GAO

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General Accounting Office
Washington, D.C. 20548

Human Resources Division

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The Honorable John D. Dingell
Chairman, Committee on Energy
and Commerce
House of Representatives

Dear Mr. Chairman:

This letter responds to your request for a review of fiscal and other implications of the long-term care (LTC) insurance projects sponsored by the Robert Wood Johnson (RWJ) Foundation. The Foundation sponsors projects that link private LTC insurance with the Medicaid program in four states.

We agreed to provide information on (1) the basis for the Department of Health and Human Services' (HHS) approval of amendments to several Medicaid state plans that allow those states to implement these LTC insurance projects, (2) the financial implications for the federal government of using section 1902(r)(2) of the Social Security Act as the basis for approving these projects, and (3) the federal role in protecting consumers who purchase LTC insurance policies through the RWJ projects.[1]

You expressed concern about the extent of federal oversight for these projects because they were approved as Medicaid state plan amendments rather than as demonstration projects. With demonstration projects, HHS has authority to impose restrictions and to exert substantial oversight. With state plan amendments, however, HHS has limited authority to impose restrictions or exert oversight, as long as the state

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[1]Medicaid is an entitlement program that provides medical assistance to certain low-income people. To qualify for Medicaid, people usually must meet income and asset criteria that are linked to eligibility criteria for the cash assistance programs, Aid to Families With Dependent Children and Supplemental Security Income. Section 1902(r)(2) allows states to compute income and resources in a manner that is less restrictive than these cash assistance programs require.

plan complies with title XIX of the Social Security Act. You were particularly interested in whether issues such as cost and consumer protection, raised previously by GAO and in congressional deliberations,[2] had been addressed by HHS as part of its approval of these projects.

In September 1990, we issued a report on several proposed RWJ LTC insurance projects, suggesting that the projects needed close federal scrutiny.[3] We raised several concerns with these projects, including the potential for increased Medicaid costs and the need for adequate consumer protection. As a result, we suggested that the Congress ensure that the projects are designed to (1) minimize the risk of cost increases for the Medicaid program, (2) require states to meet the minimum LTC insurance standards of the National Association of Insurance Commissioners (NAIC), (3) require states to demonstrate that they will provide adequate consumer education, and (4) require states and insurance companies to collect information and to share data with HHS so the projects can be adequately monitored.

OVERVIEW

Our current work shows that HHS approved Connecticut's state plan amendment for the RWJ project because it had no grounds to disapprove the amendment. We believe that HHS's decision is a reasonable interpretation of the law (title XIX of the Social Security Act). HHS must approve amendments when they conform to title XIX and its implementing regulations. Regarding financial implications, the federal government has no assurance that the RWJ projects will not increase current or future Medicaid costs. Concerning the federal role in protecting consumers, there are no federal consumer protection standards for LTC insurance.

BACKGROUND

RWJ Foundation Projects

Four states (California, Connecticut, Indiana, and New York) currently participate in the RWJ Foundation's Program to Promote Long-Term Care Insurance for the Elderly. The

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[2]H.R. Conf. No. 964, 101st Cong., 2d Sess. 881-893, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2588-2598.

[3]Long-Term Care Insurance: Proposals to Link Private Insurance and Medicaid Need Close Scrutiny (GAO/HRD-90-154, Sept. 10, 1990).

program links private LTC insurance with the states' Medicaid programs. One purpose of these LTC insurance projects is to promote private long-term care insurance as a way for older people to avoid impoverishment and to reduce the need for middle-income older people to rely on Medicaid. Other purposes include improving consumer education about LTC insurance and improving the quality of LTC insurance policies.

Typically, these projects allow people who purchase a certified LTC insurance policy to become eligible for Medicaid after the policy pays for a period of long-term care costs.[4] Purchasers would not have to deplete as much of their assets, as is required to meet current Medicaid eligibility thresholds. In effect, purchasers are offered impoverishment protection by using Medicaid as "backup" insurance if their long-term care costs exceed the amount that their policy will cover.

