NEAR-TERM PROSPECTS FOR LONG-TERM CARE FINANCING REFORM

by
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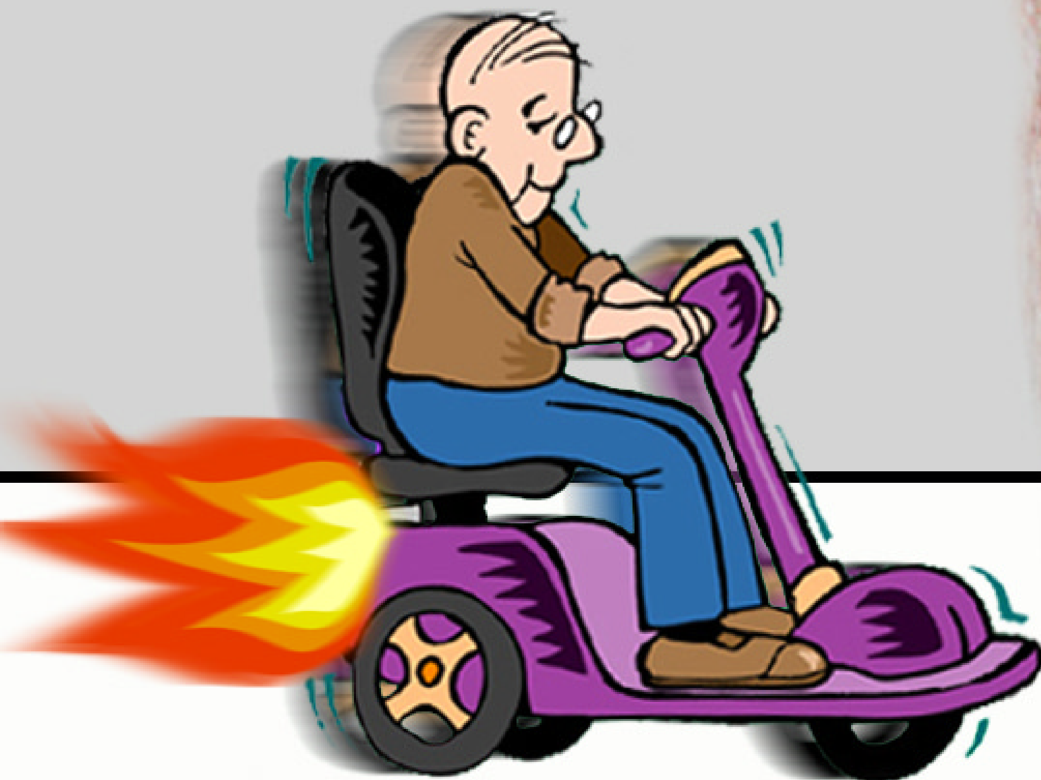

Final Report to the Milbank Foundation for Rehabilitation on the Project "Near-Term Prospects for Long-Term Care Financing Reform"

Narrative Report

Project Background

During the Summer and Fall of 2011, the Cato Institute sub-contracted with the Center for Long-Term Care Reform of Seattle, Washington for the purpose of engaging researcher **Stephen A. Moses** to conduct a study of long-term care (LTC) financing. He has been a Medicaid state representative for the Health Care Financing Administration and senior analyst for the inspector general of the U.S. Department of Health and Human Services. **Michael Cannon**, Cato's Director of Health Policy, provided oversight for the project.

Medicaid is a means-tested public assistance program, i.e. welfare. Yet Medicaid is the principal funding source for long-term care (LTC) throughout the United States, not only for the poor, but for most Americans. Although LTC users are only seven percent of the Medicaid population, they account for more than half of the program's costs nationally. The only way Medicaid can survive as a long-term care safety net for the poor is if more prosperous people plan responsibly and pay privately for their own long-term care. But Medicaid crowds out most private LTC financing alternatives such as home equity conversion and insurance. The trend toward greater and greater dependency on welfare-financed nursing home care is reversible. It will be reversed by responsible public policy or by default as costs skyrocket and public resources dwindle with the aging of the baby boom.

