111TH CONGRESS
1ST SESSION

S. 697

To amend the Public Health Service Act to help individuals with functional impairments and their families pay for services and supports that they need to maximize their functionality and independence and have choices about community participation, education, and employment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2009

Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, Mr. BROWN, Mr. CASEY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Public Health Service Act to help individuals with functional impairments and their families pay for services and supports that they need to maximize their functionality and independence and have choices about community participation, education, and employment, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Community Living As-

sistance Services and Supports Act” or the “CLASS Act”.

1

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tives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

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sistance Services and Supports Act” or the “CLASS Act”.

5
SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports.

(2) To establish an infrastructure that will help address America’s community living assistance services and supports needs.

(3) To alleviate burdens on family caregivers.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Purposes.
Sec. 3. Table of contents.

TITLE I—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

Sec. 101. Establishment of national voluntary insurance program for purchasing community living assistance services and support.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

Sec. 201. Above-the-line deduction for premium costs.
Sec. 202. Credit for premium costs of CLASS enrollees with low-income.
Sec. 203. Credit for costs of employers who elect to automatically enroll employees and withhold class premiums from wages.
Sec. 204. Long-term care insurance includible in cafeteria plans.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.
TITLE I—COMMUNITY LIVING
ASSISTANCE SERVICES AND
SUPPORTS

SEC. 101. ESTABLISHMENT OF NATIONAL VOLUNTARY INSURANCE PROGRAM FOR PURCHASING COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORT.

(a) Establishment of Program.—

(1) In general.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

“TITLE XXXI—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

“SEC. 3101. DEFINITIONS.

“In this title:

“(1) Active enrollee.—The term ‘active enrollee’ means an individual who is enrolled in the CLASS program in accordance with section 3102 and who has paid any premiums due to maintain such enrollment in accordance with section 3103.

“(2) Actively at work.—The term ‘actively at work’ means an individual who—

“(A) is reporting for work at the individual’s usual place of employment or at another
location to which the individual’s employer re-
quires the individual to travel (or in the case of
an individual who is a member of the uniformed
services, is on active duty and is physically able
to perform the duties of the individual’s posi-
tion);

“(B) is able to perform all the usual and
customary duties of the individual’s employment
on the individual’s regular work schedule; and

“(C) is not absent from work due to sick-
ness, injury, annual leave, sick leave or any
other leave.

“(3) ACTIVITIES OF DAILY LIVING.—The term
‘activities of daily living’ means each of the following
activities specified in section 7702B(c)(2)(B) of the
Internal Revenue Code of 1986:

“(A) Eating.

“(B) Toileting.

“(C) Transferring.

“(D) Bathing.

“(E) Dressing.

“(F) Continence.

“(4) CLASS PROGRAM.—The term ‘CLASS
program’ means the program established under this
title.
“(5) Disability determination service.—

The term ‘Disability Determination Service’ means, with respect to each State, the entity that has an agreement with the Commissioner of Social Security to make disability determinations for purposes of title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.).

“(6) Eligible tier I beneficiary.—

“(A) In general.—The term ‘eligible tier I beneficiary’ means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

“(i) has paid premiums for enrollment in such program for at least 60 months; and

“(ii) except as provided in section 3103(e)(2), has paid premiums for enrollment in such program for at least 12 consecutive months if a lapse in premium payments of more than 3 months has occurred during the period that begins on the date of the individual’s enrollment and ends on the date of such determination.

“(B) Date described.—For purpose of subparagraph (A), the date described in this
subparagraph is the date on which the individual is determined—

“(i) to be unable to perform at least 2 activities of daily living or to require supervision, cueing, or hands-on assistance to plan or perform at least 2 such activities; or

“(ii) due to a cognitive or psychiatric impairment, to require supervision, cueing, or hands-on assistance to engage in activities that will enable the individual to perform at least 2 of the following critical life functions:

“(I) Communicating.

“(II) Taking medications.

“(III) Household management.

“(IV) Basic money management.

“(7) ELIGIBLE TIER II BENEFICIARY.—The term ‘eligible tier II beneficiary’ means any individual who is an eligible tier I beneficiary who has been determined—

“(A) to be unable to perform at least 4 activities of daily living or to require supervision, cueing, or hands-on assistance to plan or perform at least 4 such activities; or
“(B) due to a cognitive or psychiatric impairment, to require supervision, cueing, or hands-on assistance to engage in activities that will enable the individual to perform at least 4 of the following critical life functions:

“(i) Communicating.

“(ii) Taking medications.

“(iii) Household management.

“(iv) Basic money management.

“(8) HOSPITAL; NURSING FACILITY; INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; INSTITUTION FOR MENTAL DISEASES.—The terms ‘hospital’, ‘nursing facility’, ‘intermediate care facility for the mentally retarded’, and ‘institution for mental diseases’ have the meanings given such terms for purposes of Medicaid.

“(9) INDEPENDENCE FUND.—The term ‘Independence Fund’ or ‘Fund’ means the fund established under section 3105.

