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112TH CONGRESS
2D SESSION

H. R. 6300

To provide adequate technical assistance and other support to States for long-term care partnership programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Mr. BOUSTANY (for himself, Mr. GINGREY of Georgia, Mrs. BLACKBURN, Mr. TIBERI, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide adequate technical assistance and other support to States for long-term care partnership programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicaid Long-Term Care Reform Act of 2012''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As Congress works to limit future debt and deficits, our Nation cannot afford to overlook Medicaid's long-term care financing crisis.

(2) The Congressional Research Service reports Medicaid long-term care spending has grown at an average annual rate of 6.5 percent since 1995.

(3) The National Association of State Budget Officers reports that Medicaid spending has already exceeded most components of State budgets, including K–12 education programs.

(4) According to the Congressional Budget Office, Federal Medicaid spending on long-term care will grow from $73 billion in 2012 to $1.148 trillion in 2021.

(5) The Department of Health and Human Services has reported that—

(A) approximately 70 percent of individuals who are over the age of 65 will need some kind of long-term care services; and

(B) at some point more than 40 percent of such individuals will require nursing home care.

(6) In 2005, the Government Accountability Office projected that by 2040 the number of individuals who are 85 years of age or older, which it finds is the age group most likely to require long-term

care services, is projected to increase more than 250 percent from 4,300,000 individuals in 2000 to 15,400,000 individuals in 2040.

(7) The Alzheimer's Association reports more than 13,500,000 seniors could develop this disease by 2050.

(8) Annual industry surveys indicate the median annual rate for a private nursing home room in the United States reached $81,030 in 2012.

(9) Encouraging middle-income individuals in the United States to anticipate and plan for their future long-term care needs will help them achieve greater health and financial security, as well as greater independence, choice, and control over the services they need in the setting of their choice.

(10) Advance planning by family members will help to protect caregivers' health, financial security, and quality of life.

(11) In 2005, the Department of Health and Human Services warned that the retirement plans of many Americans are at risk simply because those Americans do not understand who pays for long-term care and therefore have not planned for the possibility of needing to finance such care.

(12) Only about 1 in 10 Americans over the age of 55 has enrolled in private long-term care coverage.

(13) The Government Accountability Office reports State Medicaid programs have, by default, become the major form of insurance for long-term care services.

(14) A 2011 hearing before the Committee on Oversight and Government Reform of the House of Representatives revealed that someone with up to $750,000 in home equity may qualify as poor under Federal Medicaid rules. Witnesses at the hearing said Federal law also disregards the entire value of other financial resources when determining an individual's eligibility for Medicaid.

(15) In 2005, the National Governors Association concluded new efforts need to focus on how to encourage personal responsibility and discourage reliance on Medicaid for coverage of long-term care services.

(16) Professional actuaries have stressed the Federal Government's financial interest in reducing future Medicaid spending by improving affordable long-term care options for middle-income individuals in the United States. Such individuals represent ap-

proximately 83 percent of households suited for purchase of long-term care coverage, with an average preretirement household income of $75,000 and average assets of approximately $100,000.

(17) Section 6021 of the Deficit Reduction Act of 2005 (Public Law 109–171) expanded the State Long-Term Care Partnership Program with the goal of—

(A) reducing future Medicaid spending on long-term care services; and

(B) improving choices by encouraging middle-income individuals in the United States who might otherwise rely upon Medicaid to purchase comprehensive, front-end, private, long-term care insurance coverage through the Partnership.

(18) To encourage Americans to purchase coverage described in paragraph (17)(B), the State Long-Term Care Partnership Program provides protection from Medicaid estate recovery if policyholders use their private coverage and still need Medicaid to provide coverage for long-term care services.

(19) According to the four States operating a State Long-Term Care Partnership Program since

the 1990s, only a small percentage of Partnership policyholders using benefits have exhausted their policies and relied on Medicaid, ranging from 2.4 percent of such policyholders in California to 7.4 percent in New York.

(20) More than 40 States have established Long-Term Care Partnership policies since Congress expanded the State Long-Term Care Partnership Program in 2005.

(21) Some States, including Connecticut, have worked to increase the likelihood of Medicaid savings under the State Long-Term Care Partnership Program by developing measures of cost effectiveness for long-term care insurance policies.

(22) Section 6021(c) of the Deficit Reduction Act of 2005 require the Secretary of Health and Human Services to report annually to Congress on the impact of the State Long-Term Care Partnership Program on Federal and State Medicaid expenditures.

