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CLASS CANCELLED: AN UNSUSTAINABLE PROGRAM
AND ITS CONSEQUENCES FOR THE NATION'S DEFICIT
WEDNESDAY, OCTOBER 26, 2011
House of Representatives,
Subcommittee on Oversight
and Investigations,
joint with
Subcommittee on Health,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:05 a.m., in Room 2123, Rayburn House Office Building, Hon. Joseph Pitts [chairman of the Subcommittee on Health] presiding.

Present: Representatives Pitts, Stearns, Shimkus, Terry, Myrick, Sullivan, Murphy, Burgess, Blackburn, Bilbray, Gingrey, Scalise, Latta, McMorris Rodgers, Lance, Cassidy, Guthrie, Gardner,

Griffith, Dingell, Pallone, Engel, Green, Degette, Capps, Schakowsky, Gonzalez, Matheson, Christensen, Castor, and Waxman (ex officio).

Staff Present: Stacy Cline, Counsel, Oversight; Andy Duberstein, Deputy Press Secretary; Paul Edattel, Professional Staff Member, Health; Julie Goon, Health Policy Advisor; Todd Harrison, Chief Counsel, Oversight/Investigations; Sean Hayes, Counsel, O&I; Debbee Keller, Press Secretary; Ryan Long, Chief Counsel, Health; Carly McWilliam, Legislative Clerk; Monica Popp, Professional Staff Member, Health; Krista Rosenthal, Counsel to Chairman Emeritus; Chris Sarley, Policy Coordinator, Environment& Economy; Alan Slobodin, Deputy Chief Counsel, Oversight; Alvin Banks, Democratic Investigator; Phil Barneet, Democratic Staff Director; Brian Cohen, Democratic Investigations Staff Director and Senior Policy Advisor; Alli Corr, Democratic Policy Analyst; Ruth Katz, Democratic Chief Public Health Counsel; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; Karen Nelson, Democratic Deputy Committee Staff Director for Health; and Anne Tindall, Democratic Counsel.

Mr. Pitts. The subcommittee will come to order.

The chair recognizes himself for 5 minutes for an opening statement. On October 14, 2011, after 19 months of review, and \$15 million, HHS announced what most people, including many Members of Congress, independent analysts, and CMS's own actuary, have known about the CLASS program since before the healthcare bill became law: it is completely unsustainable.

After determining that the CLASS program cannot meet the law's 75-year solvency requirement, HHS has decided not to implement this provision of the law. This shouldn't be a surprise. Months before PPACA became law, the warning was being sounded.

On July 9, 2009, CMS actuary Richard Foster wrote, "36 years of actuarial experience lead me to believe that this program would collapse in short order and require significant Federal subsidies to continue."

Also that month, the American Academy of Actuaries wrote to the Senate HELP committee, "The proposed structure and the premium requirements within the CLASS Act plan are not sustainable."

And Kent Conrad, the Democratic chairman of the Senate Budget Committee famously called the class act "a Ponzi scheme of the first order, the kind of thing that Bernie Madoff would have been proud of."

All of this was before PPACA was signed into law. So why was the CLASS Act included? Quite simply, PPACA's authors needed savings, and the CLASS Act provided a convenient budgetary gimmick. Since participants would have to pay into the program for 5 years before

becoming eligible for any benefits, CBO estimated including the CLASS Act would reduce the 10-year cost of the legislation by \$70 billion.

By February 16 of this year, even Secretary Sebelius publicly admitted that the CLASS Act is "totally unsustainable."

The CLASS Act was doomed from the start. We have a very serious long-term care problem in this country. Costs are driving people into bankruptcy, and weighing down an already overburdened Medicaid program. The CLASS Act should not only be shelved; it should be repealed. And I would like to at this time yield to the gentleman from Nebraska, Mr. Terry, the remainder of my time.

[The prepared statement of Mr. Pitts follows:]

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Mr. Terry. Thank you, Mr. Chairman.

And the failure of the CLASS Act really is of no surprise. I think most people in this room knew that the CLASS Act, the CLASS program was flawed from its inception. There is no way that the incoming premiums could ever cover the benefits to be paid out. Also, the unhealthy and disabled would have rushed into this program in such great numbers that they would have immediately increased premiums for everyone enrolled.

Health care policy analysts raised a red flag on CLASS because they saw these flaws and understood the high likelihood that taxpayers later financing a CLASS bailout. So the ultimate question is, was that a purposeful ruse by HHS and the administration to make the Affordable Care Act look better, therefore passing? Or is this just plain old administrative incompetence? Hopefully, we will get a clearer view on which one of those it is.

Yield back to you, Mr. Chairman.

Mr. Pitts. The chair thanks the gentleman, and now recognizes the ranking member of the Subcommittee on Health Mr. Pallone for 5 minutes for an opening statement.

Mr. Pallone. Thank you, Mr. Chairman.

On March 23, 2010, our government made a promise to the American people to improve health care in this country by enacting the Affordable Care Act, landmark legislation that expanded and strengthened health coverage in this country.

This promise included the CLASS Act, which gives HHS the authority

to develop a voluntary long-term care insurance option for working families. The goal of CLASS is to provide Americans with an affordable method of obtaining long-term care benefits.

Unfortunately, Secretary Sebelius has announced that HHS will not move forward with implementing CLASS. But I am here to tell you that if we do not move forward with the implementation of the CLASS Act, we will be turning our backs on the millions of Americans that are in need of a solution for finding long-term care support.

An estimated 15 million people are expected to need some form of long-term care support by 2020. Today, more than 200 million Americans lack long-term care insurance. And currently, Medicaid pays 50 percent of the costs of long-term services. And that price tag is quickly rising every year. Persons that develop functional impairment are often forced to quit their jobs or spend down their incomes in order to qualify for the long-term care supports and services they need. The CLASS Act program is designed to allow people to plan in advance, to take personal responsibility for their own care, and obtain the support that they need in order to potentially remain in their communities and even remain active in their jobs.

Now, instead of allowing this population an opportunity to remain self-sufficient, we are sentencing them to unnecessary poverty to receive the care that they need. If we as a country do not invest in fixing long-term care, people with functional impairments will keep returning to costly acute settings to address potentially preventable conditions. And I don't think we can sit back and do nothing.

I do not agree that HHS has completed their work on trying to implement CLASS. Mr. Bob Yee, whose dismissal last month as the CLASS actuary, first signaled that HHS was abandoning this program, gave the Department a path forward to implement CLASS. His report to HHS states, "That the CLASS benefit plan can be designed to be a value proposition to the American workers as the CLASS Act prescribed it."

Mr. Yee has developed options that address adverse selection and premium support. One of Mr. Yee's options is what he calls phased enrollment, in which large employers offer the plan first before individuals can sign up. Another option is temporary exclusion, no benefits for 15 years if the need for help arises from a serious medical condition that already existed when someone enrolled.

Mr. Yee is an optimist. He explains how HHS should move forward. So why does the Department take such a negative approach and close the door on implementation when the work has not been completed? The Affordable Care Act requires that the CLASS Act implementation proposals be reviewed by the CLASS Independence Advisory Council, which HHS has yet to establish. This council should be convened immediately in order to better inform the efforts of the Department and to represent the interests of stakeholders that have been invested in CLASS for over a decade. The Department is not supposed to unilaterally abandon CLASS without convening the advisory council. The council may reveal other workable options for long-term care that the Department has not considered.

The CLASS Act is the first step towards improving our Nation's

long-term care problems. It provides an infrastructure that can be implemented. And this was an important part of health care reform. I refuse to give up on CLASS, just as I refuse to give up on the health care reform.

Now, I know my colleagues on the other side want to give up on it all. They want to repeal everything. They want to repeal the whole Affordable Care Act.

But I have to say, Mr. Chairman, I am tired of the Republican rhetoric that says Congress and the government in general can't do anything. The last two speakers on the other side, and I wrote it down, used terms like gloom, failure, can't do, no way.

You know, why can't we do things? Part of what makes us as Americans is that we are can-do people. We can have universal affordable health insurance. We can provide long-term care insurance. I certainly don't think that the Department should play into the same negative theme that I keep hearing every day from my opponents on the other side. And that is what is so disappointing to me today, is to see HHS play the same negative thing; we can't do this, we can't do that.

You know, I look on the floor today, Mr. Chairman, what are we doing this week in Congress? We are not doing anything. And this is the attitude that is pervasive around here, that we can't do anything.

Well, I think we can do things. We can have affordable health care. We can have a plan for long-term care. And I just wish that we would understand that the American people expect us to do something

and not just sit back and say, we are failures, we can't do this, we can't do that.

Let's do the CLASS Act. I would ask the Department go back to the drawing board, be optimistic, and come up with a plan that implements the CLASS Act.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

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Mr. Pitts. The chair thanks the gentleman and recognizes the chairman of the Subcommittee on Oversight and Investigations, Mr. Stearns, for 5 minutes.

Mr. Stearns. Thank you, Mr. Chairman.

And I welcome this opportunity to have a joint hearing between your subcommittee and mine.

And I would address the gentleman from New Jersey. He refuses to give up. Of course, this is something that all of his Democrat colleagues, many of his Democratic colleagues, both in the House and Senate, all indicated they have grave concerns about this new entitlement program. It is too much spending. And I suspect that he wishes to continue this program in light of the fact that it is going to be a budget buster.

And we are doing something here in Congress; we are trying to balance the budget. So we convene this joint hearing of the Oversight and Investigations and Health Committee to address the Energy and Commerce Committee's long-standing inquiry into the circumstances under which the CLASS Act was passed, a program that was recently pronounced dead by Secretary Sebelius.

The Community Living Assistance Service and Support Act, or the CLASS Act as we call it, is a long-term care program that was included in the President's health care law. It was meant to be self-funding. Individuals paying premiums into the program would cover the costs of individuals receiving benefits.

However, my colleagues, even before the passage of Obamacare,

Republicans recognized the CLASS Act had a critical design flaw. CLASS would never be self-sustaining, and would eventually go bankrupt. Some Senate Democrats even joined us, saying they, "had grave concerns that the real effect of the CLASS Act would be to create a new Federal entitlement program with large, long-term spending increases that far exceed the revenues."

Perhaps the most damning indictment came from Senate Budget Chairman Kent Conrad, who characterized the CLASS Act as a, "Ponzi scheme of the first order," as the gentleman from Pennsylvania mentioned when he was quoting him, "the kind of thing that Bernie Madoff would have been proud of."

As with other provisions of Obamacare, Democrats didn't bother to fix the CLASS Act. They had every opportunity, and they didn't work with Republicans to find common ground. They were too busy using procedural tricks to cram through a law before even the public could realize what was in it. But they didn't just quietly sneak the CLASS Act in. They had the audacity to claim that it would provide \$70 billion in deficit savings. Democrats brazenly stated, even though they knew better, that the CLASS Act would actually, actually save the American people money.

They were deliberately ignoring the truth about the CLASS Act. Democrats overstated the fiscal conditions of this program intentionally. The \$70 billion in alleged savings from the CLASS Act was crucial, crucial to passing the health care law. And this administration promised the American people that the bill would result

in \$140 billion in savings. Half of those savings were from the CLASS Act, and the other half were from tax increases and cuts to Medicare.

So after 19 months of trying, Secretary Sebelius announced she does not, "see a viable path forward for CLASS implementation at this time."

Now, the question is, why did it take the administration so long to figure out what everybody else, even the CMS chief actuary, has known for many, many years? HHS and the administration seem to have gone to extraordinary lengths to ignore the truth so that they can continue to sell the false savings on this program to the American people. Even staff at HHS knew long ago that the CLASS Act was a financial disaster and that it would cost money and simply not save it.

This committee conducted a comprehensive investigation with Senator Thune, Congressman Rehberg, and a working group of other Republicans from both the House and the Senate. We discovered 150 pages of emails and documents from HHS questioning the sustainability of the CLASS Act as early as May 2009. Staff and officials within HHS called the program a recipe for disaster that would collapse in short order. Now, this is going back to 2009. These are 150 pages of detailed documents and emails.

But while voices of reason questioned the program privately, Secretary Sebelius and other administration officials publicly proclaimed their support. As we have seen before, first with the waivers, now with the CLASS Act, the Obama administration overpromises, underdelivers, and waits until implementation to admit its policy

failures.

Under CBO rules, the CLASS failure will cost the American taxpayers \$86 billion, the most recent CBO projection of the supposed savings from the CLASS Act. If CLASS had gone into effect, it would have increased our deficit by the third decade. How much will the rest of Obamacare cost us? What are the hidden long-term costs? And when will the administration tell us the truth about that?

[The prepared statement of Mr. Stearns follows:]

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Mr. Pitts. The chair thanks the gentleman.

Now recognizes the ranking member of the Subcommittee on Oversight and Investigation, Ms. DeGette, for 5 minutes.

Ms. DeGette. Thank you very much, Mr. Chairman.

I particularly want to welcome our colleagues present and past here today, in particular our friend Patrick Kennedy. It is so good to see you here today. And I know we all feel that way.

I hope this hearing will help us to find a path forward to develop a plan to provide and pay for the ongoing burden of long-term care. Millions of seniors, disabled individuals, and their families face this challenge today, and tens of millions more will face it in the future. The CLASS Act was an effort to address these burdens. The program was added to the health care bill in this committee on a bipartisan voice vote. It was designed as a voluntary insurance program to provide beneficiaries with a cash benefit to help pay for institutional care or assistance to live independently in the community. Now, as we have all been discussing, the administration announced last week that it would not move forward with the implementation of the CLASS program because it was currently unable to do so in an actuarially sustainable fashion.

I am interested in hearing from the administration's representatives about how they came to this conclusion and what potential they have for moving forward.

Now, from this side of the aisle the reaction has primarily been one of disappointment. We understood the scope of the Nation's

long-term care problems and the impact that these problems had on seniors and the disabled and their families. And we were hopeful, when we passed the Affordable Care Act, that the CLASS program would be the solution.

Now, as you can hear from today's opening statements, some on the other side of the aisle seem positively gleeful that this CLASS program has been set aside. And that view, in my opinion, is really shortsighted because we have got to keep looking for solutions to the long-term care problem, and we have got to do it in a bipartisan way. We cannot and we should not give up.

Ten million Americans need long-term care right now. And this number is expected to grow by 50 percent over the next decade. Long-term care, as we also know, is expensive. It wipes out seniors' savings, and it forces many to go on Medicaid, which in turn costs States and taxpayers billions of dollars. So the present situation is both fiscally and morally wrong.

Mr. Chairman, many opponents of the health care law are using this CMS announcement about CLASS as an opportunity to attack the entire law. In the context of those claims, I want to set the record straight on two important subjects. First, with or without CLASS, the health care reform bill continues to be a financially responsible law that will reduce the Nation's debt. When we passed that bill, CBO told us it would save about \$200 billion over the next decade. CLASS was responsible for about \$70 billion of that savings. That means, even without CLASS, the numbers still add up. The health care law will save

taxpayers over \$120 billion over the next decade and even more in the decade after that.

Second, I want to address the myth that the administration announcement somehow hobbles the health care law. It does not. The CLASS program was an important part of the law that provided a new and important long-term benefit. But even though the administration has decided not to move forward with this program, the rest of the bill's benefits continue to pile up. Millions of seniors are enjoying discounts on prescription drugs in the part D doughnut hole. Young adults are able to retain their health insurance through their parents' plans. Taxpayers are saving money because of the bill's initiatives to cut Medicare and Medicaid fraud, waste, and abuse. Millions of Americans are protected from the worst abuses of the insurance industry. Small businesses are receiving valuable tax credits to provide health care coverage. And by the time the health care bill is fully implemented, over 30 million otherwise uninsured Americans will have access to good, affordable health care law -- or health care coverage.

Now, I am disappointed about the outcome of CLASS. But even without this part, the health care law will continue to provide critical benefits for tens of millions of Americans. My hope was that CLASS would solve our growing problems in providing and paying for long-term care. And I still hold out hope that it can be part of the solution. It really has to be. I want to hear from the administration today exactly where we are. But more importantly, I want both of these

subcommittees and the full committee to explore together how we move forward. Can the administration ultimately find a way to make CLASS a workable solution? Are there legislative solutions that can help make CLASS a workable and sustainable program? The committee and the Congress have a responsibility to help the elderly and disabled in our society who need long-term care. I hope this hearing will help us meet this responsibility.

Mr. Pitts. The chair thanks the gentlelady and now recognizes the gentleman from Georgia, Dr. Gingrey, for 5 minutes.

Dr. Gingrey. Mr. Chairman, thank you.

And I will admit to being gleeful this morning. It is hard not to be gleeful when we just rescued \$80 billion from a Democratic sink hole and now are returning that money to the American taxpayer. Yes, indeed I am gleeful.

But to quote the President of the National Coalition on Health Care in a Politico story yesterday, "The best strategy is to keep CLASS Act on the books until health reform takes hold and hope the political environment changes enough so that the program can be tweaked into shape." That, frankly, sounds like a recipe for disaster.

Mr. Chairman, when a pharmaceutical drug does not work as intended it isn't kept on the market with the hope that one day it might be tweaked. It is recalled, clean and simple. And this CLASS program is not unlike a defective drug. And its repeal is a necessary step toward successful long-term care reform. And I agree with Ms. DeGette on that.

CLASS does not work. The administration cannot fix it without massive taxpayer bailouts. And as long as it survives and is still on the books, it is a threat to the current entitlement programs and especially to Medicare. Additionally, a congressional report released last month on CLASS presents evidence that former Senator Kennedy's senior staffers and administration officials ignored CMS actuary Rick Foster's repeated warnings on the insolvency of the program. They also ignored studies conducted by the American Academy of Actuaries and the Society of Actuaries supporting Rick Foster's concerns.

According to the report, the Kennedy staff response was, "decide she does in the think she needs additional work on actuarial side." And then allegedly told administration staffers she had a score from CBO on CLASS that was actuarially sound. And yes, it kept going.

One month later, Richard Frank, Deputy Assistant Secretary for Planning and Evaluation at HHS stated publicly that we in the department have modeled CLASS extensively, and we are entirely persuaded that financial solvency over the 75-year period can be maintained. Yet to my knowledge, no model from CBO or the administration suggesting that CLASS is solvent has ever been produced publicly, even after repeated requests made by this committee, Mr. Chairman.

That is simply unacceptable. If the warnings of CMS actuaries were ignored, this committee and the American public need to know why they were ignored. We simply cannot afford to let this administration hide behind any backroom deals and secret handshakes any longer.

Mr. Chairman, I believe that this committee must continue to seek the truth from the Obama administration on the economic modeling used to sell us on the CLASS Act and Obamacare and, indeed, on the entire bill that was sold to the American people.

And further, I would once again call on this Congress pass H.R. 1173, a bill that my good friend and fellow physician Dr. Boustany has introduced to repeal the CLASS Act.

And Mr. Chairman, with that, I would like to yield the balance of my time to my colleague from Tennessee, Ms. Blackburn.

Mrs. Blackburn. Thank you, Mr. Chairman.

And I thank the gentleman from Georgia. We appreciate having the hearing today and reviewing what is taking place with the CLASS Act. I think that it is apparent that, despite the best efforts of the Federal Government, it is very clear to all of us that there is no way that the Federal Government more effectively or efficiently runs a health care program than the private sector.

Indeed, as we went through this entire debate -- and for my colleagues across the aisle, I will remind you -- there is no example in the United States of where the Federal Government has run this effectively, has saved money. Indeed, when you look at TennCare, you see cost overruns. There is no example where these near-term expenses yield you a long-term savings. It has not happened, not in Tennessee, not in Massachusetts, not in New Jersey with guaranteed issue.

And it does bring up other problems that exist with the CLASS Act, indeed the budget gimmickry that was there throughout the entire

Obamacare bill. What else is within this bill that would be gimmickry that was there to yield a savings? This is something that we need to look at as a committee, get to the bottom of. I think also the other thing that it highlights is the red flags that many of our colleagues have mentioned, indeed this being called a recipe for disaster, which now it is quite apparent that it is.

And then I think that another concern that we will want to address is the lack of transparency that existed in HHS as they moved forward with discrepancies in public statements and private statements. And we will want to get to the bottom of that. Indeed, they have spent 19 months trying to implement an unworkable problem -- program. And I appreciate that we are having a hearing to get to the bottom of it.

I yield back.

Mr. Pitts. The chair thanks the gentlelady and now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes for an opening statement.

Mr. Waxman. Thank you very much, Mr. Chairman.

Well, the Republicans are gleeful, and they are happy to admit that. If they are gleeful, it is because they want to repeal the Affordable Care Act and this particular provision, which attempts to deal with the issues of long-term care.

A lot of people around the country don't realize that if they have health insurance, even Medicare, it doesn't pay for their assistance when they need what is called long-term care. And if they repeal the CLASS Act, they will have the following status quo continued.

