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**Statement of Bernard A. Krooks, CELA, Littman Krooks LLP  
Past President of the National Academy of Elder Law Attorneys**

**“Long-Term Care and Medicaid:  
Spiraling Costs and the Need for Reform”**

**A hearing by the:**

**Subcommittee on Health  
Committee on Energy and Commerce**

**United States House of Representatives**

**Wednesday, April 27, 2005**

**Summary of Key Points of Bernard A. Krooks, CELA, Littman Krooks LLP  
Past President of the National Academy of Elder Law Attorneys**

**“Long-Term Care and Medicaid: Spiraling Costs and the Need for Reform”  
Subcommittee on Health, Committee on Energy and Commerce**

April 27, 2005

**Elder Law** - Elder law is a specialized area of law that involves representing, counseling, and assisting elderly and individuals with disabilities and their families with a variety of legal issues.

**The Long-Term Care System** - Until a comprehensive long-term care system for all Americans is in place, it is essential for Medicaid to continue its role as a federal-state program and continue to help pay for the long-term care needs of low and middle-income older individuals and individuals with disabilities. We discriminate in our delivery of health care based on the type of illness one has. If you have an illness like heart disease or cancer, the United States provides comprehensive care through Medicare. If you have a chronic illness like Alzheimer's disease, Parkinson's, ALS (Lou Gehrig's disease), or Multiple Sclerosis, the government doesn't help unless you impoverish yourself first and qualify for Medicaid.

**What I Do - Who Comes to Me and Why** - We examine the full range of long-term care options, issues and costs relevant to the client's circumstances. Most often, the lawyer's help is sought when the need for long-term care has already arrived. It is rare for a senior to come in to my office and say “I want to give away my money so I can go on Medicaid.”

**Who Doesn't Come to Me for Help with Medicaid and Why** - Millionaires do not go on Medicaid. They don't need Medicaid. Most can afford the much-preferred home care, even on a 24-hour basis. Most would face potentially large capital gains taxes, loss of step-up basis, and gift taxes if they engaged in transfer strategies.

**Medicaid Proposed Changes** - The transfer of asset rules are well designed for accomplishing a balance between the needs of individuals and families with that of fiscal responsibility. Making asset transfer penalties more punitive will mainly hurt seniors who act in good faith yet fall innocently into the state budget cutting process. Changing the date the penalty period starts to the date the individual is already impoverished is a harsh and unworkable proposal. This has the practical effect of extending the penalty period for years beyond what it is now and will leave nursing homes to provide uncompensated care. Increasing the lookback period will create unacceptable new obstacles for vulnerable, frail elderly individuals and persons with disabilities to get care, because the proposal will require record keeping and documentation that is far beyond the normal practices.

**Long-Term Care Insurance** - Elder law attorneys may be the single largest supporter of long-term care insurance as a serious option, with the exception of the insurance industry itself. NAELA has consistently supported legislation that couples tax credits for long-term care caregivers with tax deductions for the premiums paid on the purchase of long-term care insurance. NAELA and I also support a thoughtful expansion of the Long-Term Care Insurance Partnership Program.

**Other Medicaid Budget Cuts** - NAELA supports the efforts of Senators Smith and Bingaman and Representative Heather Wilson and many others who have worked to create a bipartisan Medicaid Commission that would take a thoughtful look at this critically important program and work to find innovative solutions to its problems. Capped funding or a block grant approach may offer states short-term fiscal relief but result in long term financial disaster. I ask that even in these times of tight budgets that you continue the commitment that you have made to care for millions of Americans through the Medicaid program.

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Good morning. Chairman Deal and Ranking Minority Member Brown, I congratulate you on calling this hearing. I appreciate the opportunity to testify as a professional serving the elderly and individuals with disabilities and as a past president of the National Academy of Elder Law Attorneys (NAELA). Thank you for your openness to our experiences and ideas as you consider the complex issues of long-term care and Medicaid.

The National Academy of Elder Law Attorneys is a national, non-profit association composed of more than 4800 attorneys. NAELA provides information, education, networking, and assistance to lawyers, bar organizations, and others who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

**Elder Law**

My professional practice is devoted to assisting seniors and others with disabilities. Elder law is a specialized area of law that involves representing, counseling, and assisting elderly and individuals with disabilities and their families in connection with a variety of legal issues. It is a holistic approach to the practice of law that focuses on the individual rather than a particular area of law. I have included at the end of my statement a list of the areas in which elder law attorneys provide support to older and disabled persons. I hope that it gives you a good picture of the range of concerns we help our clients work through, such as wills, advance directives, trusts, guardianships, government benefits, and long-term care insurance.

