can collect benefits under the CLASS Act, a wraparound LTC policy would either need to prohibit sales to anyone within this five-year wait, or would need to have premiums that vary by what year within the waiting period a person is in, because the LTC policy would be responsible for 100% of costs for any claim during that period. Alternately, pricing could just assume that the company pays 100% of benefits in these first five years, but then pricing assumptions would need to include what proportion of sales occurred in year one of CLASS coverage, vs. year two, etc.

Assuming that an LTC carrier would not be comfortable with offering a guaranteed-issue wraparound product (except possibly for very large groups), and assuming that the less healthy individuals are most likely to enroll in CLASS, the market for an underwritten wraparound product is likely to be small.

Complementary LTC

Given the difficulties of creating a wraparound product, companies could instead look into creating products that are designed to complement CLASS benefits, without tying directly into them. For example, a policy could be created with a \$50/day deductible, so that it does not duplicate the benefits of the average CLASS claimant. For someone who is getting reimbursed more or less than the average \$50/day payment (because of having more or fewer ADLs), there could be either some duplicate payment or some out-of-pocket required. If desired and allowed by regulators, an LTC policy could also be developed that has a daily deductible that varies by the level of the claimant's ADL limitation, to better tie into the CLASS benefits.

A policy could even be developed that, rather than relying on a variable deductible, would have different benefit payments, depending on a person's ADL level. In order to best complement CLASS, this policy would have lower payments provided for higher levels of ADL impairment. Of course, the disadvantage of this structure is that people with fewer or more ADL limitations might incur the same LTC expenses (for example, in the case of a nursing home stay), so this policy could be perceived as inequitable.

A complementary LTC policy would not be limited to the same benefit structure as the CLASS Act program—i.e., it could be designed with different options for elimination period, benefit period, reimbursement structure (e.g., pays expenses vs. pays a fixed daily benefit for each day services are received vs. pays a fixed daily benefit for each day a person is disabled), and inflation option, as is currently the case. A policyholder who purchases both a private LTC policy and the CLASS policy would then have some payment from CLASS whenever they are disabled, but could have all of their expenses paid for a time period for which they view themselves to be most at risk.

Of course, in lieu of designing a policy with a daily deductible, a company could also simply train its agents to determine whether a person is enrolled in the CLASS Act program and, if they are, to only sell them a daily maximum equal to the average cost in the area minus \$50.

Conclusion

Another insurer strategy not mentioned above is to do nothing, even after the CLASS Act program is implemented. LTC sales could be focused on those who do not enroll in CLASS. Of course, an insurer or agent using this strategy would not be able to prevent a policyholder from also enrolling in CLASS or members who are in CLASS from purchasing the private policy. In these cases, policyholders would have double coverage for some portion of their benefits and would effectively be over-insured. This could lead to adverse selection and additional utilization.

Regardless of the strategy chosen, LTC carriers and agents must carefully think through the options available and be aware of the effects of their decisions on policyholders and product profits. While the best strategy may become clearer once premiums and benefits of CLASS are determined, early planning will help insurers and agents react quickly and help determine the best strategy to employ during the time period until premiums and benefits are finalized.

IMPLEMENTING CLASS

How the CLASS Act is put into effect will determine its viability and long-term success. This article will examine issues with the design of the program, propose several alternatives based on experience from the private insurance market, and also summarize the impact of the Act on providers.

The new reality

While the idea of an affordable, nationwide LTC insurance program is appealing to some, the Community Living Assistance Services and Supports (CLASS) Act itself has some significant weaknesses. The program is both voluntary (there is no mandate for participation) and guaranteed-issue (practically anyone of any age or health level can join). Voluntary, guaranteed-issue programs are known to have the potential for significant adverse selection. Because individuals know they can join at any time, low-risk individuals refrain from joining until they become sick. This raises premiums, further discouraging early participation by low-risk individuals. This cycle can quickly result in insolvency if an appropriate spread of risk is not achieved at program inception. The CLASS Act faces an uphill road in trying to get enough participation to keep premiums at a viable level. A key component that will drive participation is price. If the program cannot be structured and priced such that it is *affordable*, needed participation may not be achieved.