To implement the LTC insurance projects, states must obtain approval from the Health Care Financing Administration (HCFA) to change their Medicaid eligibility criteria. One method of obtaining such approval is to apply to HCFA for a waiver or demonstration authority. Another method is to apply to amend their state Medicaid plan.

<u>HCFA Demonstration Projects</u>

HCFA, which administers the Medicaid program, generally approves waivers for demonstration projects of limited duration.[5] Under these LTC insurance projects, 10 years or more could elapse between consumers' purchase of an insurance policy, their eventual use of benefits, and their subsequent application for Medicaid. Because of this time frame, state officials believed that the LTC insurance projects would not be appropriate as demonstration projects under existing legislative authority. Consequently, states

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[4]A certified LTC insurance policy has been reviewed and approved by the state as meeting certain consumer protection and other standards.

[5]Section 1915(c) of the Social Security Act enables states to engage in demonstrations by permitting HHS to waive Medicaid requirements for a state for an initial period of 3 years, with a subsequent extension of 5 years. Demonstration waivers are also granted for research purposes under section 1115(a). Most projects authorized under this section run for a limited period, no more than 3 or 4 years, and are usually not renewable.

sought federal legislation to explicitly permit HHS to approve these projects for a longer period. Although legislation was introduced in 1989 and 1990, it never became law.

State Plan Amendments

As an alternative to legislation, states have requested federal approval for such projects as an amendment to their Medicaid state plans under the authority of section 1902(r)(2) of the Social Security Act. Under Medicaid law, each state operates its Medicaid program according to a detailed state plan that must comply with federal requirements and be approved by HCFA. States can amend their Medicaid plans as long as they remain in compliance with federal requirements, but such amendments must be submitted to HCFA for approval. State plan amendments are not generally required to contain time limits.

SCOPE AND METHODOLOGY

To obtain information on the basis for approving the LTC insurance projects, we focused on the approval of Connecticut's state plan amendment because this process set the precedent for the later approval of amendments from other states. We interviewed officials in HCFA's Medicaid Bureau, HCFA's regional office in Boston, and HHS's Office of General Counsel. We also interviewed officials from the state of Connecticut and the RWJ Foundation's national program office to obtain information on oversight activities by the state and the Foundation. To obtain details about the projects and the approval process, we reviewed several studies, evaluations, progress reports, HHS memorandums, legal opinions and relevant regulations. For information on the financial impact of the projects on Medicaid, we reviewed several analyses of Connecticut's LTC insurance project. However, we did not independently assess these analyses.

BASIS FOR HHS APPROVAL OF RWJ LTC INSURANCE PROJECTS

To implement its project, Connecticut decided to amend its Medicaid plan. The amendment allows Medicaid recipients who use certified LTC insurance policies to retain assets above the Medicaid eligibility thresholds. That is, the amount of assets that can be retained above these thresholds is equal to the amount of insurance benefits paid for long-term care. The insurance benefits that are paid would be equivalent to depleting assets to establish Medicaid eligibility.

In early 1990, Connecticut contacted HCFA to request informal guidance on an amendment. HCFA in turn sought guidance from HHS's Office of General Counsel. HCFA was concerned about various issues, including extending Medicaid eligibility to people with significant assets and pending federal legislation to authorize this project as a demonstration project. As noted earlier, the proposed legislation was not enacted, and in November 1990, HHS's Office of General Counsel concluded that HCFA had no grounds for disapproving the amendment. In May 1991, Connecticut submitted an amendment to HCFA that was approved in August 1991.

HHS's conclusion is a reasonable interpretation of the law (title XIX of the Social Security Act). Amendments to state plans must be approved as long as they conform to title XIX and its implementing regulations. Section 1902(r)(2) of the act grants states considerable latitude in how individuals' assets can be treated. There is specific language in title XIX that effectively limits the extent to which states can disregard income for the purpose of determining Medicaid eligibility, even under section 1902(r)(2). However, there are no similar limits on the amount of assets that states can disregard.