**The Long-Term Care System**

Mr. Chairman, as I am sure you know, unpaid caregivers provide the majority of long-term care in the United States. Researchers estimate the value of this unpaid caregiving at well over \$196 billion per year.<sup>i</sup> By contrast, paid caregiving costs the public and private sectors about \$173 billion,<sup>ii</sup> more than a quarter of which is paid out-of-pocket by individuals and their families. Nursing home care costs approximately \$70,000 per year on average, with 36% of that paid out-of-pocket by individuals and their families. It is in this context that families needing long-term care services engage in financial planning to pay for those services.

The United States does not have a national health insurance program and it does not have a comprehensive long-term care system. Based on the experiences of NAELA's members with thousands of older clients and clients with disabilities, we support a national long-term care system that would provide comprehensive services, including home and community-based and institutional services, to people with serious physical and cognitive impairments. However, until a comprehensive long-term care system for all Americans is in place, it is essential for Medicaid to continue its role as a federal-state program and continue to help pay for the long-term care needs of low and middle-income older individuals and individuals with disabilities.

When the Medicare bill was signed into law, President Johnson was clear about our commitment to protect older Americans. He said:

No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings that they have so carefully put away over a lifetime, so that they might enjoy dignity in their later years. No longer will young families see their own incomes and their own hopes, eaten away simply because they are carrying out their deep moral obligations to their parents.

Unfortunately, this goal of Medicare remains unfulfilled for many Americans with chronic illnesses. If someone is acutely ill, there is a chance that he or she could get better. For example, someone with heart disease could have bypass surgery and be fully recovered. However, if someone has a chronic illness, there is no reasonable expectation of recovery. For example, someone who has Alzheimer's disease can never fully recover. As we know, Alzheimer's disease can be a long journey for the victim as well as the caregivers and other family members. A person can survive a decade or more before ultimately succumbing to the ravages of this disease.

We discriminate in our delivery of health care based on the type of illness one has. If you have an illness like heart disease or cancer, the United States provides comprehensive care through Medicare. If you have a chronic illness like Alzheimer's disease, Parkinson's, ALS (Lou Gehrig's disease), or Multiple Sclerosis, the government doesn't help unless you impoverish yourself first and qualify for Medicaid.

Most families needing long-term care feel defeated by having to apply for a "welfare" program after years of working and saving. A colleague of mine from Illinois recently stated that most middle-income seniors who turn to Medicaid for nursing home care are "people who are up against a wall because of a serious illness, who have never depended on a government handout in their lives." Many are children of the Great Depression and are World War II veterans, our so-called "greatest generation." Most of them are women, who, after losing their husbands to the devastation of chronic illness, have to suffer the indignity of impoverishment and financial dependence on family or the government.

The bottom line is that our health care system penalizes people who have pursued the American dream, saved for retirement, and then get the wrong disease.

### **What I Do - Who Comes to Me and Why**

When I do long-term care planning it is a part of a larger planning process that:

- Examines the full range of long-term care options, issues and costs relevant to the client's circumstances;
- Pursues the goals of preserving and promoting the individual's dignity, self determination, and quality of life; and
- Respects the individual's fundamental values and preferences as defined by the client.

It is a rare day when I spend most of my time counseling clients well in advance of the long-term care crisis. Most often, the lawyer's help is sought when the need for long-term care has already arrived. It usually involves spouses and children of persons needing nursing home care who have already been heavily invested in providing care to the person for an extended period.

My clients' goals, in order of priority, typically consist of:

- Finding the best quality of health care for their loved one
- Supplementing the Medicaid personal needs allowance (typically \$30 to \$50 per month in most states);
- Paying for non-covered Medicaid services and needs (e.g., dental care, hearing aides, eyeglasses, private duty nurse, clothing, books, flowers, etc.);
- If a couple, ensuring the financial security of the community spouse (CS);
- Avoiding burdening the family;
- Avoiding losing one's home (Medicaid liens and recovery); and
- Providing a modest legacy for the children (while the estate tax is being eliminated for well-off families, states are ramping up Medicaid estate recovery - the estate tax on the disabled).

