By William L. Minnix

The CLASS Story Pits the Angel We Don't Know Against the Devil We Do

CLASS is voluntary, optional, self-sufficient, and could save Medicaid—so let's try it.

Long-term care is an issue most families will face, yet conversations with loved ones about access to it—and paying for it—are all too rare. The affordability of this type of care can be one of the most significant financial hurdles of family life, and a growing body of research shows that increasing numbers of Americans are unprepared should they require long-term care.

For years long-term care was a political anathema that was largely ignored, that is unless elected officials were forced to access the system for themselves or on behalf of family members. Then politicians on both sides of the aisle would often admit that there were growing problems, but they rarely ventured beyond hand-wringing to explore solutions. The cause did, however, have its champions who fought long and hard to include long-term-care reform in the Patient Protection and Affordable Care Act (ACA)—most notably in the form of the Community Living Assistance and Supportive Services program, or CLASS.

Today, as legislators wrestle over the implementation of the new law, long-term care is at the forefront of the debate. The CLASS program represents a landmark piece of legislation, yet it is filled with paradoxes that make its story quite remarkable.

CLASS: A Brief History

Political veterans of health policy will remember how the 1990 Pepper Commission concluded that long-term care was an insurable set of circumstances, and that addressing it should be a priority. But the issue too often remained on the back burner because the assumption was that national health policy should address healthcare reform first, and then tackle long-term care.

So, long-term care was left to the private long-term-care insurance market and Medicaid.

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Those who could afford private long-term-care insurance and survive the underwriting process had a measure of comfort. Those at poverty level, and those willing to transfer assets or spend down to poverty status had Medicaid. Most middle-class Americans have had to turn to their families to patch together services and pay for them out-of-pocket. This expense often

costs thousands of dollars annually for 10-plus million people in any given year, and that number is growing. Medicaid demand is growing exponentially—the devil known all too well.

In addition, Medicaid long-term care is biased toward nursing homes. Though important and necessary, most people do not want or need a nursing home: the vast majority of long-term care is provided in family homes.

Enter CLASS, now at the center of controversy in healthcare reform because of these four questions: Who needs CLASS? What is the potential long-term impact of CLASS? Why do some people want to kill it? What are its unknowns?

Who needs CLASS?

The matter-of-fact answer to this first question is: Every American family. Disabling conditions are indiscriminate of age, socioeconomic status, living venue, background, or genetics. There is the 21-year-old who took that dangerous dive during beach week and is now a paraplegic, or the returning war veteran who is a double amputee. There is the successful lawyer, born with muscular dystrophy and working full time but who could face problems in bathing and dressing in the future. There is the 80-year-old with Alzheimer's Disease who lives with her daughter and family. We know these people. They are us. The U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius, through a speech delivered February 7, 2011, at the Kaiser Family Foundation, tells the following story of Michael:

> *Fourteen months ago, when he was 42, Michael was diagnosed with multiple sclerosis. Since then, he has lost movement in his legs and left arm. His neck muscles have weakened…he has lost ability to control his bladder. Michael can live independently, as he strongly prefers to do, because he has part-time personal care assistance to help with daily tasks…he pays for these assistants with long-term care insurance…but his policy runs out soon, forcing him to rely on Medicaid…if it can't cover the services he needs, his worst fears will come true and he will be forced out of his home* (Kaiser Family Foundation, 2011a).

Secretary Sebelius validates that "people who want to plan for the possibility that they could be in a situation like Michael's often have few good options." Choices include self-pay if you and your family have the money; private long-term-care insurance if you qualify and can afford it; and Medicaid if you are in poverty. Sebelius believes that "Americans need better choices."

Most of us have fire insurance for our homes and car insurance in the event of an accident. Many have health and life insurance, even burial insurance and pet insurance. Insurance is an accepted way of hedging against risk, and now we will have the chance to insure ourselves against perhaps the biggest blank-check risk any of us will face: the inability to live, work, and function at home because personal-care services are not available and there are no means to pay for them. CLASS goes a long way to mitigate those risks.

What's the potential impact of CLASS?

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

CLASS helps the taxpayer in two ways. The law says there can be no tax dollars paid out for benefits. It is a financially self-sufficient program. CLASS helps break the double-downward spiral paradox of welfare and Medicaid.

Here's how the spiral works: to qualify for Medicaid benefits, a younger consumer must be on welfare. To be on welfare, he or she must not be working. But that person needs Medicaid services in order to return to work. But if they work, they cannot receive the services that allow them to be productive. CLASS allows them to use cash to purchase just the services they need to work. Welfare spiral stopped.

The second effect on the taxpayer is that CLASS is a Medicaid-avoidance mechanism. Beginning in year six of CLASS premiums, savings accrue to the taxpayer through reduced federal and state expenditures on Medicaid long-term services and supports. And the more people who sign up for the program, the greater the Medicaid savings.

Twenty years from now, CLASS will be referred to as "the little known and somewhat controversial provision in the healthcare reform act of 2010 that saved the Medicaid program from financial disaster." For businesses, CLASS creates ways for employee caregivers to reduce lost time at work and stress-induced illness.

Why do some people want to kill CLASS?