(23) The Secretary of Health and Human Services has failed to comply with this mandatory reporting requirement since the enactment of the Deficit Reduction Act of 2005.

(24) The Department of Health and Human Services no longer provides technical assistance or facilitates discussions of best practices for improving long-term care savings under the Medicaid program among States participating in the State Long-Term Care Partnership Program.

(25) The Department of Health and Human Services has made no attempts to—

(A) track the sale of long-term care insurance policies to middle-income purchasers (who might otherwise rely upon Medicaid to finance long-term care services) under the State Long-Term Care Partnership Program; or

(B) to facilitate discussion among States and large employers about best practices for expanding long-term care insurance coverage among middle-income purchasers.

(26) The Department of Health and Human Services does not consistently measure the results of its taxpayer-funded efforts to increase Americans' long-term care awareness and has no current plans to coordinate with State Governors to raise such awareness.

(27) Budget experts, including one former Director of the Congressional Budget Office, have

warned that the insurance program established by the CLASS Act would increase the deficit over the long term, instead of significantly reducing spending on long-term care under the Medicaid program. Credible long-term care reform proposals must address Medicaid's long-term care financing problems without increasing Federal deficits.

SEC. 3. SENSE OF CONGRESS.

It is a sense of Congress that—

(1) Congress should repeal the failed CLASS Act;

(2) Federal and State governments should work to reduce the number of middle-income individuals in the United States who will rely on Medicaid to finance their long-term care needs by—

(A) working to make private long-term care insurance more reliable and affordable;

(B) building a broad coalition to coordinate a national campaign to better educate middle-income individuals in the United States on their eventual need for long-term care services, coverage limitations under Medicare and Medicaid, and the benefits of purchasing private coverage and planning for retirement;

(C) making the long-term care insurance partnerships established as a result of section 6021 of the Deficit Reduction Act of 2005 (Public Law 109–171) more effective by increasing enrollment among middle-income individuals in the United States in long-term care insurance policies; and

(D) giving States flexibility to change eligibility rules to protect Medicaid long-term care as a safety net for poor Americans who need it most; and

(3) the Secretary of Health and Human Services should comply with the annual reporting requirements under section 6021(c) of the Deficit Reduction Act of 2005 (Public Law 109–171) (relating to long-term care insurance partnerships) and promote discussion about the consequences that families and States might encounter if nothing is done to change the trajectory of projected State and Federal spending on long-term care services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

SEC. 4. TECHNICAL ASSISTANCE AND BEST PRACTICES.

(a) LONG-TERM CARE PARTNERSHIPS.—The Secretary of Health and Human Services shall provide to States—

(1) technical assistance on the implementation and administration of qualified State long-term care insurance partnerships (as such term is defined in section 1917(b)(1)(C)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii))); and

(2) information on best practices for qualified State long-term care insurance partnerships, for the purpose of reducing future State and Federal expenditures on long-term care services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) ESTATE RECOVERY REQUIREMENTS.—The Secretary of Health and Human Services shall—

(1) provide technical assistance to States on requirements related to the mandate to seek recoveries from estates under section 1917(b)(1) of the Social Security Act (42 U.S.C. 1396p(b)(1)); and

(2) hold an annual event to assist States in evaluating methods of implementing such requirements and exchanging best practices information on such methods of implementation.

SEC. 5. NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.

(a) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION PUBLIC-PRIVATE INITIATIVE.—Section 6021(d) of the Deficit Reduction Act of 2005 is amended—

(1) by redesignating paragraph (3) as paragraph (5); and

(2) by inserting after paragraph (2) the following:

"(3) COORDINATION OF CONSUMER EDUCATION THROUGH PUBLIC-PRIVATE INITIATIVE.—The Secretary of Health and Human Services, acting through the National Clearinghouse for Long-Term Care Information, shall establish a public-private initiative to coordinate among the Clearinghouse, State governments, and relevant nongovernmental entities for the purpose of—

"(A) increasing the number of targeted middle-income individuals in the United States (as defined by the Secretary) who receive consumer education on—

"(i) the availability and limitations of coverage for long-term care under the Medicaid and Medicare programs;

"(ii) the availability of long-term care insurance and other private market options for purchasing long-term care coverage and services; and

"(iii) best practices for individuals and families who seek to prepare for their long-term care needs (including best practices for financial planning related to planning for the cost of such care);

"(B) enhancing the quality of information that targeted consumers receive under clauses (i) through (iii) of subparagraph (A); and

"(C) improving the accessibility of such information for consumers who seek out such information.".