Mr. Chairman, please keep in mind that when people do become eligible for Medicaid, regardless of whether they have engaged in long-term care planning, they must pay all but a small portion of their income each month for their care. Medicaid then pays whatever the difference is between that amount and the Medicaid rate. Thus, costs to Medicaid are always mitigated by the Medicaid recipient's monthly income.

In some cases, married couples are faced with having to consider divorce when one spouse requires long-term care in a nursing home, or else face financial ruin. Clients are emotionally devastated by the necessity to make the decision to go this route at a time when they are most vulnerable. For a society that professes to support the institution of marriage, this is a sad and desperate situation.

### **Who Doesn't Come to Me for Help with Medicaid and Why**

Millionaires do not go on Medicaid. They don't need Medicaid. Most can afford the much-preferred home care, even on a 24-hour basis. Most would face potentially large capital gains taxes, loss of step-up basis, and gift taxes if they engaged in transfer strategies. Those with retirement plans often face significant taxes if they liquidate the plan prior to death. Tax planning is usually antithetical to Medicaid planning.

Rather, millionaires have other options available to them – including long-term care insurance and tax planning. They have no need to rely on Medicaid, nor would they want to. Medicaid is a valuable program, but there are many disadvantages to relying on Medicaid -- such as

limitations in access to health care providers, limitations in coverage, exposure to recovery against one's estate after death, and state-by-state variations in eligibility and coverage.

No one yearns to be on a program like Medicaid. It is rare for a senior to come in to my office and say "I want to give away my money so I can go on Medicaid." Seniors engage in long-term care planning mainly because they find themselves in a "lose-lose" situation. First, they lose their health and need long-term care and come face to face with nursing home costs now averaging approximately \$70,000 per year. Second, they learn that they will have to lose virtually their entire estate to pay for long-term care - paying 100% out-of-pocket until they reach Medicaid's definition of impoverishment.

### **Medicaid Proposed Changes – Punitive or Positive?**

Over the years, the Congress has enacted provisions to balance the welfare entitlement focus of the Medicaid program with the reality that middle-income Americans have few other options for long-term care. The transfer of asset rules are well designed for accomplishing a balance between the needs of individuals and families with that of fiscal responsibility. The transfer of asset rules include such provisions as:

- Individuals must postpone Medicaid eligibility if they give away assets;
- Only gifts from the recent past (3 years) are looked at, because they are the most likely to have been done with any thought of Medicaid eligibility;
- The penalty starts when the individual gave the money away because that is when the individual would have had it and could have used it for his or her care;
- Transfers of certain assets and transfers to certain individuals are protected from penalties because public policy should not promote or foster homelessness or financial dependency on the government by those whose loved ones need Medicaid; and
- Estate recovery exists so that states can be reimbursed for the monies they have spent to care for the individual on Medicaid in a nursing home.

This debate should also acknowledge the significant financial crisis faced by a couple when one requires long-term care. For example, by enacting the Medicare Catastrophic Coverage Act of 1988, amended in 1989, we have adopted a national public policy to provide a modest degree of financial security to the spouse of an individual who requires long-term care. Through this policy, we have enabled the spouses of individuals who require long-term care services to continue their relationship rather than be forced to choose between poverty and divorce. This will change with the proposals Congress is presently considering.

Making asset transfer penalties more punitive will mainly hurt seniors who act in good faith yet fall innocently into the State budget cutting process. One proposal to make penalties harsher calls for changing the start of the penalty period from the date of transfers to the date one applies for Medicaid. This has the practical effect of extending the penalty period for years beyond what it is now. A few of the likely victims of such measures are: the grandparent caring for a grandchild who provides savings to help pay for the grandchild's education; the devoted church supporter who donates personal assets to the church; the widow who lacks records of her now deceased husband's spending; the caring sister who uses savings to help a needy sister remain in her home. Under the proposals to close transfer of asset rules, each of these individuals will be cut off Medicaid if they subsequently get sick and need long-term care.

## What Will Happen if You Change the Start Date of the Penalty Period?

### Medicaid: Penalty Rule Computation

#### I. Current Law Concerning Penalty for Asset Transfers of Less than Fair Market Value:

The penalty period commences on the first day of the month following the month in which the transfer was made or the first day of the month in which the transfer is made, at the state's option.

#### II. Proposed Legislation:

Under the President's Proposed Budget, the penalty period would commence on the date of the transfer or the first day of the month during or after which a Medicaid application has been made, whichever is later.

