

FEDERAL AND STATE INITIATIVES TO JUMP START THE MARKET FOR PRIVATE LONG-TERM CARE INSURANCE

*Joshua M. Wiener, Jane Tilly, and
Susan M. Goldenson*

As the baby boom generation prepares for retirement in the upcoming decade, one issue that figures to be of special importance is the cost of long-term care, which has

Dr. Wiener is a Principal Research Associate at the Urban Institute in Washington, D.C., and is the author or editor of seven books and over 70 articles on long-term care, Medicaid, health reform, health care rationing, and maternal and child health. He has more than 25 years experience as a health care researcher, government official, and policy analyst in these areas. Dr. Wiener received his B.A. from the University of Chicago in 1971; M.A. in 1976 from Harvard University; and Ph.D. in 1981 from Harvard University. Dr. Wiener presented this paper at *The Elder Law Journal* Annual Lecture at the University of Illinois College of Law in February 2000.

Ms. Tilly is a Senior Research Associate at the Urban Institute and has published numerous articles and conducted extensive research on long-term care. She received her B.A. from the State University of New York at Geneseo in 1978; M.P.A. from the University of Texas at Austin in 1982; and is currently a doctoral candidate at the University of Michigan.

Ms. Goldenson is a research associate at the Urban Institute and has focused her research on Medicaid managed-care programs and long-term care issues. She received her B.S. degree from Cornell University in 1992 and her M.P.P. from Duke University in 1994.

reached catastrophic levels. Neither Medicare nor private health insurance policies currently cover services such as nursing home care or home health care to any significant extent. Instead, most older Americans in need of long-term care must first exhaust personal financial resources and then turn to welfare in the form of Medicaid. As a result, long-term care expenditures not only drain an individual's retirement savings, but place a severe strain on the public fisc as well.

One possible solution to this crisis has been the advent of private long-term care insurance. Due primarily to their high cost, however, these policies have been slow to enter the market as a viable means of funding long-term care for the older population. In this article, the authors evaluate various strategies, at both the federal and state levels, designed to encourage the purchase of long-term care policies. One approach, used by the federal government and an increasing number of state legislatures, has been individual tax incentives in the form of tax deductions or credits to purchasers of private long-term care insurance. A similar tactic has been to provide tax incentives for employer contributions to long-term care insurance. At the same time, both state and federal governments have attempted to act as role models for private employers by offering long-term care insurance to their own employees. Finally, a limited number of states have formed so-called public-private partnerships for long-term care, which essentially relax the requirements of qualifying for long-term care coverage under Medicaid.

The authors conclude, though, that these initiatives have achieved only modest success in penetrating the market for long-term care insurance and their effect has been more symbolic than substantive. The failure of these proposals to increase the actual number of policies in force raises a host of fundamental policy issues, such as whether the government should encourage private long-term care insurance, which idealizes the American principle of self-reliance, or instead whether the government should fund long-term care insurance via direct spending in federal benefit programs. If the government decides to intervene in the private market, it is still unclear which particular strategy is the most effective and efficient. The authors stress that these underlying policy concerns must be addressed before any progress can be made on the issue of private long-term care insurance.

The authors wish to thank the many respondents who gave generously of their time to explain their programs and to give their views of private long-term care insurance. This paper is a part of the Urban Institute's *Assessing the New Federalism* project. The project has received funding from The Annie E. Casey Foundation, the W.K. Kellogg Foundation, The Robert Wood Johnson Foundation, the Charles Stewart Mott Foundation, the David and Lucile Packard Foundation, The McKnight Foundation, The Commonwealth Fund, the Stuart Foundation, the Weingart Foundation, The Fund for New Jersey, The Lynde and Harry Bradley Foundation, the Joyce Foundation, and The Rockefeller Foundation.

This paper represents the views of the authors and should not be attributed to the Urban Institute, its trustees, or its supporters.

I. Introduction

Long-term care in the United States is overwhelmingly financed through means-tested public programs and out-of-pocket payments.¹ People with disabilities and their families find, often to their astonishment, that nursing home and home care are not covered to any significant extent by either Medicare² or their private health insurance policies.³ Instead, they must rely on their own resources or, when those have been exhausted, turn to welfare in the form of Medicaid.⁴ With the cost of nursing home care exceeding \$50,000 per year in 1997, it is not surprising that long-term care is a major source of catastrophic out-of-pocket costs for disabled elderly persons.⁵ Due to the aging of the population and price increases greater than general inflation, Medicaid long-term care expenditures for the elderly are likely to roughly double between 2000 and 2020 in inflation-adjusted dollars, placing financial strain on individuals and their families, as well as both the federal and state governments.⁶

To address the problems of catastrophic out-of-pocket costs and rising public expenditures, many policymakers are assessing the potential of private long-term care insurance. Currently, private long-term care insurance plays only a small role in financing long-term care for the older population, accounting for only about 2.5% of national long-term care expenditures for the elderly population in 2000.⁷ This low percentage reflects not only the small number of people with private long-term care insurance policies, but also the limitations contained in those policies. Only a small fraction of older Americans have private insurance to guard against the high costs of long-term care. With only about 3.2 to 3.8 million policies in force in 1997, pri-

1. See LAWRENCE A. FROLIK & RICHARD L. KAPLAN, *ELDER LAW IN A NUTSHELL* 131 (2d ed. 1999).

2. See 42 U.S.C. §§ 1395–1395ggg (1994).

3. See FROLIK & KAPLAN, *supra* note 1, at 131.

4. See 42 U.S.C. §§ 1396–1396v.

5. See Joshua M. Wiener et al., *Catastrophic Costs for Long-Term Care for Elderly Americans*, in *PERSONS WITH DISABILITIES: ISSUES IN HEALTH CARE FINANCING AND SERVICE DELIVERY* 182, 182–83 (Joshua M. Wiener et al. eds., 1995); Unpublished Data from the Office of National Health Statistics, Office of the Actuary, Health Care Financing Administration, Baltimore, Md. (1999).

