

109TH CONGRESS
1ST SESSION

S. 1951

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

NOVEMBER 2, 2005

Mr. KENNEDY (for himself and Mr. DEWINE) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Living As-
5 sistance Services and Supports Act” or the “CLASS Act”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To provide individuals with functional limi-
 4 tations with tools that will allow them to maintain
 5 their independence and live in the community
 6 through a new financing strategy for community liv-
 7 ing assistance services and supports.

8 (2) To establish an infrastructure that will help
 9 address America's community living assistance serv-
 10 ices and supports needs.

11 (3) To alleviate burdens on family caregivers.

12 **SEC. 3. TABLE OF CONTENTS.**

13 The table of contents for this Act is as follows:

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

TITLE I—COMMUNITY LIVING ASSISTANCE SERVICES AND
 SUPPORTS

Sec. 101. Establishment of national voluntary insurance program for pur-
 chasing 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 low-income class enrollees.
 Sec. 203. Credit for costs of employers who elect to automatically enroll em-
 ployees and withhold class premiums from wages.
 Sec. 204. Long-term care insurance includible in cafeteria plans.

TITLE III—EFFECTIVE DATE

Sec. 301. Effective date.

1 **TITLE I—COMMUNITY LIVING**
 2 **ASSISTANCE SERVICES AND**
 3 **SUPPORTS**

4 **SEC. 101. ESTABLISHMENT OF NATIONAL VOLUNTARY IN-**
 5 **SURANCE PROGRAM FOR PURCHASING COM-**
 6 **MUNITY LIVING ASSISTANCE SERVICES AND**
 7 **SUPPORT.**

8 (a) ESTABLISHMENT OF PROGRAM.—

9 (1) IN GENERAL.—The Public Health Service
 10 Act (42 U.S.C. 201 et seq.) is amended by adding
 11 at the end the following:

12 **“TITLE XXIX—COMMUNITY LIV-**
 13 **ING ASSISTANCE SERVICES**
 14 **AND SUPPORTS**

15 **“SEC. 2901. DEFINITIONS.**

16 “In this title:

17 “(1) ACTIVE ENROLLEE.—The term ‘active en-
 18 rollee’ means an individual who is enrolled in the
 19 CLASS program in accordance with section 2902
 20 and who has paid any premiums due to maintain
 21 such enrollment in accordance with section 2903.

22 “(2) ACTIVELY AT WORK.—The term ‘actively
 23 at work’ means an individual who—

24 “(A) is reporting for work at the individ-
 25 ual’s usual place of employment or at another

location to which the individual's employer requires 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 position);

“(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 sickness, 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.

1 “(5) DISABILITY DETERMINATION SERVICE.—

2 The term ‘Disability Determination Service’ means,
 3 with respect to each State, the entity that has an
 4 agreement with the Commissioner of Social Security
 5 to make disability determinations for purposes of
 6 title II or XVI of the Social Security Act (42 U.S.C.
 7 401 et seq., 1381 et seq.).

8 “(6) ELIGIBLE TIER I BENEFICIARY.—The
 9 term ‘eligible tier I beneficiary’ means any individual
 10 who—

11 “(A) is an active enrollee in the CLASS
 12 program; and

13 “(B) as of the date the individual is deter-
 14 mined to be unable to perform at least 2 activi-
 15 ties of daily living or to require supervision,
 16 cueing, or hands-on assistance to plan or per-
 17 form at least 2 such activities—

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

21 “(ii) except as provided in section
 22 2903(e)(2), has paid premiums for enroll-
 23 ment in such program for at least 12 con-
 24 secutive months if a lapse in premium pay-
 25 ments of more than 3 months has occurred

1 during the period that begins on the date
 2 of the individual's enrollment and ends on
 3 the date of such determination.