“(10) MEDICAID.—The term ‘Medicaid’ means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

“(11) POVERTY LINE.—The term ‘poverty line’ has the meaning given that term in section
(12) Protection and Advocacy System.—

The term ‘Protection and Advocacy System’ means the system for each State established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

“SEC. 3102. AUTOMATIC ENROLLMENT WITH OPT-OUT ELECTION.

“(a) Automatic Enrollment.—

“(1) In general.—Subject to paragraph (2), the Secretary shall establish procedures under which each individual described in subsection (c) shall be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986.

“(2) Alternative enrollment procedures.—The procedures established under paragraph (1) shall provide for an alternative enrollment process for an individual described in subsection (c) in the case of such an individual—

“(A) who is self-employed;

“(B) who has more than 1 employer;
“(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary; or

“(D) who is a spouse described in paragraph (2) of such subsection who is not subject to automatic enrollment.

“(3) ADMINISTRATION.—

“(A) IN GENERAL.—The Secretary shall, by regulation, establish procedures to—

“(i) ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer; and

“(ii) allow for an individual’s employer to deduct a premium for a spouse described in subsection (c)(1)(B) who is not subject to automatic enrollment.

“(B) FORM.—Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

“(b) ELECTION TO OPT-OUT.—An individual described in subsection (c) may elect to waive enrollment under the CLASS program at any time in such form and manner as the Secretary shall prescribe.
“(c) INDIVIDUAL DESCRIBED.—For purposes of en-
rolling in the CLASS program, an individual described in
this subsection is—

“(1) an individual—

“(A) who has attained age 18;

“(B) who—

“(i) receives wages on which there is
imposed a tax under section 3101(a) of the
Internal Revenue Code of 1986; or

“(ii) derives self-employment income
on which there is imposed a tax under sec-
section 1401(a) of the Internal Revenue Code
of 1986;

“(C) who is actively at work; and

“(D) who is not—

“(i) a patient in a hospital or nursing
facility, an intermediate care facility for
the mentally retarded, or an institution for
mental diseases and receiving medical as-
sistance under Medicaid; or

“(ii) confined in a jail, prison, other
penal institution or correctional facility, or
by court order pursuant to conviction of a
criminal offense or in connection with a
verdict or finding described in section
202(x)(1)(A)(ii) of the Social Security Act
(42 U.S.C. 402(x)(1)(A)(ii)); or
“(2) the spouse of an individual described in
paragraph (1) and who would be an individual so de-
described but for subparagraph (B) or (C) of that
paragraph.
“(d) RULE OF CONSTRUCTION.—Nothing in this title
shall be construed as requiring an active enrollee to con-
tinue to satisfy subparagraph (B) or (C) of subsection
(c)(1) in order to maintain enrollment in the CLASS pro-
gram.

“SEC. 3103. PREMIUMS.
“(a) MONTHLY PREMIUMS.—Except as provided in
subsection (e), each individual who is enrolled in the
CLASS program shall pay the Secretary a monthly pre-
mium to maintain enrollment in the program.
“(b) AMOUNT OF PREMIUM.—
“(1) $30 MONTHLY PREMIUM FOR ENROLL-
MENT IN THE FIRST YEAR OF THE PROGRAM.—Sub-
ject to the succeeding provisions of this subsection,
the monthly premium for enrollment in the CLASS
program of any individual who enrolls during the
first year in which the program is in effect under
this title shall be $30 for every such enrollee, re-
gardless of their age at enrollment.
“(2) Inflation Adjusted Premium for Enrollment in First Year in Which An Individual Is Eligible to Enroll After First Year of the Program.—The monthly premium for enrollment in the CLASS program of any individual who enrolls during the first year in which the individual is eligible to enroll in the program but that occurs after the first year in which the program is in effect under this title, shall be $30, increased with respect to each year that the program is in effect under this title until the year of such enrollment, by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over each such preceding year.

“(3) Age-Adjusted Premiums for Enrollment in Other Years.—

“(A) In general.—The Secretary shall determine for each year that is not a year described in paragraph (1) or (2), an annual monthly premium for enrollment in the CLASS program of an individual during the year that adjusts the monthly premium that would apply to the individual under paragraph (2) if the individual had enrolled during the first year in
which the individual was eligible to enroll in the program based on the following:

“(i) Age at Enrollment.—Subject to paragraph (4), the age of an individual upon the individual’s initial enrollment in the program.

“(ii) Administrative Expenses.—The administrative expenses for the program.

“(B) Limitation on Administrative Expenses.—

“(i) Start-up Administrative Expenses.—The total amount of annual expenditures incurred for administering the CLASS program during each of the first 5 years in which the program is in effect under this title shall not exceed the sum of an amount equal to 3 percent of all premiums paid during that year.

“(ii) Subsequent Administrative Expenses.—With respect to any year after the first 5 years in which the CLASS program is in effect under this title, the total amount of annual expenditures incurred for administering the CLASS pro-
gram shall not exceed the lesser of an amount equal to—

“(I) 5 percent of the total amount of all expenditures (including benefits paid) under this title with respect to that year; or

“(II) the percentage of expenditures incurred under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for that year that is attributable to administering that program.