#### III. Analysis and Issues

1. Under this proposal, seniors and people with disabilities denied Medicaid would, at the time of the denial, be impoverished, have physical and/or mental impairments so severe they could no longer care for themselves, be in need of nursing home or home care, and have no other means (private insurance or Medicare) of paying for care.
2. The denial of long-term care will trigger adverse medical consequences. The absence of skilled nursing, physical, occupational and speech therapy and necessary assistance with medical care and activities of daily living will adversely affect seniors and people with disabilities who will be denied home care and nursing home admission under this proposal.
3. The harsh penalty that would be created by this proposal would be applied to all those who are unable to immediately recover the funds or the value of property alleged to have been improperly transferred prior to the Medicaid application. Most transferees will have no legal obligation to refund the transfer. In other cases, transferees will be financially unable to make any refund or there will be no transferee from whom to recover. For example, a senior with Alzheimer's who made a \$3,000 withdrawal from her savings account thirty six (36) months prior to the Medicaid application would be ineligible for Medicaid long term care benefits for a portion of the month in which she applies. The nursing home or hospital will not be paid for care provided.
4. This proposal would discourage donations to charities, religious and political organizations and candidates for government office. Only those who can predict with absolute certainty that they will not need Medicaid for at least three years could safely make donations.
5. This proposal will harm families by inhibiting older members from providing financial assistance to younger members - with such things as down payments on homes and college tuition - out of fear that they may not qualify for Medicaid

nursing home care if unforeseen events leave them unable to care for themselves.

6. In addition to the harm to seniors and those with disabilities, there would be considerable financial harm to health care providers. Hospitals and nursing homes are prohibited from discharging patients unless suitable alternative arrangements can be made, even if it means providing extended uncompensated care.
7. In cases where the nursing home admission has already occurred and the penalty is applied, nursing homes will be required to provide uncompensated care for the duration of the penalty period or until hospitalization. Nursing homes would become financially strapped - influencing staffing levels and the quality of care for all residents.
8. Those in hospitals at the time of the denial would be unable to leave since nursing homes and home care agencies will deny admission if there is no source of payment. Hospitals will become the default providers of care as access to nursing homes is barred during the penalty period. The cost of hospital care to the government will be far higher than it would have been in long-term care.
9. This proposal will most likely not harm those who set out to “game the system” because they most likely will be able to learn how to circumvent it, while those who have no such intent will likely learn of the policy long after it is too late. In fact, this proposal may encourage more and earlier transfers, while it is unclear how this proposal encourages the purchase of long term care insurance, especially because some of those people are uninsurable.
10. Most long-term care is provided by informal caregivers (e.g. family members). This change could also have far-reaching economic effects if a family member has to leave his or her job to try to take care of a severely incapacitated elder.

## **What Will Happen if You Extend the Lookback Period?**

### **Medicaid: Lookback Period**

#### **I. Current Law Concerning the Medicaid Lookback Period**

Federal law (42U.S.C 1396p(c)) requires states to withhold payment for various long-term care services for individuals who dispose of assets for less than fair market value. The term assets includes both resources and income. The lookback period for both institutional care and home and community based waiver services is 36 months, except the lookback period for trust-related transfers is currently 60 months.

#### **II. Proposed Legislation to Extend the Medicaid Lookback Period to Five Years**

The budget bill may include a proposal to change the lookback period to 60 months for institutional care and home care, regardless of whether there have been trust-related transfers.

### III. Analysis and Issues

1. The proposal will create unacceptable new obstacles for vulnerable, frail elderly individuals and persons with disabilities to get care, because the proposal will require record keeping and documentation that is far beyond the normal practices of the elderly, especially poor and chronically ill elders. Therefore, low-income elders would be denied admission to a nursing home because of inadequate record keeping.
2. Medicaid recipients who already receive home care services under the current law could lose eligibility under the proposed changes if they had made transfers within the past five years. Services could be abruptly terminated; thereby placing the elderly individual at risk of serious harm and inadequate or inappropriate care in the community.
3. The harshest impact of this proposal will be on those applicants with dementia, who will not be able to provide documentation or recollection for transfers, regardless of how small.
4. The extension of the lookback period is arbitrary and without sound reasoning, other than to look for transfers in order to keep seniors from accessing Medicaid for nursing home care (while increasing administrative costs). The current federal law uses three years, which is a sufficient and reasonable time period to assume that any transfers made were not in contemplation of a future event. The average stay in a nursing home is less than three years. Hence, under current law, most seniors with more significant assets who transfer assets at the onset of needing long-term care in a nursing home will not receive Medicaid reimbursed nursing home care.
5. Any increase in the lookback period will have a significant impact on administrative overhead and be more burdensome on frail elderly, who must search and obtain records of proof for older transactions. How will the frail elderly (especially those with dementia) do this from a nursing home bed?
6. The proposal suggests that the elderly can predict their medical and financial circumstances five years into the future. An extended lookback coupled with a change in the transfer rules will punish unwitting elders who have helped their families with commonly made gifts and then experience medical events such as a stroke, hip fracture or Alzheimer's disease.
7. There is no reliable data to support the proposition that a longer lookback period will reduce the Medicaid program's share of nursing home care costs.