4 “(7) ELIGIBLE TIER II BENEFICIARY.—The
 5 term ‘eligible tier II beneficiary’ means any indi-
 6 vidual who is an eligible tier I beneficiary who has
 7 been determined to be unable to perform at least 4
 8 activities of daily living or to require supervision,
 9 cueing, or hands-on assistance to plan or perform at
 10 least 4 such activities.

11 “(8) HOSPITAL; NURSING FACILITY; INTER-
 12 MEDIATE CARE FACILITY FOR THE MENTALLY RE-
 13 TARDED; INSTITUTION FOR MENTAL DISEASES.—
 14 The terms ‘hospital’, ‘nursing facility’, ‘intermediate
 15 care facility for the mentally retarded’, and ‘institu-
 16 tion for mental diseases’ have the meanings given
 17 such terms for purposes of Medicaid.

18 “(9) INDEPENDENCE FUND.—The term ‘Inde-
 19 pendence Fund’ or ‘Fund’ means the fund estab-
 20 lished under section 2905.

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

24 “(11) POVERTY LINE.—The term ‘poverty line’
 25 has the meaning given that term in section

1 2110(c)(5) of the Social Security Act (42 U.S.C.
2 1397jj(c)(5)).

3 “(12) PROTECTION AND ADVOCACY SYSTEM.—
4 The term ‘Protection and Advocacy System’ means
5 the system for each State established under section
6 143 of the Developmental Disabilities Assistance
7 and Bill of Rights Act of 2000 (42 U.S.C. 15043).

8 **“SEC. 2902. AUTOMATIC ENROLLMENT WITH OPT-OUT**
9 **ELECTION.**

10 “(a) AUTOMATIC ENROLLMENT.—

11 “(1) IN GENERAL.—Subject to paragraph (2),
12 the Secretary shall establish procedures under which
13 each individual described in subsection (c) shall be
14 automatically enrolled in the CLASS program by an
15 employer of such individual in the same manner as
16 an employer may elect to automatically enroll em-
17 ployees in a plan under section 401(k), 403(b), or
18 457 of the Internal Revenue Code of 1986.

19 “(2) ALTERNATIVE ENROLLMENT PROCE-
20 DURES.—The procedures established under para-
21 graph (1) shall provide for an alternative enrollment
22 process for an individual described in subsection (c)
23 in the case of such an individual—

24 “(A) who is self-employed;

25 “(B) who has more than 1 employer;

1 “(C) whose employer does not elect to par-
 2 ticipate in the automatic enrollment process es-
 3 tablished by the Secretary; or

4 “(D) who is a spouse described in para-
 5 graph (2) of such subsection who is not subject
 6 to automatic enrollment.

7 “(3) ADMINISTRATION.—

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

10 “(i) ensure that an individual is not
 11 automatically enrolled in the CLASS pro-
 12 gram by more than 1 employer; and

13 “(ii) allow for an individual’s em-
 14 ployer to deduct a premium for a spouse
 15 described in subsection (c)(1)(B) who is
 16 not subject to automatic enrollment.

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

21 “(b) ELECTION TO OPT-OUT.—An individual de-
 22 scribed in subsection (c) may elect to waive enrollment
 23 under the CLASS program at any time in such form and
 24 manner as the Secretary shall prescribe.

1 “(c) INDIVIDUAL DESCRIBED.—For purposes of en-
 2 rolling in the CLASS program, an individual described in
 3 this subsection is—

4 “(1) an individual—

5 “(A) who has attained age 18;

6 “(B) who—

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

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

14 “(C) who is actively at work; and

15 “(D) who is not—

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

21 “(ii) confined in a jail, prison, other
 22 penal institution or correctional facility, or
 23 by court order pursuant to conviction of a
 24 criminal offense or in connection with a
 25 verdict or finding described in section

1 202(x)(1)(A)(ii) of the Social Security Act
 2 (42 U.S.C. 402(x)(1)(A)(ii)); or

3 “(2) the spouse of an individual described in
 4 paragraph (1) and who would be an individual so de-
 5 scribed but for subparagraph (B) or (C) of that
 6 paragraph.