“(4) Nominal premium for individual’s with income that does not exceed 150 percent of the poverty line.—

“(A) In general.—In the case of an individual whose income does not exceed 150 percent of the poverty line, the monthly premium for enrollment in the CLASS program shall be the applicable amount under subparagraph (B).

“(B) Applicable amount.—The Secretary shall establish premium amounts which shall apply to an individual described in subparagraph (A) in lieu of the premium amount which would otherwise apply to the individual.
under paragraph (1), (2), or (3) (whichever is applicable). Such amounts shall be nominal and, in the case of an individual who, but for this paragraph, would be subject to the premium imposed under paragraph (3), may be adjusted in accordance with the factors described in that paragraph.

“(C) **Self-attestation and verification of income.**—The Secretary shall establish procedures to—

“(i) permit an individual, as part of their automatic enrollment in the CLASS program, to self-attest that their income does not exceed 150 percent of the poverty line; and

“(ii) verify the validity of such self-attestation.

“(5) **Adjustment of premiums.**—

“(A) In general.—Except as provided in subparagraphs (C) and (D), the amount of the monthly premium determined for an individual upon such individual’s enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.
“(B) Program solvency projections.—Beginning with 2012 and every year thereafter, the Secretary shall determine with respect to the 20-year period that begins with that year, the amount of funds held (or projected to be held) in the Independence Fund established under section 3105 that are required to pay tier I and tier II benefits under section 3104 during each year of that period.

“(C) Recalculated premium if required for program solvency.—

“(i) In general.—Subject to clauses (ii) and (iii), beginning with 2017 and every year thereafter, if the Secretary determines as a result of making the program solvency projections required under subparagraph (B) that, with respect to the 20-year period that begins with that year, more than 40 percent of the amount of funds held (or projected to be held) in the Independence Fund established under section 3105 are required to pay tier I and tier II benefits under section 3104 during each year of that period, the Secretary
shall adjust the monthly premiums for individuals enrolled in the CLASS program.

“(ii) REQUIREMENTS.—In adjusting monthly premiums under clause (i), the Secretary shall increase the premiums by such an amount as will ensure that—

“(I) the aggregate amount of such premiums collected will result in not more than 20 percent of the amounts held in the Independence Fund being required to pay tier I and tier II benefits for any one year occurring during the applicable 20-year period;

“(II) with respect to any individual enrolled in the program—

“(aa) the amount of the increase in the individual’s monthly premium does not exceed the amount equal to 50 percent of the premium prior to such increase; and

“(bb) the individual’s monthly premium does not exceed the amount equal to 200
percent of the initial premium amount paid by the individual during their first year of enrollment in the program; and

“(III) the requirements of clause (iii) are met.

The Secretary shall immediately notify Congress if the Secretary determines that the requirements of this clause cannot be satisfied and shall include in such notification recommendations for such legislative action as the Secretary determines to be appropriate.

“(iii) EXEMPTION FROM INCREASE.— Any increase in a monthly premium imposed as result of a determination described in clause (i) shall not apply with respect to the monthly premium of any active enrollee who—

“(I) has attained age 65;

“(II) has paid premiums for enrollment in the program for at least 20 years; and

“(III) is not actively at work.
“(D) Recalculated premium if re-enrollment after more than a 3-month lapse.—

“(i) In general.—Except as provided in subsection (e)(2), the reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for enrollment in the program.

“(ii) Credit for prior months.—An individual who reenrolls in the CLASS program after such a 90-day period shall be—

“(I) credited with any months of paid premiums that accrued prior to the individual’s lapse in enrollment; and

“(II) notwithstanding the total amount of any such credited months, required to satisfy section 3101(6)(B)(ii) before being eligible to receive a tier I or tier II benefit.
“(6) No underwriting requirements.—No underwriting shall be used to—

“(A) determine the monthly premium for enrollment in the CLASS program; or

“(B) prevent an individual from enrolling in the program.

“(c) Payment.—

“(1) Payroll deduction.—An amount equal to the monthly premium for the enrollment in the CLASS program of an individual shall be deducted from the wages or self-employment income of such individual in accordance with such procedures as the Secretary, in consultation with the Secretary of the Treasury, shall establish for employers who elect to deduct and withhold such premiums on behalf of enrolled employees.

“(2) Alternative payment mechanism.—The Secretary shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

“(A) who does not have an employer who elects to deduct and withhold premiums in accordance with paragraph (1); or

“(B) who does not earn wages or derive self-employment income.
“(d) Transfer of Premiums Collected.—

“(1) In general.—During each calendar year
the Secretary of the Treasury shall deposit into the
Independence Fund a total amount equal, in the ag-
aggregate, to 100 percent of the premiums collected
during that year.

“(2) Transfers based on estimates.—The
amount deposited pursuant to paragraph (1) shall be
transferred in at least monthly payments to the
Independence Fund on the basis of estimates by the
Secretary and certified to the Secretary of the
Treasury of the amounts collected in accordance
with paragraphs (1) and (2) of subsection (e). Prop-
er adjustments shall be made in amounts subse-
quently transferred to the Fund to the extent prior
estimates were in excess of, or were less than, actual
amounts collected.