Conceived as a project to identify, present, and win support for a cost-saving Medicaid reform initiative, the project and its proposal encountered political and bureaucratic apathy despite dramatic and escalating state and national fiscal crises. Adapting to this reality, the project produced and published several papers intended to educate legislators, policy makers, interest groups and the media about the Medicaid and long-term care financing issues. Researcher Stephen Moses testified before Congress on September 21, 2011 at a hearing titled "Examining Abuses of Medicaid Eligibility Rules." The Milbank Foundation for Rehabilitation provided a grant a $40,000 in support of this work.

Under the terms of the agreement, Moses committed "to spend a minimum of six weeks in the Washington, DC in late summer or early fall of 2011 "to conduct interviews with key long-term care policy experts and to "produce a report that reflects the views of the interviewees and threads the needle of conflicting interests to produce realistically achievable recommendations for Congress to consider." Stephen Moses lived full time and conducted interviews in Washington, DC from July 25, 2011 to August 8, 2011 and from September 2, 2011 until October 28, 2011, a total of ten weeks.

Strategy

The premise behind this project was that the U.S. government faces severe debt and deficit problems exacerbated by massive unfunded entitlement liabilities and that, therefore, public officials should be receptive to common sense proposals that save money and improve programs. Frequent warnings from the Congressional Budget Office and the Government Accountability Office, the December 2010 report of the National Commission on Fiscal Responsibility and Reform (Simpson/Bowles report), and an impending debt ceiling crisis substantiated this sense of urgency as the Summer of 2011 began.

Thus, the proposed strategy was to (1) propose an approach to Medicaid long-term care savings, (2) brief and interview key Congressional members and staff on the proposal and get their agreement on what would be realistic to achieve politically, then (3) go to LTC interest groups such as providers, insurers, and senior advocates to seek their support, and finally (4) propose practical recommendations to Congress suitable for adaptation into legislative language.

As a practical matter, in response to political polarization and legislative inertia, the project's strategy evolved through three phases into a more modest one of raising consciousness about the Medicaid long-term care issue among policy makers in Washington, DC and the broader public. The following sections explain challenges the project encountered, how its focus changed, and what it achieved in the end.

Phase 1 (July - August, 2011)

Moses's first step in the project was to interview **David Rosenfeld**, Senior Health Counsel to the House Republican Caucus. Rosenfeld was a co-founder of the Center for Long-Term Care Reform in 1998. Moses believes he understands the Medicaid and long-term care financing issues better than any other Congressional staffer. He was instrumental--as Health Counsel to the House Energy and Commerce Committee--in the writing and passage of the last major national reform language affecting Medicaid and long-term care financing, the Deficit Reduction Act of 2005. Mr. Rosenfeld provided the names and contact information for key House and Senate members and staff who have knowledge and influence related to budgets, appropriations, and specifically Medicaid and long-term care funding.

Rosenfeld advised that congressional members and staff were extremely concerned at that time (mid-Summer 2011) about the Sustainable Growth Rate (SGR or "Doc Fix") issue. He explained that Congress needed to find $30 billion per year or $300 billion over ten years to avoid the automatic implementation of a 30-percent cut in Medicare physicians' fees created by an earlier law. He recommended that a good way to get the attention and buy-in of Congress for a Medicaid long-term care reform recommendation would be to show how such a reform could save some or all the revenue needed to fund the Doc Fix. Rosenfeld particularly recommended that he reach out to members of Congress who are also physicians.

Reasoning that the Doc Fix issue would indeed be an excellent hook to get the attention of key policy makers, Moses then prepared a report titled "Pay for the Doc Fix by Fixing Medicaid LTC."[1] This report, the project's **first deliverable**, was published and posted to the Center for Long-Term Care Reform's website on August 5, 2011 (see end note 1). It explained in detail how a relatively simple, common sense change to Medicaid's long-term care eligibility rules could achieve sufficient savings to fund the Doc Fix.