#### **Examples of How the Proposed Legislation Will Affect the Elderly**

Mr. Chairman, I have provided for the Subcommittee's consideration "typical examples" of how these proposals will hurt real Americans and their families.

1. A church supporter

Mr. Banks was living independently and actively in Florida though he suffered from diabetes and heart disease. He sold his home for \$135,000 and donated 10% of the proceeds, or \$13,500, to his local church. Mr. Banks moved to assisted living and thereafter to a skilled nursing facility. Two years later, Mr. Banks had exhausted his funds and would otherwise be eligible for Medicaid but for this \$13,500 gift to his church. Instead, Mr. Banks is ineligible for assistance for four months and has no resources to pay for his care during that period. Under existing law, Mr. Banks would have been penalized when he made the \$13,500 gift and that penalty period would have elapsed long before his need for public assistance arose.

2. A grandparent caregiver

Mr. and Mrs. Brown are the primary caregivers for their 16-year-old grandchild. Over the last three years they have paid \$20,000 for support of their grandchild. Mr. Brown suffers a stroke and needs long term care. Mrs. Brown has total liquid assets of \$50,000. Mr. Brown is *otherwise eligible* but will not be approved for Medicaid because of the \$20,000 expenditure for his grandchild. Instead, Mrs. Brown will be placed in the precarious position of paying privately for six months that will, at today's costs, totally exhaust her \$50,000 nest egg.

3. A family emergency

Mrs. Jones' daughter loses her job due to chronic fatigue syndrome. The daughter is a single parent with two underage children. Mrs. Jones helps her daughter financially in amounts totaling \$30,000. Six months later, Mrs. Jones suffers a heart attack and a debilitating stroke requiring long-term care. Two years later an impoverished Mrs. Jones applies for Medicaid and is denied because of the \$30,000 gift made several years earlier.

4. Cash-based couple

Mr. and Mrs. Smith live in their own home and pay most of their day-to-day expenses with cash. Mr. Smith generally withdraws about \$500 per month for food, gas, newspapers, house wares, car repairs, etc. Generally, he does not keep receipts, at least not in any organized way. Mrs. Smith has never handled their financial affairs and suffers from mild dementia. Unexpectedly, Mr. Smith suffers a stroke and now needs nursing home care. Their current assets and income would make him eligible for Medicaid coverage without difficulty under current law.

His withdrawals of \$500 per month will result in a penalty period, unless they are accounted for. His withdrawals add up to \$6000 per year in potentially disqualifying transfers, or \$18,000 for the three-year lookback. Since Mrs. Smith cannot document the use of the withdrawn money, Mr. Smith will face a penalty period of approximately 4 months.  $(\$18,000 \div \$4,500/\text{mo}) = 4 \text{ month}$ .

7. A helper through hard times

Mr. T, age 80, has been ill for several years since a stroke. His wife, age 75, has been caring for him at home. He became more seriously impaired this past summer when he contracted pneumonia. He was walking with assistance before the pneumonia, but increasing weakness has

left him unable to walk. She is continuing to care for him at home, but nursing home placement looks imminent.

Mrs. T has a son from a previous marriage who lives in another state and is not well off. During the last half of 2001, Mrs. T paid his mortgage for him, at \$850 per month (\$5,100 total). In May of 2002, she gave him \$2,200 to help him purchase an automobile so he could commute to and from a new job.

Thus, her total transfers were \$7,300. Their own savings are now dwindling. Her husband will be otherwise eligible for Medicaid, but under the President's budget proposal, he will face a penalty period of one month and some days. Mrs. T will have to find a way to pay this out of pocket.

