

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicaid Long-Term
5 Care Reform Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) As Congress works to limit future debt and
2 deficits, our Nation cannot afford to overlook Medie-
3 aid’s long-term care financing crisis.

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

7 (3) The National Association of State Budget
8 Officers reports that Medicaid spending has already
9 exceeded most components of State budgets, includ-
10 ing K–12 education programs.

11 (4) According to the Congressional Budget Of-
12 fice, Federal Medicaid spending on long-term care
13 will grow from \$73 billion in 2012 to \$1.148 trillion
14 in 2021.

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

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

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

22 (6) In 2005, the Government Accountability Of-
23 fice projected that by 2040 the number of individ-
24 uals who are 85 years of age or older, which it finds
25 is the age group most likely to require long-term

1 care services, is projected to increase more than 250
2 percent from 4,300,000 individuals in 2000 to
3 15,400,000 individuals in 2040.

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

7 (8) Annual industry surveys indicate the me-
8 dian annual rate for a private nursing home room in
9 the United States reached \$81,030 in 2012.

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

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

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

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

4 (13) The Government Accountability Office re-
5 ports State Medicaid programs have, by default, be-
6 come the major form of insurance for long-term care
7 services.

8 (14) A 2011 hearing before the Committee on
9 Oversight and Government Reform of the House of
10 Representatives revealed that someone with up to
11 \$750,000 in home equity may qualify as poor under
12 Federal Medicaid rules. Witnesses at the hearing
13 said Federal law also disregards the entire value of
14 other financial resources when determining an indi-
15 vidual's eligibility for Medicaid.

16 (15) In 2005, the National Governors Associa-
17 tion concluded new efforts need to focus on how to
18 encourage personal responsibility and discourage re-
19 liance on Medicaid for coverage of long-term care
20 services.

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

1 proximately 83 percent of households suited for pur-
2 chase of long-term care coverage, with an average
3 preretirement household income of \$75,000 and av-
4 erage assets of approximately \$100,000.

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

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

11 (B) improving choices by encouraging mid-
12 dle-income individuals in the United States who
13 might otherwise rely upon Medicaid to purchase
14 comprehensive, front-end, private, long-term
15 care insurance coverage through the Partner-
16 ship.

17 (18) To encourage Americans to purchase cov-
18 erage described in paragraph (17)(B), the State
19 Long-Term Care Partnership Program provides pro-
20 tection from Medicaid estate recovery if policy-
21 holders use their private coverage and still need
22 Medicaid to provide coverage for long-term care
23 services.

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

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

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

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

15 (22) Section 6021(c) of the Deficit Reduction
16 Act of 2005 require the Secretary of Health and
17 Human Services to report annually to Congress on
18 the impact of the State Long-Term Care Partner-
19 ship Program on Federal and State Medicaid ex-
20 penditures.

21 (23) The Secretary of Health and Human Serv-
22 ices has failed to comply with this mandatory report-
23 ing requirement since the enactment of the Deficit
24 Reduction Act of 2005.

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

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

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

14 (B) to facilitate discussion among States
15 and large employers about best practices for ex-
16 panding long-term care insurance coverage
17 among middle-income purchasers.

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

24 (27) Budget experts, including one former Di-
25 rector of the Congressional Budget Office, have

1 warned that the insurance program established by
2 the CLASS Act would increase the deficit over the
3 long term, instead of significantly reducing spending
4 on long-term care under the Medicaid program.
5 Credible long-term care reform proposals must ad-
6 dress Medicaid's long-term care financing problems
7 without increasing Federal deficits.

8 **SEC. 3. SENSE OF CONGRESS.**

9 It is a sense of Congress that—

10 (1) Congress should repeal the failed CLASS
11 Act;

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

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

18 (B) building a broad coalition to coordi-
19 nate a national campaign to better educate mid-
20 dle-income individuals in the United States on
21 their eventual need for long-term care services,
22 coverage limitations under Medicare and Med-
23 icaid, and the benefits of purchasing private
24 coverage and planning for retirement;

1 (C) making the long-term care insurance
2 partnerships established as a result of section
3 6021 of the Deficit Reduction Act of 2005
4 (Public Law 109–171) more effective by in-
5 creasing enrollment among middle-income indi-
6 viduals in the United States in long-term care
7 insurance policies; and

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

12 (3) the Secretary of Health and Human Serv-
13 ices should comply with the annual reporting re-
14 quirements under section 6021(c) of the Deficit Re-
15 duction Act of 2005 (Public Law 109–171) (relating
16 to long-term care insurance partnerships) and pro-
17 mote discussion about the consequences that families
18 and States might encounter if nothing is done to
19 change the trajectory of projected State and Federal
20 spending on long-term care services under the Med-
21 icaid program under title XIX of the Social Security
22 Act (42 U.S.C. 1396 et seq.).