Phase 2 (September 2011)

Even as this flagship proposal to garner interest was being prepared, however, the attention of Congress refocused onto a different and broader fiscal issue. A late-July 2011 debt ceiling crisis captured everyone's attention. After it culminated with the President's signing the Budget Control Act of 2011 on August 2, the main thing on the minds of people on the Hill was the "Super Committee" and how it would raise the newly mandated $1.2 trillion dollars in budget savings by a December 23, 2011 deadline.

So, to keep the project in tune with the short attention span and current preoccupation of Congress, Moses modified the original flagship report changing it from a proposal to fund the Doc Fix to a means of supplying one-fourth of the Super Committee's savings mandate, or $300 billion over ten years. The Center for Long-Term Care Reform published the project's **second deliverable** titled "Save Medicaid LTC $30 Billion Per Year AND Improve the Program" and posted it to our website.[2] Moses and the Center continued to bring both position papers to the attention of people briefed and interviewed for the project depending on each individual's principal area of interest.

As these adjustments in strategy and approach were taking place, Moses continued conducting interviews with Congressional staff and influential interest groups. His argument was simple and well supported in both of the reports mentioned above. To wit: Medicaid long-term care eligibility rules exempt at least half a million dollars of home equity. Most seniors own homes and most senior homeowners own their homes free and clear. By reducing Medicaid's home equity exemption--which increased to $525,000 or $786,000 at state legislative discretion effective January 1, 2012--to an amount closer to England's asset exemption (23,500 British pounds or approximately $36,400), many of Medicaid's most expensive recipients (potential dual eligibles) would need to pay for their own long-term care which would delay or prevent their dependence on welfare, thus producing the estimated savings of $30 billion per year.

During the interview phase of the project, the following people were briefed and interviewed: **James Holland** representing Senator **Jim DeMint** (R, SC); **Rodney Whitlock**, Senator **Charles Grassley** (R, IA); **Winthrop Cashdollar**, America's Health Insurance Plans; **Dan Elling**, Staff Director, Committee on Ways and Means, Subcommittee on Health; **Janice Zalen, Steven Gregory, Teresa Cagnolatti** and **Karl Polzer** of the American Health Care Association; **James "JP" Paluskiewicz** representing Congressman **Michael Burgess**, M.D. (R, TX); **Kris Skrzycki**, Chief of

Staff, Republican Policy Committee and **Laura Holland** representing Chairman **Tom Price**, M.D. (R, GA); **Stephanie J. Carlton**, Health Policy Advisor, U.S. Senate Committee on Finance Minority Staff; **Greg D'Angelo**, U.S. Senate Committee on the Budget; **Josh Trent** representing Senator **Tom A. Coburn**, M.D. (R, OK); **Anna K. Abram**, Senator **Richard Burr** (R, NC); **John Greene**, National Association of Health Underwriters; **Robert Horne**, Congressman **Phil Gingrey**, M.D. (R, GA); **Christie Herrera**, American Legislative Exchange Council; **Steven M. Lieberman**, National Governors Association; **Brian Blase**, House Committee on Oversight and Government Reform; **Robert Moffit** and **Nina Owcharenko**, the Heritage Foundation; **Joe Antos** and **Robert Helms**, American Enterprise Institute.

Phase 2 Results

While individual responses varied somewhat, as a general thrust, those interviewees expressed shock and concern about Medicaid's wasteful home equity exemption policy. They showed interest in the potentially enormous savings from the reform we proposed, but their concern for the political sensitivity of reducing any senior benefit, however worthwhile such a change might be, trumped their anxiety about budget issues. Democrats refused to touch Medicaid no matter how much sense a proposed change would make, no matter how much it would save, and no matter how much it would improve the program. Republicans said, in essence, "We can't do anything on Medicaid because the Democrats say it is off the table."