Right now, over 10 million Americans are in need of some form of long-term care, and this number is expected to increase to 15 million by 2020. Seven in 10 people in the country will need help with basic daily living activities at some point in their lives because of a functional disability.

The cost of long-term care is astronomical. The average nursing home bill currently stands in excess of \$70,000 a year. Monthly charges for home health services averages out at \$1,800. Private health insurance, which my Republican colleagues says is the way to solve the problem, a lot of those private insurance policies often are too expensive or difficult to purchase. As a result, less than 10 percent of the population holds these policies.

By far and away, the largest spender for long-term care comes through the Medicaid program. In fiscal year 2010 alone, the combined Federal and State price tag for these services was some \$120 billion. That is a publicly-financed program.

So the Republicans would allow this program that is publicly financed to be the only hope for seniors that can't afford a policy to cover them for their long-term care needs. They started off this year by saying, we want to repeal the Affordable Care Act, and then we will replace it. We have never heard what their replacement is.

They have no idea how to deal with this problem, only to tear down the attempts to make the problem more manageable for the millions of Americans who face the dilemma of how to pay for their long-term care or the long-term care costs of their family.

Well, it was for this problem that Congressman Pallone and Congressman Dingell and Senator Kennedy worked to establish an effort to meet the long-term care needs of our elderly and disabled citizens and their families, as well as to provide fiscal relief to the Medicaid program. The Community Living Assistance Services and Supports initiative, which is the CLASS program, was made part of the Affordable Care Act. This represented the first real attempt at the national level to tackle the country's long-term care puzzle. And it has eluded us for decades because of the complexity and the expensive price tag. We should not lose sight of all this, even as the program struggles to get off the ground.

Now, no doubt the CLASS program is not crafted perfectly. No piece of legislation is, especially one that is as novel and as unique as CLASS. Everyone acknowledges that. But regrettably, Republicans have called this hearing today to dwell on the problems that have stymied implementation of CLASS, not how to fix those problems to deliver the promising future that could and should lie ahead for the CLASS program.

Ten days ago, Secretary Sebelius announced she is putting CLASS on hold. That is because of unintended flaws in the statutory authority. She feels she could not at this time fully implement the law. I find that disappointing. But until she finds a path forward, the action she has taken is the responsible thing to do, fiscally and otherwise. But calling for a timeout is not the equivalent of throwing in the towel, as Republicans would have the public believe.

Contrary to the Republican title this hearing, CLASS has not been canceled; rather, it simply stands in recess.

The Republicans complain we are ignoring the truth. Well, they are ignoring the truth of the plight of millions of people to finance their long-term care. They talk about the financial disaster. What about the financial disaster for those families facing this issue? Recipe for disaster. Doing nothing and repealing the CLASS Act is a recipe for disaster.

They talk about overpromising and underdelivering. They have promised to repeal and replace, and they have never told us what they would do. All they have done is pass a law that would make the Medicare program not a guarantee, but something that may be available in the future, but for most people, it may not.

I want to put all this in perspective, and look forward to the hearing today.

Mr. Pitts. The chair thanks the gentleman, and now recognizes the vice chairman of the Health Subcommittee, Dr. Burgess, for 5 minutes.

Dr. Burgess. I thank the chairman for yielding.

Welcome to our panelists this morning. A great bipartisan group of Members and former Members.

And I also want to welcome the second panel from the agencies. We certainly look forward to hearing your testimony this morning.

I am a believer in long-term care insurance. And really, this hearing is more about the budgetary gimmicks that were used to force

through the Affordable Care Act, which really if I can't remove the Affordable Care Act, I would like to at least remove the word affordable from the title. But nevertheless, this is a hearing about the classic Washington whodunit; what did you know, and when did you know it?

But I am a believer in long-term care insurance. I purchased a long-term care insurance policy long before I came to Congress, after I turned 50, on the advice of my mother. And I encourage other people to do the same.

Now, Mr. Waxman says that it is going to be too expensive for seniors to do that. My premium is a little less than \$100 a month. I don't know what the premiums would have been in the CLASS Act, but they certainly would not have been benefits as substantial as the ones that I have purchased in the private sector. And I am not always dependent upon the Federal Government to end up doing the right thing.

We heard Mr. Pallone talk about a 15-year exclusion. Well, I didn't have a 15-year exclusion on the policy that I bought. Now, Congress could do something to make it easier. You could let me pay for that with pretax dollars, full deductibility of long-term care insurance. Why don't we do that? You could let me pay for it out of my health savings account. Why do don't we do that? These are simple things that are within our reach and grasp that I frankly do not understand why we won't tackle.

And Mr. Pallone talked a little bit about some of the words that were used. I was encouraged to hear him use the word premium support. Yeah, that is a good idea, Frank. We have got some place to talk about

there. But he also referred to us as opponents.

And I remember that night in July of 2009 when the CLASS Act first appeared in this hearing room. The CLASS Act appeared at the last minute as a placeholder language that Mr. Pallone brought to the markup, never had a hearing on it, never called a witness on it. We were just presented with this information, and oh, well, we will fill in the details later. Well, now it is later, and we are filling in those details. And some of those details don't look too encouraging.

It looks like the CLASS Act was a budgetary deception to mask the actual cost of the Affordable Care Act. And people are rightly asking now, would we have passed the Affordable Care Act had the true extent of the budgetary impact been known? Again, what did they know, and when did they know it? Because in the spring of 2009, May 19 to be precise, the chief actuary for the Center for Medicare and Medicaid Services talked about the financial structure of this program would be "a terminal for the program." So he knew that in May 2009.

Why didn't we discuss that in July of 2009 when we were doing the markup on H.R. 3200? I think that would have been a service to the committee and a service to the people if we could have had those hearings, but we didn't. So here we are. It is a fact of life. We all age, and at some time, we are going to rely on some form of long-term care insurance. I will just say, again, I can think of no more loving gift for parents to leave for their children than to take care of their needs if that need were to arise and relieve the children of that burden.

We never got a chance to fully debate this.

Mr. Waxman, I would say CLASS dismissed, and then we need to work on canceling.

I am going to yield the balance of my time to Mr. Murphy of Pennsylvania.

Mr. Murphy. Thank you.

You know, I have been for some time concerned about the way this program was double counting premiums as both funding long-term care insurance and contributing to the so-called savings in the health care law. As far back in March, I said if any insurance company began collecting premiums, then tried to spend \$86 billion before paying out a single penny in benefits, they would rightly be prosecuted as a Ponzi scheme.

What is of particular concern here to today is the lack of forthrightness on the behalf of HHS and the administration regarding the insolvency of the program. Throughout the debate over the health care bill, I, other Republicans, and even some Democrats, again and again questioned the long-term solvency of this program. But the administration insisted that long-term solvency was not in question, and that the program would significantly reduce the deficit.

In fact, the original CBO score of the CLASS Act projected savings of \$70 billion, accounting for almost half of the total deficit reduction we were told the bill would achieve. And now Secretary Sebelius tells us it is totally unsustainable and the promised savings have evaporated.

But even of greater concern is that this committee's

investigation has uncovered evidence that the administration knew the program was not sustainable as early as the spring of 2009, prior to the passage of the health care law. We are left with serious questions about what the administration knew and when they knew it. It certainly appears that the administration knowingly promoted the CLASS Act as a cost saver when they knew those savings would never be achieved.

I yield back.

Mr. Pitts. The chair thanks the gentleman, and now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

And I thank my colleagues for the time.

First, I want to welcome our colleagues here. I know three of them we see all the time still.

But I want to particularly welcome our former colleague Patrick Kennedy.

And Patrick, we worked together on lots of mental health issues over the years. And I want to thank you for your service to the American people, and particularly to your district in Rhode Island. But also I want to thank you for the service of your father. Without your father's work in the Senate, I don't have enough fingers and toes to list the issues that would not be in the law today, including the CLASS Act. And just, generally, thank you for the service of your family. And I think all of us thank you for that, and particularly knowing you and your service in the House.

I think it is correct the CLASS Act was added by voice vote when

we were working on the Affordable Care Act. But I don't want to use the CLASS Act as a reason to oppose the Affordable Care Act. There are thousands of people in our country who do not have the same opportunities that Federal employees have, or State employees, or bar association members, or American Medical Association members to purchase a long-term care plan. And that is what the CLASS Act was supposed to be about, to give a lot of people to do what Dr. Burgess talked about, to give a gift to our children, so we have that opportunity. It is difficult to fund it. And I know we have heard the quote of a Ponzi scheme. I thought up until today I heard a Ponzi scheme was only what the Republicans thought about Social Security. But insurance could be considered a Ponzi scheme, because you hope you pay these premiums for all these years and you will be able to collect it.

But that is not what this is about. It was to give people an opportunity who may not have the same opportunity as we do as Federal employees, or State employees in the State of Texas I know have that opportunity. And a lot of businesses have that. But most people don't through their employer. And that is what the CLASS Act was about.

Is it perfect? Nothing in the Affordable Care Act is perfect. In fact, I continue to disagree with calling it Obamacare because this committee drafted that bill. The President didn't send us up a bill. Now, I know it is popular to call it Obamacare because it is a good message. But we are the ones that drafted that bill in this committee after a lot of markup, late night markups, that was not dissimilar to

what we went through in 2003 when we had the prescription drug plan that the majority now pushed, that a lot of us didn't support because of problems in the bill. But you haven't seen us repealing that prescription drug plan. We want to perfect it.

And I know we need to perfect the Affordable Care Act. And so that is what we need look at. If we can perfect the Affordable Care Act and make it better, then let's sit down across the aisle.

But for 10 months in this Congress, all we have seen is repeal. I guess that happened after Social Security was passed in 1935. There were a lot of people who said, we need to repeal Social Security. Thank goodness the Congress in 1935 and 1936 didn't do that.

I would like to yield the rest of my time to my colleague, Dr. Christensen.

Dr. Christensen. Thank you, Congressman Green.

I want to welcome my colleagues.

And it is good to see you, Patrick.

A lot of claims have been made about a proposed repeal of CLASS saving taxpayer dollars. But it is my understanding that the CBO director has reported that repealing CLASS would have no impact on the Federal budget. So to claim otherwise is just not true.

But repeal would have a profound effect, as Howard Glickman at The Urban institute recently wrote, and I agree, while the CLASS Act is deeply flawed, it is an opportunity to transform long-term care from the means-tested Medicaid program to an insurance-based system. If CLASS is repealed, that opportunity will be lost, and millions of

Americans will find themselves with only a shrinking Medicaid benefit to support them in their frail old age or if they become disabled at a younger age.

So our seniors and our disabled need this amended, not ended.

And I would like to yield the balance of my time to Congresswoman Schakowsky.

Ms. Schakowsky. Thank you so much.

We don't have a long-term care policy in the United States of America. The only thing we really have is finally Medicaid when people run out of all their money. And so the 10 million Americans who are in need of long-term care and services and support really need a program like this.

And it is disturbing to me that when my colleague says, CLASS dismissed. No, if there are some problems with this legislation, we are all willing to sit down and figure out how to perhaps do it better. But the very idea that we are going to take away better choices for Americans -- you know, already one out of six people who reach the age of 65 will spend more than \$100,000 on long-term care. In this country, that is really a disgrace. We need a long-term care policy. The CLASS Act is a good start.

I yield back.

Mr. Pitts. The chair thanks the gentlelady.

That concludes the opening statements.

The chair has a unanimous consent request to enter into the record a statement by Senator John Thune. The ranking member has looked at

this.

Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Pitts. Our first order of business today will be our Members panel.

I would like to welcome our Members and former Member, and all the witnesses today.

But our first panel includes Congressman Rehberg from Montana. Congressman Rehberg is the chairman of the Subcommittee on Labor, Health, and Human Services, Education, and Related Agencies at the House Appropriations Committee.

Next is Congressman Boustany from Louisiana. As we all know, Congressman Boustany is a doctor. So he will have plenty of company here at the Energy and Commerce Committee.

Also with us is Congressman Ted Deutch from the great State of Florida.

And finally, the former Congressman from Rhode Island, and no stranger to the Energy and Commerce Committee, Patrick Kennedy.

Welcome.

We are happy to have each of you here today. And we will start with Chairman Rehberg. You are recognized for 5 minutes.

**STATEMENT OF THE HON. DENNIS R. REHBERG, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MONTANA**

Mr. Rehberg. Thank you, Chairman Pitts, and members of the House Energy and Commerce Committee for the invitation to testify here today. I also want to thank the members of the CLASS Act working group, especially Chairman Stearns, Representatives Burgess and Gingrey, Chairman Pitts, and I see Mr. Upton is not here. He probably has something else on his mind at this time. Senator Thune's leadership has also been extraordinary.

This hearing is really the culmination of a lot of hard work. And if you think about it, it has unfolded a lot like an episode of Law and Order. Those shows always begin with a mystery. Well, on March 23, 2010, the American public was handed a mystery when President Obama signed the so-called Patient Protection and Affordable Care Act. Weighing in at more than 2,500 pages, it calls for thousands of pages of more regulatory rulemaking. Even the bill's authors didn't read it. We were told we had to pass the bill before we could find out what was in it. That is what the CLASS Act working group was all about. We followed clues, questioned witnesses, and used the oversight authority of the Congress to track paper trails.

As the chairman of the House Appropriations Committee that oversees the Department of Health and Human Services, I requested internal HHS documents that revealed the insolvent nature of the

program. When it passed, we were told that CLASS is a true insurance program where the premiums collected would cover the benefits paid out. But as we dug deeper, that cover story began to fall apart. New facts came to light. Every actuarial expert, including HHS staff and the chief actuary himself, agreed that, as currently written, CLASS simply won't work. It won't pay for itself.

So the government is exposed to tens of billions of dollars of costs, according to the CBO. And then earlier this month, we got the equivalent of a full confession. The Department of Health and Human Services has rightfully decided to cancel the program. This was a profound development. Once we stripped away the political spin, brushed off budget gimmicks, and cut through the bureaucratic jungle, we saw a foundational pillar of the President's health care law for what it really was, truly a Ponzi scheme that apparently was included in the bill solely to help the bill appear deficit neutral.

But there is a problem. CLASS is not gone, not yet. The Secretary can claim that she has the authority to, in effect, rewrite it. There will be temptation for some in Congress to simply slip additional authority into an unrelated bill to turn CLASS into something it was never intended to be. And that is why we are here today. The facts are out. Now we have to decide what is to be done.

I am here because I don't think CLASS should be rewritten or redesigned by the bureaucracy. At a time when we are struggling to save the entitlement programs we already have, good programs like Social Security and Medicare, we simply can't afford massive new

government programs like CLASS. The potential costs to the government and the employers is so great that any consideration of a program of this type needs to be fully considered in a transparent and open way by the public and by Congress. And just as with the other entitlements in PPACA, a new program of this type makes the task of saving existing entitlement programs for existing beneficiaries even more difficult.

This week I introduced a bill to repeal CLASS and other new entitlement programs in PPACA, as well as cosponsoring Mr. Boustany's CLASS repeal bill.

Colleagues, the most important responsibility Congress has today is to create an environment for the economy to thrive, to do what we must do to reduce government spending and onerous regulations. Out-of-control government spending leads to higher taxes, lower government debt ratings, and uncertainty. And onerous regulations lead to higher costs of doing business and barriers to business growth.

We have come to the final act in any Law and Order episode. We have seen the crime. We have uncovered what happened. We have got the confession. Now it is time to pass sentence. Congress has a chance to act decisively to protect the hardworking American taxpayer from the consequences of an unsustainable new government program.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rehberg follows:]

***** INSERT 1-4 *****

Mr. Pitts. The chair thanks the gentleman.

We will just go in the order in which you are seated.

And the chair recognizes Congressman Deutch for 5 minutes at this time.

**STATEMENT OF THE HON. THEODORE E. DEUTCH, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA**

Mr. Deutch. Thank you, Chairman Pitts, Chairman Stearns.

Thank you for the opportunity to discuss the CLASS Act. I am privileged to be joined on this panel with our former colleague, Mr. Kennedy.

I am also grateful to Mr. Pallone for his commitment to making the late Senator Kennedy's dream of dignity and hope for elderly, sick, and disabled Americans a reality.

Senator Kennedy so eloquently captured the failure of our long-term care system when he said, too often, they have to give up the American dream, the dignity of a job, a home, and a family so they can qualify for Medicaid, the only program that will support them.

CLASS brought so many Americans hope because it was the first real path to delivering real, affordable long-term care. Just 10 percent of Americans over age 50 have long-term care insurance, yet 70 percent of them will need long-term care at some point.

The remaining 90 percent of Americans rely on Medicaid. That is why over a third of its dollars go toward long-term care, and why cuts

to Medicaid at the Federal and State levels demand that we make affordable, cost-effective long-term care insurance available to the American people.

The current system incentivizes poverty. It forces seniors to blow through their life savings and spend down in order to qualify for Medicaid. This perverse incentive forces struggling families into unthinkable positions. Take, for example, a man in his 50s with early-onset Alzheimer's. He is ineligible for long term care through Medicaid due to his wife's salary as a teacher. At \$50,000 a year, her salary is too high for Medicaid but not nearly enough to pay for the nursing home care that can cost up to \$90,000 annually in Florida. She could leave her job so they could fall into poverty. She could divorce her sick husband, leaving him destitute but eligible for expensive long-term care through Medicaid.

These choices are not unique. These are the current system's incentives. Save nothing, pass what you do have onto your children before you get sick, own little property, do not purchase long-term care insurance. Follow this plan, and you will be eligible for expensive long-term care through Medicaid.

Triumphant statements from opponents of health care reform at the suspension of CLASS do nothing for the grandmother in my district who must choose between helping her grandson pay for college or paying her own tuition at a nursing home. Cheering the halted implementation of CLASS does nothing for working families I represent with no way of paying for the long-term care their elderly loved ones need.

I visit nursing homes in Florida and am pained to hear constituents tell me they miss their homes in Century Village, Kings Point, and other retirement communities. Sadly, Medicaid steers them into institutional care, despite their preference for less costly in-home care and other community-based options.

I have heard from seniors facing foreclosure due to a spouse's exorbitant nursing home bills. I have heard from young families who cannot afford quality care for the ailing parents they love, yet long-term care insurance remains out of reach for most Americans.

No one is immune from the frailty of old age. Anyone can fall ill or become disabled. Take, for example, the case of Alan Brown, a 20-year-old in 1988, when he was struck by a strong ocean wave that severely damaged his spinal cord, leaving him a paraplegic. From wheelchairs to transportation to long-term care, his costs are astronomical. Even with two jobs, he struggles to get by.

Those who are young and healthy may not always be. Any one of us could become disabled like Mr. Brown. And if that is not compelling enough, the inevitability of aging should be. Critics of CLASS primarily focus on sustainability. If that is a concern, let's fix it. HHS was given statutory latitude. And I join the CLASS actuary and CLASS advocates in believing that the Secretary has enough authority to make the program work.

Others disagree and imply that a legislative fix is needed. So let's fix it. Just as Social Security succeeded as a wage insurance, reducing elderly poverty from 50 percent to 10 percent, Americans

should have an affordable way to finance long-term care.

For the 200,000 seniors I represent, the jovial reaction to the suspension of CLASS was both disheartening and predictable.

Mr. Chairman, my constituents, our constituents deserve more. We must seize this opportunity to get long-term care right in America. Together, I believe we can improve upon an incredibly promising idea: reduce entitlement spending and ensure Americans' greater financial security.

Thank you, Mr. Chairman, and I yield back.

[The prepared statement of Mr. Deutch follows:]

***** INSERT 1-5 *****

Mr. Pitts. The chair thanks the gentleman and is pleased to welcome our former colleague, Congressman Patrick Kennedy, for 5 minutes.

STATEMENT OF PATRICK J. KENNEDY, FORMER MEMBER OF CONGRESS

Mr. Kennedy. Thank you, Chairman Pitts and Chairman Stearns, and Ranking Members Pallone and DeGette, and all of my colleagues who welcomed me back today. I appreciate the opportunity to testify.

Let's just think for a moment and step back and use our common sense. All of our family members are going to need supportive living services. And the question is not how and what program we are going to put those costs on. Is it going to be at the State level, the local level, or the Federal level? The notion is you can't turn away from this problem and think that the problem is going to go away. Someone is going to have to be there for our people and our families who are going to need supportive living services.

So the question for Congress is really, how are they going to address this problem? And so you can say that actuaries say, oh, CLASS Act is going to cost money, but the whole point of health care reform is that we take a broader look at all the costs associated with health care and really see the forest from the trees.

