

Eye on elder issues

EYE on ELDER ISSUES
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NAELA Responses to Insurance Industry Objections to the New York Compact

In our most recent issue, NAELA lauded the New York Compact as a viable and worthwhile program to help assure continued adequate funding for long-term care services. Not surprisingly, advocates for the long-term care insurance industry oppose the Compact and are trying to block it by raising the following objections - each of which we respond to below.



Insurance Industry Objection: The Deficit Reduction Act of 2005 (the "DRA") was intended to end planning by seniors. For more background about the DRA, please visit:

<http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN01932:@@L&summ2=m&>.

Response: The DRA changed Medicaid rules for long-term care eligibility to eliminate perceived abuses. NAELA played a role in identifying several areas where laws could be tightened. While the DRA incorporated many of NAELA's suggestions for eliminating abuses, the

law includes many negative provisions, which are harmful to older adults. Most seniors are still concerned about funding their health care, and many are still seeking the advice of elder law attorneys for two reasons: first, to gain some understanding of rules that have become as complicated as the tax code; and second, to determine what options they may have to plan responsibly for their long-term care needs. The DRA allowed states to use the Partnership for Long-term Care and the New York Compact is simply a creative variation of the Partnership program. The New York Compact takes one sensible step further for people who otherwise couldn't qualify for long-term care insurance.

Insurance Industry Objection: The New York Compact may actually cause the states to incur greater expense.

Response: We believe that this is unlikely. Previous estimates are contained in a scoring performed by Milliman,* an actuarial and clinical advisor to the health care industry, which suggest the program is either revenue neutral or may save money. More importantly, the Compact is a time-limited research and demonstration program that will provide empirical answers regarding what this type of solution may actually cost.

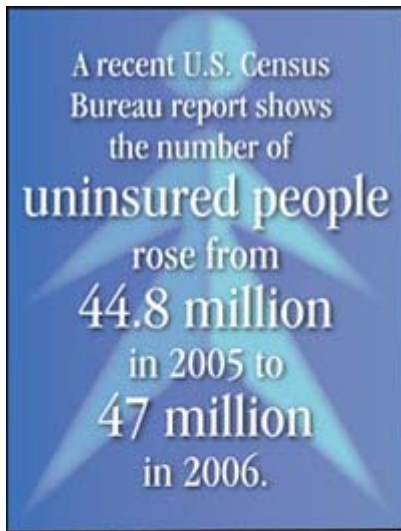
**Scoring of Proposed Nationwide Long Term Care "Compact" Legislation," letter from Milliman Consultants and Actuaries, August 7, 2006.

Insurance Industry Objection: Long-term care insurance is the answer to the public policy problem.

Response: The cost of the premiums of long-term care insurance exceeds the ability of many Americans. Using affordability criteria on



the National Association of Insurance Commissioners (premium not exceeding 7 percent of income and financial assets of at least \$35,000), among people between 60 and 79 years old, a recent study estimated that only 22 percent could afford to buy "mid-range" coverage. [SOURCE: M.Merlis, *Private Long-Term Care Insurance: Who Should Buy It and What Should They Buy?* (Washington, DC: Kaiser Family Foundation, 2003).] In 2005, the average price (among five major insurers) for a typical policy providing \$150 daily benefit and 5 years of coverage with a 90-day elimination period and inflation protection was \$2,447 for buyers age 50 at the time of purchase, and \$6,178 for buyers who first purchased policies at age 70. [Source: Government Accountability Office (GAO), *Long-Term Care Insurance: Federal Program Compared Favorably with Other Products, and Analysis of Claims Trend Could Inform Future Decisions*, GAO-06-401 (Washington, DC: GAO, 2006).] Yet based upon recent census data, the average income of those over age 65 is approximately \$2,316 per month. Further, even for those that can afford it, almost 20% of long-term care insurance applications are denied because of existing health care conditions, age or other issues, according to a 2005 report by Wakely Actuarial Services and the American Association for Long-Term Care Insurance.



Insurance Industry Objection: The New York Compact is an effort to increase revenues of elder law attorneys.

Response: We believe that this proposal would be revenue-negative towards elder law attorneys in the long run, because it gives seniors a fair and understandable planning alternative for long-term care. **The New York Compact will allow citizens to avoid complex Medicaid planning and the threat of litigation over Byzantine rules. It offers seniors a dignified means of using their own assets to pay for essential long-term care services without facing the elimination of their entire estate.**

Insurance Industry Objection: Those with wealth are the ones most likely to utilize the Compact.

Response: Contrary to the claims of some individuals with ties to the long-term care insurance industry, such as those noted at <http://www.centerlhc.com/>, most wealthy people do not consider Medicaid planning since their income is usually sufficient to pay for their care or to protect their estate with long-term care insurance. Further, this constant focus upon the wealthy ignores the demographic data, which reflects that most Americans are not wealthy. According to a 2006 U.S. Census Bureau report breaking down households by income, the low and middle class represent 80% of the total population. The report may be found at http://pubdb3.census.gov/macro/032006/hhinc/new05_000.htm.

The real challenge is to offer a meaningful alternative to middle income citizens so that they are not assessed a health care tax that consumes 100% of their assets. That is what the Compact does.

In conclusion, while long-term care insurance is a viable tool for many healthy people who can afford it, it is significant that after nearly two decades long-term care insurance has yet to capture a significant portion of the marketplace. The industry should not blame Medicaid, or promising experiments such as the Compact, for that failure. It's time to offer innovative and constructive thought, not profit-based demagoguing.



For more information about elder law attorneys and the National Academy of Elder Law Attorneys, visit www.naela.org. Established in 1987, NAELA provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to seniors and people with special needs.

Note to Our Readers: *This e-newsletter, Eye on Elder Issues, is presented as a public service by the National Academy of Elder Law Attorneys (NAELA). We are pleased to send you this issue and welcome your comments. NAELA explores, reports and provides insight on timely topics affecting our nation's seniors and their families. In addition, the growing population of Baby Boomers is addressing issues for themselves and their families that are new and unique. This publication is intended to explore those issues from all sides and to educate consumers, aging network professionals, law makers, and members of the media.*

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