7 “(d) RULE OF CONSTRUCTION.—Nothing in this title
 8 shall be construed as requiring an active enrollee to con-
 9 tinue to satisfy subparagraph (B) or (C) of subsection
 10 (c)(1) in order to maintain enrollment in the CLASS pro-
 11 gram.

12 **“SEC. 2903. PREMIUMS.**

13 “(a) MONTHLY PREMIUMS.—Except as provided in
 14 subsection (e), each individual who is enrolled in the
 15 CLASS program shall pay the Secretary a monthly pre-
 16 mium to maintain enrollment in the program.

17 “(b) AMOUNT OF PREMIUM.—

18 “(1) \$30 MONTHLY PREMIUM FOR ENROLL-
 19 MENT IN THE FIRST YEAR OF THE PROGRAM.—Sub-
 20 ject to the succeeding provisions of this subsection,
 21 the monthly premium for enrollment in the CLASS
 22 program of any individual who enrolls during the
 23 first year in which the program is in effect under
 24 this title shall be \$30 for every such enrollee, re-
 25 gardless of their age at enrollment.

1 “(2) INFLATION ADJUSTED PREMIUM FOR EN-
 2 ROLLMENT IN FIRST YEAR IN WHICH AN INDIVIDUAL
 3 IS ELIGIBLE TO ENROLL AFTER FIRST YEAR OF THE
 4 PROGRAM.—The monthly premium for enrollment in
 5 the CLASS program of any individual who enrolls
 6 during the first year in which the individual is eligi-
 7 ble to enroll in the program but that occurs after the
 8 first year in which the program is in effect under
 9 this title, shall be \$30, increased with respect to
 10 each year that the program is in effect under this
 11 title until the year of such enrollment, by the per-
 12 centage increase in the consumer price index for all
 13 urban consumers (U.S. city average) over each such
 14 preceding year.

15 “(3) AGE-ADJUSTED PREMIUMS FOR ENROLL-
 16 MENT IN OTHER YEARS.—

17 “(A) IN GENERAL.—The Secretary shall
 18 determine for each year that is not a year de-
 19 scribed in paragraph (1) or (2), an annual
 20 monthly premium for enrollment in the CLASS
 21 program of an individual during the year that
 22 adjusts the monthly premium that would apply
 23 to the individual under paragraph (2) if the in-
 24 dividual had enrolled during the first year in

1 which the individual was eligible to enroll in the
 2 program based on the following:

3 “(i) AGE AT ENROLLMENT.—Subject
 4 to paragraph (4), the age of an individual
 5 upon the individual’s initial enrollment in
 6 the program.

7 “(ii) ADMINISTRATIVE EXPENSES.—
 8 The administrative expenses for the pro-
 9 gram.

10 “(B) LIMITATION ON ADMINISTRATIVE EX-
 11 PENSES.—

12 “(i) START-UP ADMINISTRATIVE EX-
 13 PENSES.—The total amount of annual ex-
 14 penditures incurred for administering the
 15 CLASS program during each of the first 5
 16 years in which the program is in effect
 17 under this title shall not exceed the sum of
 18 an amount equal to 3 percent of all pre-
 19 miums paid during that year.

20 “(ii) SUBSEQUENT ADMINISTRATIVE
 21 EXPENSES.—With respect to any year
 22 after the first 5 years in which the CLASS
 23 program is in effect under this title, the
 24 total amount of annual expenditures in-
 25 curred for administering the CLASS pro-

1 gram shall not exceed the lesser of an
2 amount equal to—

3 “(I) 5 percent of the total
4 amount of all expenditures (including
5 benefits paid) under this title with re-
6 spect to that year; or

7 “(II) the percentage of expendi-
8 tures incurred under the medicare
9 program under title XVIII of the So-
10 cial Security Act (42 U.S.C. 1395 et
11 seq.) for that year that is attributable
12 to administering that program.