So we are well aware that our health care system has been about cost shifting. You take the uncompensated care and you put it on the private pay and you hope that someone pays for the bills of those who

can't afford to pay. When are we going to start to be realistic about this? Because just turning away from the problem is not going to make the problem go away. So people will say, oh, this is a program that costs money. You know, in my father's case, who needed supportive living services, and my Uncle Sarge Shriver's case, who needed it when he had dementia, it was nonmedical supportive living services that helped them in their lives. It was the guy that helped my Uncle Sarge up from the living room and into the dining room, and who helped him, you know, get transported around. This was someone who didn't have a medical degree, doesn't have big student loans because they went to get a doctor's degree or a nursing degree. But they were the most essential person in my Uncle Sarge's life in giving him dignity and giving him a life.

And guess what? It is the least expensive. I should be getting all the chorus of support from my Republican friends. If you want to reduce medical costs, try using nonmedical support services. So you will hear a lot about, oh, you know, this is going to cost money. Let's just step back and understand, someone is going to pay. Someone is going to pay. And so let's be realistic here. Let's also do the right thing by our family members, and give them the kind of lives of dignity that they deserve, that we would want for any one of our family members.

And I hope that we get away from this notion that, let's place the blame game, because Washington is good at that.

But at the end of the day, our country is facing a demographic tsunami. It is going to bury this country in red ink. And the question

is, do you want to take all of your tools out of your toolbox now? Because CLASS Act can be one of the tools that you use to help address the overall costs of trying to take care of long-term care. And in my mind, you can either pay high-priced acute care, institutionalized care costs, or you can pay for nonmedical supportive living service costs that will keep people out of acute care settings. The whole notion of health care reform was to move us from a sick care system to a health care system. Because it is less expensive at the end of the day to keep people independent and not dependent, if you will, on our medical system, which is costly. CLASS Act is a tool. And let's make it work for all of your constituents who are going to need the supportive services that are going to give them the human dignity that each of us would want for our own family members.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kennedy follows:]

***** INSERT 1-6 *****

Mr. Pitts. The chair thanks the gentleman and now is pleased to recognize Dr. Boustany for 5 minutes.

**STATEMENT OF THE HON. CHARLES W. BOUSTANY, JR., M.D., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF LOUISIANA**

Dr. Boustany. Thank you, Chairman Pitts and Ranking Member Pallone, members of the Energy and Commerce Committee, for allowing me to testify today.

Chairman Pitts, I ask unanimous consent that my full statement be made a part of the record.

Mr. Pitts. Without objection, so ordered.

Dr. Boustany. I appreciate you allowing me to testify in support of H.R. 1173.

The bill is really simple. It repeals the CLASS Act, as the program has been shown to be fatally flawed, fiscally irresponsible, and irreparable. I opposed the CLASS Act and have worked to highlight the problems and fatal flaws of the program.

And I can tell you as chairman of the Oversight Subcommittee on the House Ways and Means Committee, the bicameral congressional oversight efforts were vigorous, extensive, committed, and necessary to expose the truth about this program.

In fact, Mr. Chairman, this is a victory, a congressional oversight victory on behalf of the American taxpayer.

Leaving the statute on the books is irresponsible, and it must

be removed. Keeping the law on the books gives bureaucrats a creative license to keep trying to implement it. And it is an opening for Congress to keep trying to tweak a failed program. CLASS is unsustainable and a new unfunded entitlement that we cannot afford. I agree with employer groups and taxpayer advocates who have no doubt CLASS will return if Congress fails to strike it from the books.

Liberal special interest groups insist that HHS has the broad legal authority to fix the program by excluding eligible Americans from the program.

Mr. Chairman, I have to say that I am deeply disappointed that Secretary Sebelius refused to testify today. She should come here. She should explain why she ignored warnings of the insolvency of this program and falsely claimed that she had the authority to change the program.

Lawmakers consistently ignored warnings by the Congressional Budget Office, the chief Medicare actuary, and the American Academy of Actuaries when they inserted this budget gimmick in the Affordable Care Act. After months of refusing to answer questions, HHS finally -- finally -- conceded it lacks the legal authority to make CLASS sustainable. Congress should repeal it instead of waiting for bureaucrats to change their mind.

Mr. Chairman, CBO's credibility should also be called into question for scoring the program as a saver when they knew it would need a bailout. And in fact, I want to quote from former CBO official Jim Capretta. Capretta wrote, "What remains most perplexing in this

whole episode is why CBO played along with the CLASS charade. They had access to all the same actuarial data as everyone else. Their own numbers showed the program was unstable beyond 10 years. The Gregg amendment gave them the perfect excuse to conclude that CLASS would never be launched because it could never be viable without massive taxpayer subsidies. And yet they kept showing the \$70 billion, 10-year surplus in their estimate. Among the many questions about the sorry episode that are worth pursuing, the role of CBO is surely one."

Mr. Chairman, as a physician who has dealt with many, many patients -- I was a cardiac surgeon, and I saw a lot of these very complex conditions, and saw the entire spectrum of care and the needs that are out there. I can surely tell you as a physician there are many, many other options that are much more responsible, fiscally responsible and sustainable than what this program was.

My colleague Dr. Burgess mentioned a number of options that were never entertained as we went through this process. So beyond CLASS, we must continue to encourage middle class Americans to plan. That is the fundamental issue here, is planning ahead, starting at an early age and planning for these kinds of things. You can't do this at a late stage.

RPTS THOMAS

DCMN SECKMAN

[10:05 a.m.]

Mr. Boustany. Planning for retirement security, purchasing long-term care insurance policies. We can do a number of things to make that even better if we look at these options very carefully.

And finally, on a personal note, I can tell you, from having dealt with my own father and my wife's step father, there are viable ways to deal with this. And what we need to do now is be responsible. Let's repeal this failed program. Let's move forward and come up with responsible policies and move the ball forward in health care.

[The prepared statement of Mr. Boustany follows:]

***** INSERT 2-1 *****

Mr. Pitts. We will call the second panel to the witness table, and the chair will turn over the chair to Mr. Stearns for the second panel.

Mr. Stearns. We have the Honorable Kathy Greenlee, the is assistant secretary for aging, the Administration on Aging, U.S. Department of Health and Human Services. The other individual is the Honorable Sherry Glied, assistant secretary for planning and evaluation, U.S. Department of Health and Human Services.

STATEMENTS OF THE HONORABLE KATHY GREENLEE, ASSISTANT SECRETARY FOR AGING, ADMINISTRATION ON AGING, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND THE HONORABLE SHERRY GLIED, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES.

Mr. Stearns. Good morning. You are aware that the committee is holding an investigative hearing and, in doing so, has had the practice of taking testimony under oath.

Do you have any objection to testifying under oath?

No, okay.

The chair then advises you that under the Rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today? In that case, if you would please rise and raise your right hand, I will swear you in.

[Witnesses sworn.]

Mr. Stearns. Thank you. You are now under oath, and subject to the penalties set forth in Title 18, Section 1001 of the United States Code. You are now welcome to give your 5-minute summary of your written statement.

Please begin, Ms. Greenlee.

STATEMENT OF THE HONORABLE KATHY GREENLEE

Ms. Greenlee. I apologize, I was expecting questions for the first panel.

So I thank you, Chairman Pitts, Chairman Stearns, Ranking Members Pallone and DeGette, and members of the subcommittees.

Thank you for the opportunity to discuss with you today the CLASS Act. I'm pleased this morning to be joined by my colleague, Sherry Glied, who serves as assistant secretary for the Office of Planning and Evaluation for the Department of Health and Human Services.

As our population ages, there is an increasingly urgent need to find effective ways to help Americans prepare for and finance their individual long-term care needs. Almost 7 out of 10 people turning 65 today will need help with daily living activities at some point in their remaining years. And many younger people, particularly those living with significant disabilities may also need assistance.

But this care is expensive. Nationwide, the median annual cost of a nursing home in 2010 was \$75,000. An attendant who provides home care and no medical tasks, like the dispensing of medication, is paid approximately \$19 an hour.

As this committee knows well, Medicare only covers short-term and limited long-term care services, and the Medicaid safety net is only available to those who have depleted virtually all of their resources. And long-term care insurance, by and far the most popular private

option, can be costly and difficult to purchase, particularly for those people who have preexisting health conditions or disabilities.

The status quo is unacceptable, which is why Congress created the CLASS program. The program's distinguishing features include an offer of lifetime benefits, a prohibition on underwriting, and availability of a cash benefit.

Congress also made clear that no taxpayer funds could be used to pay those benefits and the program must be solvent over a 75-year period. Over the last 19 months since the passage of the CLASS Act, HHS has worked steadily to find a financially sustainable model for CLASS. We conducted substantial analysis of a wide variety of possible implementation options. We examined the long-term care market, modeled possible plan designs, and studied the CLASS statute, and consulted with actuaries, including an in-house actuary and two outside actuarial firms, insurers and consumer groups.

On October 14, as you know, we submitted to Congress a report indicating that we have not identified a way to make CLASS sustainable, legal, and attractive to potential buyers at this time. For all of us working on this urgently needed program, it was a very difficult conclusion, but one we had to make.

It's crucial to recognize that this does not affect the Affordable Care Act. Our Department continues to work across the administration to implement the provisions of the law that will provide coverage for millions of Americans and will eliminate the worst of abuses of the insurance industry and work to control health care costs.

Even without the CLASS programs upfront revenue, the Affordable Care Act will reduce the deficit. And we will also continue our work to improve America's long-term care choices. By 2020, we know that an estimated 15 million Americans will need long-term care. If we want our family members, friends, and neighbors to be able to live with the maximum amount of freedom and independence, we need to make sure they have access to the long-term supports that make that possible.

In addition to the CLASS Act, to the Affordable Care Act included other policies to strengthen the choices for long-term care, such as Community First Choice, the new home and community based options and an extension of the successful program of Money Follows the Person.

We believe that our CLASS implementation has shed valuable light on long-term care challenges. And in the months to come, we look forward to having a healthy and substantive dialogue with all interested stakeholders as we continue to seek real solutions to those challenges.

For that reason, we welcome the opportunity to discuss this important topic with you today. Thank you for the opportunity to testify. Assistant Secretary Glied and I are prepared to answer your questions.

Mr. Stearns. Thank you.

Dr. Glied, you are welcome.

STATEMENT OF THE HONORABLE SHERRY GLIED

Ms. Glied. I have no statement.

[The prepared statement of Ms. Greenlee and Ms. Glied follows:]

***** INSERT 2-2 *****

Mr. Stearns. That is fine.

Okay, I will start with my opening questions.

I guess the first question we are all just waiting with baited breath is, has the CLASS activity been shut down?

Ms. Greenlee. If I may respond by first describing what that activity has consisted --

Mr. Stearns. No, no, I am just asking. You answer the question. The way we work in O&I, we ask a question, and hopefully, you can give a yes or no.

Ms. Greenlee. We are moving to stop implementation and reassign the staff that have been working on implementing the program.

Mr. Stearns. Could I interpret that to mean that you have shut down the program?

Ms. Greenlee. The program that remains within the CLASS office is a long-term care awareness campaign. That project --

Mr. Stearns. So it is now shut from the actual CLASS Act to now an awareness program? Would that be a fair statement?

Ms. Greenlee. That was continued both in the CLASS program and the deficit reduction act --

Mr. Stearns. Dr. Glied, the question to you, have we shut down the CLASS Act program?

Ms. Glied. We don't have an CLASS Act program in ASPI.

Mr. Stearns. Right now, we do not have a CLASS Act program.

Ms. Glied. We never had a CLASS Act program at ASPI.

Mr. Stearns. So when we passed the legislation for the CLASS Act,

you didn't interpret that as legislation that for implementation of the --

Ms. Glied. We don't implement programs within ASPI, so we conduct analysis of all sorts of things, but we don't actually implement programs.

Mr. Stearns. So can I interpret your answer as -- will the -- is the CLASS Act shut down now in your opinion?

Oh, would the clock start to make sure my time is moving.

Yes, I am sorry.

So we heard from Ms. Greenlee.

Dr. Glied, the question is, has the CLASS Act been shut down as a program? Just your answer.

Ms. Glied. Secretary Greenlee runs the CLASS Act office.

Mr. Stearns. So she has interpreted that way.

To follow up, another area that I am concerned about is the very high level uncertainty that was surrounding assumptions in the actuarial models.

Were you familiar with those back in 2009, Dr. Glied?

Ms. Glied. I was not familiar with them in 2009.

Mr. Stearns. Are you familiar with them now?

Ms. Glied. Yes, sir.

Mr. Stearns. And Ms. Greenlee, were you familiar with those, the uncertainties surrounding those assumptions back in 2009?

Ms. Greenlee. No, sir. I did not begin working until 2010 in May on the CLASS program.

Mr. Stearns. When you came in May, how soon afterwards were you aware of the uncertainty surrounding those assumptions? Or are you aware of them today?

Ms. Greenlee. I am aware of them now. It was several months after I began working on them that I got up to speed on the activity prior to enactment.

Mr. Stearns. Okay, 2011 was more than a year after -- in June of 2011, more than a year after Obamacare passed and 2 years since initial concerns were raised about the CLASS, what did HHS do to make the public aware of this uncertainty when projecting a \$70 billion in saving before the bill was passed?

Now you were not there, but Dr. Glied, perhaps you can answer that question?

Ms. Glied. I was not there either. I would just point out that the HHS actuary, the CMS actuary, Mr. Foster, published three separate analyses of the CLASS Act before and during the time that it was passed. Those were publicly available on the HHS Web site. They were frequently quoted in the news media, and in fact, several of the statements already this morning have referred to them. So the uncertainty about the estimates was very evident before the legislation passed.

Mr. Stearns. Do you know of any other government actuaries that discussed this and when, and in your opinion, do you know of any other besides Rick Foster?

Ms. Glied. The Congressional Budget Office also conducted

analyses of the program, and they came up with a different -- they used different assumptions and had a different result.

Mr. Stearns. Now, as I understand, they made those assumptions before the Obamacare passed. Is that your understanding?

Ms. Glied. So, both Mr. Foster and the CBO actuaries and analysts analyzed various versions of the CLASS Act and other provisions as the legislation was moving along.

Mr. Stearns. I think, as you have pointed out, Rick Foster raised concerns about the \$70 billion in savings, and you said other sources did, too, so I guess the question perhaps is difficult for you to answer, but how is it possible that Health and Human Services didn't figure out the problem with the CLASS Act until 2 month after passage of the law?

Is that a question either one of you posed while you were working there, while you were going forward with the bill in which Rick Foster and other government agencies indicated that it was not sound financial, long term, kind of make it actuarial is not there? Were you aware of that after you were working there?

Ms. Glied. There was robust and vigorous debate about the assumptions and the modeling behind CLASS before it passed with very respected analysts arguing that it was viable and other respected analysts arguing that it was not viable. That is a quite common occurrence when you talk about a program that is as novel and unique as the CLASS Act.

What was different about the CLASS Act and I think special is that

included in it this twin test that required that the Secretary only proceed if she could show that it was solvent over 75 years and that it was entirely self-sustaining. So I think --

Mr. Stearns. So if I can interrupt you, Dr. Glied, what you are saying is that after the bill passed, based upon Rick Foster's analysis as well as CBO and others, you started an analysis of your own. Is that correct to say?

Ms. Glied. As we've -- we've sent over documents.

Mr. Stearns. You started doing an analysis to see if it would pay for itself?

Ms. Glied. We actually had done analyses in the fall as well.

Mr. Stearns. Did your analysis show anything different than Rick Foster or --

Ms. Glied. Yes, Our analysis was completely consistent with the CBO estimates.

Mr. Stearns. So, actually, it became apparent to you that this was not actuarially sound?

Ms. Glied. No. CBO actually thought the program was sound, and the estimates that we had conducted in the Department that we sent over to you already, sir, are completely consistent with the CBO.

Mr. Stearns. Do you state here today that you think it is financially sound, too?

Ms. Glied. No. I state here today that at the time, in the fall of 2009, based on the models that we had available at that time, we believed the program was actuarially sound. We were dealing in the

area where there was considerable uncertainty.

Mr. Stearns. From our standpoint, at least, I would say, from this side, we are a little concerned that it appears that there was sort of a deliberative effort on the part of HHS before passage of the law to avoiding these unpleasant realities. And of course, as pointed out on our side, Senator Gregg and Senator Conrad were very concerned and indicated the whole thing wouldn't work. Was Secretary Sebelius aware of the uncertainty in the models during the Obama debate for health care? Were they aware before we passed it of these uncertainties in your opinion?

Ms. Glied. I think that Mr. Foster's analyses had been published very widely. I wasn't here, so I can't say precisely, but his analyses were published very widely in the news media and spoken about in Congress. It seems unlikely that people were not aware of them.

Mr. Stearns. All right. My time is up.

The ranking member of the subcommittee, Mr. Pallone, is recognized for 5 minutes.

Mr. Pallone. Mr. Chairman, without undue respect, I mean, I know the clock didn't start until almost a minute after you started your questioning, and then you went 30 seconds over. So just keep that in mind in terms of the rest of us as we proceed here with the time.

You know, I just, again, I heard from my colleague, the chairman from Florida, again, all of this negative stuff: Let's shut down. Shut down. Repeal. Gloom, failure, can't do.

I have to tell you, when I go home -- and we just had another one

of these recesses because the Republicans never meet. We meet for two weeks, and then we go home for a week, and then we come back, and they don't have anything to vote on. But when I go home, I hear this over and over again: Why doesn't Washington do something? Why are you guys so negative? Why don't you take action?

I am not going to beat up on you guys today. But I do want to say that I am looking for a path forward. I don't want to accept this doom and gloom that we can't do it, okay? And I am trying to find a way through my questioning to get to actually move forward and not go into recess or hold or whatever it is that is being described here today.

So, Secretary Greenlee, my hope is that this CLASS Independence Advisory Council, which is established under the statute, can be a way to move forward and implement the CLASS Act. The law stipulates that members of the council are to be appointed by the President; the council is to be comprised of important stakeholders, people with expertise in long-term care insurance and actuarial science and those who may participate in the program, to name a few.

Now you testified that the Department wants to have dialogue with stakeholders like these as you continue to seek solutions. I understand that HHS has received over 140 nominations for this 15-member council. Yet the council members have not been appointed. Why hasn't that been done? And is this a pathway forward? You seem to say you are putting this in recess or on hold. Can we appoint this council, and let them look at the methods of implementation, so that we don't just put this on hold?

Ms. Greenlee. Congressman, you are correct in your statement that we are very interested in working with stakeholders of all types, with Congress; with the consumer advocates, who fought so hard for this bill; with employers, who are critical to a success. We do want broad engagement and recently met with the advocates and made that most sincere gesture and overture to them that we do want to have broad conversation.

Mr. Pallone. Yeah, but can we move --

Ms. Greenlee. The Secretary has announced that we are suspending implementation. The Independence Advisory Council because it is a part of the CLASS act has not been implemented. At this point, when we seek broad dialogue, we would like to discuss both CLASS and issues broader, more broadly than CLASS. I don't see right now moving the Independence Advisory Council because we want to discuss this in a more broad perspective.

Mr. Pallone. Well, see, I disagree with you completely because you seem to be suggesting that you are going to decide whether to move forward, and if you decide not to, then you don't need to have this council because they would look at what you are proposing.

But the way I see this council, they are charged -- and I am now quoting directly from the statute -- with advising "the Secretary on matters of general policy in the administration of the CLASS program." So it seems to me that this council could be not just there to implement what you decide or not to decide but actually a way of looking at alternatives and coming up with suggestions and come back to you or

the President and say, look, maybe HHS doesn't think we can move forward, but we have got some ideas, and we can show you the way to move forward.

I think that the President -- and you make that suggestion that this is the way we move forward. We maybe right now don't think we can do anything. I disagree. But let this other group take another look and take a try.

Let me just ask you, would you agree that this expert group could be useful in helping the Secretary looking at options for moving forward, even though you now feel that there aren't any?

Ms. Greenlee. Congressman Pallone, we are most sincere in saying that we have suspended implementation. I do not want to send a mixed message by saying we are continuing to work on CLASS when we are not. We do want to engage with stakeholders. All of the type of stakeholders that were mentioned in the statutory section that you read we would be glad to have further conversation with.

Mr. Pallone. I don't think it is going to be very effective engaging us or engaging everyone, based on what you said today. I really would urge this administration to move forward with naming the members of this panel and using this panel as a way to move forward. I personally and many of us do not agree with your decision to put this on hold. And I think if you have this advisory council in place, hopefully they can look at alternatives and come back and make some additional suggestions.

I am just looking for something here, Madam Secretary. I am not

trying to be difficult, but too many of us have worked too hard on this, and we feel very strongly that this can be implemented. And we don't want to give up. And I am not just speaking for myself. And I have got to be honest: The American people want this Congress to take action on long-term care and on so many other things. And it is not a good thing to simply say, we are going to put it on hold. Let this advisory council meet and find a way forward. And I will follow up further on that.

