

EXHIBIT S

Brown, Nicole (HHS/ASL)

From: Frank, Richard (HHS/ASPE)
Sent: Tuesday, December 22, 2009 11:54 AM
To: Katz, Ruth (HHS/ASPE)
Subject: class
Attachments: Talking Points on CLASS Act Amendment 12-21-09.doc

Richard G. Frank
Deputy Assistant Secretary for Planning and Evaluation
Disability, Aging and Long-Term Care
U.S. Department of Health and Human Services


-Talking Points on CLASS Act Amendment

- **General Comments:** Reasonable concerns about some program design features have been raised by Actuaries, Congressional analysts and others. Prominent among the concerns raised are: the risk of adverse selection, the potential to game the system through strategic lapsing from program participation, and the need to encourage broad participation in the program. The changes proposed to the CLASS Act are aimed at balancing the basic principles of the program with the need to make the program robust financially. All the changes described below aim to address these three types of issues.

Adverse Selection

- **Change in Activities of Daily Living provision:** This change allows the Secretary the option to take advantage of the flexibility in the IRS code regarding the specific ADLs to be used in determining eligibility for the CLASS benefit. The result is that it aligns the CLASS ADL standards with those used in private long-term care insurance. Specifically, it allows the Secretary to not use incontinence as a qualifying condition. Since incontinence is a very prevalent condition in elders, providing the Secretary with the flexibility to determine whether or not to include it as a condition of eligibility gives a lever to mitigate adverse selection into the CLASS program. This serves to address issues raised by CBO and the American Academy of Actuaries (November, 2009) about adverse selection in later years of CLASS. ASPE analyses suggest this would have an important impact on adverse selection and would result in lower premiums and a more stable program.
- **Non-working Spouses:** The Senate and House bills differ with respect to the treatment of non-working spouses. The House bill allows non-working spouses to enroll and meet the premium requirements. The Senate requires that all enrollees meet work requirements. We propose adoption of the Senate language. This change was cited as of central importance by the American Academy of Actuaries (November 2009).
- **Exemption from Increases:** This change gives the Secretary increased discretion in granting exemptions from premiums. This allows the Secretary greater latitude to expand or reduce the groups eligible for such exemptions according to the financial health of the program.
- **Work Requirements:** Both the Senate and the House establish a \$1000 a year earnings standard. Public and private actuaries see this as too low. We recommend raising the earned income requirements to at least \$1000 per quarter for the full vesting period.

Gaming

- **Credit for Prior Months Enrolled:** In its existing form the Act would permit people to lapse and rejoin within 5 years without paying any meaningful penalties. This serves to encourage people to lapse until they encounter a health

problem and then rejoin. This undermines the soundness of the premium structure. The new language imposes penalties on people that lapse and rejoin and forces them to pay their way in a fashion that bolsters to financial stability of the program. This provision addresses points raised by both CBO and private actuaries about program gaming and financial stability. ASPE analysis suggests that this would have an important impact on financial stability overtime.

Promotion of Enrollment in CLASS

The American Academy of Actuaries noted in their recent commentary on the CLASS Act the importance on taking steps that would promote broad enrollment in the CLASS Act. They explicitly proposed recommended educational and promotional efforts. We agree with that view. In addition we propose that employers be required to assist in expanding awareness of the CLASS program and make clear avenues for enrollment.

- **Employer Requirements:** In the current formulation of the bill, employers have complete discretion regarding whether to participate in the CLASS program and auto-enroll employees. One concern is that administrative issues related to managing premiums and opt out provisions may discourage many from participating in the auto-enrollment. The provision introduced in this amendment maintains the original optional participation in auto-enrollment, but adds a requirement that employers inform their employees about the CLASS program. Based on analyses of state experiences with such provisions we expect that this would serve to increase participation in the programs and further mitigate adverse selection.
- **Outreach:** This provision expands the Secretary's authority to mount a public education, awareness and marketing campaign around the CLASS Act beyond the existing long-term care awareness campaign. This effort is based on the experiences of private insurers in increasing participation in long-term care insurance. This provision would contribute to increasing participation and mitigating adverse selection.

Other Key Proposed Changes

- **Failsafe:** In the existing language of the bill, the Secretary can alter the premiums in response to threats to financial stability of CLASS. The failsafe provisions expand the Secretary's authority to alter key provisions of the CLASS Act to further decrease adverse selection and maintain long-run stability. This language responds to concerns of private actuaries and CBO.

Concluding Observations

- The proposed changes in the CLASS Act respect core principles of the program that include: no underwriting, a commitment to consumer directed benefits, a lifetime benefit and financial stability. The provisions proposed serve to diminish

the impact of adverse selection, reduce gaming and equip the Secretary of Health and Human Services with the ability to respond to unfavorable economic circumstances in a fashion that will maximize the chances of mounting and maintaining a financial stable program where program participants pay for their own benefits. We expect that the proposed changes in the CLASS Act will result in increased participation rates and lower premiums relative to projections made by the American Academy of Actuaries and the CBO.