There are three reasons. The first is that a few companies in the private long-term-care insurance sector perceive CLASS to be a threat. The ironies of that are current product offerings are shrinking, yet there are growth opportunities in the private market for supplemental products with the advent of CLASS. These companies lobbied heavily against the inclusion of CLASS in healthcare reform and found bipartisan support in states where major insurance carriers are based (but not enough to eliminate CLASS from the final passed law).

Another reason is partisan politics. All Democratic and Republican senators voted for its inclusion in the Senate HELP Committee's healthcare reform bill. The elements of choice, consumer-financed premium pool, putting dollars in the hands of consumers, fairness, a program that does not expand entitlements—these are all values and goals expressed by both parties and are embodied in CLASS. Yet it became controversial because it is in the health-care reform bill that one party crafted. Even current opposition is not about the merits of CLASS, but the fact that it was part of the Democrat's health plan, according to off-the-record comments from Republican friends.

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The third reason is what I call dueling actuaries. CLASS has not been done, so there are several respectable actuarial studies that predict multiple scenarios about its success or failure, which gets to the final and following question.

What are the unknowns about CLASS?

The biggest unknown is that no one can know how many people will sign up the day it is offered, and how rapidly the pool will grow based on public perception of benefit and protection. Although their programs are structured differently, other industrialized countries such as Germany and France have faced this issue successfully. There seems to be a tipping point of a percentage of the population that has faced these issues personally that makes paying for some form of long-term-care insurance acceptable. America may be at that point, if polls and focus groups are any reflection. A February 24, 2011, Kaiser Family Foundation poll indicates that "if the public could pick and choose, 83 percent would institute the new voluntary long-term care insurance program known as the CLASS Act..." (Kaiser Family Foundation, 2011b).

Plan design, market research, communications, and messaging will be critical over the next two years to entice both younger and older working people to sign up with sufficient young,

healthy people in the risk pool to make the most reliable actuarial numbers project seventy-five-year solvency. If the numbers do not pan out, there are mechanisms in the law to allow the Secretary of HHS to change premiums or limit exposure for the taxpayer.

Long-Term Care: The Quest and the Cause

In 2003, LeadingAge (then American Association of Homes and Services) began to address the issue of financing long-term care with a visit to Senator Max Baucus. He asked us, "So, how *do* we pay for long-term care?"

I asked our staff health economist, Dr. Barbara Manard, to whip up a three-pager we could take to Senator Baucus in a few weeks. She put her head into her hands, then looked up at me soberly, as if to tell me my dog would not live through the night, and said, "Larry, it isn't that simple."

We embarked upon a quest to respond to Senator Baucus through a task force of the best financial brains among our membership and beyond. They studied models worldwide and concluded that there were four generic ways to fund long-term care. The current way the United States pays for it is through the most expensive, least effective means. The other three were as follows: a new tax on the population as Germany had done; the private market, already an unsuccessful approach for most Americans; or a public-private combination yet to be crafted, based on social insurance.

Our fall 2007 board meeting reviewed the task force findings. The four options were carefully detailed and the public-private, social-insurance approach was endorsed. People could choose to participate through premiums. The fund would be overseen by an independent trust. Benefits would be cash to allow elders to stay at home to the greatest extent possible.

Our board had a decision to make: with the 2008 election at hand and healthcare reform a centerpiece issue, were we going to try to get our plan into whatever healthcare reform might emerge? The safe option would have been to approve the study, distribute it widely, encourage candidates to read it, and pave the way for addressing long-term care after health reform. The bold option was to make the case that healthcare reform could not adequately be addressed unless long-term-care needs were included. The bold option would take an estimated $3 million in further studies, education materials, and grassroots support. We could help make the issue a cause of the people.

Our board voted bold. We would need to partner with others, find political champions, and prepare for difficult politics on several fronts. We knew we might not raise $3 million, and if we did, the whole plan could go up in smoke if the new president and new Congress avoided the issue. But one of our leading members volunteered to raise the money for the bold option. He said he was proud to be part of an association that was taking on such a big issue.

A study was commissioned with the Moran Company (2007) to model a cash benefit, social-insurance option for the American adult population. Sophisticated actuarial models were blended to put forth reasonable assumptions about utilization, premiums, and claims. The benefits were projected at $50 to $100 per day, with an inflation factor, and the premium was roughly the cost of a daily cup of coffee (on average, $2.87 per day).

Focus groups and polling ensued. Real people of various age groups and political leanings appreciated the problem and were willing to pay. Younger people said they would pay less and older people more, but most had seen the issues firsthand in their families and current options for help were simply not sufficient. The Moran study reflected that high use of the model resulted in major Medicaid savings. This is significant considering that the current Medicaid situation is unsustainable.

We found no politician who disagreed.

Champions Rally 'Round CLASS

Into the arena now stepped an essential political champion, and partnership opportunities arose.

Senator Edward Kennedy had previously introduced a CLASS bill that focused on the needs of younger people with disabilities and used a successful pilot called "cash and counseling." The idea was to expand this program to include elders. He assigned the staff work to Connie Garner, his long-time mental health and disability specialist and a passionate advocate. Kennedy became excited about the possibility of a program for everyone, whatever their age.