#### 8. A caring sister

Two sisters, both in their 80s, have lived with each other in an apartment for several years. Both have reasonably sufficient assets to cover their anticipated needs. However, one sister has considerably more assets (about \$250,000). She is concerned that if she were to become ill and leave the apartment to move into a nursing home, the sister with fewer assets would not be able to afford to remain in the apartment.

The sister with greater assets wishes to take steps to ensure that her sister will be able to continue living in the apartment, if possible, and so she funds an irrevocable trust with \$48,000, intended to supplement the poorer sister's costs of living if the need arises.

Under current law and a regional monthly transfer rate of \$4500, this transfer will result in a disqualifying period of a little over ten months ( $\$48,000 \div \$4500/\text{mo} = 10.67$  months) from the date of transfer. But under the proposal, the caring sister, after spending down all her assets on nursing home care, would then face a penalty period of more than ten months before receiving Medicaid nursing home coverage. Alternatively, if she is aware of the penalty rules, she may be reluctant to help her less fortunate sister in the first place.

#### 9. Helping family

A mother helps her two children - her daughter has medical problems and does not have insurance and her son's daughter (her grandchild) is in a college with expensive tuition. So she helps her daughter by paying \$30,000 for health care and she helps her granddaughter by paying \$50,000 in tuition. These are significant amounts paid almost five years before she was forced to go into a nursing home. With a five year lookback and a penalty period starting on the day of application, she will be ineligible for nursing home care for more than 17 months (depending upon the state's regional monthly transfer rate). Seniors will not be able to help family members because they will not be able to predict their circumstances.

#### 10. A widow lacking records

Mrs. Waters was married for fifty years. Prior to his death, Mr. Waters handled all financial transactions. Mrs. Waters suffers from dementia and upon Mr. Waters' death is placed in a skilled nursing facility. Her resources are expended and she is applying for Medicaid. She has no knowledge or ability to explain the cash withdrawals totaling \$50,000 during the five years

preceding her husband's death. Nonetheless, Mrs. Waters is ineligible for Medicaid due to these inexplicable transfers.

11. A mother helping her daughter

Mr. and Mrs. G are in their late seventies and retired. Two and a half years ago, they were living independently and relatively healthy. At that point, one of their daughter's marriage ended and the daughter moved closer to her parents to be near them. She was unemployed at the time and needed to work. Her parents bought her a modest car for \$18,000 so that she had transportation to get back and forth to work. The daughter then started working in a series of part-time jobs, which provided her just enough to meet her living expenses.

Two years after giving their daughter the car, Mr. G suffered a major stroke. He lost his ability to speak, walk and use his left arm. He received rehabilitation following the stroke but did not recover all of his abilities. Despite medical advice, his wife insisted on bringing him home. She cared for him herself and paid for services privately for one year. At that point, Mr. G's needs had increased and Mrs. G had become considerably weakened due to the demands of being the primary caregiver. They reluctantly decided that he would be best cared for in a skilled care facility. Mrs. G paid privately for this care for one year. By then, her assets were depleted and she had no more than the amount that would be protected for her as a community spouse. She applied for Medicaid benefits on behalf of her husband and was denied benefits due to the purchase of the car for their daughter.

### **Long-Term Care Insurance**

Mr. Chairman, when a client comes to see me with significant resources, I suggest that they consider seeing a professional who is able to provide information on their long-term care insurance options. Congress and the Administration have for a number of years considered modifying the current laws regarding long-term care insurance. NAELA has consistently supported legislation that couples tax credits for long-term care caregivers with tax deductions for the premiums paid on the purchase of long-term care insurance. We believe this would be a positive way to assist caregivers and those that are willing, able, and qualify to purchase insurance.

I frequently advise clients with sufficient assets to consider long-term care insurance. Elder law attorneys may be the single largest supporter of long-term care insurance as a serious option, with the exception of the insurance industry itself. In many cases, however, our clients cannot afford the products or do not meet the underwriting criteria and will not be able to buy it. Nonetheless, I refer many clients to long-term care insurance agents if they have the resources and might be approved for coverage.

Some have wrongly claimed that the proposed changes to the asset rules will expand the use of long-term care insurance. NAELA does not believe this is true. However, NAELA strongly believes that long-term care insurance has a vital and appropriate role in helping to provide long-term care to some Americans and that we should continue to explore ways to make it a useful tool for more of us.