13 “(4) NOMINAL PREMIUM FOR INDIVIDUAL’S
14 WITH INCOME THAT DOES NOT EXCEED 150 PER-
15 CENT OF THE POVERTY LINE.—

16 “(A) IN GENERAL.—In the case of an indi-
17 vidual whose income does not exceed 150 per-
18 cent of the poverty line, the monthly premium
19 for enrollment in the CLASS program shall be
20 the applicable amount under subparagraph (B).

21 “(B) APPLICABLE AMOUNT.—The Sec-
22 retary shall establish premium amounts which
23 shall apply to an individual described in sub-
24 paragraph (A) in lieu of the premium amount
25 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.

1 “(B) PROGRAM SOLVENCY PROJEC-
 2 TIONS.—Beginning with 2010 and every year
 3 thereafter, the Secretary shall determine with
 4 respect to the 20-year period that begins with
 5 that year, the amount of funds held (or pro-
 6 jected to be held) in the Independence Fund es-
 7 tablished under section 2905 that are required
 8 to pay tier I and tier II benefits under section
 9 2904 during each year of that period.

10 “(C) RECALCULATED PREMIUM IF RE-
 11 QUIRED FOR PROGRAM SOLVENCY.—

12 “(i) IN GENERAL.—Subject to clauses
 13 (ii) and (iii), beginning with 2015 and
 14 every year thereafter, if the Secretary de-
 15 termines as a result of making the pro-
 16 gram solvency projections required under
 17 subparagraph (B) that, with respect to the
 18 20-year period that begins with that year,
 19 more than 40 percent of the amount of
 20 funds held (or projected to be held) in the
 21 Independence Fund established under sec-
 22 tion 2905 are required to pay tier I and
 23 tier II benefits under section 2904 during
 24 each year of that period, the Secretary

1 shall adjust the monthly premiums for in-
 2 dividuals enrolled in the CLASS program.

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

7 “(I) the aggregate amount of
 8 such premiums collected will result in
 9 not more than 20 percent of the
 10 amounts held in the Independence
 11 Fund being required to pay tier I and
 12 tier II benefits for any one year occur-
 13 ring during the applicable 20-year pe-
 14 riod;

15 “(II) with respect to any indi-
 16 vidual enrolled in the program—

17 “(aa) the amount of the in-
 18 crease in the individual’s monthly
 19 premium does not exceed the
 20 amount equal to 50 percent of
 21 the premium prior to such in-
 22 crease; and

23 “(bb) the individual’s
 24 monthly premium does not ex-
 25 ceed the amount equal to 200

1 percent of the initial premium
 2 amount paid by the individual
 3 during their first year of enroll-
 4 ment in the program; and
 5 “(III) the requirements of clause
 6 (iii) are met.

7 The Secretary shall immediately notify
 8 Congress if the Secretary determines that
 9 the requirements of this clause cannot be
 10 satisfied and shall include in such notifica-
 11 tion recommendations for such legislative
 12 action as the Secretary determines to be
 13 appropriate.

14 “(iii) EXEMPTION FROM INCREASE.—
 15 Any increase in a monthly premium im-
 16 posed as result of a determination de-
 17 scribed in clause (i) shall not apply with
 18 respect to the monthly premium of any ac-
 19 tive enrollee who—

20 “(I) has attained age 65;

21 “(II) has paid premiums for en-
 22 rollment in the program for at least
 23 20 years; and

24 “(III) is not actively at work.

“(D) RECALCULATED PREMIUM IF RE-
ENROLLMENT AFTER MORE THAN A 3-MONTH
LAPSE.—

“(i) IN GENERAL.—Except as pro-
vided in subsection (e)(2), the reenrollment
of an individual after a 90-day period dur-
ing which the individual failed to pay the
monthly premium required to maintain the
individual’s enrollment in the CLASS pro-
gram shall be treated as an initial enroll-
ment 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
2901(6)(B)(ii) before being eligible to
receive a tier I or tier II benefit.