Mr. Stearns. Thank the gentleman.

I recognize the chairman of the Subcommittee on Health, the gentleman from Pennsylvania, Mr. Pitts.

Mr. Pitts. Thank you.

Secretary Greenlee, why did it take until 11 months after APACA passed for the Secretary to publicly acknowledge that there were flaws with CLASS?

Ms. Greenlee. Chairman Pitts, I believe that Secretary Glied has acknowledged that there was broad discussion at the time the law was passed about both the opportunities and the potential problems with the law. What the Department began to do immediately after the law was passed was further develop models that truly modeled the law as it was presented, because there were various options before the law was passed.

It took some time for us to put those models together, and we began what was an iterative process to look at the basic plan, the bare law, the natural reading, and to begin from there finding if there were other

methods that could help us achieve solvency and legality. It took just a matter of time to do that detailed and very thorough work.

Mr. Pitts. You testified before the committee in March. Why didn't you indicate at that time there were significant problems with the program?

Ms. Greenlee. Mr. Chairman, at the time I testified in March, we, in dialogue with the committee, discussed the degree that the Secretary may have some discretion to modify the program. That is a good reflection of where we were at that point in time. We had done the basic analysis and knew that the statute, the bare bones statute, would produce a premium that was unworkable.

We were at that point exploring the degree to which the Secretary had discretion to make a few modifications. Following that work, we did additional developmental work that led us to this conclusion. So what I had explained at that point in time was very accurate with regard to the work that we were doing last spring.

Mr. Pitts. Now, at our last hearing on CLASS, you and Chairman Emeritus Dingell had the following exchange, and I will quote:

Dingell: "I begin by welcoming the Secretary, and I ask, do you have all of the authority you need in the Department to ensure that this program gets off to a start in an actuarially sound manner?"

Ms. Greenlee: "Yes, we do."

Mr. Dingell: "And you lack nothing?"

Ms. Greenlee: "No. We can make it solvent. We have the authority."

Why did you think that the Secretary had the legal authority to make the CLASS program solvent?

Ms. Greenlee. At that time, we were looking at three different items that we discussed, that I testified about in front of the committee: The anti-gaming provisions; the need to possibly index premiums; and the need to raise the earnings level. We felt that in that area, the Secretary had some degree of flexibility or discretion. And I was truthful when I talked about that we were exploring that and felt very positive.

We did further analysis that led us in a different direction after we made those initial changes to the model. We found that even with those, we would still produce a premium that we felt like was higher than could produce a reasonable take-up rate.

Mr. Pitts. This question is -- and when did the legal analysis come?

Ms. Greenlee. The final legal analysis was prepared earlier this month as we did the final report. We had been engaged with our legal counsel all along as we have surfaced different ideas, such as the three that I just explained, and asked them for initial guidance. We didn't get the full guidance until we did the final report.

Mr. Pitts. Now, for both of you, can you please provide an overview of how much has been spent by the Department during this administration to review, analyze and implement the CLASS program to date?

Ms. Greenlee. Yes, sir, I can respond to that.

The Department in fiscal year 2010 and 2011, between the two offices that Assistant Secretary Glied and I run spent just under \$5 million. That is a reflection of the work from both endeavors.

Mr. Pitts. Now according to the e-mails, Secretary Glied, and other documents obtained by a bicameral working group, the Office For Planning and Evaluation, which you now run, had prepared technical comments on the CLASS program in December of 2009 for congressional consideration.

During your time at HHS, have you been briefed by your colleagues or staff regarding ASPI's 2009 analysis of CLASS and the process under which the ASPI comments were received and reviewed by congressional offices, and what happened with these technical comments?

Ms. Glied. I am somewhat aware of what happened. I was not here at the time. And I don't know the precise details of what happened. I have seen some of the of documents that were turned over to you, sir.

Mr. Pitts. Were any of the 75-year actuarial analyses conducted before APACA passed?

Ms. Glied. Before the legislation passed, we had a contract, an ongoing contract, with Actuarial Research Corporation, and we sent over to you the estimates of premiums and prices that they calculated at the time. They did not have a full model with which to calculate 75-year solvency. In fact those were the models that were developed in the subsequent 19 months. They had a model to calculate premiums, and that was the model that we were using to provide technical assistance. We were focused on looking at how different changes in

the law would affect those premiums over time.

Mr. Pitts. And finally, the \$5 million you mentioned, does that include contract work?

Ms. Glied. Yes, it does.

Mr. Stearns. The chair recognizes the gentlelady from Colorado, the ranking member of the Oversight and Investigations Subcommittee, Ms. DeGette.

Ms. DeGette. Secretary Greenlee, you testified that it is urgent to find effective ways to help Americans prepare for and finance their long-term care needs. And I think it is safe to say that all of us agree with that statement.

Now, I believe that you stated that 15 million Americans will need long term care by 2020 is that correct.

Ms. Greenlee. Yes.

Ms. DeGette. And there are a range of long-term care options now, nursing homes, assisted living, and home health care to name a few. The previous panel talked about some of those. But most of Americans with long-term care needs live at home. And so, in your testimony, you talked about the importance of Americans with disabilities living the maximum amount of freedom and independence. Can you briefly describe some of the benefits of receiving long-term care services within the community?

Ms. Greenlee. Congresswoman, I certainly can.

I would also like to say that I thought Congressman Kennedy did also an excellent job of framing the two critical issues. One is it

is less expensive to provide services in the community. Regardless of the payer source, whether it is the individual, the family, Medicaid, it is cheaper in the community. It is also the setting that overwhelmingly people desire, regardless of age. It helps most preserve a quality of life, dignity, independence, connection to their families and communities, the important things in life and that is why community service is so critically important to people.

Ms. DeGette. Right. Now, you were the former administrator of Kansas' Medicaid program, so I know you have some experience on the topic of Medicaid, which is the primary payer of long-term care in this country. And I am assuming that you have experience in the impact of long-term care spending on State and Federal governments; is that correct?

Ms. Greenlee. Yes.

Ms. DeGette. So if we rely on -- and I agree with you. I thought former Representative Kennedy and also Representative Deutch spoke quite eloquently about the impact of having to rely primarily on Medicaid for funding long-term care on families. In other words, middle class families having to make these terrible decisions about having to get divorced or putting themselves in poverty or something. Did you see some of that when you were the -- when you were administering this program in Kansas?

Ms. Greenlee. Yes, ma'am.

As you mentioned, currently Medicaid pays for half of the long-term care services in this country. This has a very significant

effect on State budgets that many are just really laboring under at this point. Not just State budgets but the Federal budgets in terms of the Medicaid program.

But the opportunity that CLASS presents is a way for people to take responsibility for some of their own long-term care financing, a way to help working Americans so that they can afford to provide some protection, so that they are not in a situation where they have to spend down and impoverish themselves in order to get care.

Ms. DeGette. So the concept of the CLASS system is that people will buy long-term insurance and be able to take care of their needs without making these terrible decisions, right?

Ms. Greenlee. Yes. It will provide additional cash assistance so that they have more flexibility for their needs.

Ms. DeGette. So it seemed to me from listening to the testimony on the last panel, from what my colleagues on the other side are saying, is we don't need CLASS to do that. We would just have everybody go out and buy long-term health insurance. Is that the sense you get?

Ms. Greenlee. The private long-term care insurance market I believe is an option for some individuals, but the private long-term care insurance market will not be the solution for everyone.

Ms. DeGette. Why not?

Ms. Greenlee. There are some of their premiums that are not affordable, and the private long-term care market underwrites their product, meaning many people with chronic conditions or disabling conditions do not qualify to purchase the insurance.

Ms. DeGette. I was just telling the staff I have had two hip replacements myself, and when I went to buy long-term health insurance for myself, the insurer said, well, we will sell it to you, but we are going to exclude anything from your hips, which, you know, if someone has a preexisting condition and that is excluded, then they are going to end up either having to pay out of their own pocket for care related to that or go on to Medicaid, right?

Ms. Greenlee. Yes. And that is why I think we are all looking for broad options --

Ms. DeGette. Right.

Ms. Greenlee. -- single options, so that we can tailor to each person.

Ms. DeGette. Now, let's go back to the States' budgets. Let's say we don't have something like the CLASS Act, some kind of a viable solution to helping people get long-term health insurance that they can afford and that doesn't exclude preexisting conditions, what is going to be the impact on the States' budgets?

Ms. Greenlee. Well, you mentioned that I had worked in Medicaid in Kansas. I have not seen recent kind of trends in my home State. But I know that we continue to pay half of the long-term care costs through Medicaid. We have increasing numbers of seniors in this country which will help drive up further demand for Medicaid services, whether they are in institutions, like nursing homes, or in community, that we need to have other options so people have somewhere else to go to help finance long-term care.

Ms. DeGette. Thank you. Thank you very much.

Mr. Stearns. Recognize the gentleman, Mr. Shimkus, for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman. It's kind of good to follow my friend from Colorado with my line of questions. But first, I want to say that I am not gleeful that CLASS got shelved, but I am kind of relieved because of the -- it was actuarially unsound that the Secretary even agreed to. And I agree. So I am actually pleased that HHS and Secretary Sebelius did make what I thought was the proper decision.

But following up on long-term care, I do believe that if you incentivize individuals early in the system, like any insurance product, you have effective costs. But we don't have a system right now to adequately reinforce long-term care insurance. And that is, I think, something that would be beneficial to all of the questions my colleague from Colorado asked.

So I would be willing to work with anyone on this issue.

Congressman Deutch and Congressman Kennedy both noted that HHS had studied scenarios to make the problem solvent. And of course, in the report that I have would kind of identify some of these, so I am going to go on a question of three, which I think is pretty telling just about the whole actuary process and on insurance itself, is that, is it true that the Department looked into a 15-year waiting period for the receipt of benefits for enrollees with certain health conditions or what can be classified as preexisting conditions?

Ms. Greenlee. Congressman, that proposal that you are mentioning had been presented and developed by the CLASS actuary, Mr. Yee. It was contained in the overall document as well as in his report. It wasn't an idea that he suggested as a way to mitigate or manage the adverse selection. We never modeled it extensively because we had concerns about the legality of being able to use a preexisting condition.

Mr. Shimkus. Right. And in the report here, I mean, it does identify this as an option but was ruled that you had no legal authority to implement this.

Ms. Greenlee. That is correct.

Mr. Shimkus. So my point is, there was consideration of using preexisting conditions as an enrollment process to make CLASS affordable. And for, you know, my friends on the other side to say, don't do preexisting conditions, and then actuarially, in a government-run program, we can't do it, then obviously there is a reason why the insurers do that.

Let me go to another question. Is it true that the Department looked into providing lower benefit amounts for individuals who become eligible in the first 20 years of their enrollment in the program? Yes or no.

Ms. Greenlee. Yes.

Mr. Shimkus. And another way to adjust and modify -- and these are the same practices that insurers do that we get -- that the private insurance markets get attacked for. What about, is it true that the

Department looked into a possible plan with premiums nearing \$400 a month? Yes or no.

Ms. Greenlee. Yes, that reflects the basic CLASS program un-amended any in any way.

Mr. Shimkus. That is correct. And it says here, with full waiver of premium, while in the claim ranging from \$235 a month to \$391 a month. So I guess, you know, the point is, to make this financially sound, you had to actuarially do adjustments that many times a private insurance market is attacked for. And it is just a statement. And the report, in essence, supports that.

The \$70 billion of savings when passed, when we passed H.R. 2, it was up to \$86 billion. Now, to my friends who say that the health care law still has real dollar savings, go back to our first hearing this year with Secretary Sebelius when she admitted that we had double counted Medicare. The \$500 billion Medicare cuts were scored for health care and they were scored for extending Medicare solvency.

Now you add the \$70 billion double counting or that is going to be revenue to help make this affordable -- now, you are at the \$570 billion of money that was planned to help fund Obamacare that isn't available. Then you talk about the \$800 billion in tax increases. You get 1.37 and that is where we are moving with the health care law today. I appreciate your time. I yield back.

Mr. Stearns. The gentleman yields back.

Recognize the ranking member of the full committee, Mr. Waxman, the gentleman from California.

Mr. Waxman. Let me follow up with the last questioner's comments.

I understand the health care reform bill cuts the long-term debt. I know that is hard for the Republicans to accept, but it is the facts. The new benefit of the bill -- the new benefits of the bill are entirely paid for and more by new revenues and by improvements that cut the overall cost of health care, cut waste, fraud, and abuse from the Medicare and Medicaid programs.

When the health care reform law passed, the CBO said it would save \$200 billion over the next decade. About \$70 billion of this savings was from the CLASS program, savings that obviously will not materialize.

Dr. Glied, the Republicans have stated if the \$70 billion in savings was crucial to the passage of the health care law. Let me ask you, even without the CBO-scored savings from the CLASS program, do you still anticipate that the health care reform law will cut the debt over the next decade.

Ms. Glied. Absolutely, sir. We anticipate that the health care reform law, without the CLASS program, will save \$127 billion in the next decade and over a trillion dollars in the decade following that.

Mr. Waxman. Now critics of the CLASS program have also raised the fact that the program's costs will explode in future years and that CLASS will set saddle taxpayers with future debt. Those worst-case scenarios obviously will not happen if the program does not go into effect; isn't that correct?

Ms. Glied. That is correct, sir.

Mr. Waxman. Of course, the benefits of having something in place for long-term care won't happen either.

We are going to hear a lot of rhetoric complaining about budget gimmicks and budget deficits today, but there is a difference between the Republican rhetoric and the facts. The facts are that even with the news about the CLASS program, the health care reform law will cut the long-term deficit and save taxpayers money.

As you know, the Republicans' bicameral CLASS working group released a report last month which included documents obtained through an investigation of the CLASS program. The report asserts that the administration supported the CLASS Act because the Congressional Budget Office or CBO scored the program as reducing the deficit over the first 10 years. I would like to ask you a few questions about this decision.

Secretary Glied, why did the Obama administration support the CLASS program during the health care reform debate?

Ms. Glied. The administration supported the program because of the indisputable need to protect people from the cost of long-term care services, to allow them to buy themselves protection, and to ensure that disabled people would have opportunities to work and to get themselves the services to do that, and because the law included this twin test that required that it be entirely self-financing and fiscally solvent over 75 years, so that it was also fiscally prudent for us to do so.

Mr. Waxman. What role of any about the CBO score play in the administration's analysis of the program and ultimate support for the program?

Ms. Glied. It was certainly encouraging that the CBO analysts also believed that the program would be viable, fiscally viable, fiscally solvent and therefore able to address the needs that we had set forth to address with the program.

Mr. Waxman. Without the Affordable Care Act, people with preexisting medical conditions can't get insurance, or they have to pay an extraordinary amount for their insurance, which means that many people with preexisting conditions don't have insurance.

One of the purposes of the Affordable Care Act was to say that we are not going to allow that discrimination against people with preexisting conditions. The way the act handled that matter is to say if everybody got insurance, then we could spread the costs and not have those with preexisting medical conditions as a group charged so much that they can't afford it. My colleague on the other side of the aisle raised this issue. Wasn't that the approach that we took in the Affordable Care Act for insurance? Either one of you.

Ms. Glied. Yes.

Mr. Waxman. Now that solved the problem for people who want to get acute care insurance, medical insurance as we know it. But medical insurance, even Medicare, doesn't cover the long-term care needs of people who are disabled. It may for a short while if they go to a nursing home after some spell of illness, but that is only for a short

period of time. After that, if they need to be in a nursing home or they need home health care, the Medicare doesn't pay for that assistance that they may need. Isn't that correct?

Ms. Glied. Yes.

Mr. Waxman. Well, one of the problems people have in trying to buy insurance for long-term care is that if they had any kind of preexisting condition, they can't buy it.

Ms. Glied. That is right.

Mr. Waxman. That is the issue, isn't it?

Ms. Glied. Yes, sir.

Mr. Waxman. That was never solved -- and the Republicans have offered no solution to it, except to say, isn't it a terrible problem? But that wasn't even solved by the CLASS Act, except it would have allowed people to buy into a program even with their disabilities. Isn't that correct?

Ms. Glied. Yes, sir.

Mr. Waxman. So we still need to address this long-term care insurance?

Ms. Glied. Very much, sir.

Mr. Waxman. Thank you.

Thank you, Mr. Chairman.

Mr. Stearns. Thank the gentleman.

And the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. Terry. Thank you, Mr. Chairman.

Thank you, Secretary Greenlee and Glied, whichever, the ACA

included money. I think your testimony is that that money has stayed in for the provisions on educational efforts on long-term care, that CLASS has been shelved, but you said the educational component is still going forward, right?

Ms. Greenlee. That is correct. The deficit reduction act in 2005 first provided money so that we could do public outreach and education about the need for long-term care, long-term care awareness campaign. Many States have used this to provide kind of an own-your-futures campaign. That was picked up.

Mr. Terry. Is that what this awareness program is? Since CLASS doesn't exist or isn't going to be rolled out, the only thing left to become aware of would be private long-term health care plans. Is that what the campaign is doing, is telling people that they should get a policy for long-term health care?

Ms. Greenlee. I think there are two issues. One is to educate the people about the need as well as the misconception that Medicare covers long-term care when it doesn't, and then provide education about how individuals may take responsibility for meeting that need.

So it covers all of the different options and really raises awareness.

Mr. Terry. So it does include the private sector.

Ms. Greenlee. Yes.

Mr. Terry. Which right now is the only thing that, if the person becomes aware, that they can go out and purchase.

So, well, other than Medicaid, buying down your assets or purging.

So you plan to continue to go forward with the awareness campaign.

Ms. Greenlee. Yes, sir.

Mr. Terry. All right. How much is put aside per year this year?

Ms. Greenlee. Just about \$3 million a year set aside for the long-term care awareness campaign. That was provided for separately in the Affordable Care Act.

Mr. Terry. And you were moved, as I was, in Patrick Kennedy's testimony, especially it hit -- was his testimony about his uncle, Sargent Shriver, and the companion care that he was given at home, which is different than skilled nursing care or a nursing facility; you know, the person that would help him get from the living room to the dining room so he could eat. Was companion care part of CLASS?

Ms. Greenlee. The cash benefit that was provided in CLASS would have allowed the consumer to direct their own choice of services. We fully anticipated that that type of companion care or attendant care would be one of the primary items that someone would --

Mr. Terry. That is good, and I really believe that companion care can keep somebody like Sargent Shriver out of a skilled nursing facility that would be on a daily basis probably 20 times more expensive.

Ms. Greenlee. I agree with you, sir.

Mr. Terry. Are you aware, have you had any contact or work with the Department of Labor, who is trying to pass a rule to make all caregivers subject to the FLSA, therefore making it unaffordable for many middle class families to use caregivers?

Ms. Greenlee. No, sir. I have not engaged with the Department

of Labor on that issue, either in my role as assistant secretary with the Older Americans Act or --

Mr. Terry. I would think that the Department of Labor, if they are going to affect senior care so dramatically, that they would have reached out to your Department. I think that is odd that they haven't.

Ms. Glied, have they asked you to run any models about how FLSA will make the companion care more expensive, therefore making it unaffordable?

Ms. Glied. I am not sure, but we can get back to you on that.

Mr. Terry. I would appreciate that.

Also, then, I agree with home health care. My personal -- my mother battled cancer, and she was always bouncing between hospital to skilled nursing when my father and I felt that she would be better off at home with some home health care, but Medicare wouldn't pay for those health home care, changing IVs, those types of things. So we had to go with the more expensive option. So home health care, unfortunately, though, has been -- costs for home health care and access -- has actually been cut over the last 2 years. And within the savings in Medicare from the ACA, home health care has been diminished. Have you been working with the administration, the White House, to champion home health care?

Ms. Greenlee. I am looking at Dr. Glied. The main conversations I have had in this area are actually not Medicare-related but Older Americans Act-related because that has also been another critical support.

Ms. Glied. There have also been substantial increases in Medicaid programs that provide home and community based services. So those have been a major focus within the Affordable Care Act. We have got more money going to Money Follows the Person, and we have new community first choice options for Medicaid programs that are all intended to help people stay in the community. So we have actually expanded access to home health care for most people.

Mr. Stearns. The chair thanks the gentleman, recognizes the ranking member emeritus, Mr. Dingell, for 5 minutes for questions.

Mr. Dingell. Mr. Chairman, I thank you for your courtesy.

Madam Secretary, long-term care insurance helps American workers to prepare for future long-term care needs. Do you believe that the private market is currently providing long-term care options for working Americans? Yes or no.

Ms. Greenlee. Primarily, no. It is very limited.

Mr. Dingell. All right. As you know, the CLASS Act is designed to be a voluntary insurance program to help American workers to pay for long-term care services that they will need in later years.