Nevertheless, the project did not reach a total dead end. Several promising possibilities opened up:

- A Senate Budget Committee staffer asked for "specs" he could use to request a "score" from the Congressional Budget Office for our proposal to reduce or eliminate the Medicaid home equity exemption. Moses supplied those specifications backed up by recent reports supporting the $30 billion per year savings and by state-level studies published by the Center for Long-Term Care Reform and local think tanks in Pennsylvania, California, and New York earlier in 2011.
- Two Senate staffers requested "the right questions to ask the Government Accountability Office" to study in order to document the need for and potential savings from reducing or eliminating the Medicaid home equity exemption for long-term care. He supplied those proposed questions plus back up documentation.
- One House staff member asked for help preparing a letter to the Department of Health and Human Services Inspector General requesting a study of Medicaid planning abuses and updating Medicaid estate recovery results by state.

While the request to CBO for a score has not gone forward, letters to both the GAO and the DHHS Inspector General requesting studies relevant to our project's objectives either have been sent or will be sent soon from members of Congress. The content of those letters remains confidential, but both Moses and the Cato Institute

consider them major achievements, the **third and fourth deliverables** of the project respectively.

Congressional Hearing

Moses contends that his biggest impact during the second phase of the project was to assist with the selection of witnesses for and to testify at a hearing, titled "Examining Abuses of Medicaid Eligibility Rules," conducted by the House Oversight and Government Reform's Sub-Committee on Healthcare. Video and witnesses' testimonies are available. (See end note 3) Congress published Moses' testimony, titled "Medicaid Long-Term Care Benefits: Friendly Fire in the Class War".[3] It is the project's **fifth deliverable**. The Center for Long-Term Care Reform also published his testimony and analysis of the hearing.

By the end of September 2011, it was clear that the project's original strategy would not work. The powers-that-be in Washington, DC simply were not as motivated to deal with excess spending, debt and deficit problems as the objective gravity of these problems previously suggested that they would (and should)be. Despite all the rhetoric about the fiscal crisis, policy makers were not yet scared enough to tackle the Medicaid entitlement program. Virtually everyone with whom Moses spoke agreed with the facts and analysis, but neither the left nor the right were willing to move forward with serious review of the proposal. Subsequent events, such as the failure of the Super Committee to achieve its relatively modest goal of $1.2 trillion in savings over ten years, substantiated this conclusion.

Phase 3 (October 2011)

Under the circumstances, it was necessary to modify the project's strategy yet again. If action on Medicaid reform is premature due to government control's being politically divided--with the Presidency and Senate held by one party and the House by the other--Moses concluded that his best strategy would be to use the remainder of the project to prepare for a time when the political landscape would be better suited for reform. That meant focusing on documentation of and education about the problem as leveraged by outreach to influential organizations and people who can help to publicize the proposed solution.

Thus, he began work on a series of briefing papers designed to provide legislators, policy makers, pundits and the public with a primer on the Medicaid and long-term care financing issue. Fortuitously, Moses was invited to attend and to present formally in early November at a prestigious national conference. The 13th annual Health Sector Assembly's (HSA) 2011 topical focus was "Long-Term Care: The Unacknowledged Elephant in the Room," a title reflecting the reality that long-term care service delivery and financing are bigger problems than commonly recognized.

At the HSA meeting in Sundance, Utah on November 4, 2011, Moses delivered remarks on "Challenges to Effective Long-Term Care: Cost and

Affordability." The purpose of this invited speech was to raise questions for discussion by the leading national health care experts convened. The Center for Long-Term Care Reform published the presentation on December 9, 2011. It is the project's **sixth deliverable**.[4] The meeting referenced and the Health Sector Assembly distributed to all attendees a one-page handout titled "Overview: How to Fix Long-Term Care." That handout is available[5] and includes internet links to each of the following six briefing papers:

Briefing Paper #1: The History of Long-Term Care Financing or How We Got Into This Mess
www.centerltc.com/BriefingPapers/1.pdf

How did the USA come to have a welfare-financed, institutionally biased LTC system in the wealthiest country in the world where no one wants to go to a nursing home? We answer this question first or we risk treating symptoms instead of causes and making problems worse instead of better.