1 “(6) NO UNDERWRITING REQUIREMENTS.—No
2 underwriting shall be used to—

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

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

7 “(c) PAYMENT.—

8 “(1) PAYROLL DEDUCTION.—An amount equal
9 to the monthly premium for the enrollment in the
10 CLASS program of an individual shall be deducted
11 from the wages or self-employment income of such
12 individual in accordance with such procedures as the
13 Secretary, in consultation with the Secretary of the
14 Treasury, shall establish for employers who elect to
15 deduct and withhold such premiums on behalf of en-
16 rolled employees.

17 “(2) ALTERNATIVE PAYMENT MECHANISM.—
18 The Secretary shall establish alternative procedures
19 for the payment of monthly premiums by an indi-
20 vidual enrolled in the CLASS program—

21 “(A) who does not have an employer who
22 elects to deduct and withhold premiums in ac-
23 cordance with paragraph (1); or

24 “(B) who does not earn wages or derive
25 self-employment income.

1 “(d) TRANSFER OF PREMIUMS COLLECTED.—

2 “(1) IN GENERAL.—During each calendar year
3 the Secretary of the Treasury shall deposit into the
4 Independence Fund a total amount equal, in the ag-
5 gregate, to 100 percent of the premiums collected
6 during that year.

7 “(2) TRANSFERS BASED ON ESTIMATES.—The
8 amount deposited pursuant to paragraph (1) shall be
9 transferred in at least monthly payments to the
10 Independence Fund on the basis of estimates by the
11 Secretary and certified to the Secretary of the
12 Treasury of the amounts collected in accordance
13 with paragraphs (1) and (2) of subsection (c). Prop-
14 er adjustments shall be made in amounts subse-
15 quently transferred to the Fund to the extent prior
16 estimates were in excess of, or were less than, actual
17 amounts collected.

18 “(e) CONTRIBUTION PERIOD.—

19 “(1) IN GENERAL.—An individual shall not be
20 required to pay a monthly premium to maintain the
21 individual’s enrollment in the CLASS program dur-
22 ing the following periods:

23 “(A) RECEIVING BENEFITS WHILE UNEM-
24 PLOYED.—Any period during which the indi-
25 vidual is—

1 “(i) receiving tier I or tier II benefits;

2 and

3 “(ii) the individual does not have
4 wages or income derived from self-employ-
5 ment.

6 “(B) FULL-TIME STUDENT WHO IS AC-
7 TIVELY AT WORK.—Any period during which
8 the individual is a full-time student (as deter-
9 mined by the Secretary) who has not attained
10 age 22 and is actively at work.

11 “(2) APPLICATION OF PREMIUM AMOUNT PRIOR
12 TO START OF PERIOD.—Upon the conclusion of a pe-
13 riod described in paragraph (1) for an individual,
14 the individual shall resume paying the monthly pre-
15 mium amount that applied to the individual imme-
16 diately prior to the start of such period in order to
17 maintain enrollment in the program.

18 **“SEC. 2904. BENEFITS.**

19 “(a) DETERMINATION OF ELIGIBILITY.—

20 “(1) APPLICATION FOR RECEIPT OF BENE-
21 FITS.—The Secretary shall establish procedures
22 under which an active enrollee shall apply for receipt
23 of tier I or tier II benefits.

24 “(2) ELIGIBILITY ASSESSMENTS.—

“(A) IN GENERAL.—Not later than October 1, 2008, 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-

1 NING TO DISCHARGE.—An active enrollee shall
 2 be deemed presumptively eligible if the en-
 3 rollee—

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

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

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

13 “(D) APPEALS.—The Secretary shall es-
 14 tablish procedures under which an applicant for
 15 benefits under the CLASS program shall be
 16 guaranteed the right to appeal an adverse de-
 17 termination.