1 **SEC. 4. TECHNICAL ASSISTANCE AND BEST PRACTICES.**

2 (a) LONG-TERM CARE PARTNERSHIPS.—The Sec-
3 retary of Health and Human Services shall provide to
4 States—

5 (1) technical assistance on the implementation
6 and administration of qualified State long-term care
7 insurance partnerships (as such term is defined in
8 section 1917(b)(1)(C)(iii) of the Social Security Act
9 (42 U.S.C. 1396p(b)(1)(C)(iii))); and

10 (2) information on best practices for qualified
11 State long-term care insurance partnerships, for the
12 purpose of reducing future State and Federal ex-
13 penditures on long-term care services under the
14 Medicaid program under title XIX of the Social Se-
15 curity Act (42 U.S.C. 1396 et seq.).

16 (b) ESTATE RECOVERY REQUIREMENTS.—The Sec-
17 retary of Health and Human Services shall—

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

22 (2) hold an annual event to assist States in
23 evaluating methods of implementing such require-
24 ments and exchanging best practices information on
25 such methods of implementation.

1 **SEC. 5. NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE**
2 **INFORMATION.**

3 (a) NATIONAL CLEARINGHOUSE FOR LONG-TERM
4 CARE INFORMATION PUBLIC-PRIVATE INITIATIVE.—Sec-
5 tion 6021(d) of the Deficit Reduction Act of 2005 is
6 amended—

7 (1) by redesignating paragraph (3) as para-
8 graph (5); and

9 (2) by inserting after paragraph (2) the fol-
10 lowing:

11 “(3) COORDINATION OF CONSUMER EDUCATION
12 THROUGH PUBLIC-PRIVATE INITIATIVE.—The Sec-
13 retary of Health and Human Services, acting
14 through the National Clearinghouse for Long-Term
15 Care Information, shall establish a public-private ini-
16 tiative to coordinate among the Clearinghouse, State
17 governments, and relevant nongovernmental entities
18 for the purpose of—

19 “(A) increasing the number of targeted
20 middle-income individuals in the United States
21 (as defined by the Secretary) who receive con-
22 sumer education on—

23 “(i) the availability and limitations of
24 coverage for long-term care under the
25 Medicaid and Medicare programs;

1 “(ii) the availability of long-term care
2 insurance and other private market options
3 for purchasing long-term care coverage and
4 services; and

5 “(iii) best practices for individuals
6 and families who seek to prepare for their
7 long-term care needs (including best prac-
8 tices for financial planning related to plan-
9 ning for the cost of such care);

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

13 “(C) improving the accessibility of such in-
14 formation for consumers who seek out such in-
15 formation.”.

16 (b) EXPANSION OF CLEARINGHOUSE DUTIES TO IN-
17 CLUDE MEDICARE LIMITATIONS.—Subparagraph (A) of
18 section 6021(d)(2) of the Deficit Reduction Act of 2005
19 is amended—

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

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

23 “(ii) educate consumers with respect
24 to the availability and limitations of cov-

1 erage for long-term care under the Medi-
2 care program;”.

3 (c) ANNUAL REPORTS TO CONGRESS.—Section
4 6021(d) of the Deficit Reduction Act of 2005 is further
5 amended by inserting after paragraph (3), as added by
6 subsection (a), the following:

7 “(4) ANNUAL REPORTS.—

8 “(A) IN GENERAL.—Beginning not later
9 than 1 year after the date of the enactment of
10 the Medicaid Long-Term Care Reform Act of
11 2012, the Secretary of Health and Human
12 Services shall submit to the Congress an annual
13 report on the activities of the National Clear-
14 ingshouse for Long-Term Care Information.

15 “(B) CONTENTS.—The report under sub-
16 paragraph (A) shall include an analysis of the
17 extent to which—

18 “(i) the National Clearinghouse for
19 Long-Term Care Information has engaged
20 nongovernmental entities in the public-pri-
21 vate initiative described in paragraph (3);

22 “(ii) such initiative has increased the
23 awareness of targeted consumers about
24 issues related to accessing and financing
25 long-term care; and

1 “(iii) such initiative has caused con-
2 sumers to take measurable actions to plan
3 for accessing and financing such care.”.

4 **SEC. 6. EVALUATION OF POLICY OPTIONS AND REPORT.**

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

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

10 (A) evaluate methods to expand long-term
11 care insurance coverage for middle-income indi-
12 viduals in the United States through the State
13 Long-Term Care Partnership Program under
14 section 6021 of the Deficit Reduction Act of
15 2005 (Public Law 109–171), for the purpose of
16 improving retirement security and long-term
17 care options for such individuals;

18 (B)(i) solicit ideas from the stakeholders
19 listed in subsection (c) on policy options that
20 could reduce projected State and Federal long-
21 term care expenditures under the Medicaid pro-
22 gram; and

23 (ii) subject to paragraphs (2) and (3),
24 evaluate the policy options collected under
25 clause (i), as well as other appropriate options

1 to reduce such expenditures, including the op-
2 tion of providing a block grant to States of
3 Medicaid funds for long-term care services; and

4 (C) conduct a study evaluating the effec-
5 tiveness of Federal laws relating to—

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

9 (ii) estate recovery under the Med-
10 icaid program;

11 (iii) the look-back period for transfers
12 of assets for purposes of Medicaid eligi-
13 bility under section 1917(c) of the Social
14 Security Act (42 U.S.C. 1396p(c)), includ-
15 ing the hardship waiver process under such
16 section and section 6011 of the Deficit Re-
17 duction Act of 2005; and