The program was created to help address the needs of ailing Americans, both young and old, because alternatives can be impossibly costly to American families. And Medicaid is only accessible after they have exhausted all of their savings.

Do you agree that the CLASS Act was intended to help fill a need in affordable options for long-term care for working Americans? Yes or no.

Ms. Greenlee. Yes, sir. Definitely.

Mr. Dingell. Now. Madam Secretary, when you testified before this committee, you will recall I asked you whether you had all of the authority you needed in the Department to ensure the program gets off to the start in an actuarially sound manner. At the time you answered you did.

However, the report issued on October 14th tends to indicate that the Department does not have the authority it needs to develop a program that will meet the solvency tests. I would like to ask you again, then, whether you have the authority you need in the Department to implement the CLASS Act so that it is actuarially sound and provides a an affordable, long-term care to working Americans? Yes or no.

Ms. Greenlee. Mr. Dingell, may I respond other than yes or no --

Mr. Dingell. All right. If you please, but quickly.

Ms. Greenlee. My statements were correct at the time I made them in March, that we were very optimistic about the types of flexibility through the discretion that the Secretary might have --

Mr. Dingell. I am not coming down. I just want the answer.

Ms. Greenlee. After we did further analysis, we found that that was not the case. We do not have the authority we need at this point.

Mr. Dingell. All right. Then, if you would, please, tell us what additional authority do you need to implement the CLASS Act in a fashion that results in an actuarially sound plan?

Ms. Greenlee. Sir, I would need to refer you back to the reports to look specifically at the type of actuarial modelling we were looking

at as well as the legal issues that were raised as we continued to model the program.

Mr. Dingell. All right.

I would ask you, along with my friend Mr. Pallone and others, that you submit to me a list of the authorities that the Department needs to properly implement this plan.

Ms. Greenlee. We do not currently have a list. I will take your request back, so we can be responsive. We don't have a list at this time.

Mr. Dingell. Okay.

Madam Secretary, in your memorandum on the CLASS program to Secretary Sebelius stated, quote, you do not see a path to move forward with CLASS at this time, close quote. Until a list of needed authority is provided to this committee, will you commit to working with the Congress, industry, and the consumers to continue to work to find options for affordable long-term care options for Americans? Yes or no.

Ms. Greenlee. Yes, we are committed to working with you.

Mr. Dingell. Now, Mr. Chairman, I want to make a couple of observations here.

I heard my Republican colleagues in this committee, on the floor, and in speeches in and outside the Congress tell everybody what an evil thing the health insurance bill, Affordable Care Act, is. And I, quite frankly, don't agree.

But I am curious. What is it that our Republican colleagues

suggest to us we ought to do? What should we do, my dear friends, about the CLASS Act, so that we providing term care programs for Americans who desperately need it? So that they won't be destitute, and so that they can have an actuarially sound program which will enable them to have a program of long-term care to take care of themselves and their families.

What is it my Republican colleagues want to do to see to it that we get ourselves a program which addresses problems like preexisting conditions and all of the other things that they have been introducing legislation to repeal, to strip the American public of the rights and opportunities we have given them in a piece of legislation which they opposed with enormous vigor and which they continue to oppose, without any particular apparent care, other than that we continue the reliance on the same unworkable situation that we have.

Dr. Gingrey. Will the distinguished gentleman yield?

Mr. Dingell. I will be happy to yield if I have time. But I want to make this observation. We have a serious problem that the American people confront. All we hear from my Republican colleagues is no, no, no, no. They sound like --

Dr. Gingrey. Mr. Chairman, the gentleman's time has expired, but he did ask a specific question of members on this side of the aisle, and if you would allow me 10, 15 seconds to respond to that.

Mr. Stearns. Any objection? Do you have any objection?

Mr. Pallone. Why doesn't he use his own time?

Mr. Dingell. I would love to have it if it can be done.

Dr. Gingrey. The gentleman is requesting that we respond to that.

Mr. Stearns. The gentleman seeks unanimous consent for what 15, 30 seconds.

Dr. Gingrey. Sure.

Mr. Stearns. To respond to Mr. Dingell.

Without objection.

Dr. Gingrey. Sure. I thank all members for the unanimous consent.

You know, in regards to the question, what could we do, Mr. Pallone earlier in his line of questions asked about the advisory council on long-term care. Secretary Greenlee talked about that and said that implementation has been stopped, and therefore, we are not going to go forward with that advisory council. I think that was my understanding. I don't see any reason in the world not to have Mr. Dingell and Mr. Pallone to come forward, make a standalone bill creating an advisory council on long-term care and let us look at it and essentially start over and get it right this time.

Mr. Stearns. The chair thanks the gentleman.

The chair yields to Dr. Burgess for 5 minutes for questions.

Dr. Burgess. I thank the chairman for yielding.

Let's just for a moment go back, Ms. Greenlee, to Mr. Dingell's questioning. He talked about -- he had questioned you and your previous appearance here and you said you had everything you need. Then, apparently, you didn't. And he asked, what did you lack as far

as being able to provide the tools? Really there are only two variables you have to manipulate, and that is the premium and the benefit. Is that correct? When you are structuring a program, when Richard Foster was looking to provide the actuarial information as to whether this was sound or not, you can alter the premium. You can restructure the benefit. Mr. Pallone said you can have a 15-year vesting period as opposed to 5. But really those are the variables that you have got to manipulate. Is that correct?

Ms. Glied. As you can see in our report, sir -- I am sorry. Is it okay -- I mean, we actually considered a lot of different options, and they varied --

Dr. Burgess. Maybe this is -- perhaps this is how I need to ask the question. Ms. Greenlee, did you do modeling to look at what the premium point would have to be to support the CLASS Act?

Ms. Greenlee. Yes, sir.

Dr. Burgess. And what is that number?

Ms. Greenlee. It depended, depending on the different model that we were running. The CLASS Act, as modified --

Dr. Burgess. Give us a range. Can you give us a range?

Ms. Greenlee. May I refer to Ms. Glied. I mean, the modeling numbers are really something that she is more equipped to answer for you correctly I think.

Ms. Glied. So I would like to emphasize that there isn't a single number out there that we know.

Dr. Burgess. Great. Look, my time is very limited. I don't

mean to be rude. I am not allowed extra time, like other members are. Can you get this for me?

Ms. Glied. There is not a number.

Dr. Burgess. There is not a number?

Ms. Glied. There is not a single number. There are a lot of numbers in the report --

Dr. Burgess. Now, initially, when Mr. Pallone brought this to us, the number was \$60 a month. Is it likely to be higher than \$60 a month for the premium?

Ms. Glied. If you could look at the report, the premiums are in there. They are all higher than \$60 a month.

Dr. Burgess. Let me ask you this. Let me ask you a couple of questions. You referenced \$5 million in money that has already been spent in the implementation of this program. And please, if it is information that you need to get back to us with, I am going to ask that you do that. But how -- of that \$5 million, does that include the money that has been spent on outside contractors?

Ms. Greenlee. Yes, sir.

RPTS JOHNSON

DCMN ROSEN

[11:04 a.m.]

Ms. Greenlee. Yes, sir.

Dr. Burgess. And will you be willing to provide us a balance sheet showing how and when and for what purpose the money was expended?

Ms. Greenlee. Certainly.

Dr. Burgess. The figure of \$5 million is helpful, but it is not all that useful in understanding where the expenditures occurred.

Ms. Greenlee. We will be glad to. We think we may have provided it already, but we are willing to provide if we have not.

Dr. Burgess. Then how much money has ASPE itself expended in this regard? Is it different from the \$5 million?

Ms. Glied. It is included in that figure.

Dr. Burgess. How much money is available for further planning in ASPE?

Ms. Glied. ASPE doesn't have a separate budget for CLASS. We have a Division of Aging and Long-Term Care Policy. We have had it for 30 years, and that continues.

Dr. Burgess. Do you have a budgetary line item for CLASS?

Ms. Glied. No, we don't.

Dr. Burgess. Let me ask you this: We talked -- Mr. Terry talked some about the informational aspects of long-term care insurance. And in 2005, when the Deficit Reduction Act was being debated in this

committee, I think we got information that if one-third of the projected seniors moved off of Medicaid into a private long-term care product, that the savings would be substantial. I think \$160 billion was the figure this committee received over 10 years. I guess that would be even larger now a few years later. \$160 billion is, even today, a significant amount of money. Have we harmed the long-term care, the private long-term care market with the activities of the CLASS Act over the last 19 months? Has it made it more difficult for companies to develop these products and market them?

Ms. Greenlee. Sir, I don't think so in any way.

Dr. Burgess. Would it not, if someone were developing a product in the private market, and they are looking over their shoulder at what is occurring within the administration, wouldn't that alter their thinking on what type of product to offer?

Ms. Greenlee. Because you have acknowledged that you have private insurance, I know you are aware that the private market offers a comprehensive product, which is far different than what the minimum benefit is, the minimal support that CLASS would provide. I don't believe we have, in any way, hampered the ability of the market to learn from what we have learned and modify their products. They also have other tools available to them that we would not have had in the CLASS program.

Dr. Burgess. Let me just ask you this, Ms. Glied. Did you serve on President Clinton's health care task force?

Ms. Greenlee. I did not.

Ms. Glied. I did.

Dr. Burgess. You did. And as I recall, when President Clinton had his comprehensive health care reform, there was a long-term care piece to that. Is that correct?

Ms. Glied. Yes, there was.

Dr. Burgess. Did you encounter any of these same questions or concerns during the development of that product for the Clinton administration?

Ms. Glied. I was not involved in that part of the reform proposal at all.

Dr. Burgess. But you have been involved in these discussions before. Did any of the information you got during that time inform any of the decisions that are being made now?

Ms. Glied. I am quite sure they did, but I don't -- can't point to specifics.

Dr. Burgess. Mr. Chairman, I hope we have time for a second round. I will yield back at this point.

Mr. Pitts. The chair thanks the gentleman, and recognizes the gentleman from Texas, Mr. Green, for 5 minutes for questions.

Mr. Green. Thank you, Mr. Chairman. It is no secret that our colleagues on the other side of the aisle don't like the historic health care reform law that we passed in 2010. And they have been eager to jump on the problems of the CLASS Act to imply that the entire health care reform law is a failure. Dr. Glied, can you offer us some perspectives here? And I don't want to minimize the CLASS Act. It

was an important part of the bill. And whether the CLASS Act or another approach, we need to find a solution for long-term care in our country. With the huge increase in Alzheimer's, with dementia, that needs to be part of the solution, even though the CLASS Act may not be that solution. But my understanding is there are many critical benefits of the health care law that have nothing to do with CLASS. And I would like you to walk through with me on the benefits. My first question is how are seniors benefiting from the health care reform law now?

Ms. Glied. We have made many changes already that have benefited seniors. For one thing, we are working on closing the doughnut hole in Medicare part D. And already about 4 million seniors have benefited from that.

Mr. Green. I will just interrupt you. I probably would have voted for the 2003 plan if it hadn't been for that doughnut hole in there. So I am glad we are closing it.

Ms. Glied. We are also providing seniors with new preventive benefits that are free of cost sharing. There is a new annual wellness visit in the Medicare program thanks to the Affordable Care Act. We have taken aggressive steps to reduce fraud in the Medicare program. And that is a benefit to everyone. And as we mentioned earlier, in the Medicaid program, we have also expanded opportunities for home- and community-based services.

Mr. Green. How about small businesses? We hear a lot about that. In fact, having helped manage a small business, outside of basic payroll, our insurance costs was one of our biggest issues in a

13-employee company. Can you say how the health care reform law deals with small business?

Ms. Glied. We have already put in place a small business tax credit to help small businesses provide health insurance to their workers. And that tax credit is actually going to expand beginning in 2014.

Mr. Green. How about young adults?

Ms. Glied. So one of the very, very first provisions in the Act to take effect was a provision that allowed young adults to stay on their parents' health insurance coverage. We have now got back responses from three separate national surveys. And they all show that the number of young adults in this country who are uninsured has dropped by a million because of that policy.

Mr. Green. Well, and I am getting calls, how about Americans with insurance? Because I know we heard this last week that WalMart was increasing their premiums. We all get calls every day saying my insurance premium from my company insurance is going up. What are the new protections that we have under the health care reform law to protect Americans who actually have insurance?

Ms. Glied. So some of the provisions that have already taken effect will eliminate some of the most egregious behaviors of the private insurance industry like rescissions. So that has already taken effect. As well, there are now provisions that allow States to take a very careful look at unreasonable rate increases and negotiate with insurance companies to keep those down.

Mr. Green. Okay. And I know the uninsured and how they benefited from the new health care law. And let me give you some perspective. In the 2000 census, I had 33 percent of my constituents who had insurance through their employer. Forty-three percent of them worked and didn't qualify for Medicaid, but they were uninsured because their employer did not provide insurance coverage. How will the health care reform law help that 43 percent in my district?

Ms. Glied. So we are expecting that over 30 million people will gain health insurance coverage when full implementation of the Affordable Care Act starts in 2014.

Mr. Green. Are there any of these benefits by the administration's decision on the CLASS program?

Ms. Glied. No, the CLASS program is really a stand-alone and distinct part of the health care reform bill. It addresses a very important need, but it is quite distinct from the rest of the legislation.

Mr. Green. So whether it is the decision of the Department or decision of Congress, everything else in the law is working and functioning and going into effect as we are moving?

Ms. Glied. Absolutely, sir.

Mr. Green. I am disappointed that the new CLASS program as currently constructed will not be in effect because we have to have a solution. And I hope we can reach across the aisle legislative-wise and come up with something that will deal with long-term care. Because like I said earlier, a lot of my constituents don't have the same

opportunities that Federal employees have, State employees have. I don't know of many companies except very large ones that apply some long-term -- allow for long-term care for their employees. It means that we have to continue to work to address the solution of our long-term care needs. But it does not have the impact on the success of the health care reform law that you just expressed. Millions of Americans, young and old, will continue to benefit from this law even though the CLASS Act may not be part of it.

Ms. Glied. Yes, sir.

Mr. Green. Mr. Chairman, I actually yield back my 23 seconds.

Mr. Pitts. The chair thanks the gentleman, and recognizes Dr. Murphy for 5 minutes for questions.

Mr. Murphy. Thank you, both Secretaries. It is good to meet with you. Particularly, Assistant Secretary, I appreciate your forthrightness during our hearing last March, where you and I discussed this, and discussed the administration was double counting funds from the CLASS program as funding both the CLASS program and the health care bill. And I appreciate your forthrightness at that time we had that discussion. I want to ask you a couple questions, though. Did members of the CLASS working group or the CLASS office ever discuss the CLASS Act with the White House, including White House Office of Health Reform, the White House Counsel's office, or the Office of Management and Budget about the problems with resolving the program within your authority? Was there any discussions that took place like that?

Ms. Greenlee. As typical with large policy issues, especially

those as important as health reform, we are in contact with the White House as policy issues arise. This is no exception.

Mr. Murphy. Can you tell us who was involved with those conversations and what was said?

Ms. Greenlee. Sir, over the 19 months that we have been working on the program, I honestly don't have a list.

Mr. Murphy. Is that something you can get to the committee? I wouldn't expect you to remember all that. I appreciate that. I wasn't trying to quiz you on that part of it. If you could let us know, I would really appreciate that. Thank you.

Ms. Greenlee. I will see how to follow up, sir.

Mr. Murphy. Thank you. Do you have any idea who at the White House was consulted before Secretary Sebelius decided that, as was cited before, she didn't see a path forward for implementation at this time? Do you have any idea who she met with or consulted with at the White House?

Ms. Greenlee. No. As I mentioned, this is a major policy decision. So it is something that we would want to talk to the White House and get their guidance. I can't tell you who specifically the Secretary has spoken to.

Mr. Murphy. When you say it was a major policy decision, who made the decision?

Ms. Greenlee. The Secretary did.

Mr. Murphy. The Secretary did. And it was also a decision she had in consultation with the White House?

Ms. Greenlee. They certainly needed to be informed of this decision, and involved as she was making it.

Mr. Murphy. And who at the White House agreed with her decision?

Ms. Greenlee. Sir, I would have to -- I can't answer that specifically, because it was the Secretary's decision. And her -- she was the primary one who would have been involved.

Mr. Murphy. What I am trying to find out, and again I appreciate your forthrightness here, I mean something of this magnitude on which the health care bill really hinged on in terms of trying to balance the books on it, of which the CBO I think told us -- I think when you were here before I think this is the number, correct me if I am wrong -- that withdrawing it from the health care bill would leave a gap in the health care bill of \$80 or \$85 billion or something like that. It is a decision of some magnitude. And so I am wondering if there were someone else in the White House very high up that would have to say, okay, well, we are going to pull the plug on this.

Ms. Greenlee. It clearly was the Secretary's decision. That is what it lines up in the law. She is the one that has submitted the report, based on my recommendation. I can't respond to or be responsive with regard to else she may have consulted as she was making that decision.

Mr. Murphy. Thank you very much. Mr. Chairman, I have no more questions. But I would be glad to yield to my colleague, Dr. Burgess.

Dr. Burgess. And I thank the gentleman for yielding. Just to follow up on some of the budgetary questions, the committee staff does

not believe that they do have the breakdown of the expenditures. That may have gone to the Appropriations subcommittee. So would you be sure to work with our staff to make certain that we have that? And really, we are kind of looking for some of the fine detail. Even the money that was spent on staples and staplers, we would like to see that.

And again, a breakdown or a breakout of the dollars that were expended for outside contracting. Because my understanding is there was, some of this work that had to be done on the modeling did require the participation of outside contracts. Is that correct?

Ms. Greenlee. Yes, sir. And we are willing to provide that information to you.

Dr. Burgess. Now, Ms. Greenlee, I think you mentioned that both Chief Actuary Foster and Doug Elmendorf at the CBO performed an analysis on the cost of the total health care bill that included, of course, the offset that was going to be provided by CLASS. It has been said that in the last Congress we didn't do a lot of oversight over the implementation of the health care law. But there were two resolutions of inquiry that were heard by this committee, and one of them dealt with exactly this set of facts, that is, was the Congress provided accurate financial information before the actual vote on the bill that became law occurred March 21 of 2010?

Now, in retrospect, to me at least, it does not seem like Congress had all of the information. And now with the information that we are getting out of the documents provided that Mr. Foster, in fact, questioned himself in June of 2009. So do you see why some of us are

uncomfortable with the notion that you couldn't have known until after the bill was signed into law how much it actually was going to cost?

Ms. Greenlee. Congressman Burgess, as Secretary Glied has said, the work that was done by Mr. Foster was publicly available before the bill was passed, as was work done by other outside professionals such as the American Academy of Actuaries. So the information was in the public domain at the time the law was passed.

Mr. Pitts. The chair thanks the gentleman, and yields to Dr. Christensen for 5 minutes for questions.

Dr. Christensen. Thank you, Mr. Chairman. Good morning --

Ms. Greenlee. Good morning.

Dr. Christensen. -- Secretaries. Ms. Greenlee, as you have heard, I am not the only person in this room who is disappointed by the HHS announcement that you will not be moving forward at this time to implement the CLASS program. It has been 18 months since the Affordable Care Act was passed, and we were really hoping that this part of the legislation would allow the Nation to begin addressing the burden of long-term care. That is not the case. But I hope that we can at least say that the amount of time and the money that we have spent on CLASS to date has not been wasted.

And we have had a lot of questions about how much money you have spent, and you are supposed to supply documents on even the staples that you bought and all of that. So can you tell us a bit about the expenses? And in particular, can you assure this committee that you have used those funds in a manner that is consistent with the statute

and in a way that has advanced our understanding of long-term care?

Ms. Greenlee. Yes. I am certainly willing to provide the information that Congressman Burgess has requested. We have been prudent and practical, very responsible, and also done at the same time a very thorough analysis of the law that we think will help advance the conversation about how a voluntary insurance program could work, what the problems are with the law that we have seen. We have learned a lot, and have gained from this investment in a positive way.

Dr. Christensen. That is what I thought. Because just the information that you have gathered going through this has been, I am sure, worth the expenditure. What are some of the lessons that we have learned as we have sought the solutions to the Nation's long-term care problems? Are we back at square one, or can we build on the CLASS framework and the work and the analyses that you have done?

Ms. Greenlee. I don't think we are back at square one. I think we can continue to move from here. There is much to be learned by looking at the report as well as the different modeling exercises. There are real critical needs that this program is meant to address. And as we move forward, one of the reasons we are suggesting that we have as broad a conversation as possible is that the CLASS program would serve a lot of different kind of people. And we want to make sure that we as a Nation cover the waterfront in terms of having solutions and options for all of those individuals.