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

20 “(1) DAILY CASH BENEFIT.—A daily cash ben-
 21 efit in the amount of \$50 per day.

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

1 “(3) ADVOCACY SERVICES.—Advocacy services
2 in accordance with subsection (e).

3 “(4) ADVICE AND ASSISTANCE COUNSELING.—
4 Advice and assistance counseling in accordance with
5 subsection (f).

6 “(5) NO LIFETIME LIMIT.—There shall be no
7 lifetime limit on the aggregate tier I benefits that an
8 eligible tier I beneficiary may receive.

9 “(c) TIER II BENEFITS.—An eligible tier II bene-
10 ficiary shall receive the following tier II benefits:

11 “(1) DAILY CASH BENEFIT.—A daily cash ben-
12 efit in the amount of \$100 per day.

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

17 “(3) ADVOCACY SERVICES.—Advocacy services
18 in accordance with subsection (e).

19 “(4) ADVICE AND ASSISTANCE COUNSELING.—
20 Advice and assistance counseling in accordance with
21 subsection (f).

22 “(5) NO LIFETIME LIMIT.—There shall be no
23 lifetime limit on the aggregate tier II benefits that
24 an eligible tier II beneficiary may receive.

25 “(d) PAYMENT OF BENEFITS.—

1 “(1) LIFE INDEPENDENCE ACCOUNTS.—

2 “(A) IN GENERAL.—The Secretary shall
3 establish procedures under which tier I daily
4 cash benefits and tier II daily cash benefits
5 shall be paid on a monthly basis into a Life
6 Independence Account established by the Sec-
7 retary on behalf of each eligible tier I bene-
8 ficiary or eligible tier II beneficiary.

9 “(B) USE OF CASH BENEFITS.—Daily cash
10 benefits paid into a Life Independence Account
11 of an eligible tier I beneficiary or an eligible tier
12 II beneficiary shall be used to purchase non-
13 medical services and supports that the bene-
14 ficiary needs to maintain his or her independ-
15 ence at home or in another residential setting
16 in the community, such as home modifications,
17 adaptive technology, accessible transportation,
18 homemaker services, respite care, personal as-
19 sistance services, and home care aides.

20 “(C) ELECTRONIC MANAGEMENT OF
21 FUNDS.—The procedures established in accord-
22 ance with subparagraph (A) shall provide for—

23 “(i) crediting an account established
24 on behalf of a beneficiary with the bene-
25 ficiary’s cash daily benefit;

1 “(ii) accessing such account through
2 debit cards; and

3 “(iii) accounting for withdrawals by
4 the beneficiary from such account.

5 “(D) PRIMARY PAYOR RULES FOR BENE-
6 FICIARIES WHO ARE ENROLLED IN MEDICAID.—
7 In the case of an eligible tier I beneficiary or
8 an eligible tier II beneficiary who is enrolled in
9 Medicaid, the following payment rules shall
10 apply:

11 “(i) INSTITUTIONALIZED BENE-
12 FICIARY.—If the beneficiary is a patient in
13 a hospital, nursing facility, intermediate
14 care facility for the mentally retarded, or
15 an institution for mental diseases, the ben-
16 eficiary shall retain an amount equal to 5
17 percent of the beneficiary’s daily cash ben-
18 efit (which shall be in addition to the
19 amount of the beneficiary’s personal needs
20 allowance provided under Medicaid), and
21 the remainder of such benefit shall be ap-
22 plied toward the facility’s cost of providing
23 the beneficiary’s care, and Medicaid shall
24 provide secondary coverage for such care.