NAELA and I also support the expansion of the Long-Term Care Insurance Partnership Program. I am aware that a number of Members of Congress and consumer groups have reservations about

doing this, but I believe it is time to look carefully at this program and make any changes that are needed to make it a viable alternative in all states. The President has included this in his budget proposal and we believe your committee should help move this forward this year.

### **Other Medicaid Budget Cuts**

Some believe that the solution to Medicaid's increasing costs lies in methods either to limit federal funding and/or offer states greater flexibility in the administration of the program. I do not believe either will succeed. Capped funding or a block grant approach may offer states short-term fiscal relief but result in long term financial disaster for them. Modification on a state-by-state basis of fundamental eligibility rules will destroy what uniformity the program does have and shred the safety net that we need so desperately for all of Medicaid's beneficiaries.

Neither a limitation of federal funding nor a restriction in Medicaid's fundamental eligibility rules will change the fact that seniors and individuals with disabilities, their spouses and their families will continue to require basic health care. I hope this Congress does not allow a frail and vulnerable senior to suffer at home without treatment because we have restricted services or rewritten categorical eligibility rules that eliminate the senior from participation. Further, the Administration proposed that changing the Medicaid asset rules would save \$4.5 billion. There is no research that supports this assumption. In fact, the limited research data available reveals that there is little to be gained by changing these rules and much harm to be done to the elderly and individuals with disabilities.

Assuming that we have not become a society that turns its back on those in need, then these proposals accomplish nothing more than a shift of costs for the care that we should provide to those who are at risk. If federal funding for such services is limited, and the services continue, who will pay? At some level, whether by state, county, hospital, nursing home or private individual, the level of uncompensated care will increase. When that burden is borne by each state, hospital or nursing home, then the financial viability of each payer will be weakened further and the integrity of our health care system will be compromised.

NAELA supports the efforts of Senators Smith and Bingaman and Representative Heather Wilson and many others who have worked to create a bipartisan Medicaid Commission that would take a thoughtful look at this critically important program and work to find innovative solutions to its problems. Please let good policy drive your actions, not the budget.

### **Conclusion**

Mr. Chairman, I thank you for the opportunity to present testimony to this distinguished panel that has done so much for the elderly and individuals with disabilities over the years. As you can see from my remarks, one's life can truly end up on a Wheel of Fortune or misfortune. You spin the wheel and if it lands on heart disease or cancer, your costs are covered; if it lands on Lou Gehrig's disease, Multiple Sclerosis or Alzheimer's disease, you are on your own. If you get the right disease, the government will pay; if you get the wrong disease, they will not. Unfortunately, none of us has control over which illnesses we contract.

I ask that even in these times of tight budgets that you continue the commitment that you have made to care for millions of Americans through the Medicaid program.

Mr. Chairman and Members of the Subcommittee, I would be happy to respond to any questions you may have. Thank you.

## NAELA Members as Resources: Issue List

The National Academy of Elder Law Attorneys' (NAELA) has members that are valuable public policy and substantive law resources. Within the membership we have expertise in almost all federal, state and local programs serving or affecting the elderly. Many are willing to be supportive of the work of legislators and regulators, and will provide expert opinions, testimony, articles, and other written materials upon request. Issue areas include, but are not limited to:

- Alternative Dispute Resolution
- Disability Law
- Estate Planning
- Health Care Decision Making and End of Life Issues
- Health Care Advanced Directives
- Long-Term Care Planning
- Long-Term Care Insurance
- Managed Care
- Medicare
- Medicare Appeals
- Medicaid
- Mental Capacity Issues
- Nursing Home Care, Law, and Litigation
- Public Interest Representation (including Legal Services Corporation and Older Americans Act delivery systems)
- Retirement Housing
- Retirement Planning
- Guardianships, Conservatorships and other Surrogate Decision Making processes
- Social Security
- Supplemental Security Income
- Tax Planning
- Trusts and Wills

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<sup>i</sup> Peter S. Arno et al., "The Economic Value of Informal Caregiving," 18 *Health Affairs* 182 (March/April 1999) (estimates for 1997).

<sup>ii</sup> Health Policy Institute, Georgetown University, Long-Term Care Financing Project, *Fact Sheet: Who Pays for Long-Term Care?* (May 2003), available at: <http://ltc.georgetown.edu/pdfs/whopays.pdf>, accessed July 31, 2003.