(b) EXPANSION OF CLEARINGHOUSE DUTIES TO INCLUDE MEDICARE LIMITATIONS.—Subparagraph (A) of section 6021(d)(2) of the Deficit Reduction Act of 2005 is amended—

(1) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively; and

(2) by inserting after clause (i) the following:

"(ii) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicare program;''.

(c) ANNUAL REPORTS TO CONGRESS.—Section 6021(d) of the Deficit Reduction Act of 2005 is further amended by inserting after paragraph (3), as added by subsection (a), the following:

''(4) ANNUAL REPORTS.—

''(A) IN GENERAL.—Beginning not later than 1 year after the date of the enactment of the Medicaid Long-Term Care Reform Act of 2012, the Secretary of Health and Human Services shall submit to the Congress an annual report on the activities of the National Clearinghouse for Long-Term Care Information.

''(B) CONTENTS.—The report under subparagraph (A) shall include an analysis of the extent to which—

''(i) the National Clearinghouse for Long-Term Care Information has engaged nongovernmental entities in the public-private initiative described in paragraph (3);

''(ii) such initiative has increased the awareness of targeted consumers about issues related to accessing and financing long-term care; and "(iii) such initiative has caused consumers to take measurable actions to plan for accessing and financing such care.".

SEC. 6. EVALUATION OF POLICY OPTIONS AND REPORT.

(a) STUDY AND EVALUATION OF METHODS AND POLICIES TO REDUCE DEPENDENCE ON MEDICAID LONG-TERM CARE FINANCING.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall—

(A) evaluate methods to expand long-term care insurance coverage for middle-income individuals in the United States through the State Long-Term Care Partnership Program under section 6021 of the Deficit Reduction Act of 2005 (Public Law 109–171), for the purpose of improving retirement security and long-term care options for such individuals;

(B)(i) solicit ideas from the stakeholders listed in subsection (c) on policy options that could reduce projected State and Federal long-term care expenditures under the Medicaid program; and

(ii) subject to paragraphs (2) and (3), evaluate the policy options collected under clause (i), as well as other appropriate options to reduce such expenditures, including the option of providing a block grant to States of Medicaid funds for long-term care services; and

(C) conduct a study evaluating the effectiveness of Federal laws relating to—

(i) treatment of assets for purposes of determining eligibility for Medicaid long-term care services;

(ii) estate recovery under the Medicaid program;

(iii) the look-back period for transfers of assets for purposes of Medicaid eligibility under section 1917(c) of the Social Security Act (42 U.S.C. 1396p(c)), including the hardship waiver process under such section and section 6011 of the Deficit Reduction Act of 2005; and

(iv) section 1917(f) of the Social Security Act (42 U.S.C. 1396p(f)), relating to the disqualification of individuals with substantial home equity for long-term care assistance under Medicaid.

(2) INCLUSION OF ESTIMATES.—The evaluation under paragraph (1)(B)(ii) shall include estimates of the impact of such policy options on Federal and

State spending under Medicaid over a 25-year period.

(3) LIMITATION.—The Secretary may not evaluate any policy option under paragraph (1)(B)(ii) if such policy option—

(A) requires mandatory enrollment of individuals in a program or insurance product;

(B) requires employers to automatically enroll individuals in a program or insurance product, without such individuals prior affirmative consent; or

(C) requires that premiums collected for a long-term care program or insurance product be deposited in government securities or a Federal trust fund, such as the CLASS Independence Fund established by section 3206 of the Public Health Service Act.

(b) REPORT.—Not later than January 1, 2014, the Secretary of Health and Human Services shall submit to Congress a report containing—

(1) recommendations for State governments and the Federal Government on methods described under subsection (a)(1)(A);

(2) a list of the policy options considered under subsection (a)(1)(B)(ii) (including the estimates on

Federal and State spending made with respect to each such option under such subsection) and recommendations on which such options would be most effective at reducing projected State and Federal long-term care expenditures under the Medicaid program while providing an adequate safety net for low-income individuals; and

(3) the results of the study under subsection (a)(1)(C), and any recommendations for improving such Federal laws.