This problem is exacerbated by the potential clash between the CLASS Act and the private LTC insurance market. Since the government program is guaranteed-issue, it will tend to attract the highest-risk individuals. This may prove to benefit the private sector (at least temporarily), which can engage in risk selection to offer richer plans at lower cost.

There may be opportunities to improve the viability of the CLASS Act and create a space for private insurers to profitably offer LTC coverage in ways that complement the government program. The CLASS Act would be strengthened if it took some lessons from the experiences of the private market with regard to benefit design and adverse selection.

Options for reducing program costs

The Secretary of Health and Human Services (HHS) needs to be concerned about participation. Increasing and broadening participation is the counterweight to adverse selection. As the LTC insurance industry has learned, it is difficult to get people to plan for the consequences of aging or disability—events most people don't want to think about and see as taking place far in the future, if ever. And because the government currently pays for most LTC in the United States, many mistakenly believe the government safety net will be there in the long run. Marketing and education are essential, as group LTC insurance providers in the private market have learned.

Participation also depends on cost; and partly because most people do not see it as an urgent need, the LTC insurance market is very price-sensitive. To increase participation, it will be important for the CLASS Act to take any steps possible to reduce premiums. Two aspects of the plan benefits, as currently written, work together to make it relatively expensive. First, it guarantees lifetime benefits—there is no cap on how long recipients can draw from the plan. Second, it provides a cash benefit rather than reimbursement for services as most private plans do. The private industry has learned that cash benefits create incentives that can increase utilization.

While these aspects of the CLASS Act are clearly delineated in the Act, some flexibility may be provided by the requirement that the program be *actuarially sound* over a 75-year time horizon. Also, the program is not strictly defined in all its elements. Several cost-saving measures appear to be available within the present wording and structure of the Act. While few of them are likely to be popular, they are preferable to a plan whose costs spiral out of control. Some of the following changes may require a liberal interpretation of the Act, or revisions to the current wording.

- **Increase activities of daily living requirement:** The Act allows for a two- or three-ADL benefit trigger requirement. The secretary should choose the three-ADL option to help control utilization and lower premiums.

Because individuals know they can join at any time, low-risk individuals refrain from joining until they become sick. This raises premiums, further discouraging early participation by low-risk individuals. This cycle can quickly result in insolvency if an appropriate spread of risk is not achieved at program inception.

- **Create an incentive to preserve benefits:** Currently, CLASS Act benefits grow in step with inflation, as determined by the Consumer Price Index (CPI). Individuals could be encouraged to preserve their benefits by offering them a faster benefit growth rate if they do not access their benefits until a certain age.
- **Change the cash benefit:** Today, the cash benefit can be collected even if a spouse or child is performing LTC services. This is rarely the case in the private market because of the perverse incentives it creates. The provision could be structured more stringently so that the cash benefit can only be used for specific services such as a Medicare-approved home care agency. This would help reduce utilization.
- **Add an option for other than a zero-day elimination period:** Currently, CLASS Act participants can begin drawing benefits immediately upon meeting the criteria for disability. An elimination period would require them to meet those criteria for a specified period of time, limiting the program to those who are in clearer need of true LTC.
- **Add an option for other than a lifetime benefit period:** While a lifetime plan would be offered, other benefit period options that are part of the same CLASS offering may help to keep premium levels intact and potentially open up a supplemental plan.

If an actuarially sound program is still not possible given those changes, there may be a justification for changing other elements. For example:

- **Increasing the actively-at-work requirement:** Currently, this is relatively liberal—requiring only that individuals earn approximately \$1,200 per year to join the program. Raising the requirement would reduce exposure to the highest-risk individuals. This is an imperfect solution; those individuals would have to be covered by a subsidized high-risk pool or rely on Medicare/Medicaid to pay for LTC, a situation that the CLASS Act is intended to address in the first place.
- **Imposing rising premiums:** The CLASS Act initially sets a premium that is intended to be level over the life of the participant. This premium inherently includes significant pre-funding and therefore contains a high initial price tag. One option that could help reduce that initial price is to include an increasing premium option. The premium could increase with the CPI consistent with the benefit increases.