“(e) Contribution Period.—

“(1) In general.—An individual shall not be
required to pay a monthly premium to maintain the
individual’s enrollment in the CLASS program dur-
during the following periods:

“(A) Receiving benefits while unem-
ployed.—Any period during which the indi-
vidual is—
“(i) receiving tier I or tier II benefits;
and
“(ii) the individual does not have
wages or income derived from self-employ-
ment.
“(B) Full-time student who is ac-
tively at work.—Any period during which
the individual is a full-time student (as deter-
mined by the Secretary) who has not attained
age 22 and is actively at work.
“(2) Application of premium amount prior
to start of period.—Upon the conclusion of a pe-
period described in paragraph (1) for an individual,
the individual shall resume paying the monthly pre-
mium amount that applied to the individual imme-
diately prior to the start of such period in order to
maintain enrollment in the program.

“SEC. 3104. BENEFITS.
“(a) Determination of Eligibility.—
“(1) Application for receipt of bene-
fits.—The Secretary shall establish procedures
under which an active enrollee shall apply for receipt
of tier I or tier II benefits.
“(2) Eligibility assessments.—
“(A) IN GENERAL.—Not later than October 1, 2012, the Secretary shall enter into agreements with—

“(i) the Disability Determination Service for each State to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

“(ii) the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (e); and

“(iii) public and private entities to provide advice and assistance counseling in accordance with subsection (f).

“(B) 30-DAY PERIOD FOR APPROVAL OR DISAPPROVAL.—An agreement under subparagraph (A) shall require that a Disability Determination Service determine within 30 days of the receipt of an application for benefits under the CLASS program whether an applicant is an eligible tier I beneficiary or an eligible tier II beneficiary. An application that is pending after 45 days shall be deemed approved.

“(C) PRESUMPTIVE ELIGIBILITY FOR CERTAIN INSTITUTIONALIZED ENROLLEES PLAN-
NING TO DISCHARGE.—An active enrollee shall be deemed presumptively eligible if the enrollee—

“(i) has applied for receipt of tier II benefits;

“(ii) is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

“(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution.

“(D) APPEALS.—The Secretary shall establish procedures under which an applicant for benefits under the CLASS program shall be guaranteed the right to appeal an adverse determination.

“(b) TIER I BENEFITS.—An eligible tier I beneficiary shall receive the following tier I benefits:

“(1) DAILY CASH BENEFIT.—A daily cash benefit in the amount of $50 per day.

“(2) ANNUAL BENEFIT.—An annual benefit in an amount not to exceed the amount equal to the daily benefit applicable under paragraph (1) (after the application of subsection (g)) multiplied by 365.
“(3) Advocacy services.—Advocacy services in accordance with subsection (e).

“(4) Advice and assistance counseling.—Advice and assistance counseling in accordance with subsection (f).

“(5) No lifetime limit.—There shall be no lifetime limit on the aggregate tier I benefits that an eligible tier I beneficiary may receive.

“(c) Tier II benefits.—An eligible tier II beneficiary shall receive the following tier II benefits:

“(1) Daily cash benefit.—A daily cash benefit in the amount of $100 per day.

“(2) Annual benefit.—An annual benefit in an amount not to exceed the amount equal to the daily benefit applicable under paragraph (1) (after the application of subsection (g)) multiplied by 365.

“(3) Advocacy services.—Advocacy services in accordance with subsection (e).

“(4) Advice and assistance counseling.—Advice and assistance counseling in accordance with subsection (f).

“(5) No lifetime limit.—There shall be no lifetime limit on the aggregate tier II benefits that an eligible tier II beneficiary may receive.

“(d) Payment of benefits.—
“(1) LIFE INDEPENDENCE ACCOUNTS.—

“(A) IN GENERAL.—The Secretary shall establish procedures under which tier I daily cash benefits and tier II daily cash benefits shall be paid on a monthly basis into a Life Independence Account established by the Secretary on behalf of each eligible tier I beneficiary or eligible tier II beneficiary.

“(B) USE OF CASH BENEFITS.—Daily cash benefits paid into a Life Independence Account of an eligible tier I beneficiary or an eligible tier II beneficiary shall be used to purchase non-medical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, such as home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, and home care aides.

“(C) ELECTRONIC MANAGEMENT OF FUNDS.—The procedures established in accordance with subparagraph (A) shall provide for—
“(i) crediting an account established
on behalf of a beneficiary with the bene-
ficiary’s cash daily benefit;
“(ii) accessing such account through
debit cards; and
“(iii) accounting for withdrawals by
the beneficiary from such account.
“(D) PRIMARY PAYOR RULES FOR BENE-
FICIARIES WHO ARE ENROLLED IN MEDICAID.—
In the case of an eligible tier I beneficiary or
an eligible tier II beneficiary who is enrolled in
Medicaid, the following payment rules shall
apply:
“(i) INSTITUTIONALIZED BENEFICIARY.—If the beneficiary is a patient in
a hospital, nursing facility, intermediate
care facility for the mentally retarded, or
an institution for mental diseases, the ben-
eficiary shall retain an amount equal to 5
percent of the beneficiary’s daily cash ben-
efit (which shall be in addition to the
amount of the beneficiary’s personal needs
allowance provided under Medicaid), and
the remainder of such benefit shall be ap-
plied toward the facility’s cost of providing
the beneficiary’s care, and Medicaid shall
provide secondary coverage for such care.