Historically, finding common ground between the aging and disability worlds has never been easy. To agree on a plan to finance long-term care for every American would take time, creative thinking, trust, and political work. In addition, the Senate and House committees had jurisdictional oversight and various pieces layered with their own internal power struggles over them—even among same-party colleagues. But the Kennedy-Garner team was formidable, effectively forging collaboration at every turn.

The first challenge was to get aging and disability on the same page. This was done first through changing the language from "long-term care" to "long-term services and supports" to dilute the image of the nursing home as the only service for those with functional needs. That agreement occurred in an AARP conference room with key parties present. The second challenge was the coupling of Medicaid Community Choice improvements for younger people with disabilities already in the system with the benefits of CLASS. This happened between Senator Kennedy and Senator Tom Harkin, a long-time friend of all parties. The third challenge was forming a fundamental message that we would all agree to, namely that "long-term services and supports must be part of health reform."

The year 2008 represented a milestone: Senator Barack Obama became president and was open to our cause. Champions Kennedy and Harkin in the Senate and Congressmen John Dingell and Frank Pallone, Jr. in the House were outspoken in their support. Other leadership emerged in both chambers as health bills were crafted. Senate Majority Leader Harry Reid and House Speaker Nancy Pelosi became strong supporters.

In healthcare reform, the objective became to make sure CLASS was included in Senate and House bills. The birthplace of CLASS in a healthcare reform bill was Senator Kennedy's HELP Committee, but his own health crisis intervened. He remained staunch in his support, though limited in his capacity to lead and negotiate. A Republican staffer from the HELP committee said, "If Senator Kennedy was more available, you wouldn't have nearly as much trouble with this because he knows how to get everyone to work together."

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Fortunately, Senator Christopher Dodd was assigned leadership of the HELP Committee, and became the new champion of CLASS. It had the support of 270 advocacy organizations—unprecedented support, according to Senator Dodd. Two years earlier, it was thought to be too big a political lift to be a part of a major health bill.

But the Senate Finance Committee, crafting its own health bill, was not enthusiastic about CLASS. They preferred to keep the need on the back burner and avoid anything that could keep the Senate from getting sixty votes on the healthcare reform bill. It was a valid concern. Senator Kent Conrad's reference to CLASS as a Ponzi scheme was a label that found traction among opponents, though he later clarified that the CLASS premium pool was not the target of his reference for that statement. But Senator Reid had become a believer, and Congressional Budget Office (CBO) numbers were encouraging, showing a savings of $72 billion over ten years,

even at conservative consumer participation in unchartered actuarial territory.

President Obama weighed in strongly for CLASS through a letter to Congress from HHS Secretary Kathleen Sebelius in the summer of 2009. The House embraced CLASS, thanks to leadership at all levels. Republican Congressman Joe Barton from Texas even spoke for it at the Energy and Commerce Committee meeting. He, like other proponents, has a personal story to tell on the potential value of CLASS. The House had improvements to the provision destined for inclusion in a joint Senate-House Conference Committee. Due to the exigencies of the political situation, however, the House adopted the Senate versions of the ACA without those improvements.

The Senate version of CLASS became law. The Administration lodged CLASS with Assistant Secretary for Aging Kathy Greenlee for implementation, a decision applauded by aging, disability, and consumer groups alike. Work is underway in her office to meet the rollout date of fall 2012.

Some Final (Home) Truths About CLASS

The fall 2010 election brought renewed opposition to CLASS from the same sources that opposed it to begin with. The President's Debt Commission called for repeal or reform of CLASS. Secretary Sebelius has publically stated that the law, as enacted, gives her the authority to make changes in CLASS before it is rolled out to assure solvency, no tax dollars, cash benefit, and a healthy risk pool; she committed to reform before implementation.

Opponents call it an entitlement, a budget gimmick, a mandate. They say people will not sign up. These are all messages from an old playbook. But here's the truth: CLASS is voluntary, optional, and self-sufficient.

The HHS Secretary must continually certify the solvency of CLASS, and can change it to assure solvency. No tax dollars can be used for benefits, and the benefit is dispensed in cash. Continued polling reflects positive public opinion about CLASS, and no politician I have met with denies that the need and costs for long-term services and supports are growing dramatically and that there must be a solution beyond Medicaid. No politician opposed to CLASS has proposed a better alternative; many agree that the private market, which is good for some, is not the answer for most Americans.

Medicaid is collapsing and CLASS could be its partial salvation. The most significant truth is that no one knows if CLASS will be financially successful until consumers see the options and commit to premiums. The CBO projected viability at a modest 2 percent participation. At 4 percent or more it is an even stronger program, with greater Medicaid savings. But the popular opinion mechanisms are very positive for it.

Those of us passionate about long-term care (and CLASS), with no conflicts of interest or products to sell, believe that our next great hurdle—and responsibility—is to educate the American public on a need that many already know they have. We must persuade the public and our political leaders that CLASS is a risk worth taking, with little downside. The risk of the status quo is predictable, unacceptable, and catastrophic. CLASS is the angel we don't know versus the devil we know all too well.

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