Working together with private insurers

Private insurers and the government have incentives to work together. The government will have difficulty attracting low-risk individuals who will likely be able to get *richer plans at lower cost* in the private market. On the other hand, if competition threatens to undo the CLASS Act altogether, the government may intervene in the private sector.

A better way forward is to create a clear space for private LTC insurance providers to operate profitably and in a way that complements public LTC insurance. Some of the possible changes to the CLASS Act proposed above could help create this space by enabling private insurers to offer supplemental coverage. For example, if limited benefit period plans are offered with a significant elimination period, insurers could offer coverage that makes up the difference.

A better way forward is to create a clear space for private LTC insurance providers to operate profitably and in a way that complements public LTC insurance. Some of the possible changes to the CLASS Act proposed above could help create this space by enabling private insurers to offer supplemental coverage. For example, if limited benefit period plans are offered with a significant elimination period, insurers could offer coverage that makes up the difference.

Insurers will choose their strategies based on the final details of CLASS Act coverage. The competitive approach is to offer plans that compete directly with the CLASS Act, with lower prices that are due to risk selection. In a more cooperative mode, they could offer supplemental policies whose benefits are different than, but complementary to, those of the CLASS Act. By providing coverage with defined benefit periods and an expense reimbursement payout as opposed to a cash benefit, for example, these plans could supplement the CLASS Act at an attractive price without directly competing. Finally, insurers could sell *wrap-around* policies that add to the dollar amount of the CLASS Act benefit for a specified period of time.

If the government and private industry work together, they can make the most of their education and marketing investments while offering a range of LTC coverage that serves a variety of needs. This collaboration with government extends to the providers of services to meet those needs.

The impact of the CLASS Act on providers

Other provisions of the Patient Protection and Affordable Care Act (PPACA) may have a significant impact on providers of LTC services. However, there are also several aspects included in the CLASS Act that could have an impact on the LTC providers. The Act establishes in regulation that several services commonly used in determining eligibility for benefits and management of services provided by commercial LTC insurers may be used as benefits under the CLASS program. In general, the provisions focus on the assessment of the availability and quality of providers and the use of advocacy services as well as advice and assistance counselors. Some of the provisions take effect in the next two years but providers will not see any immediate increase in the need for services from the Act since no benefits will be provided for five years after the program begins and even then, the initial impact may not be significant.

One of the provisions of the CLASS Act was that, no later than 90 days after enactment, the Secretary of Health and Human Services (HHS) was required to establish a Personal Care Attendants Workforce Advisory Panel made up of representatives of home- and community-based service providers, assisted living providers, and other individuals who would care for seniors or the disabled. The purpose of the panel is to advise the secretary and Congress on issues related to the access of personal care attendant workers, the adequacy of the number of workers to provide the needed services, and workforce issues including salary and benefits. The panel was established on June 7, 2010, and nominations for members of the panel are being solicited by the secretary.

By January 1, 2012, the secretary is required to establish an eligibility assessment system and regulations to support the equitable assessment of the benefit eligibility of participants in the CLASS program. The eligibility determination process is required to include a certification by a licensed healthcare practitioner that is consistent with requirements in a federally tax-qualified commercial LTC plan. However, the practitioner will not only determine eligibility in relation to not being able to perform the required number of ADLs, but also the amount of the cash benefit that the claimant will receive according to the sliding scale, which is yet to be established. The National Association of Insurance Commissioners (NAIC) model regulation for LTC states that, in addition to physicians, nurses and social workers must qualify as licensed healthcare practitioners.

Benefits under the CLASS program specifically include advocacy services as well as advice and assistance counseling. Most commercial LTC companies provide similar services today through care managers when plans of care are evaluated for policyholders who become eligible for benefits or are periodically reevaluated. The act instructs the protection and advocacy system for each state to contract with private and public entities to provide these services. The intent is to ensure that the active enrollees and beneficiaries are informed of the available service providers that can meet their needs and that services are provided in a manner that fosters their best interests.

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