Dr. Christensen. Thanks. Mr. Chairman, the HHS announced that last week was not the end of this story. And I would say that to my

colleagues as well. The burden of long-term care, as was said very clearly by our colleague Congressman Kennedy, it is not going to go away. Millions of Americans will need long-term care, and we have to figure out a way to help them. So I wish the CLASS Act had not been the final answer. But to the extent it is not, we need to work as a committee and as a Congress to find out how to provide and pay for long-term care.

And I just want to add that one of the reasons that I am so much in support of the CLASS Act is as a family physician, we have the opportunity to take care of patients in many different ways. And one of those is when they are chronically disabled or at end of life. And I always encourage my patients to stay at home if that was at all possible. And the benefits of that to the individual who was sick, to be able to be cared for in familiar surroundings with their family, and with the proper support, the family really got a lot of satisfaction out of taking care of their loved ones at home. And so I am looking forward to working with the Department and my colleagues to find a way forward. Thank you. I yield back the balance of my time.

Mr. Pitts. The chair thanks the gentlelady, recognizes the gentleman from Georgia, Dr. Gingrey, for 5 minutes for questioning.

Dr. Gingrey. Mr. Chairman, thank you. And my colleague, Dr. Donna Christensen's line of questioning and comments kind of segues into what I am going to say. I want to, at the outset, tell you that I am for closing this office down and not leaving a remnant, a crack in the door, if you will. And I am going to ask you a few questions

to show you why I feel that way. Secretary Glied, you testified earlier that your office had conducted studies in 2009 that were consistent with the CBO's findings that the program was actuarially sound. Were those studies modeled just on the first 10 years of the program, or were there any studies you modeled on, say, the 50- or 75-year estimates?

Ms. Glied. We did not have a model at that time that could estimate fiscal solvency over a 75-year period. We only had a model that could calculate premiums. That is the information that we have provided to you. So what we were able to do was calculate premiums based on different takeup rates. And what was reassuring to us at that time was that we got premiums that were very similar to the ones that CBO was reporting. We did not have a full actuarial solvency model.

Dr. Gingrey. Not modeled out 75 years. Because Richard Frank, the deputy assistant for planning and evaluation, I guess someone who works under you, stated publicly that we in the Department have modeled CLASS extensively, and we are entirely, entirely persuaded that financial solvency over the 75-year period can be maintained. That is a direct quote from him.

Ms. Glied. Correct. And I think that he was -- I was not there yet, but I think that what he was saying was that the CBO had run a very similar model with the 75-year projection and came up with very similar premiums so that the consistency --

Dr. Gingrey. Well, if that modeling is available, and you didn't see it, but I would very much appreciate it if you would get that to

this Member or Members on both sides of the aisle.

Ms. Glied. We provided those to you, they are actually in your report.

Dr. Gingrey. Let me go to the second question. IOS, Immediate Office of Secretary of HHS, cited in the working group report as stating that Senator Kennedy's staffer, and this is a quote, "had CBO do lots and lots of runs out to 50 years to ascertain solvency. She is going to send to me to forward on." Have either of you ever seen such a report from CBO on the 50-year solvency of the CLASS program?

Ms. Greenlee. I have not.

Ms. Glied. No.

Dr. Gingrey. Are you aware that any such CBO report ever existed? Because this is a quote from a senior staffer in Senator Kennedy's office in regard to seeing those studies, those models.

Ms. Glied. It is quite possible they existed. I wasn't at HHS at the time, so I do not see them.

Dr. Gingrey. Okay. Secretary Greenlee, you stated in testimony before this committee on March 17, 2011, that we should not repeal CLASS until we have made every effort to reform the program. Just this month, HHS concluded in a report that the administration has, quote, "not identified a way to make CLASS work at this time." In light of this announcement, will HHS now support repeal of the CLASS program?

Ms. Greenlee. Congressman Gingrey, we feel that repealing CLASS would serve no useful purpose at this point.

Dr. Gingrey. Would you say that again?

Ms. Greenlee. We feel that repealing the law would serve no useful purpose at this point. We have stated publicly we do not intend to implement, and have no plans to move forward on implementation.

Dr. Gingrey. Let me then suggest a useful purpose to you that you may want to take under consideration. Section 3203 of the Patient Protection and Affordable Care Act requires the Secretary to designate a benefit plan as the CLASS Independence Benefit Plan no later than October 1, 2012. That is a year from now. Absent repeal, if the Secretary cannot find a way to make CLASS work by October 1, 2012, I am concerned that some private citizen or interest group, for instance, one very vocal in the press lately, could sue the Secretary for not following the statute.

Has the Secretary of Health and Human Services created any contingency plans in case she can not make CLASS solvent and is sued for not following the statute? Now, before you answer that, obviously if we repeal CLASS, that would not be a problem.

Ms. Greenlee. As you know, the statute requires that the Secretary determine that the program could be solvent over 75 years. She can not make that determination, so she will not be moving forward. So even though the law states the October 2012 date, she does not have a way to achieve that, and will not be working to implement.

Dr. Gingrey. That is my point, Madam Secretary. You are saying exactly what I said, that she can't do it. So why leave this statute on the books there just almost begging someone to come forward and sue the Department and the Federal Government for not providing something

that we have a law that has been passed and has been pledged by a date certain? It would be a lot safer to just go ahead and have a very clean like 1173, Dr. Boustany's bill, and repeal the CLASS Act.

Ms. Greenlee. Again, I don't think that serves a helpful purpose. We need to talk with people about the broader issue instead of focusing on repealing the law.

Dr. Gingrey. I know my time has expired. Mr. Chairman, thank you for your patience.

Mr. Pitts. The chair thanks the gentleman. And recognizes the gentlelady from Illinois, Ms. Schakowsky, for 5 minutes for questions.

Ms. Schakowsky. Thank you, Mr. Chairman. To me this conversation is so incredibly unrelated to the real lives of real Americans. As former Representative Kennedy said, repealing the CLASS Act doesn't mean that the widespread financial and physical and emotional suffering of older and disabled Americans goes away. Somebody is going to pay. And we can talk about actuarial tables, and we can talk about staples and staplers all we want to, but it seems to me that we would be a heck of a lot better talking about how we address this problem. And if we want to talk about actuaries, by the way, we can go back to 2003 when the Republicans shut down the actuary when we were talking about the prescription drug bill, and actually said if the actuary puts out the costs that he has actually estimated for the program, there were threats that were made on that person. Some of us actually remember that. But I actually want to quote some of the conversation that I think would be more productive of some of our

Members.

Chairman Pitts, you said, I believe we can all agree that we do have a serious long-term care problem in this country, as the costs are driving people into bankruptcy and weighing down the Medicaid program. We do need to address this issue. Chairman Emeritus Barton said long-term care is a serious issue. I believe myself and all Republicans are very willing to support some sort of program for long-term care, but it must be one which is sustainable and fiscally responsible. And Congressman Shimkus, my colleague from Illinois said, but if we would like to work on Medicaid dollars following the individual and not incentivizing institutional care, and freeing up the disabled to choose the areas where they want to live and how they want to live, I am willing to work with you. That is the kind of conversation that we need to have. Because the status quo, does it not, Ms. Greenlee, say that we end up with the most expensive possible way to fund long-term care, and as you point out, the least desirable for most Americans?

Ms. Greenlee. That is correct. If people have only the choice of nursing home care, it is the most expensive setting, and their least preferred setting. We need to explore all the options.

Ms. Schakowsky. In the time I have remaining, my understanding, and I think you just mentioned it about the 75-year solvency that you want, so are private long-term care insurance companies required to meet the same standards that the CLASS Act required? Are they required to be actuarially sound and financially solvent for 75 years to ensure

that those who pay for this insurance and who count on it most have access to long-term care services when they need them? The way I see it, so in other words, in the status quo now, if you have long-term care insurance, you pay all the way, and then somehow the company disappears, there is no recourse. Am I right about that?

Ms. Greenlee. Congresswoman, of course the rate setting for the private long-term care insurers would be handled at the State level. So I can't answer your question specifically with regard to the length of time. You mentioned 75 years. Certainly as a former insurance regulator, I can tell you they are required, when they seek approval, to demonstrate that their models are actuarially sound. I can't give you the specific State by State or the length of time.

Ms. Schakowsky. And is that by law?

Ms. Greenlee. Yes, it would be the individual State laws.

Ms. Schakowsky. Okay. It seems to me that we have, at hand, a number of things that are in the CLASS Act that we don't want to repeal it and throw out every single piece of the CLASS Act, and that we need to continue to have this conversation. How do we do that if the CLASS Act is not implemented? How do we go forward?

Ms. Greenlee. I believe that, as I mentioned to Congresswoman Christensen, we have learned a lot from the investment that we have made. And now is the best opportunity that we have possible to talk to as many different people from every sector, to share with what we have learned, and figure out if there is more solution that people want to explore from Congress with CLASS, if there is other kinds of

proposals that would meet this need. That this is the time to broaden our approach rather than to narrow it. The need continues.

Ms. Schakowsky. Let me just say from 1985 to 1990, I was the director of the Illinois State Council of Senior Citizens. And the number one issue that we were dealing with then was long-term care and the failure of our country to have any kind of policy that made it possible for people to live their lives in dignity and get the kind of care that they needed, persons with disabilities and all of those of us who are going to age, we hope. And I think the time is long past that we do that. Thank you.

Mr. Pitts. The chair thanks the gentlelady, recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes for questions.

Mr. Latta. Thank you, Mr. Chairman. And thank you very much for appearing before us today. I really appreciate you being here and hearing your testimony today. If I could just go back to our last hearing, one of the things that I had asked, and this was a statement that was in your testimony at that time, you said President Obama and Secretary Sebelius have acknowledged the CLASS program needs improvement. Many of the changes proposed to the Senate health reform bill that would have improved the CLASS program's financial stability were not included in the final legislation reflected in the Congressional Budget Office assumptions that scored the CLASS program. If I could, I heard you a little bit earlier, if I understood it correctly, that about \$5 million has been spent on the CLASS to date. Is that correct?

Ms. Greenlee. That is correct.

Mr. Latta. From the time of our last hearing until, I believe it was October 14, do you have any idea how much of that \$5 million was spent in that period of time?

Ms. Greenlee. I would have to go back and break it down. Our expenses, they were primarily staffing.

Mr. Latta. But it is still \$5 million of taxpayers' money. What was the date that it was actually determined that the CLASS Act could not go forward?

Ms. Greenlee. I don't have a specific date. The final report was October 14. So it was --

Mr. Latta. Wasn't there something before that that somebody had to make a determination before the 14th? Before October 14, didn't there have to be a determination?

Ms. Greenlee. We received the final report from Mr. Yee on September 20, began working on the comprehensive Department report, including finalizing the legal analysis. I can't give you a specific date, but because we produced the report on the 14th of October, I would say earlier this month, the Secretary made her final decision so we could prepare a report to present to you.

Mr. Latta. Okay. Let me ask this either to either one of you. On page 14 of your report you say that HHS contractor ARC began preliminary modeling of CLASS in late 2009. Did the CBO see the preliminary work from ARC?

Ms. Greenlee. I am sorry, would you just said that again?

Mr. Latta. Did the CBO see the preliminary work of your contractor ARC, A-R-C?

Ms. Glied. I was not there, but I doubt it. I don't know. I can get back to you. I don't think so.

Mr. Latta. You say you don't think they saw it?

Ms. Glied. It would be unlikely that they would, but I wasn't there, so I could get back to you on that.

Mr. Latta. Okay. If I could find that out, because my question would be why didn't CBO see the report? Okay. Let me just go on. Following passage of the ACA, ARC began to systematically review previous assumptions and premium calculations for accuracy, and made major revisions to the model. Question. Whose previous assumptions and premium calculations were reviewed?

Ms. Glied. So ARC had a long-term care insurance model that they had been using for other purposes. And I think, I am not actually sure exactly what purpose, some State programs, I believe. And we didn't have any model in house, so we asked them if we could use that model, they could use that model to do some preliminary technical assistance for us.

Mr. Latta. Okay. If I may, did they find any problems as they were doing their calculations, do you know?

Ms. Glied. So at the end of the day -- they revised their model comprehensively. And at the end of the day last June, we had a technical expert panel that reviewed both their model and a separately contracted model with Avalere Health, and actually pronounced that the

parameters were pretty good, in their view.

Mr. Latta. Let me go on, if I may. On page 12 of your report you state, that by April 2010, it became clear that existing actuarial models that had been used before enactment of the CLASS Act would be insufficient to provide CLASS estimates, and new models would have to be developed. Which models were insufficient?

Ms. Glied. At that point we only had the ARC model. And I think we had the ARC model --

Mr. Latta. I am sorry, could you say that again, please? Which model?

Ms. Glied. At that point we had the ARC model. And that was the one that needed revision. I am not sure, I think Avalere might have done something already. I am not sure.

Mr. Latta. Do you know why they were insufficient?

Ms. Glied. Well, one of the reasons that we have come to realize is the challenge of a program like CLASS is actually in the details of the program. And those models didn't have enough granularity to capture all the details of the program.

Mr. Latta. Let me ask this: Did anyone warn the Secretary that the models were insufficient? Was the Secretary brought into the loop?

Ms. Glied. We were doing modeling. I don't know that we ever told her anything -- I mean, modeling is an iterative process. You are always improving the models. The actuary's office improves their models all the time. We were doing it too. I don't think it would have been a special conversation.

Mr. Latta. So what you are saying is she was not informed of this?

Ms. Glied. There wasn't some fatal flaw in the model. We were improving the model consistently over time. I don't think we briefed her on that.

Mr. Latta. Thank you. Mr. Chairman, my time has expired, and I yield back.

Mr. Pitts. The chair thanks the gentleman, and recognizes the gentlelady from Florida, Ms. Castor, for 5 minutes.

Ms. Castor. Thank you, Mr. Chairman. And thank you both for being here today. And I would really like to urge my colleagues to use this as an opportunity for all of us to work together to tackle this very daunting challenge of how we can become smarter in addressing the long-term care needs of American families. Our goal really should be to work together to design better solutions, and not give up. I mean, we have this, under the CLASS Act, this voluntary initiative, not based on taxpayer dollars, but on the health care dollars of American families. It faces some challenges. The Department doesn't have all the authority it needs to make it work.

Fortunately, we have leaders like Frank Pallone and John Dingell who have been at this for some time, and I can tell from their remarks today they are not going to let us give up. And really that should be a call for all of us to work together, because the demographics are daunting, particularly coming from the State of Florida.

I am going to borrow Patrick Kennedy's language of a demographic tsunami because here comes the baby boom generation. And if we don't

get in front of this, he is absolutely right, we are going to be paying on the back end on Medicaid. And that is not entirely smart. In the State of Florida alone right now, we already have \$3 billion of our State budget that goes to long-term care. And we have heard a lot of testimony today, and I know my colleagues appreciate this, that that skilled nursing is very expensive. It is necessary for many who are disabled who need that. But let's turn this system around and begin to invest maybe a portion of those dollars, and I know we have had testimony that we are doing more on in-home care and providing families with the tools they need so that their family members can stay in the home at a much more cost-effective rate. But we can't just play ostrich on this and turn it into a political football and say this isn't going to be a problem. We have got to work together constructively to address it.

And just, if we can, come up here in the near term with some other plan of action to give families this modest bridge to be able to live their lives in dignity when they are disabled or elderly, that would be the best-case scenario. But I am concerned that it has been turned into a political football because some of my Republican colleagues on the committee released a report last month that made some very alarming allegations, charging that the administration ignored and silenced the HHS actuary when he raised concerns about the financial viability of the CLASS program. And Ms. Greenlee, I would like to provide you with an opportunity to address those allegations head on.

In the report that was released in September, the Republicans

published a series of internal CMS emails describing concerns that the actuary and other CMS staff had about the financial sustainability of the CLASS program as it was being drafted. But that didn't strike me as unusual in the legislative process. Is it unusual for these kind of concerns to arise as legislation is being drafted and debated?

Ms. Greenlee. Congresswoman, as Secretary Glied and I have testified, we were, neither one, at the Department at the time the bill was being considered. But the work that you are referring to did occur in the Department section that she leads. So if I could have her respond to kind of the pre-decisional pre-passage issue.

Ms. Glied. Mr. Foster's actuarial analyses were actually publicly released. They were posted on HHS's own Web site. They were widely reported in the news media. They were discussed in Congress. He was in no way silenced.

Ms. Castor. And is it unusual, you all have been around the legislative process for many years, is it unusual that during the debate over legislation, there are discussions over financial viability of certain programs and that changes are made?

Ms. Glied. Not at all. There is frequently robust and vigorous debate around programs. And I think as the Congresswoman from Illinois pointed out, in some cases, especially with novel programs, the CMS actuary and CBO can have very, very different estimates, which was the case in this situation as well, where the CMS actuary had one set of assumptions, and the assumptions at CBO were different. That is not at all unusual.

Ms. Castor. Did you all review that report that my Republican colleagues sent out? It struck me that there were a lot of unfair allegations. I think they understand the legislative process just as well as we all do, and they understand that legislation changes as it is drafted. Do you have any other comments on that report?

Ms. Glied. So I think it is also important to note that the CMS actuary released those reports over time, and there were changes made to the CLASS Act over time in response to his concerns.

Ms. Castor. Ms. Greenlee?

Ms. Greenlee. No, nothing further.

Ms. Castor. Okay. Well, I just wanted to allow you all an opportunity to address that. Because, you know, in the legislative process changes are made, updates, financial reviews are a natural part of the legislative process. And I thought their allegations that something untoward was happening because changes were being made simply was not accurate.

And again, I really want to urge everyone to work together to address the real challenges facing every family across America, and urge us all to develop some solutions for the elderly, folks with Alzheimer's, the disabled, and how they are cared for in a dignified, cost-effective manner. Thank you.

Mr. Stearns. [Presiding.] Thank the gentlelady.

Mr. Guthrie, the gentleman from Kentucky, is recognized for 5 minutes.

Mr. Guthrie. Thank you, Mr. Chairman. Thank you for coming today. It has been good testimony, I think. I have enjoyed listening

and trying to learn more, because I do think we have a long-term care issue that we are going to have to address this in country, and what it is doing to families. But one thing first, Secretary Glied, when you were talking with Mr. Green from Texas, he went through a list of benefits. And I think I heard, I am not sure that I heard, but I think it was like the policy, you are 26, preexisting conditions for children, and the end of the caps, that that hasn't been reflected in premiums? Did you say premiums haven't increased?

Ms. Glied. I don't think I spoke to premiums at all.

Mr. Guthrie. He said something about WalMart and premiums. That is what I wanted to clarify, that those mandated benefits, you didn't say they haven't reflected premium increases in the private market. I thought I heard him say something about WalMart's premiums.

Ms. Glied. I don't think I said anything about that.

Mr. Guthrie. Okay. Okay. I just wanted to clarify then. All right. So the issue isn't whether or not we want people to have long-term care insurance, it is the issue of how you pay for it. And that was concerning if you look at different things in the health care bill, that people were paying into this program for 5 years, and that was just going to offset other costs in the health care bill before it was going to be recouped on the back end.

And so my concern, as you look into the third decade, this is just kind of overall, it showed that this was going to be an unsustainable program, which I appreciate you all making that declaration and saying we can't go further with the way that we have. I think that was the

right way to go. Because I am 47, my daughter is 18, she will be 48 in 30 years. And 30 years, if you look at all the CBO projections if we don't change, is when 100 percent of Federal revenues will be Social Security, Medicare, and Medicaid.

And so if you are putting a new policy in place, which you are not doing, I understand that would be unsustainable, that was the concern that a lot of us were raising. It is not that we are gleeful that we are not going to have long-term care insurance. And that is not the case at all. But if you create a program that people pay into that is not sustainable, and they believe they are going to get a benefit in the end, and then we are here 30 years from now, or somebody that follows me is trying to make it balance and trying to take benefits away from people with plans, we do have to come up with a way that is sustainable that people know the money is going to be there when they get there. Because I think Secretary Greenlee, you said that you were in Kansas? Is that where you were the insurance commissioner?

Ms. Greenlee. The Secretary was the insurance commissioner. I was her general counsel.

Mr. Guthrie. Okay. When you were in the insurance commissioner's office, that you make sure plans are sustainable before you approve a private plan. And I think that is probably what we got into with this, is that unless you can mandate people purchase at a young age, all the different things, there is no way to make it affordable. Or it didn't appear like you could come up with a premium that you would consider affordable, given the conditions that you had.

That is kind of what drove the final decision?

Ms. Greenlee. Yes. There were three factors at play that we kept circling as we made the final decision: An actuarially solvent program or plan that we could market so that there would be takeup rate that complied with the statute that was passed and the intent of Congress. And we needed all three of those factors to line up together in order to be able to move forward, and could not find the right alignment of those three.