6. See U.S. Congressional Budget Office, *Projections of Expenditures for Long-Term Care Services for the Elderly*, CBO Memorandum (1999).

7. See *id.*

vate insurance provided coverage to less than ten percent of the elderly population.⁸

While some reasons for the low market penetration of private long-term care insurance include misinformation about long-term care coverage under Medicare,⁹ lack of knowledge about the spend-down requirements of Medicaid,¹⁰ denial of the risks of long-term care,¹¹ and competition with other needs, the greatest impediment may be the high cost of good quality policies.¹² The average annual premium for high-quality, individual policies purchased at age sixty-five was \$2305 in 1997,¹³ rising to \$7022 if purchased at age seventy-nine.¹⁴ The policies are expensive for two reasons: first, eight out of ten policies are sold individually¹⁵ and, consequently, carry high administrative and marketing costs;¹⁶ second, most policies are bought by older people who have a greater risk of needing long-term care.¹⁷ Despite the marked improvement in the financial position of the elderly over the past thirty years,¹⁸ most studies estimate that only ten to twenty percent of the older population can afford good quality private long-term care insurance policies.¹⁹ Other research has found the percentage of the elderly who can afford private insurance to be higher, but these studies have done so by assuming purchase of policies with more

8. A major difficulty with insurance industry statistics is that they only report the number of policies ever sold rather than the number of policies in force. See Interview with Marc Cohen, LifePlans, Inc., in Waltham, Mass. (Apr. 1999).

9. See generally FROLIK & KAPLAN, *supra* note 1, at 131-48.

10. See *id.*; see also 42 U.S.C. § 1396(p) (1994).

11. See generally FROLIK & KAPLAN, *supra* note 1, at 131-48.

12. See Jan Ellen Rein, *Misinformation and Self-Deception in Recent Long-Term Care Policy Trends*, 12 J. L. & POL. 195, 280-85 (1996).

13. See Susan Coronel, Health Insurance Assoc. of Am., Monograph, *Long-Term Care Insurance in 1997-98* (2000).

14. This was the average premium for policies providing \$100 per day of nursing home care, \$50 per day of home care, four years of coverage, a 20-day elimination period, five percent annual compound inflation adjustment, and a nonforfeiture benefit. See *id.*

15. See Rein, *supra* note 12, at 281.

16. See *id.*

17. See *id.*

18. See Committee on Ways & Means, U.S. House of Representatives, *The Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means*, 894 tbl.13-22 (1998) [hereinafter *1998 Green Book*].

19. See JOSHUA M. WIENER ET AL., *SHARING THE BURDEN: STRATEGIES FOR PUBLIC AND PRIVATE LONG-TERM CARE INSURANCE* (1994); William H. Crown et al., *Economic Rationality, the Affordability of Long-Term Care Insurance, and the Role of Public Policy*, 32 GERONTOLOGIST 478, 478-85 (1992); see also ALICE M. RIVLIN & JOSHUA M. WIENER, *CARING FOR THE DISABLED ELDERLY: WHO WILL PAY?* (1988).

limited coverage,²⁰ by assuming that the elderly would use a high percentage of their income and assets to pay premiums,²¹ or by not requiring that purchasers have a minimum level of assets.²² For example, by assuming that the older population is able to spend ten percent of its income on private long-term care insurance, Mulvey and Stucki estimate that thirty-one percent of people age sixty-five and older can afford a two- or five-year private long-term care insurance policy that covers two or five years of nursing home or home care coverage.²³

Given the limitations of the current market for private long-term care insurance, policymakers have considered or enacted three strategies of governmental intervention that could increase the number of people with private long-term care insurance. One approach is to provide individuals with tax incentives that encourage purchase of long-term insurance policies by reducing the net price of such policies.²⁴ The second approach is to encourage employer-based private long-term care insurance through tax incentives and through the federal and state governments serving as role models for private employers by providing governmental employees, retirees, and their dependents the opportunity to purchase insurance.²⁵ The third approach is to waive some or all of the Medicaid asset depletion requirements for purchasers of qualified private long-term care insurance policies, allowing them to retain more of their assets and still qualify for Medicaid.²⁶ The intent of all three strategies is to induce more people to purchase long-term care policies by lowering premium costs: the first accomplishes this through tax breaks; the second operates under the principle that private long-term care insurance is far more affordable if purchased at a younger age;²⁷ and the third attempts to reduce the amount of insurance necessary to achieve lifetime asset protection.

20. See Marc A. Cohen et al., *Financing Long-Term Care: A Practical Mix of Public and Private*, 17 J. HEALTH POL. POL'Y & L. 403, 408-09 (1992) [hereinafter *Financing Long-Term Care*]; Marc A. Cohen et al., *The Financial Capacity of the Elderly to Insure for Long-Term Care*, 27 GERONTOLOGIST 494 (1987) [hereinafter *Financial Capacity*].

21. See JANEMARIE MULVEY & BARBARA STUCKI, WHO WILL PAY FOR THE BABY BOOMERS' LONG-TERM CARE NEEDS? EXPANDING THE ROLE OF LONG-TERM CARE INSURANCE 9 (1998).

22. See *id.* at 10.

23. See *id.* at 14.

24. See *infra* notes 35-115 and accompanying text.

25. See *infra* notes 116-67 and accompanying text.

26. See *infra* notes 168-99 and accompanying text.

27. Policies purchased at age 40 cost about one-third of what they cost at age 65. See Coronel, *supra* note 13, at 28; see also MULVEY & STUCKI, *supra* note 21, at 14;