(c) CONSULTATION.—In conducting the activities under subsection (a) and developing the report required under subsection (b), the Secretary shall consult with each of the following stakeholders:

(1) The American Academy of Actuaries.

(2) The Governors of each of the 50 States.

(3) The National Association of Insurance Commissioners.

(4) America's Health Insurance Plans.

(5) The American Council of Life Insurers.

(6) The United States Chamber of Commerce.

(7) The Alzheimer's Association.

(8) The AARP.

(9) The National Association of Health Underwriters.

(10) The National Association of Independent Financial Advisors.

(11) The Center for Long-Term Care Reform.

(12) Experts on the Federal budget, including experts currently or formerly employed by the Congressional Budget Office or the Office of Management and Budget.

(13) Experts from relevant non-profit organizations and foundations, including the Brookings Institution, the Urban Institute, the Ethics and Public Policy Center, The Commonwealth Fund, the Heritage Foundation, the Cato Institute, and the American Enterprise Institute.

(14) Any other appropriate stakeholders, as determined by the Secretary.

SEC. 7. CBO REPORT ON POLICY OPTIONS TO REDUCE RELIANCE ON MEDICAID FOR LONG-TERM CARE SERVICES.

(a) IN GENERAL.—Not later than January 1, 2014, the Director of the Congressional Budget Office shall submit to the Committees on the Budget of the House of Representatives and the Senate a report containing the following:

(1) PROJECTION OF NUMBER OF MIDDLE-INCOME PEOPLE WHO WILL RELY ON MEDICAID FOR

LONG-TERM CARE SERVICES.—A projection of the percentage of middle-income individuals in the United States who will rely, partially or completely, on Medicaid to finance their long-term care needs during the next 20 years and the percentage who will rely solely on other resources, including home equity, personal savings, or private long-term care coverage to finance such care.

(2) ESTIMATE OF COST OF RELIANCE ON MEDICAID.—An estimate of the cost of such reliance on the Medicaid program to State and Federal governments.

(3) ESTIMATE OF IMPACT OF SPECIFIC POLICY OPTIONS.—Subject to subsection (b), an estimate of the change in the cost estimated under paragraph (2) that would result from each of the following policy options:

(A) REDUCTION IN HOME EQUITY EXEMPTION.—A reduction in the home equity exemption under section 1917(f) of the Social Security Act (42 U.S.C. 1396p(f)) from the amount permitted under such subsection to—

(i) $200,000; or

(ii) $50,000.

(B) EXTENSION OF LOOK-BACK PERIOD.—Changing the look-back period for the transfer of assets under section 1917(c)(1) of such Act (42 U.S.C. 1396p(c)(1)) to a period of 10 years.

(C) ENCOURAGING STATE USE OF LIENS.—Federal incentives for States to require the use of liens for the purpose of estate recovery under the Medicaid program.

(D) TAX INCENTIVES FOR INSURANCE USE.—Tax incentives to assist middle-income individuals in the United States with the purchase of long-term care insurance, including by amending section 125 of the Internal Revenue Code of 1986 to permit long-term care insurance products to be included in employer cafeteria plans.

(E) INCENTIVES FOR STATES TO INCREASE PURCHASES OF LONG-TERM CARE INSURANCE.—Provide States operating qualified State long-term care insurance partnerships (as defined in section 1917(b)(1)(C)(iii) of such Act (42 U.S.C. 1396p(b)(1)(C)(iii))) with incentives to increase the number of middle-income individuals in the United States who are enrolled in long-term care insurance.

(F) OTHER POLICY OPTIONS.—Any other policy options that the Director determines would reduce Federal and State spending on long-term care services under the Medicaid program.

(4) ESTIMATE OF IMPACT OF SPECIFIC POLICY OPTIONS ON SAVINGS UNDER MEDICAID BLOCK GRANT.—An estimate, for each of the policy options under paragraph (3), of the change in cost estimate under paragraph (2), that would result if each such policy option were adopted and funding for long-term care services under Medicaid is provided to States through a block grant.

(b) LIMITATION.—The Director may not evaluate any policy option under subsection (a)(3) if such policy option—

(1) requires mandatory enrollment of individuals in a program or insurance product;

(2) requires employers to automatically enroll individuals in a program or insurance product, without such individuals prior affirmative consent; or

(3) requires that premiums collected for a long-term care program or insurance product be depos-

ited in government securities or a Federal trust fund, such as the CLASS Independence Fund established by section 3206 of the Public Health Service Act.