Mr. Guthrie. But when you mandate benefits -- I am from Kentucky, and was in the general assembly. And we always wrestled with benefit mandates to the insurance policies, health insurance particularly. And as you allow more coverage, which everybody wanted, you also drove up the price, which left more uninsured. And so I think you saw -- and you are an expert at this, in wrestling with how to come up with the proper benefits versus the costs, that that is another thing that, at least from my perspective and some of the health care benefit -- the laws with benefits, one of the things we mentioned is that is going to drive more and more people, or make health insurance more unaffordable. Because I do think premiums -- I am not sure what he said about WalMart. I am sorry if I implied that you said that. But I thought I heard a discussion with what he said about WalMart's premiums.

But that is the problem that we look at. And it is what Representative Kennedy said, who is going to pay in the end? And it is a question of who is going to pay. And as we drive up insurance

policy rates, that is my concern. More people are going to fall out of the market, therefore they are they are going to end up in the exchange, and it is going to be a more expensive bill on them than we think. But you all have had a forthright conversation. I appreciate you coming here and sharing what you have done today. I have 20 seconds. Mr. Burgess, you are looking for 20 seconds?

Mr. Stearns. Dr. Burgess, we are going to do a second round here.

Mr. Guthrie. I will yield back.

Mr. Stearns. You will yield back. Okay. We will keep moving Mr. Griffith from Virginia is recognized for 5 minutes.

Mr. Griffith. Thank you, Mr. Chairman. Your report says on page 12, "By April 2010 it became clear that existing actuarial models that had been used before enactment of the CLASS Act would be insufficient to provide CLASS estimates, and new models would have to be developed." I am guessing that, based on the report, that the new models would be all of the things other than the basic model. Is that correct? Looking at the report, there were like seven or eight different models that were looked at. Is that not correct?

Ms. Glied. I just want to clarify two things. The word "model" is used in two different ways in the report. And I think the way that you are referring to it is talking about an actuarial model, which is like a mechanical Excel spreadsheet sort of thing, whereas the plan options, those were developed over the full 18 months.

Mr. Griffith. All right. I guess what I am trying to get at is that you all developed over the 18 months you spent a sum of money,

what did I hear, about \$5 million working on putting together these various options. And I heard you say earlier that the full, and I am speaking to Secretary Greenlee, that the full legal opinion wasn't known until fairly recently. I guess I am wondering why you would pursue models, referring to options, why you would pursue options that you hadn't had fully cleared as to whether or not those options would be legal under the bill?

Ms. Greenlee. I had addressed this briefly in a prior question, that as the Assistant Secretary said, we had to build the models based on the law that actually passed, not on iterations that were there before. And after those were built, we started with the basic design of the law. And then knew, because those premiums were so high, that we would need to make adjustments.

As we began surfacing ideas of possible adjustments, we did engage with counsel internally to talk to them about what our ideas were, and continued to talk to them until the final product. The final product is the culmination of all of those different ideas pulled together in one place for final analysis. But we did need to consult with counsel about things that were very important to us. What is absolutely prohibited? No underwriting. It must be cash. Some of those things are well known. Where might we have some flexibility or discretion so we could additional work. It was a dynamic process that involved various experts within the Department to come to a final conclusion, and over a course of time.

Mr. Griffith. But at least some of those things, I know that some

of them are questionable, but some of those things, in reading the report, legal counsel says, well, there is no authority at all for the Secretary to do that. I am just wondering why that some of those options would have been pursued even for a brief period of time if there was no legal basis in the statute for them.

Ms. Glied. I mean both of these things had to happen. We had to figure out whether it would be solvent, and we had to figure out whether it was legal. So sometimes we figured out whether it was legal before we figured out whether it was solvent, and sometimes we figured out whether it was solvent before we figured out whether it was legal. Both of those tasks had to be completed. And so I am not sure why it would have mattered which way we went at it.

Mr. Griffith. Here is why it matters to me. If it is not legal and you make that determination first, then you don't spend the money finding out whether they are solvent.

Ms. Glied. Once we built the model -- it costs money to build the model, which allows to you test many different things. Once you have the model, it costs almost nothing to test a different option. So it makes fiscal sense to do it in the direction we did it.

Mr. Griffith. All right. Having asked that, earlier -- I forget which one of you said it, and I apologize for that -- you said that you didn't have some of the tools that were available to the private sector. What tools that are available to the private sector did you not have that you would have liked to have had?

Ms. Greenlee. I can respond. I can't respond in saying I would

have liked to have had them. I mean, the primary difference that is generally known is that the private sector uses underwriting, which was not available to this program. They have a mechanism, by doing so, to address adverse selection that was not available as we developed the CLASS program. So we needed to look for other types of options to deal with adverse selection. And that is reflected in the various ideas that we have about different models. That is, and there may be others, that is the clear distinction between what the private market can do and what we could not.

Mr. Griffith. All right. And because of that, doesn't it make some sense to go with the option that the doctor mentioned earlier in regard to having private pay long-term care be paid for with pretax dollars or allowed to use your medical account? Doesn't that make sense? Because it looks like even though the products are substantially different, and I understand that, it looks like that the government can't compete with the private sector because you have to take on so many people. I understand that. But wouldn't it make sense then to enhance the ability of the private sector?

Ms. Greenlee. As we move forward with more conversations and pull insurers in, I think a component of that is, with support, what could the private market do? But because they use these mechanisms, like underwriting, they will never be able to, with that mechanism, serve all of the people that CLASS was designed to serve. So not everyone will be taken care of. I don't know better how to say that. So we need to move forward on multiple options, coming back to who are

we trying to serve and what is the best solution for those individuals. It may not be one thing for every single person. There may need to be different options.

Mr. Griffith. I yield back.

Mr. Stearns. I thank the gentleman. Dr. Cassidy is recognized for 5 minutes.

Dr. Cassidy. Thank you, Mr. Chairman. Really the question, one, everybody agrees we need to come up with a solution for the problem of long-term care. I don't think any of us argue that. But as a physician who works in a public hospital caring for the uninsured on the receiving end of poorly planned programs enacted by posturing politicians, a nice alliteration there, I am aware if we don't come up with something sustainable, we end up worse off.

Now, clearly, this was not sustainable. Secretary Sebelius's letter said that you ended up testing premiums of \$3,000 a month, and still clearly it was not sustainable if you are looking at that. The question before us isn't whether or not we need to do something about long-term care. We all agree. The question before us is whether or not the American people were almost duped into thinking that this was \$70 billion of revenue that folks, reasonable folks would have assumed not. Now, that is the question before this committee. Now, I note -- and by the way, this is more than just a partisan issue. I am looking here at a book, Fresh Medicine, by Phil Bredesen, Democratic former Governor of Tennessee, which goes on to say in our government it is as important to have honest work presented to the American people.

He goes on to say the CLASS Act is a great example of how that was not done. Now, this is a Democrat casting aspersions upon this. Now, that said, it is clear, as you mentioned, before the CLASS Act was passed that there were concerns. I note that Ezra Klein recently -- Ezra Klein, the liberal -- recently had a blog in which he said the administration was concerned that the CLASS Act was not fiscally sustainable. As Secretary Sebelius points out in her testimony, or in her letter, even before PPACA was passed, there was concerns regarding the CLASS Act's fiscal responsibility. You point out that actuaries were there. Frankly, the fact that Klein is saying that it was internal debate in the administration and the Secretary is acknowledging concerns, Paul Ryan pointed it out in February of 2010, why did the administration insist that this was fiscally responsible? Why does Phil Bredesen have to write a passage in his book saying this is a great example of how the American people were deceived in terms of how an important bill was financed?

Ms. Glied. Sir, we had every reason to believe it was fiscally responsible when we moved forward. And indeed, it was fiscally responsible. After we did our analysis --

Dr. Cassidy. Wait a second. We just heard from your associate that without the ability to medically underwrite, that inevitably there would be anti-selection, as Mr. Foster said, and that you would end up with something without an individual mandate would not be sustainable. Now, this was a first-pass read. You are telling me, you are telling me now that the very construct of it meant that it was

unsustainable. So tell me why, in retrospect, it was sustainable.

Ms. Glied. Actually, if you -- first of all, there was considerable differences of opinion at the time that the legislation passed about whether it was possible to make this model work. But at the same time --

Dr. Cassidy. Let me ask you, your colleague, I don't mean to interrupt, but we have kind of been covering this, and yet when I hear your testimony, that without the ability to have an individual mandate and without the ability to have a medical underwriting, it is a nonsustainable model.

Ms. Glied. Actually, our report shows that there are sustainable models that don't have medical underwriting and that don't have an individual mandate.

Dr. Cassidy. Okay. What I read from Sebelius is that you had to test premiums up to \$3,000 a month.

Ms. Glied. That was not one of those, but there are eight options in there.

Dr. Cassidy. And that the only way it would be sustainable if premiums were less than \$100 a month, I am reading your material, and yet it could not be done for anything less than \$300 a month.

Ms. Glied. That is not the case, sir. If you read our report, you can see that some of those options would have been actuarially sustainable, but they were not viewed as being -- the legal counsel informed us they were not consistent with the statute. That is not the same thing as saying that it would be impossible to do this.

Dr. Cassidy. Now, Mr. Foster apparently knew this before the bill was passed. The Moran report said the only way it worked basically is with an individual mandate. Others were pointing it out. It was kind of a critical issue to come to the answer that was apparent to so many so long after the fact. Again, going back to what Bredesen says, this really is a concern regarding how honest we are with the American people.

Ms. Glied. As Joe Antos testified before this committee --

Dr. Cassidy. I am sorry, I didn't hear you.

Ms. Glied. Joe Antos testified before this committee last March, and he pointed out the difference between the CBO and CMS estimates of the cost of this bill. And he noted that that was a good reflection of the tremendous uncertainty --

Dr. Cassidy. CBO actually said, though, it was only sustainable in the first 10-year window because you didn't pay -- you collected premiums for the first 5 years. And so that was clear that their \$70 billion-plus was only because they could only grade for the first 10 years. It is a little disingenuous to suggest that they thought that long term that was a viable model.

Ms. Glied. They made a projection that it was -- I believe they made a projection it was fiscally sustainable.

Dr. Cassidy. No, they did not. Would you show me that? I don't mean to be rude, but please, if you can show that to me, I don't see evidence for that.

Ms. Glied. I will have to follow up, because I doesn't have the

CBO analysis memorized.

Dr. Cassidy. Let me ask one more thing. I am out of time. I apologize. Thank you very much. I didn't mean to be hostile, but it is such an important issue, and again, the American people frankly do feel duped. I yield back.

Mr. Stearns. The gentleman yields back. Mr. Bilbray from California is recognized for 5 minutes.

Mr. Bilbray. Thank you, Mr. Chairman. Mr. Chairman, let me just say this to my colleagues on both sides of the aisle. I hope that we address this issue and remember the bigger picture here. As somebody who just went through 25 years of home services to a grandparent, and then my mother who just passed away, I think we have got to remember that people like Mr. Pitts talks about the family unit being essential in this Nation, we talk about it like it is an abstract.

Here is a situation where family units really do matter. And the breakdown in those family units are creating crises not just for the individuals in those families, but also the community at large. And so maybe when we talk about how important the family is, we remember it is just not an abstract, it is dollars and cents and quality of life. And maybe we ought to be reminding all of us that we have just as much responsibility to take care of our mother and father in their later years as they had to take care of us in our early years. And we approach that as being some strange antiquated concept. And that is why I always remember be nice to your children, they are going to choose your retirement home. And hopefully, they won't choose a retirement home,

they will allow you to live like I did.

I moved in with my -- actually, my wife and I moved in to take care of my mother as part of a not only a responsibility, but a privilege of being a child. That aside, addressing that, Ms. Greenlee, don't we have the answer to this problem right in front of us? And that is all we have to do, rather than suspend the program, is go back to the basic assumption that all we have to do is mandate that every able-bodied young person in this country pays \$100 to \$200 a month and we can finance this program, be able to guarantee the program within 75 years?

Ms. Greenlee. Congressman, if I could make two points. What you described with your family is actually very typical. In addition to running a CLASS program, of course, as the Assistant Secretary, I know that 80 percent of long-term care is still provided by family members. We did not have the option, it was clear to us in this law, that mandates for individuals or employers were not options.

Mr. Bilbray. But Congress does have the option of revisiting, if we maintain this program and not put it on ice, if we do not eliminate it, Congress does have the option to go back and revisit this and modify the law to allow or to require that every able-bodied person in the United States be required to contribute a portion of their salary, \$100 to \$200, to guarantee this program will be available whenever they need it.

Ms. Greenlee. Well, of course, if Congress passes a law Congress can revise the law. I don't want to make a commitment on any particular

revisions that you may consider. That is why I believe we need to all keep talking. It was clear to us that a mandate was not an option, and it is not something that we have developed or pursued in any way.

Mr. Bilbray. Wait a minute. When you said that, when you say that it was not an option, the issue was the law didn't allow that option. But I will allow you to jump in on this. Then that was the law, the law limited you there. Why wasn't that identified as being the Achilles heel in this before we were asked to vote on this legislation, before we were asked to assume this huge amount of revenue generation? Why wasn't that up front that this was a desperately needed mandate if you were going to have the system work?

RPTS THOMAS

DCMN ROSEN

[12:00 p.m.]

Ms. Greenlee. As we both testified, we weren't at the Department when the debate was happening. In the conversation about adverse selection the reason why that conversation was so important, regardless of perspective, is that this is a voluntary program. So adverse selection is different. You must overcome it with large participation, how to achieve large participation if there is no mandate. All of those components work together. They can't be separated.

Mr. Bilbray. I don't understand, though, the big picture of the law. This is one small section, but it was a huge part of the savings. The rest of the bill was built on the assumption that if you mandate every able-bodied person in the United States to participate in a program, there will be such huge savings, and now -- and then we were sold that this small little side one was not going to have the mandate that the rest of the program had and was going to be 50 percent of the savings. That doesn't sound like somebody really doesn't follow a continuum of thought and reason. It's sort of going over that the great secret of the Affordable Care Act was mandate everybody had to play and participate and pay in except for a part that was 50 percent of the savings.

Ms. Greenlee. It was voluntary. That is correct. I can't be

more responsive than that. That's different from other sections of the law. This law always was designed to be a voluntary program.

Mr. Bilbray. Do you think that that was a reason why it had to be put on ice is because you don't have the mandatory revenue flow to be able to support the long-term commitment.

Ms. Greenlee. With the voluntary program, the key to participation is having a price that will sell in the market so you can get high participation. And that's the way to achieve the law of large numbers.

Mr. Bilbray. Wouldn't a mandate eliminate the problem if we just mandate that able-bodied people had to pay into a requirement and eliminate the voluntary program?

Ms. Greenlee. I can't take a position on a specific change because we've not identified specific changes. You can certainly go back and look at the problems that we have identified, and then have a conversation about which of those might be the most approachable, but we have not done that. We knew that this was not something we could pursue.

Mr. Bilbray. Thank you very much, Mr. Chairman. I would just point out there is an answer here. It is an answer that nobody wants to talk about. And we should be up front. The mandate could avoid this problem, but it also eliminates the selling point for the program. I yield back.

Mr. Stearns. I thank the gentleman, and I would say to our witnesses we have a few more people with questions. We appreciate your

forbearance here. So we are going to go a second round. There is a few of us who would like to ask questions. So we should be through shortly. So I will start with my questions.

Secretary Glied, and I guess also Ms. Greenlee, the question is, our investigative reports from September 15 uncovered e-mails in which the Health and Human Service staff discussed the possibility of using employer mandates to make certain employers offer enrollment in the class program. Is that an option you are still considering, yes, or no.

Ms. Greenlee. No. It was never considered.

Mr. Stearns. Dr. Glied?

Ms. Glied. No.

Mr. Stearns. Was this option discussed among the people modeling class and drafting its regulations ever?

Ms. Greenlee. No. In the draft regulation, it is always very clear that this was an option for employers and employees both. We never pursued a different path.

Mr. Stearns. And during and after the bill passed, you never discussed that? Yes or no?

Ms. Greenlee. No.

Mr. Stearns. Dr. Glied?

Ms. Glied. I never discussed it.

Mr. Stearns. You never discussed it. Did your staff ever discuss it?

Ms. Greenlee. I am not aware of any discussion that took place.

I think there was a working group. I don't know what they talked about.

Mr. Stearns. Did Secretary Sebelius ever talk to you or do you know if she understood that discussing employer mandate as an option for the CLASS program?

Ms. Glied. I don't believe she did.

Mr. Stearns. You say no?

Ms. Greenlee. I have no other reason otherwise.

Mr. Stearns. Let me read an email to you that we actually have. It is in the book here. HHS explain this in December 2009. One possible alternative is to move to a mandated offer approach where employers offer a certain size, example, 50 employees, would be required to offer enrollment. Had you ever heard of that?

Ms. Glied. Before I saw that that email went to you, I hadn't seen it at any other time, but I know that many, many options were considered as a robust policy.

Mr. Stearns. Many options is one thing. But this is a distinct departure that I don't think many Americans don't realize --

Ms. Glied. But we didn't pursue it, Mr. Stearns.

Mr. Stearns. No, but I have an email that it is discussed here in an email.

Ms. Glied. Mr. Stearns, we discuss all sorts of things all the time.

Mr. Stearns. So your position is this morning that this was never, after the bill passed, it was never discussed in your opinion?

Ms. Glied. In my opinion, it was not discussed after the bill

passed. The bill did not include a provision for an employer mandate.

Mr. Stearns. Ms. Greenlee, is that true that it was never discussed by you or anyone else?

Ms. Greenlee. It was never discussed unless it was in opposite. We don't have this option, so we must do this instead. It was never a viable option to us once the bill was passed. It was always very clear that we were working with a program that was voluntary. To the degree that it was discussed, it was discussed as a door that was closed to us, not something that we could pursue.

Mr. Stearns. Let me just ask -- I have a little extra time here and just talk to you a little briefly. I am a little concerned in our discussion about Rick Foster and his release of his analysis which came after the bill was passed. I think many of you were aware of his concern before the bill passed. And then coincidentally, almost 30 days after the bill passed, his analysis came.

Did you or anyone on your staff, either one of you know about his analysis, shall we say, he projected in 2025 that expenditures would exceed premium receipts. Did all of you know that from his analysis? Did you read and fully understand that?

Ms. Glied. He made various analyses. He published them in December of 2009. He published several before the bill passed. He also published a comprehensive analysis of the entire bill after it passed. That is what I think you are referring to.

Mr. Stearns. I think his analytics were not that definitized back before the bill passed. It just seems coincidentally to us that

what he projected for 2025 were the expenditures would exceed premium receipts was clear, but it only came 30 days after, and the question would be, did anyone on your staff knew about this analysis before April 22, 2010?

Ms. Glied. Before he published it? No. I don't believe so.

Mr. Stearns. So part of his concern, never a draft of this before was ever provided?

Ms. Glied. He had expressed many concerns. He had not shared the lost analysis he did with us before he published them. He certainly vocally shared his concerns with many people.

Mr. Stearns. In your opinion then, Rick Foster was not asked to hold off his analysis publishing?

Ms. Glied. Not only was he not asked but he actually responded to a reporter and said he was not silenced in any way.

Mr. Stearns. Okay. Well, it is obvious if we had his analysis before the bill passed I think that would have had a big impact.

Ms. Glied. He didn't have that analysis either, that April analysis wasn't done until after the bill was passed. It was actually reflecting what was in the bill.

Mr. Stearns. On April 22, barely after a month the bill passed, he released this report saying the CLASS program projected savings are due to the initial 5-year period during which no benefits would be paid. Over the long run expenditures would exceed premiums, receipts, and he projected in 2025 expenditures would exceed premium receipts.

Ms. Glied. He disagreed with CBO. He had a very different

estimate.

Mr. Stearns. Okay. My time has expired. And with that, the gentleman from Pennsylvania, Mr. Pitts.

I need to go to a Democrat. I thought you told me you folks didn't want to participate. But if you want to, we are very glad to have you.

Mr. Pallone. Mr. Chairman, you asked if we wanted to have a second round. We said no. But that doesn't mean if you have one, that we don't speak?

Mr. Stearns. Absolutely, you get every opportunity. We recognize the gentleman from New Jersey for 5 minutes.

Mr. Pallone. I think part of my problem here with the panel is that I just disagree with I guess HHS counsel or whoever is advising you both with regard to the CLASS independence advisory council and also with regard to what authority you have under the law. So maybe at some point, I will have an opportunity to meet with the council and talk to them, because I simply disagree with whatever recommendations they are making.

Secretary Greenlee, you said that because you suspended implementation of the CLASS program, that the council could not be appointed. But in the statute it says the CLASS independence advisory council shall advise the Secretary on matters of general policy in the administration, and I stress "in the administration" of the CLASS program, and then it talks about the various categories of the administration.

