“The Future of Long-Term Care and Medicaid”

Statement of Stephen A. Moses
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before

The Honorable Donald Manzullo (R-16-IL)
Chairman of the House Small Business Committee

and

The Honorable Roscoe Bartlett (R-6-MD)
Vice Chairman of the House Small Business Committee

Monday, July 10, 2006
Roundtable Discussion, Hagerstown, MD

[983 words]

Mr. Chairman Manzullo and Vice Chairman Bartlett, thank you for the opportunity to testify before you today about Medicaid, long-term care financing, and the impact of the Deficit Reduction Act of 2005 on those two critical issues.

I have submitted detailed written testimony which explains and defends the Deficit Reduction Act’s important changes in Medicaid eligibility rules and long-term care financing policies.

It took courage for members of Congress to pass those critically needed, but politically sensitive changes. But instead of receiving the kudos they deserve, they’ve been criticized. Why?

Medicaid is a means-tested public assistance program. In a word, welfare. It is supposed to be the public assistance safety net that guarantees access to quality long-term care for people who are financially unable to provide for themselves.

Over the years, however, Medicaid has expanded to become the primary third-party payor for long-term care for most Americans, not just the needy.

Contrary to popular opinion, Medicaid long-term care eligibility places no certain limits on program recipients’ income or assets.

Income may be unlimited if medical expenses, including the cost of nursing home care are high enough.

Assets may be unlimited as long as they are held in exempt form, such as a business, home, automobile, term life insurance, prepaid burials, etc.

Medicaid's income and asset eligibility rules are easily stretched even beyond these already highly generous limits.

Medicaid estate planning attorneys are in the business of doing just that. By means of creative legal strategies, they artificially impoverish middle-class and even affluent clients to qualify them for Medicaid's LTC benefits. This practice has had devastating consequences for the program.

Today, Medicaid-financed long-term care has a reputation for severe problems of access, quality, reimbursement, discrimination and institutional bias. Yet, the program continues to explode in cost.

Because Medicaid financing of long-term care has been so readily available for forty years, the American people have become anesthetized to the risk of long-term care. They rarely plan to save, invest or insure for that risk. Therefore, most end up on Medicaid when they need long-term care.

A crisis is approaching. As the Age Wave crests and crashes over the next 30 years, America cannot sustain an $84 trillion unfunded liability in the Social Security and Medicare programs, and still provide welfare-financed long-term care to non-needy Americans.

That's why the Deficit Reduction Act was such an important measure. It removed some of the perverse incentives in public policy that have discouraged responsible long-term care planning.

By extending the "look back" period from three to five years, the DRA discouraged the common practice of giving away wealth to qualify for welfare. By the way, the "look back" under Germany's socialized LTC system is 10 years, double ours.

By changing the date when a transfer of assets eligibility penalty takes effect, the DRA eliminated the single most common Medicaid planning strategy, called "half-a-loaf," thus removing the main reason people gave away assets to qualify for Medicaid.

By lowering Medicaid's home equity exemption from unlimited to no more than $750,000, the DRA discouraged the routine Medicaid planning practice of "hiding money in the home." By the way, the home equity exemption is only $36,000 in the United Kingdom's socialized LTC system.

By restricting the use of annuities, self-canceling installment notes, life estates and other egregious Medicaid planning gimmicks of self-impoverishment, the DRA sent yet another clear message to Medicaid estate planners that their practices are unwanted and counter to clients' and citizens' best interests.

In 1996, Congress passed and then-President Clinton signed a law that criminalized the practice of advising clients for a fee to transfer assets to qualify for Medicaid. Although unenforceable, that law clearly established bipartisan Congressional and Presidential intent to preserve Medicaid as a long-term care safety net for the poor.

So, Congress should be praised for trying in the DRA to save Medicaid. Instead they've been accused of denying access to needed long-term care.

Critics have said the DRA will penalize people for routine gifts to charities or grandchildren. They've said it will deny people critically needed care after all their assets have been expended.

Such attacks are totally unfounded. Nothing in the DRA changes the clear statement in the Social Security Act that to be penalizable asset transfers must be done for the purpose of qualifying for Medicaid.

Routine gifts to family members, religious tithing, and other asset transfers are exempt if they are not done for the purpose of obtaining welfare benefits.

What about the claim that people will be denied care when they need it most. That's nonsense too.

The DRA eliminates the main reason people gave away assets--the half-a-loaf strategy. That is, give away half your money and qualify for Medicaid in half the time. Thus, Medicaid planners can no longer recommend that strategy; there is no longer any reason for people to give away assets; and therefore, no one should become vulnerable to a penalty.

But, what if it does happen? The DRA strengthened the rules governing "undue hardship waivers" to protect people who unwittingly incur a transfer of assets penalty.

Let me close by explaining the real reason for the attacks on courageous members of Congress who voted for the Deficit Reduction Act.

Medicaid estate planning has been a lucrative sub-practice of the law for 25 years or more. Medicaid planners routinely make six-figure incomes and seven-figure firm revenues diverting Medicaid's scarce resources from people truly in need to their often-affluent clients.

The DRA makes this harder to do and that's why Medicaid planners oppose it and attack the people who voted for it.

Responsible public policy requires that we target public assistance to people truly in need and encourage everyone else to plan early, save, invest and insure for long-term care.

In the long run, that is the only way we can ensure access to quality long-term care for all Americans—rich, poor and in between.

Thank you.

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