“(ii) Beneficiaries receiving
home and community-based serv-
ices.—

“(I) 50 percent of daily ben-
efit retained by beneficiary.—If
a beneficiary is receiving medical as-
sistance under Medicaid for home and
community-based services, the bene-
ficiary shall retain an amount equal to
50 percent of the beneficiary’s daily
cash benefit, subject to subclause (II),
and the remainder of the daily cash
benefit shall be applied toward the
cost to the State of providing such as-
sistance (and shall not be used to
claim Federal matching funds under
Medicaid), and Medicaid shall provide
secondary coverage for the remainder
of any costs incurred in providing
such assistance.

“(II) Requirement for state
offset.—A State shall be paid the
remainder of a beneficiary’s daily cash
benefit under subclause (I) only if the
State home and community-based
waiver under section 1115 of the So-
cial Security Act (42 U.S.C. 1315) or
subsection (c) or (d) of section 1915
of such Act (42 U.S.C. 1396n) does
not include a waiver of the require-
ments of section 1902(a)(1) of the So-
cial Security Act (relating to statewideness) or of section
1902(a)(10)(B) of such Act (relating
to comparability) and the State offers
at a minimum case management serv-
ices, personal care services, habili-
tation services, and respite care under
such a waiver.

“(III) DEFINITION OF HOME AND
COMMUNITY-BASED SERVICES.—In
this clause, the term ‘home and com-
munity-based services’ means any
services which may be offered under a
home and community-based waiver
authorized for a State under section
1115 of the Social Security Act (42
U.S.C. 1315) or subsection (c) or (d)
of section 1915 of such Act (42 U.S.C. 1396n).

“(2) AUTHORIZED REPRESENTATIVES.—

“(A) IN GENERAL.—The procedures established under paragraph (1)(A) shall allow for access to tier I daily benefits or tier II daily benefits by an authorized representative of the eligible tier I beneficiary or eligible tier II beneficiary on whose behalf such benefits are paid.

“(B) QUALITY ASSURANCE AND PROTECTION AGAINST FRAUD AND ABUSE.—The Secretary shall include in the procedures established under paragraph (1) standards of conduct for authorized representatives of eligible tier I beneficiaries and eligible tier II beneficiaries to ensure that authorized representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

“(3) COMMENCEMENT OF BENEFITS.—Tier I benefits or tier II benefits, as applicable, shall be paid to, or on behalf of, an eligible tier I beneficiary or an eligible tier II beneficiary, respectively, begin-
ning with the first month in which an application for such benefits is approved.

“(4) Rollover option for lump-sum payment.—An eligible tier I beneficiary or an eligible tier II beneficiary may elect to—

“(A) defer payment of their daily benefit and to rollover any such deferred benefits from month-to-month, but not from year-to-year; and

“(B) receive a lump-sum payment of such deferred benefits in an amount that may not exceed the lesser of—

“(i) the total amount of the accrued deferred benefits; or

“(ii) the applicable annual benefit.

“(5) Period for determination of annual benefits.—

“(A) In general.—The applicable period for determining with respect to an eligible tier I beneficiary or an eligible tier II beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.
“(B) Inclusion of Tier I Benefits.—

The Secretary shall establish procedures under which benefits paid to an eligible tier I beneficiary who becomes an eligible tier II beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible tier II beneficiary.

“(C) Recoupment of Unpaid, Accrued Benefits.—

“(i) In General.—The Secretary shall recoup any accrued benefits in the event of—

“(I) the death of a beneficiary; or

“(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

“(ii) Payment into Independence Fund.—Any benefits recouped in accordance with clause (i) shall be paid into the Independence Fund and used in accordance with section 3105.
“(6) Requirement to recertify eligibility for receipt of benefits and to notify the Secretary if not earning wages or income.—

The procedures established under paragraph (1)(A) shall provide for an eligible tier I beneficiary or an eligible tier II beneficiary to—

“(A) annually—

“(i) recertify by submission of medical evidence the beneficiary’s continued eligibility for receipt of tier I or tier II benefits (as applicable); and

“(ii) submit records of expenditures attributable to the aggregate daily cash benefit received by the beneficiary during the preceding year; and

“(B) notify the Secretary if the beneficiary is not earning wages or deriving self-employment income and should not have to pay a monthly premium to maintain enrollment in the CLASS program in accordance with section 3103(e)(2).

“(7) Supplement, not supplant other health care benefits.—Subject to the Medicaid payment rules under paragraph (1)(C), benefits received by an eligible tier I beneficiary or an eligible
tier II beneficiary shall supplement, but not sup-
plant, other health care benefits for which the bene-
ficiary is eligible under Medicaid or any other feder-
ally funded program that provides health care bene-
fits or assistance.