Briefing Paper #2: Medicaid Long-Term Care Eligibility
www.centerltc.com/BriefingPapers/2.pdf

Despite the conventional wisdom that people must spend down into impoverishment before qualifying for Medicaid LTC benefits, the truth is that income and asset eligibility rules are so generous that most people qualify easily without spending down significant wealth. This brief explains how and why.

Briefing Paper #3: Medicaid Planning for Long-Term Care
www.centerltc.com/BriefingPapers/3.pdf

Even people who are too affluent to qualify for Medicaid LTC benefits under the generous basic eligibility rules can qualify easily with the help of simple or sophisticated legal techniques marketed by "Medicaid planners." This brief explains how.

Briefing Paper #4: Rebalancing Long-Term Care
www.centerltc.com/BriefingPapers/4.pdf

Despite the high hopes of many analysts and policymakers, rebalancing Medicaid LTC services from nursing home care to home care without simultaneously tightening eligibility will not save money and will increase costs interminably. This brief explains why.

Briefing Paper #5: Dual Eligibles and Long-Term Care: How to Save Medicaid LTC $30 Billion Per Year *and* Pay for the "Doc Fix"
www.centerltc.com/BriefingPapers/5.pdf

Medicaid recipients also eligible for Medicare are the program's most expensive. Better public policy could delay or prevent Medicaid dependency for millions who would otherwise become dual eligibles. This brief explains precisely what needs to be done to achieve that goal.

Briefing Paper #6: Private Long-Term Care Financing Alternatives
www.centerltc.com/BriefingPapers/6.pdf

Medicaid does not have to bear the brunt of most LTC financing if policy makers unleash the potential of the four major private financing alternatives that currently go mostly untapped. This brief explains what those sources are and what needs to be done to maximize their potential.

Project Completion

The Center for Long-Term Care Reform will publish all six of the preceding "briefing papers" one a week beginning in February and encourage its readership to distribute them widely along with the "Overview" paper which links to each of them. Together, those publications represent the project's **seventh deliverable**. Moses intends to reach out to the media and to "bull horn" organizations such as the Concord Coalition, Citizens Against Government Waste, the National Taxpayers Union and others, to seek their help in publicizing the problem and the solution. On October 28, 2011, for example, he met with and briefed **David M. Walker**, the former Comptroller General and current founder and president of the Comeback America Initiative. At a future date, the Cato Institute will publish for wider dissemination a Policy Analysis based on the briefing papers, and will distribute the papers to attendees of its upcoming State Health Policy Summit (funded in part by the JM Foundation).

Subsequent to the completion of this project, *Barron's* published an editorial based on an interview with Stephen Moses. It explained the problem he tackled in the project and described the difficulty he encountered mobilizing support for a solution. The editorial is available online: Thomas G. Donlan, "A Medicaid Mess," *Barron's*, January 14, 2012,
http://online.barrons.com/article/SB50001424052748704284404577157103378830154.html?mod=BOL_twm_fs.

Both Moses and Cato think that, although this project veered from its originally intended course due to practical necessity, it did produce several important work products, including the seven deliverables referenced above. Our bottom line conclusion is that the legislative and executive branches of the U.S. government are not yet ready to tackle the problem of long-term care financing by reforming Medicaid. We hope that this project has helped to document and promulgate the gravity of that problem and to propose a viable solution for when policy makers are finally ready to act. We are very grateful to the trustees of the Milbank Foundation for Rehabilitation for their support and recognition.