So it doesn't say that they are only there for implementation once

you decide that the program is sustainable and can be implemented. It says in the administration. So you are still administering the CLASS program. So why would you say that the council couldn't be involved in the administration and the development of the benefit plan and the determination of monthly premiums and the financial solvency.

It just seems to me that precluding this council which exists under the law is wrong, and I don't understand if they are supposedly involved in the administration, you are still administering the program, why they can't be convened?

Ms. Greenlee. Mr. Pallone, this is similar to the concern you raised earlier. I am willing to go talk to the Secretary about your concern. Like I said, she has been very clear that we have suspended implementation of the CLASS Act. The only item that is in the CLASS Act that we will continue to work on is what I have referred to as the long-standing, long-term care awareness campaign. So to the degree that you are talking about --

Mr. Pallone. I understand what you are saying.

Ms. Greenlee. I don't want to be contrary to what the Secretary is saying. I will take to her your concern.

Mr. Pallone. My point is that it seems that since you are still administering the program, there is an obligation to start this council and get it moving. I would ask and you have now said, and I appreciate that, you will go back to the Secretary and ask that, because that is one way for us to look at alternatives and keep this alive.

Now, the second thing is, I know that Ms. Glied mentioned the

models that were outlined in the report and there were several that I think you said in response to some of my Republican colleagues that were sustainable, but for legal counsel saying there was insufficient authority. Now again I disagree with the legal counsel about the sufficiency of authority.

But could you tell us, in terms of those models that you outlined were sustainable, was there one or more that you felt were preferable, that you thought would be the most sustainable, if you, in fact, had the authority and the council said you had the authority, leaving that aside for the time being, what would you have recommended? Which one of those would be best, or maybe talk about one or two that would be best, because we are not even getting that opportunity now, if you would. Just tell us a little bit about one, and if there is one that you think was better, or one or two that you think would be better than the others, I would like to know what you thought.

Ms. Glied. Several of them looked like they might be actuarially solvent, they usually had many changes from the natural language of the statute, generally increasing the earnings requirement, altering the benefit design, phasing in benefits over time so that only some people could participate in the program initially. Those were all options that were incorporated in the programs that seemed to be more actuarially solvent.

Mr. Pallone. Did the counsel ever explain why he thought there wasn't sufficient authority to move on some of these? Did they explain that?

Ms. Greenlee. The report actually describes the legal opinion. I am not a lawyer, so I can't speak much more to it than what is in the report.

Mr. Pallone. I think at some point if you could ask the Secretary, I would like to also meet with the counsel because I simply disagree with those recommendations. I think it can -- that some of those options would meet the legal authority. If you could meet with the Secretary, I would like an opportunity to meet with the Secretary.

Ms. Greenlee. I will convey your request, sir.

Mr. Pallone. Thank you.

Mr. Stearns. The gentleman yields back the balance of his time, and the gentleman from Pennsylvania is recognized for 5 minutes.

Mr. Pitts. Your report says that in December of 2009 and January of 2010, Senate staff asked HHS to begin developing a list of technical corrections to the bill. We have seen drafts of those technical corrections and none of your corrections made it into the final bill. Do you know why?

Ms. Greenlee. My understanding is there was a procedural mechanism that allowed them not to be amended. But again, I was not here. I am telling you second-hand information. It was offered, but I can come back and tell you.

Mr. Pitts. And provide us the information, provide the committee the information?

Were the concerns of career HHS staff that were raised in 2009 and early 2010 over the sustainability of the CLASS program ever relayed

to Congress prior to the passage of the PPACA?

Ms. Glied. I am not sure exactly what you are referring to, but I believe the concern about adverse selection in the program that was raised by a member of the staff in the ASPI office, and that was the same concern that Rick Foster had raised many times in his published report as well. So that was a concern that had been very vocally voiced.

Mr. Pitts. That was relayed to Congress?

Ms. Glied. I believe Mr. Foster published his reports and Congress was well aware of them and he actually raised exactly that point. So the concern about adverse selection had been very widely discussed prior to passage of the legislation.

Mr. Pitts. The recommendations, the American Academy of Actuaries, were these recommendations provided to Congress?

Ms. Glied. I believe the American Academy of Actuaries published those recommendations, and they were discussed in the committee, I believe. I am not sure. I wasn't here.

Mr. Pitts. They weren't adopted, these technical corrections. Was your office ever given an explanation as to why these recommendations were not accepted?

Ms. Greenlee. Again, Mr. Chairman, I will get back to you on that. My understanding is it was a procedural issue with regard to the offering of the amendment and not being able to move it. But we can certainly answer that.

Mr. Pitts. Your report said that "Many of the regulations

related solely to operational aspects of the CLASS program have been drafted." Why did you have staff do the work of drafting regulations before you had determined whether it was possible, or it would be possible to implement the program?

Ms. Greenlee. In order to meet the time line set out in the statute that the Secretary would designate a final benefit plan in October 2012, we needed to begin the initial analysis of how we would operationalize the program and do that at the same time as we were exploring the models and benefit designs in order to have a chance of being able to meet the statutory deadline. That is also very well described in the report that we, aside from the policy issues, needed to issue or look at potential regulations, how we would bill an assessment system, an IT system. These were the other functions that the staff were initially looking at as required by law in order to meet the deadline.

Mr. Pitts. Can you send us a list of the offices to which you forwarded, or the offices that received the technical corrections? Can you send us a list of those offices that received those from you?

Ms. Greenlee. I want to make sure I am clear. Are we talking about the technical corrections to the statute, not the regs that you just asked me about?

Mr. Pitts. Yes.

Ms. Greenlee. I will go find out. This is an area that I don't know. So I will tell you what I can about the procedural and how that was presented.

Mr. Pitts. You have talked several times, you have mentioned long-term awareness campaign. I think we can agree that the long-term care market is a vulnerable one; as to the long-term insurance product is difficult to sell, and it can often be expensive and more commonly attracts the most sick.

Implementation of the CLASS program may have been a lesson for the Federal Government in how not to meddle with the private industry. What impact do you believe the mishandling of the CLASS program implementation and the suspension of all CLASS program activity will have on consumer confidence in long-term care insurance overall?

Ms. Greenlee. Mr. Chairman, I do just note that I don't agree with the mishandling characterization, but I would like to be responsive. I believe that there is great opportunity through the long-term awareness campaign to continue to work with private insurers, and that the investment that we make to tell the American people about this issue benefits that private market, as well as the general public. So I don't find that there is a negative or chilling impact on the private market at all because of our studied look at the CLASS program.

Mr. Pitts. Okay. Thank you, Mr. Chairman.

Mr. Stearns. And the gentleman from Texas, Dr. Burgess. I am sorry.

The gentlelady from Colorado is recognized for 5 minutes.

Ms. DeGette. Here is what I have been sitting here thinking about as we have been having this discussion today, and I want to ask both of you your honest opinion about this.

My colleagues on the other side of the aisle have talked about kind of two ways we can help older Americans get, and also disabled Americans get long-term care. One of them is if we somehow do what I help my children do, which is have some kind of moral and familial responsibility towards aging parents or disabled relatives, and I think that is a noble hope that we would have, but not one -- I don't think anybody in this room would think that we should legislate some kind of personal mandate that individuals provide those care responsibilities.

So then that leaves us with a second alternative, which is to try to encourage people to purchase long-term care insurance. And this is one thing that the agency is trying to do right now.

But the issue with the long-term care market is two-fold. Number one, since it is not widely -- since people don't widely take advantage of it, premiums are very expensive because only the more risky population is involved in this market. And the second problem is people with preexisting conditions under current law are excluded from that market.

So long-term care insurance solely through private insurance really isn't an option.

And then I get to the report that the Department prepared that said that the CLASS plan option is not going to be sustainable from an actuarial standpoint because it is not going to attract a broad enough population because of the high estimated monthly premiums. And also because it is not a mandatory program.

So as I sit here and think about what our options are, I guess I would ask the both of you to just tell me what you think we can do to enroll more people either in private insurance or some kind of insurance program because we do see, all of us, on both sides of the aisle, see this tsunami coming towards us, and I haven't heard any real good practical solutions suggested here in the last 3-1/2 hours we have been sitting here.

Ms. Greenlee. Congresswoman, to me it makes sense to explore, if there is a way, for the private market to do more. I am not someone who is opposed to the private market. It will never solve the whole need. If there is things we can do and continue to talk to Congress about the private market, then we are certainly willing to have that conversation. But we must understand that there will be a group of people for whom that is not the right solution for a number of reasons, from affordability to preexisting conditions to the fact that that is a product that is different than what the CLASS product. It is comprehensive in the private market. CLASS is a more minimal benefit. We need to analyze how everything could blend together to meet the whole range of needs. And I think we are willing to have that conversation.

Ms. DeGette. Thank you. I yield back.

Mr. Stearns. The gentleman from Texas, Dr. Burgess, is recognized for 5 minutes.

Dr. Burgess. Let's keep on that same line of thinking. How do we enhance the availability of this type of insurance to the private market? I talked about tax consequences in my opening statement.

Certainly in the Deficit Reduction Act of 2005, we expanded the partnership program so that those people who do spend their own money on their own private long-term care insurance product, if they outlive their benefit, which is rare, but if they do, then they don't have to spend down to get into the Medicaid program. I am oversimplifying it. But States now have the option of opting into that long-term care partnership, and I think that is certainly something if we want to work on the awareness side, to work on the awareness at the State level.

I do think, and Mr. Pitts brought it up again, I think the activities of the CLASS, the implementation of the CLASS Act, I think that has had, if not a chilling effect, at least caused some stagnation in the private market, because if I am working on a long-term care product or I have got one on the market, I am kind of holding back to see what you guys are going to do.

I would be interested to know did you ever talk with any of the larger players in this market to see if there was a way to also partner with those products that are already out there, those projects that are already offered?

Ms. Greenlee. We are both nodding because we did.

Ms. Glied. One of the options in the report actually includes an option for CLASS that would involve a partnership with the private market. So that was something that we did actively pursue.

Dr. Burgess. What happens now in that, and again, I am concerned that the people that do provide this in the private market, again, they are going to be waiting for Congress or the agencies to do something,

and they are kind of frozen in time while that happens.

Ms. Greenlee. I was just looking at data on sales of long-term care insurance recently, it doesn't look like beyond the effects of the weak economy that there has been any particular effect of the CLASS.

Dr. Burgess. Maybe it is a positive aspect for us doing the hearing today, and maybe someone out there will recognize that perhaps this is an activity that they should undertake for themselves.

Just a couple of things to tie up some loose ends we are getting asked from the other side. Losing half of the savings from the CLASS Act for the Affordable Care Act, but there were still savings. The savings, of course, come from Medicare cuts, certainly cuts in the Medicare Advantage program and the Home Health benefit that was cut in Medicare, the device tax, which is likely to be problematic for our device manufacturers, the changes in the income tax law where people have a lower deductability of their actual medical expenses, the Cadillac tax, and then always my favorite, the tanning tax. And the recent evidence that the tanning tax receipts are lower than expected because people do behave in a rational fashion and if you tell them you are going to tax your tanning activity, sunlight is free and people will go that route.

On the issue of the premiums, and I have asked you for a premium range, I did find it in your HHS report, the premium range, \$235 a month to \$391 a month, this was under the assumptions designated as scenario two, average premium of -- for \$50 a day with the two-plus activities a day living trigger, that is a pretty stout premium for what really

isn't a really long-term care policy.

So I can certainly understand that people would be reluctant to voluntarily opt into that program. That is going to be an enormous barrier to participation.

Now, the issue of pre-existing conditions came up, and honestly, I think the whole concept of the individual employer mandate for the CLASS Act would be wrong. But I honestly don't see how you get there without that because unless you coerce people to spend what is that multiply up to \$4,700 a year, unless you coerce that purchase, I can't see anyone in the world making that purchase, particularly when you can go to one of the large insurers and buy an individual policy, middle of the road as far as its benefits and get that for just a little over \$1,000 a year.

On the issue of the independent advisory council, has that been named?

Ms. Greenlee. No, sir.

Dr. Burgess. Do you have a list of people from which you are expecting to draw, or were expecting to draw on their expertise to name for that?

Ms. Greenlee. We had quite a number of people respond to the Federal Register notice. A final -- a list was never finalized. We looked at those names when they first came in. I have not looked at them for a while.

Dr. Burgess. You didn't have a preferred list of people that were going to be contacted?

Ms. Greenlee. We had looked at the list. There are some specific requirements in the law that different interest groups or sectors be, I guess that is a better description, sectors be covered, but I don't have a final list that this was narrowed down to.

Dr. Burgess. Do you think that if this program is unfunded, but still in existence, will you still proceed with naming those people?

Ms. Greenlee. I just refer back to my conversation with Mr. Pallone. The Secretary said very clearly that we are suspending implementation of the program. We want to have a broad conversation with a wide range of individuals. I will carry Mr. Pallone's request back to the Secretary. I believe we can do that in a number of fashions. I don't know that she wants to set up an advisory committee when she has already said we are not going to move forward to implement.

Mr. Stearns. The gentleman from Virginia, Mr. Griffith, is recognized for 5 minutes.

Mr. Griffith. Thank you, Mr. Chairman, I appreciate that. A couple of things just in comment to some of the things that have been said. I notice that in reading the legal counsel's opinion that while they may have been conservative and there were areas where they were definitely said you can't go, they also had some of the options they said you might be able to make an argument, but I appreciate the fact they were conservative in the sense that they said, but it is clearly challengeable and if it goes to court, and the court rules that the program is not set up correctly, it could void the program. And that one of the options the court might have is to just say whatever moneys

are not yet expended get returned to the people who bought in, but obviously, a big chunk of the money would have already been expended.

So I do appreciate that because we have had some other situations in front of this committee where folks just charged in and didn't come back to Congress to get the legal changes necessary. And while we may agree or disagree on some of those legal changes, if we are going to go forward with something, I think it needs to come back to Congress. So I appreciate the legal counsel taking a position that recognizes the position of Congress.

I did also notice that in one of the options, at least, there was a preexisting condition requirement that if you had a preexisting condition, you had to wait, I think, 15 years. Seems like an awful long time. And again, it is just, I recognize the Secretary's frustration because it is going to be hard to get there from here, even if we change some of that law.

I did note one thing in some of the notes that are in front of me, and that is, that it appears that ASPI's analysis is that the administrative costs should run somewhere between 6 and 20 percent, with the code on after 3 percent. I would have to assume -- would I be correct in assuming that that is part of, even if it is a small part, that is a part of what makes the financial models, the actuarial models not work is that there is not a large enough administrative component?

Ms. Glied. It was a concern that the Federal actuaries be raised when they met and reviewed the various options that the 3 percent was not going to be sufficient.

Mr. Griffith. And then one thing that I might suggest that you all take a look at in various programs. I just came from the Virginia legislature about a year ago, and just before I left, I patroned a bill that allowed us to have Statewide zoning ordinances for med cottages. As we look at this issue and work together, this is a facility that you put in the backyard of a family member for somebody who has two tasks that they need assistance on for daily living requirements. It kind of is a mix for the person that doesn't have the ability to stay in their own home and their family member doesn't have room in their home. This gives you kind of a mix. There are certain requirements that are required by the Virginia Statewide zoning that we got through.

But needless to stay, it brings jobs to Virginia because we are manufacturing these items. And it does it at a lower cost than a permanent assisted living facility can do and keeps the individual close to their loved ones. So I would recommend that maybe not on this program, but on other programs that you all keep that in mind or take a look at that as an option. As I understand it, North Carolina, with minor exceptions, adopted the Virginia law this year. It may be a way that we can save money and provide quality care for people, if not in their own home, at least in the yard of a family member. I thank you, Mr. Chairman, and I yield back.

Mr. Stearns. And Dr. Cassidy is recognized for 5 minutes.

Dr. Cassidy. Yes. First, for the record, I would like to submit the testimony from Richard Foster, I believe, from the CBO, at least, to Tom Harkin's committee dated November 25, 2009, and I think there

was a little bit of an issue as to --

Mr. Stearns. By unanimous consent, so ordered.

Dr. Cassidy. Thank you. I think there were some concerns, some questions as to whether CBO had concerns.

And technically you are right. In the second decade, it said it might be cost neutral, but if I go on, and again in the spirit of what Governor Bredesen is saying how forthright are we being with the American people. The CLASS program would add to the budget deficit in the third decade and succeeding decades by amounts on the orders of tens of billions of dollars for each 10-year period, and the CLASS Act would inevitably add to future deficits on a cash basis by more than it reduces deficits in the near term, etc., etc.

Ms. Glied. Is that Mr. Foster speaking?

Dr. Cassidy. This is the CBO. In my mess of papers, I have lost the last page, but it came out of CBO. And this is November 2009. So again, were you -- I don't know this. I am asking. Were you part of the deliberation as to include the CLASS Act in the final?

Ms. Glied. No. I hadn't come to Washington.

Dr. Cassidy. So you wouldn't know whether Mr. Klein was correct in saying that the administration was initially opposed to including it, perhaps on the basis of fiscal concern?

Ms. Glied. I do know that the fact there was this twin test in legislation was something that certainly gave the administration more reason to go ahead. We were not going to proceed. I am struck by the fact that everyone agrees this was an enormous need, and that we passed

a piece of legislation that said given a great deal of uncertainty, we are going to let you explore this, figure out if you can make it work and then go ahead and address this need. We realize we can't do that.

Dr. Cassidy. The only thing that gives me pause on that is that I heard you speak, Ms. Greenlee in times past, very impressed with your body of knowledge, as I am with yours, and you clearly know what is key to what is a successful program, and it is not just us. The GAO has a report that for fiscal solvency, you need to have an accrual basis of accounting, not a cash flow basis. That is GAO talking about entitlements in general.

We have here on page 39 of your report on the Actuarial marketing and legal analysis of the CLASS program, a list of the things that would make the program viable as it turns out they are everything that the private sector employs, and yet you are not allowed to do. So I think that CBO and CMS's initial concerns were so kind of grounded in practical experience, that it concerns me that that practical experience was ignored as a credit of \$70 billion was counted towards the overall cost of the President's health care bill. That is just an aside.

That said, my concern about that leads me to a concern about other things. Clearly a way that insurance is provided to others is by an expansion of Medicaid. Ms. Greenlee, I think you are from Kansas?

Ms. Greenlee. Yes.

Dr. Cassidy. And I think I heard you earlier that you work in

the Medicaid program?

Ms. Greenlee. Yes.

Dr. Cassidy. And I saw that it is bipartisan, that we know that there is a problem here. Mr. Deutch, in his testimony, spoke about Medicaid being on the chopping block on State budgets and stressing Federal, somebody else spoke about the labor of the budgets under the cost of Medicaid. What is it going to do to the State of Kansas' budget to expand Medicaid as the President's health care plan does, and knowing that many more people potentially go on long-term care because of this expansion. Will that be positive or negative for the State of Kansas' budget?

Ms. Greenlee. Mr. Cassidy, I have been here now for over 2 years, so I can't give you current information about the impact on the State of Kansas. The lieutenant governor from the State visited me several months ago, and I know that they, like other States, are looking at a managed care option for Medicaid in the State of Kansas. I don't have a current budget information.

Dr. Cassidy. So knowing that you have to be careful in how you speak, but let's just again kind of resort to common sense. If already, I think as Deutch said, it is on the chopping block because of the fiscal strain Medicaid is playing, specifically the long-term care aspect of Medicaid, if we are about to expand the eligibility thereof, knowing that we also have, as former Representative Kennedy said, a tsunami of people who are going to qualify, so older population, more people and more people eligible, can that do anything but further strap a

budget which is laboring under the cost of Medicaid?

Ms. Greenlee. I am sorry, sir, I really can't be responsive to the current Kansas situation.

Dr. Cassidy. I keep on thinking about what Breseden said. It is hard to get the American people an honest answer. Not that you are being dishonest. Lastly, you are just being so totally honest that it is a little disingenuous, I must say. I am sorry. That is just my impression.

Lastly, let me ask -- I am out of time. I yield back.

Mr. Stearns. We have finished our hearing. By unanimous consent, I would like to put the document binder in the record. Any objection? If not so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Stearns. Also I would say to the gentleman from New Jersey if indeed he meets with the council as he requested from Ms. Greenlee, perhaps we can assume that the Republicans will be invited and will be part of that conference, is that fair to say.

Mr. Pallone. First of all, I would like to see whether or not we are even going to have a meeting. I know today I struck an optimistic note. So we will see if the optimism holds and we actually have a meeting, and then I will get back to your question.

Mr. Stearns. With that optimism, we will close the hearing. And I thank you very much for your testimony.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned.]