“(e) ADVOCACY SERVICES.—An agreement entered
into under subsection (a)(2)(A)(ii) shall require the Pro-
tection and Advocacy System for the State to—

“(1) assign, as needed, an advocacy counselor
to each eligible tier I beneficiary or eligible tier II
beneficiary that is covered by such agreement and
who provides an eligible tier I beneficiary or an eligi-
ble tier II beneficiary with—

“(A) information regarding how to access
the appeals process established for the program;
“(B) assistance with respect to the annual
recertification and notification required under
subsection (d)(6); and
“(C) such other services as the Secretary,
by regulation, shall require; and
“(2) ensure that the System and such coun-
selors comply with the requirements of subsection
(i).

“(f) ADVICE AND ASSISTANCE COUNSELING.—An
agreement entered into under subsection (a)(2)(A)(iii)
shall require the entity to assign, as requested by an eligible tier I beneficiary or an eligible tier II beneficiary that is covered by such agreement, an advice and assistance counselor who provides an eligible tier I beneficiary or an eligible tier II beneficiary with information regarding—

“(1) accessing and coordinating long-term services and supports in the most integrated setting;

“(2) possible eligibility for other benefits and services;

“(3) development of a service and support plan;

“(4) information about programs established under the Assistive Technology Act of 1998 and the services offered under such programs; and

“(5) such other services as the Secretary, by regulation, may require.

“(g) NO EFFECT ON ELIGIBILITY FOR OTHER BENEFITS.—Benefits paid to an eligible tier I beneficiary or an eligible tier II beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary’s eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of
Veterans Affairs, under low-income housing assistance programs, or under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011).

“(h) Cost-of-Living and Other Adjustments.—

“(1) In General.—Beginning with 2011, the dollar amounts specified in subsections (b)(1) and (c)(1) shall be annually increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) over the previous year.

“(2) Additional Adjustment.—With respect to any year for which the Secretary has determined under section 3103(b)(4)(C) that an adjustment to the monthly premium amounts is necessary to ensure program solvency, the Secretary shall decrease the increase in the dollar amounts specified in subsections (b)(1) and (c)(1) that would otherwise be applicable under paragraph (1) for that year, by such amount as the Secretary determines is appropriate for that year (but shall ensure that there is an increase in such dollar amounts for that year).

“(i) Rule of Construction.—Nothing in this title shall be construed as prohibiting tier I or tier II benefits paid under the CLASS program from being used to compensate a family caregiver for providing community living

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assistance services and supports to an eligible tier I beneficiary or an eligible tier II beneficiary.

“(j) Protection Against Conflict of Interests.—The Secretary shall establish procedures to ensure that the Disability Determination Service and Protection and Advocacy System for a State, advocacy counselors for eligible tier I or eligible tier II beneficiaries, and any other entities that provide services to active enrollees and eligible tier I or eligible tier II beneficiaries under the CLASS program comply with the following:

“(1) If the entity provides counseling or planning services, such services are provided in a manner that fosters the best interests of the active enrollee or beneficiary.

“(2) The entity has established operating procedures that are designed to avoid or minimize conflicts of interest between the entity and an active enrollee or beneficiary.

“(3) The entity provides information about all services and options available to the active enrollee or beneficiary, to the best of its knowledge, including services available through other entities or providers.

“(4) The entity assists the active enrollee or beneficiary to access desired services, regardless of the provider.
“(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

“(6) If the entity provides counseling or planning services, the entity ensures that an active enrollee or beneficiary is informed of any financial interest that the entity has in a service provider.

“(7) The entity provides an active enrollee or beneficiary with a list of available service providers that can meet the needs of the active enrollee or beneficiary.

“SEC. 3105. INDEPENDENCE FUND.

“(a) Establishment of Independence Fund.—There is established in the Treasury of the United States a trust fund to be known as the ‘Independence Fund’. The Secretary shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 3103(d) and 3104(d)(5)(C)(ii), and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—
“(1) to be held for investment on behalf of individuals enrolled in the CLASS program;
“(2) to pay the administrative expenses related to the Fund and to investment under subsection (b); and
“(3) to pay tier I and tier II benefits under section 3104.
“(b) INVESTMENT OF FUND BALANCE.—The Secretary, through the Secretary of the Treasury, shall invest the Independence Fund in the same manner, and to the same extent, as the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund may be invested under section 201(d) of the Social Security Act (42 U.S.C. 401(d)).
“(c) OFF-BUDGET STATUS; LOCK-BOX PROTECTION.—
“(1) EXCLUSION OF TRUST FUNDS FROM ALL BUDGETS.—Notwithstanding any other provision of law, the amounts derived from payments into the Fund and amounts paid from the Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—
“(A) the budget of the United States Government, as submitted by the President; and
“(B) the congressional budget; or
“(C) the Balanced Budget and Emergency Deficit Control Act of 1985.

“(2) Lock-box Protection.—

“(A) In General.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any measure that would authorize the payment or use of amounts in the Fund for any purpose other than a purpose authorized under this title.

