



Legislative Bulletin.....February 1, 2011

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H.R. 1173 – Fiscal Responsibility and Retirement Security Act of 2011

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Order of Business: The bill is scheduled to be considered on Wednesday, February 1, 2012, under a modified open rule ([H.Res. 522](#)). The Rule provides one hour of general debate with 40 minutes equally divided and controlled by the Chair and Ranking Member of the Committee on Energy and Commerce and 20 minutes equally divided and controlled by the Chair and Ranking Member of the Committee on Ways and Means. It makes in order only those amendments pre-printed in the *Congressional Record* no later than Tuesday, January 31, 2012, and described within this legislative bulletin.

Summary: H.R. 1173 repeals the Community Living Assistance Services and Supports Act (CLASS Act)—a national, voluntary, long-term care program created in Title VIII of the Patient Protection and Affordable Care Act, aka “Obamacare.” The bill also rescinds \$9 million that Obamacare advance-appropriated through 2015 for the National Clearinghouse for Long-Term Care Information while authorizing the same amount for it subject to appropriations.¹

Obamacare’s architects designed this new long-term care entitlement permitting employers to automatically enroll individual employees unless their employees opted out of it.² Federally-set premiums, originally estimated to begin at \$123/month, would begin being collected from enrollees in late 2012 in exchange for a \$50-a-day benefit to cover the long-term care costs for seniors. Later premium estimates from enrollees ranged from \$235 to \$3,000/month.

¹ The Deficit Reduction Act of 2005 (P.L. 109-171) established the National Clearinghouse for Long-Term Care Information. According to its [website](#), this clearinghouse managed by HHS provides information and resources to help individuals plan for future long-term care needs.

² An [alternative](#) enrollment process would also be developed for self-employed individuals, those with more than one employer, and those who have an employer that does not elect to participate in the automatic enrollment process.

Individuals would be required to pay premiums for five years before receiving any benefits. Prior to Obamacare's enactment in March 2010, CBO estimated that \$72 billion of premiums would be collected in the first ten years while no benefits would be paid out for the first five years. In short, Obamacare supporters used the CLASS Act as a budgetary gimmick to disguise the true financial costs of the massive, government takeover of our health care system over its first ten years.

Additional Background: According to House Report [#112-342, Part I](#), the stated purpose of H.R. 1173 is to “terminate any further Federal activity or spending by the Executive Branch on the CLASS program, which the U.S. Department of Human Services (HHS) has determined to be unsustainable.” In the lead up to Obamacare's enactment, questions pertaining to the CLASS Act's fiscal sustainability were regularly posed. For example, in October of 2009, Senate Budget Committee Kent Conrad (*D-ND*) expressed that the program was a “Ponzi scheme of the first order, the kind of thing Bernie Madoff would be proud of.” Seven Democratic Senators explained in a letter to Majority Leader Harry Reid “...grave concerns that the real effect of the provisions would be to create a new federal entitlement program with large, long-term spending increases that far exceed revenues...” Eleven Democrats and Independent Senator Joe Lieberman voted in favor of a failed amendment to repeal the CLASS Act offered by Senator John Thune in December 2009.

Beginning shortly after Obamacare became law, numerous other reports corroborated what earlier forecasts predicted: the CLASS Act is fiscally unsustainable.³ A provision in the Obamacare statute required the HHS Secretary to certify that the costs of the program ensures solvency throughout a 75 year period based on an actuarial analysis. On October 14, 2011, HHS Secretary Kathleen Sebelius [informed](#) Speaker John Boehner that she did not see a “viable path forward for class implementation.”

The following [Timeline for Repeal of the CLASS Act](#) created by the Majority Whip's Office describes key facts about this flawed program in the lead up to the House vote to repeal it. Many CLASS Act repeal supporters believe, despite HHS Secretary Sebelius' decision to suspend implementation, it is essential that Congress eliminate CLASS' statutory authorization and, thereby, prohibit HHS from developing a revised long-term care federal entitlement program. Also, H.R. 1173 supporters point to a recent CRS report which discusses the possibility of a federal court forcing the HHS Secretary to implement this new entitlement as justification for the need to repeal the program.