Bios

Stephen A. Moses is president of the Center for Long-Term Care Reform in Seattle, Washington (www.centerltc.com). The Center promotes universal access to top-quality long-term care by encouraging private financing as an alternative to Medicaid dependency for most Americans. Previously, Mr. Moses was president of the Center for Long-Term Care Financing (1998-2005), Director of Research for LTC, Inc., (1989-98), a senior analyst for the Inspector General of the U.S. Department of Health and Human Services (1987-89), a Medicaid state representative for the Health Care Financing Administration (1978-87), a HHS Departmental Management Intern (1975-78), and a Peace Corps Volunteer in Venezuela (1968-1970). He is widely recognized as an expert and innovator in the field of long-term care. Mr. Moses' articles have appeared often in distinguished publications like *The Gerontologist*, *The Journal of Accountancy*, *The Journal of Financial Planning*, *Contemporary Long-Term Care*, *Best's Review*, *National Underwriter*, *Assisted Living Today* and *Nursing Homes* magazine. He has testified before Congress and most of America's state legislatures. He frequently addresses professional conferences in the fields of law, aging and insurance. His recommendations are quoted often in the national media including the "CBS Evening News," PBS's "Frontline" and "The Financial Advisors," CNN, National Public Radio, *The New York Times*, *The Wall Street Journal*, *Newsweek*, *USA Today*, *Forbes*, *The New Republic*, *Smart Money*, *National Journal*, and Jane Bryant Quinn's syndicated column. He appeared in a public television documentary titled "The Aging of America: The Dilemma of Long-Term Care." Bachelor of Arts in Political Science, Highest Honors, Phi Beta Kappa, University of California, Davis (1967); Master of Arts in Political Science, High Honors, University of Maryland, College Park (1971).

Michael F. Cannon is the Cato Institute's director of health policy studies. Previously, he served as a domestic policy analyst for the U.S. Senate Republican Policy Committee under Chairman Larry E. Craig, where he advised the Senate leadership on health, education, labor, welfare, and the Second Amendment. A columnist for *Kaiser Health News*, Cannon has appeared on ABC, CBS, CNN, CNBC, C-SPAN, Fox News Channel, and NPR. Cited by the *Washington Post* as "an influential health-care wonk at the libertarian Cato Institute," his articles have been featured in *USA Today*, the *Los Angeles Times*, the *New York Post*, the *Chicago Tribune*, the *Chicago Sun-Times*, the *San Francisco Chronicle*, *Forum for Health Economics & Policy*, and the *Yale Journal of Health Policy, Law, and Ethics*. Cannon is coauthor of *Healthy Competition: What's Holding Back Health Care and How to Free It*. He holds a bachelor's degree in American government (B.A.) from the University of Virginia, and master's degrees in economics (M.A.) and law & economics (J.M.) from George Mason University.

End Notes

[1] Stephen A. Moses, "Pay for the Doc Fix by Fixing Medicaid LTC," Center for Long-Term Care Reform, Seattle, Washington, August 5, 2011;
http://www.centerltc.com/pubs/Pay_for_the_Doc_Fix_by_Fixing_Medicaid_LTC.pdf.

[2] Stephen A. Moses, "Save Medicaid LTC $30 Billion Per Year AND Improve the Program," Center for Long-Term Care Reform, Seattle, Washington, September 9, 2011; http://www.centerltc.com/pubs/Save_Medicaid_LTC_$30_Billion_Per_Year_AND_Improve_the_Program.pdf.

[3] Stephen A. Moses, "Medicaid Long-Term Care Benefits: Friendly Fire in the Class War," Hearing Documents, United States House of Representatives Committee on Oversight and Government Reform September 21, 2011 Hearing "Examining Abuses of Medicaid Eligibility Rules;" http://oversight.house.gov/index.php?option=com_content&view=article&id=1445%3A9-21-2011-qexamining-abuses-of-medicaid-eligibility-rulesq&catid=35&Itemid=40.

[4] Stephen A. Moses, "Challenge Remarks: Cost and Affordability of Long-Term Care," Health Sector Assembly Presentation, Sundance, Utah, November 4, 2011; http://www.centerltc.com/bullets/latest/939.htm.

[5] http://www.centerltc.com/BriefingPapers/Overview.htm