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

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

1 State spending under Medicaid over a 25-year pe-
2 riod.

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

6 (A) requires mandatory enrollment of indi-
7 viduals in a program or insurance product;

8 (B) requires employers to automatically
9 enroll individuals in a program or insurance
10 product, without such individuals prior affirma-
11 tive consent; or

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

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

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

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

1 Federal and State spending made with respect to
2 each such option under such subsection) and rec-
3 ommendations on which such options would be most
4 effective at reducing projected State and Federal
5 long-term care expenditures under the Medicaid pro-
6 gram while providing an adequate safety net for low-
7 income individuals; and

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

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

15 (1) The American Academy of Actuaries.

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

17 (3) The National Association of Insurance
18 Commissioners.

19 (4) America's Health Insurance Plans.

20 (5) The American Council of Life Insurers.

21 (6) The United States Chamber of Commerce.

22 (7) The Alzheimer's Association.

23 (8) The AARP.

24 (9) The National Association of Health Under-
25 writers.

1 (10) The National Association of Independent
2 Financial Advisors.

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

4 (12) Experts on the Federal budget, including
5 experts currently or formerly employed by the Con-
6 gressional Budget Office or the Office of Manage-
7 ment and Budget.

8 (13) Experts from relevant non-profit organiza-
9 tions and foundations, including the Brookings Insti-
10 tution, the Urban Institute, the Ethics and Public
11 Policy Center, The Commonwealth Fund, the Herit-
12 age Foundation, the Cato Institute, and the Amer-
13 ican Enterprise Institute.

14 (14) Any other appropriate stakeholders, as de-
15 termined by the Secretary.

16 **SEC. 7. CBO REPORT ON POLICY OPTIONS TO REDUCE RE-**
17 **LIANCE ON MEDICAID FOR LONG-TERM CARE**
18 **SERVICES.**

19 (a) IN GENERAL.—Not later than January 1, 2014,
20 the Director of the Congressional Budget Office shall sub-
21 mit to the Committees on the Budget of the House of Rep-
22 resentatives and the Senate a report containing the fol-
23 lowing:

24 (1) PROJECTION OF NUMBER OF MIDDLE-IN-
25 COME PEOPLE WHO WILL RELY ON MEDICAID FOR

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

9 (2) ESTIMATE OF COST OF RELIANCE ON MED-
10 ICAID.—An estimate of the cost of such reliance on
11 the Medicaid program to State and Federal govern-
12 ments.

13 (3) ESTIMATE OF IMPACT OF SPECIFIC POLICY
14 OPTIONS.—Subject to subsection (b), an estimate of
15 the change in the cost estimated under paragraph
16 (2) that would result from each of the following pol-
17 icy options:

18 (A) REDUCTION IN HOME EQUITY EXEMP-
19 TION.—A reduction in the home equity exemp-
20 tion under section 1917(f) of the Social Secu-
21 rity Act (42 U.S.C. 1396p(f)) from the amount
22 permitted under such subsection to—

23 (i) \$200,000; or

24 (ii) \$50,000.

1 (B) EXTENSION OF LOOK-BACK PERIOD.—
2 Changing the look-back period for the transfer
3 of assets under section 1917(c)(1) of such Act
4 (42 U.S.C. 1396p(c)(1)) to a period of 10
5 years.

6 (C) ENCOURAGING STATE USE OF
7 LIENS.—Federal incentives for States to require
8 the use of liens for the purpose of estate recov-
9 ery under the Medicaid program.

10 (D) TAX INCENTIVES FOR INSURANCE
11 USE.—Tax incentives to assist middle-income
12 individuals in the United States with the pur-
13 chase of long-term care insurance, including by
14 amending section 125 of the Internal Revenue
15 Code of 1986 to permit long-term care insur-
16 ance products to be included in employer cafe-
17 teria plans.

18 (E) INCENTIVES FOR STATES TO INCREASE
19 PURCHASES OF LONG-TERM CARE INSUR-
20 ANCE.—Provide States operating qualified
21 State long-term care insurance partnerships (as
22 defined in section 1917(b)(1)(C)(iii) of such Act
23 (42 U.S.C. 1396p(b)(1)(C)(iii))) with incentives
24 to increase the number of middle-income indi-

1 viduals in the United States who are enrolled in
2 long-term care insurance.

3 (F) OTHER POLICY OPTIONS.—Any other
4 policy options that the Director determines
5 would reduce Federal and State spending on
6 long-term care services under the Medicaid pro-
7 gram.

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

16 (b) LIMITATION.—The Director may not evaluate any
17 policy option under subsection (a)(3) if such policy op-
18 tion—

19 (1) requires mandatory enrollment of individ-
20 uals in a program or insurance product;

21 (2) requires employers to automatically enroll
22 individuals in a program or insurance product, with-
23 out such individuals prior affirmative consent; or

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

1 ited in government securities or a Federal trust
2 fund, such as the CLASS Independence Fund estab-
3 lished by section 3206 of the Public Health Service
4 Act.

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