“(B) 60-vote Waiver Required in the Senate.—

“(i) In General.—Subparagraph (A) may be waived or suspended in the Senate only by the affirmative vote of 3/5 of the Members, duly chosen and sworn.

“(ii) Appeals.—

“(I) Procedure.—Appeals in the Senate from the decisions of the Chair relating to clause (i) shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the measure that would authorize the payment or use of amounts in the Fund for a
purpose other than a purpose authorized under this title.

"(II) 60-votes required.—An affirmative vote of 3/5 of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised in relation to clause (i).

"(C) Rules of the Senate and House of Representatives.—This section is enacted by Congress—

"(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a measure described in subparagraph (A), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(ii) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the pro-
“(d) ADDITIONAL APPROPRIATIONS TO ENSURE SOLVENCY DURING INITIAL BENEFIT YEARS.—In addition to the amounts appropriated to the Fund under subsection (a), out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Fund, for each of fiscal years 2013 through 2017, such sums as are necessary for each such fiscal year (and which, in the case of each of fiscal years 2014 through 2017, shall be less than the amount appropriated for the preceding fiscal year) to ensure the solvency of the Fund during the first 5 years in which tier I or tier II benefits are paid from the Fund. Amounts appropriated under this subsection shall remain available without fiscal year limitation for the purposes specified in paragraphs (1), (2), and (3) of subsection (a).

“SEC. 3106. REGULATIONS; ANNUAL REPORT.

“(a) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this title. Such regulations shall include provisions to prevent fraud and abuse under the program.
“(b) ANNUAL REPORT.—Beginning with fiscal year 2013, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

“(1) The total amount of enrollees in the program.

“(2) The total number of eligible tier I beneficiaries and eligible tier II beneficiaries during the fiscal year.

“(3) The total amount of tier I and tier II benefits provided during the fiscal year.

“(4) A description of instances of fraud or abuse identified during the fiscal year.

“(5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program or to prevent the occurrence of fraud or abuse.

“SEC. 3107. TAX TREATMENT OF PROGRAM.

“The CLASS program shall be treated for purposes of the Internal Revenue Code of 1986 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.”.

(2) CONFORMING AMENDMENTS TO MEDICAID.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section
5006(e)(2)(A) of division B of Public Law 111–5, is amended—

(A) in paragraph (72), by striking “and” at the end;

(B) in paragraph (73)(B), by striking the period and inserting “; and”; and

(C) by inserting after paragraph (73) the following:

“(74) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this title and are eligible tier I beneficiaries or eligible tier II beneficiaries under the CLASS program established under title XXIX of the Public Health Service Act as the Secretary shall establish.”.

(b) Assurance of Adequate Infrastructure for the Provision of Personal Care Attendant Workers.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by subsection (a)(2), is amended—

(1) in paragraph (73)(B), by striking “and” at the end;

(2) in paragraph (74), by striking the period at the end and inserting “; and”; and
(3) by inserting after paragraph (74), the fol-
lowing:

“(75) provide that, not later than 2 years after
the date of enactment of the Community Living As-
sistance Services and Supports Act, each State
shall—

“(A) assess the extent to which entities
such as providers of home care, home health
services, home and community service providers,
public authorities created to provide personal
care services to individuals eligible for medical
assistance under the State plan, and nonprofit
organizations, are serving or have the capacity
to serve as fiscal agents for, employers of, and
providers of employment-related benefits for,
personal care attendant workers who provide
personal care services to individuals receiving
benefits under the CLASS program established
under title XXIX of the Public Health Service
Act, including in rural and underserved areas;

“(B) designate or create such entities to
serve as fiscal agents for, employers of, and
providers of employment-related benefits for,
such workers to ensure an adequate supply of
the workers for individuals receiving benefits
under the CLASS program, including in rural
and underserved areas; and

“(C) ensure that the designation or cre-
ation of such entities will not negatively alter or
impede existing programs, models, methods, or
administration of service delivery that provide
for consumer controlled or self-directed home
and community services and further ensure that
such entities will not impede the ability of indi-
viduals to direct and control their home and
community services, including the ability to se-
lect, manage, dismiss, co-employ, or employ
such workers or inhibit such individuals from
relying on family members for the provision of
personal care services.”.

(e) PERSONAL CARE ATTENDANTS WORKFORCE AD-
VISORY PANEL.—

(1) ESTABLISHMENT.—Not later than 90 days
after the date of enactment of this Act, the Sec-
retary of Health and Human Services shall establish
a Personal Care Attendants Workforce Advisory
Panel for the purpose of examining and advising the
Secretary and Congress on workforce issues related
to personal care attendant workers, including with
respect to the adequacy of the number of such work-
ers, the salaries, wages, and benefits of such workers, and access to the services provided by such workers.

(2) Membership.—In appointing members to the Personal Care Attendants Workforce Advisory Panel, the Secretary shall ensure that such members include the following:

(A) Individuals with disabilities of all ages.

(B) Senior individuals.

(C) Representatives of individuals with disabilities.

(D) Representatives of senior individuals.