FEDERAL FINANCIAL IMPLICATIONS OF RWJ INSURANCE PROJECTS

There is no assurance that the RWJ projects will not increase the federal government's Medicaid costs. The federal government is financially responsible for its share of Medicaid costs for services to people covered under an approved state plan, including costs that result from the RWJ insurance projects.[6] There are no limits that are relevant to the RWJ projects on federal payments for Medicaid services provided under a state plan.

In our 1990 report, we said that many factors can affect the likelihood that these projects will increase Medicaid expenditures. The most significant factor is how much income and assets the projects allow people to retain and still qualify for Medicaid.

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[6]Medicaid is paid for by state and federal governments. The federal proportion varies from 50 percent to about 80 percent, depending on a state's per capita income, relative to the national per capita income.

The Connecticut RWJ project would reduce the risk of increased Medicaid expenditures by limiting the amount of assets that people can protect and by requiring people to spend their incomes to Medicaid eligibility thresholds. As we stated in 1990, Connecticut's Medicaid program is protected from additional expenditures to the extent that a LTC insurance policy pays the same amount as an individual would have paid in out-of-pocket payments before qualifying for Medicaid. Because the RWJ projects in Indiana and California are similar to the Connecticut project, the risk for increased Medicaid costs in these states should also be reduced. However, this view may not necessarily be true for the New York project because it is structured differently from the projects in the other three states.[7]

Several analyses of the Connecticut project, sponsored by various organizations (including the state of Connecticut and the RWJ Foundation), have examined the long-term fiscal impact of these projects. Most analyses that we reviewed show that these projects will not change Medicaid costs or will produce modest savings to the Medicaid program. One analysis, done for the American Association of Retired Persons, shows modest increases in future costs to Medicaid. However, estimates of the cost implications of these projects depend largely on assumptions and predictions about people's future behavior.

Information we obtained during our work indicates that other states may be interested in amending their Medicaid plans to establish LTC insurance projects. The projects in these states would not be part of the RWJ program. Given the considerable latitude that states have under section 1902(r)(2), and HHS's limited authority over projects approved as state plan amendments, the federal government has no assurance that a new Medicaid LTC insurance project would be structured to minimize the possibility of increasing Medicaid costs. If such projects were established as demonstrations, rather than state plan amendments under section 1902(r)(2), the federal government could exercise greater oversight and could limit its financial liability for Medicaid costs resulting from the projects.

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[7]The New York project will allow people who exhaust the benefits of a policy, covering a minimum of 3 years of nursing home care or 6 years of community care, to become eligible for Medicaid without regard to their assets beyond the amount paid out by insurance.

FEDERAL ROLE IN PROTECTING CONSUMERS

There are no federal consumer protection standards for LTC insurance. Consequently, HHS has no basis to impose consumer protection standards on the RWJ projects. With the exception of Medicare supplemental ("Medigap") insurance, the federal government plays a limited role in the regulation of insurance. Such regulation is the responsibility of states and state insurance commissioners. Previous GAO reports have shown problems with insurance policies, consumer protection, and other issues. Because many states had not adopted all of NAIC's standards for LTC insurance, we suggested establishing minimum federal standards for such insurance.[8]

One goal of the RWJ Foundation's program is to improve the quality of LTC insurance policies by requiring state projects to meet NAIC's minimum standards in certified insurance policies. To date, the four states that participate in the RWJ LTC insurance project have agreed to meet the standards. However, since there are no federal consumer protection standards for LTC insurance, there is no guarantee that such programs established by other states will provide adequate consumer protection.

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I trust that this response addresses your concerns. If you have any questions, please contact me on (202) 512-7119.

Sincerely yours,

Mark V. Nadel

Mark V. Nadel
Associate Director, National and
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[8]See Long-Term Care Insurance: Better Controls Needed in Sales to People With Limited Financial Resources (GAO/HRD-92-66, Mar. 27, 1992); Long-Term Care Insurance: Risks to Consumers Should Be Reduced (GAO/HRD-92-14, Dec. 26, 1991); and Long-Term Care Insurance: State Regulatory Requirements Provide Inconsistent Consumer Protection (GAO/HRD-89-67, Apr. 24, 1989).