Amendments Pre-Printed in the Congressional Record: The following five amendments shall be considered for a period not to exceed three hours:

1. ***Jackson Lee (D-TX)*** – This amendment prevents repeal of the CLASS Act to take effect until the HHS Secretary certifies to Congress that at least 60 percent of individuals in the U.S. who are at least 25 years old are covered by private long-

³ Center for Medicare and Medicaid Services (CMS) Chief Actuary, Richard Foster, reported in April 2010 that the CLASS program will “face a significant risk of failure” and will result in an “insurance death spiral.”

term care insurance. It also retains the authorization of appropriations of \$9 million over three years for the National Clearinghouse for Long-Term Care Information.

2. ***Jackson Lee (D-TX)*** – This amendment requires the CBO Director to complete and submit to Congress a macroeconomic study on the impact of individuals not being covered by long-term care insurance on the federal, state, and local governments. It also retains the authorization of appropriations of \$9 million over three years for the National Clearinghouse for Long-Term Care Information.
3. ***Christensen (D-Virgin Islands)*** – This amendment prevents repeal of the CLASS Act to take effect until the HHS Secretary certifies that an alternative affordable, national, long-term care program is in effect. It also retains the authorization of appropriations of \$9 million over three years for the National Clearinghouse for Long-Term Care Information.
4. ***Deutch (D-FL)*** – This amendment prevents repeal of the CLASS Act from taking effect until 90 days after the U.S. Comptroller General certifies to Congress that failure to implement the CLASS program will not increase federal or state Medicaid spending for long-term care services. It also retains the authorization of appropriations of \$9 million over three years for the National Clearinghouse for Long-Term Care Information.
5. ***Deutch (D-FL)*** – This amendment prevents repeal of the CLASS Act from taking effect until: (1) the HHS Secretary submits a report to Congress developed by the HHS Secretary determining whether or not the HHS Secretary has the authority to implement the CLASS program; and (2) if the HHS Secretary determines she does not have such authority, she provides statutory recommendations to give her such authority and Congress considers such recommendations within 90 days. If Congress has not considered and rejected the HHS Secretary’s recommendations within 90 days, the CLASS Act will not be repealed and the HHS Secretary shall be deemed to have the authority to implement the CLASS Act. Also, the CLASS Act repeal will not take effect if the HHS Secretary determines she has the authority to implement the CLASS Act and develops three, actuarially sound benefit plans called for in the CLASS program. Lastly, retains the authorization of appropriations of \$9 million over three years for the National Clearinghouse for Long-Term Care Information.

Outside Groups Supporting: Americans for Prosperity, Americans for Tax Reform, American Healthcare Education Coalition, Association of American Physicians & Surgeons, Council for Affordable Health Insurance, Council for Citizens Against Government Waste, Doctor Patient Medical Association, Freedom Works, Hispanic Leadership Fund, Independent Women’s Voice, Medical Society of the District of Columbia, Partnership for America, The National Center for Public Policy Research, U.S. Chamber of Commerce, and 60 Plus Association.

Committee Action: Representative Charles Boustany (R-LA) introduced H.R. 1173 on March 17, 2011. The bill was then referred to the House Committees on Energy and Commerce and Ways and Means. Energy and Commerce’s Subcommittee on Health held hearings on CLASS the same day and October 26, 2011. The Subcommittee reported H.R. 1173 favorably by voice vote on November 15, 2011. The full Committee reported it out favorably with an amendment by a [33-17](#) vote on November 30, 2011. On January 18, 2012, the Ways and Means Committee reported the bill out favorably by a vote of [23-13](#).⁴

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released. Yet, according to [reports](#), President Obama has vowed to veto any CLASS Act repeal legislation.

Cost to Taxpayers: The Congressional Budget Office (CBO) released a cost [estimate](#) for H.R. 1173 on January 19, 2012. The estimate states that implementing this bill will reduce direct spending by \$9 million over the 2012-2022 period. Also, spending subject to appropriations will increase by \$9 million over the 2012-2022 period.

Does the Bill Expand the Size and Scope of the Federal Government?: No. The bill repeals a long-term care federal entitlement created by Obamacare and reduces direct spending by \$9 million.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The CBO estimate explains that the bill “contains no intergovernmental or private-sector mandates as defined in UMRA (Unfunded Mandates Reform Act) and would not affect the budgets of state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1173 does **not** contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states: “Congress has the power to enact this legislation pursuant to the following: Article I, Section 7.”

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⁴ Additionally, the Ways and Means Committee held four hearings involving discussion on the CLASS Act on January 26, 2011, February 10, 2011, and two hearings held on February 16, 2011.