(E) Representatives of workforce and labor organizations.

(F) Representatives of home and community-based service providers.

(G) Representatives of assisted living providers.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. ABOVE-THE-LINE DEDUCTION FOR PREMIUM COSTS.

(a) In General.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is
amended by inserting after paragraph (21) the following new paragraph:

“(22) CLASS PROGRAM PREMIUMS.—The deduction allowed by section 213 (determined without regard to any adjusted gross income limitation) which consists of amounts paid by the taxpayer for enrollment in the CLASS program (as defined in section 36B(d)) for eligible enrollment months (as defined in section 36(b)) beginning in the taxable year.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 202. CREDIT FOR PREMIUM COSTS OF CLASS ENROLLEES WITH LOW-INCOME.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by inserting after section 36A the following new section:

“SEC. 36B. PREMIUM COSTS OF CLASS ENROLLEES WITH LOW-INCOME.

“(a) IN GENERAL.—In the case of a CLASS enrollee with low-income, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 50 percent of the amount paid by the taxpayer for enrollment of the taxpayer and the taxpayer’s spouse in the CLASS
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program for eligible enrollment months beginning in the taxable year.

“(b) ELIGIBLE ENROLLMENT MONTH.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible enrollment month’ means any month if, as of the first day of such month, the taxpayer is a CLASS enrollee with low-income enrolled in the CLASS program, the premium for which is paid by the taxpayer.

“(2) JOINT RETURNS.—In the case of a joint return, the requirements of paragraph (1) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

“(c) CLASS ENROLLEE WITH LOW-INCOME.—For purposes of this section, the term ‘CLASS enrollee with low-income’ means an individual—

“(1) who is an active enrollee in the CLASS program (as defined in section 3101(1) of the Public Health Service Act); and

“(2) whose gross income does not exceed 250 percent of the poverty line.

“(d) CLASS PROGRAM.—For purposes of this section, the term ‘CLASS program’ means the program for community living assistance services and supports established under title XXIX of the Public Health Service Act.
“(e) Special Rules.—

“(1) Coordination with other deductions.—Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 62(a)(22), 162(l), or 213.

“(2) MSA distributions.—Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).

“(3) Denial of credit to dependents.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual’s taxable year begins.

“(4) Both spouses eligible individuals.—For purposes of subsection (a), the amount paid for enrollment of the taxpayer’s spouse shall be disregarded if—

“(A) the taxpayer is married at the close of the taxable year,

“(B) the taxpayer and the taxpayer’s spouse are both CLASS enrollee with low-income during the taxable year, and
“(C) the taxpayer files a separate return for the taxable year.

“(5) Marital status; certain married individuals living apart.—Rules similar to the rules of paragraph (3) and (4) of section 21(e) shall apply for purposes of this section.

“(f) Regulations.—The Secretary may prescribe such regulations and guidance as may be necessary or appropriate to carry out this section.”.

(b) Conforming Amendments.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by striking “section 35” and all that follows through “53(e)” and inserting “section 35, 36, 36A, 36B, 53(e), or 6428”.

(2) Section 6211(b)(4)(A) is amended by inserting “36B,” after “36A,”.

(3) The table of sections for subpart C of part IV of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 36A the following new item:

“Sec. 36B. Premiums costs of CLASS enrollees with low-income.”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.
SEC. 203. CREDIT FOR COSTS OF EMPLOYERS WHO ELECT TO AUTOMATICALLY ENROLL EMPLOYEES AND WITHHOLD CLASS PREMIUMS FROM WAGES.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business credits) is amended by inserting after section 45Q the following:

“SEC. 45R. CREDIT FOR COSTS OF AUTOMATICALLY ENROLLING EMPLOYEES AND WITHHOLDING CLASS PREMIUMS FROM WAGES.

“(a) General Rule.—For purposes of section 38, the CLASS automatic enrollment and premium withholding credit determined under this section for the taxable year is an amount equal to 25 percent of the total amount paid or incurred by the taxpayer during the taxable year to—

“(1) automatically enroll employees in the CLASS program established under title XXIX of the Public Health Service Act, and

“(2) withhold monthly CLASS premiums on behalf of an employee who is enrolled in that program.

“(b) Denial of Double Benefit.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.
“(c) Election Not to Claim Credit.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.”.

(b) Credit Made Part of General Business Credit.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking “plus” at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting “, plus”, and by inserting after paragraph (35) the following new paragraph:

“(36) the CLASS automatic enrollment and premium withholding credit determined under section 45R(a).”.

(c) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45Q the following new item:

“Sec. 45R. Credit for costs of automatically enrolling employees and withholding CLASS premiums from wages.”.

(d) Effective Date.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2009, in taxable years ending after such date.
SEC. 204. LONG-TERM CARE INSURANCE INCLUDIBLE IN CAFETERIA PLANS.

(a) In General.—Section 125(f) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2009.

TITLE III—EFFECTIVE DATE

SEC. 301. EFFECTIVE DATE.

Except as provided in sections 201(b), 202(c), 203(d), and 204(b), this Act and the amendments made by this Act take effect on January 1, 2010.