1 “(ii) BENEFICIARIES RECEIVING
2 HOME AND COMMUNITY-BASED SERV-
3 ICES.—

4 “(I) 50 PERCENT OF DAILY BEN-
5 EFIT RETAINED BY BENEFICIARY.—If
6 a beneficiary is receiving medical as-
7 sistance under Medicaid for home and
8 community based services, the bene-
9 ficiary shall retain an amount equal to
10 50 percent of the beneficiary’s daily
11 cash benefit, subject to subclause (II),
12 and the remainder of the daily cash
13 benefit shall be applied toward the
14 cost to the State of providing such as-
15 sistance (and shall not be used to
16 claim Federal matching funds under
17 Medicaid), and Medicaid shall provide
18 secondary coverage for the remainder
19 of any costs incurred in providing
20 such assistance.

21 “(II) REQUIREMENT FOR STATE
22 OFFSET.—A State shall be paid the
23 remainder of a beneficiary’s daily cash
24 benefit under subclause (I) only if the
25 State home and community-based

1 waiver under section 1115 of the So-
 2 cial Security Act (42 U.S.C. 1315) or
 3 subsection (c) or (d) of section 1915
 4 of such Act (42 U.S.C. 1396n) does
 5 not include a waiver of the require-
 6 ments of section 1902(a)(1) of the So-
 7 cial Security Act (relating to
 8 statewideness) or of section
 9 1902(a)(10)(B) of such Act (relating
 10 to comparability) and the State offers
 11 at a minimum case management serv-
 12 ices, personal care services, habili-
 13 tation services, and respite care under
 14 such a waiver.

15 “(III) DEFINITION OF HOME AND
 16 COMMUNITY-BASED SERVICES.—In
 17 this clause, the term ‘home and com-
 18 munity-based services’ means any
 19 services which may be offered under a
 20 home and community-based waiver
 21 authorized for a State under section
 22 1115 of the Social Security Act (42
 23 U.S.C. 1315) or subsection (c) or (d)
 24 of section 1915 of such Act (42
 25 U.S.C. 1396n).

1 “(2) AUTHORIZED REPRESENTATIVES.—

2 “(A) IN GENERAL.—The procedures estab-
 3 lished under paragraph (1)(A) shall allow for
 4 access to tier I daily benefits or tier II daily
 5 benefits by an authorized representative of the
 6 eligible tier I beneficiary or eligible tier II bene-
 7 ficiary on whose behalf such benefits are paid.

8 “(B) QUALITY ASSURANCE AND PROTEC-
 9 TION AGAINST FRAUD AND ABUSE.—The Sec-
 10 retary shall include in the procedures estab-
 11 lished under paragraph (1) standards of con-
 12 duct for authorized representatives of eligible
 13 tier I beneficiaries and eligible tier II bene-
 14 ficiaries to ensure that authorized representa-
 15 tives provide quality services on behalf of such
 16 beneficiaries, do not have conflicts of interest,
 17 and do not misuse benefits paid on behalf of
 18 such beneficiaries or otherwise engage in fraud
 19 or abuse.

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

1 “(4) ROLLOVER OPTION FOR LUMP-SUM PAY-
 2 MENT.—An eligible tier I beneficiary or an eligible
 3 tier II beneficiary may elect to—

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

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

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

12 “(ii) the applicable annual benefit.

13 “(5) PERIOD FOR DETERMINATION OF ANNUAL
 14 BENEFITS.—

15 “(A) IN GENERAL.—The applicable period
 16 for determining with respect to an eligible tier
 17 I beneficiary or an eligible tier II beneficiary
 18 the applicable annual benefit and the amount of
 19 any accrued deferred benefits is the 12-month
 20 period that commences with the first month in
 21 which the beneficiary began to receive such ben-
 22 efits, and each 12-month period thereafter.

23 “(B) INCLUSION OF TIER I BENEFITS.—
 24 The Secretary shall establish procedures under
 25 which benefits paid to an eligible tier I bene-

1 ficiary who becomes an eligible tier II bene-
 2 ficiary before the end of a 12-month benefit pe-
 3 riod shall be included in the determination of
 4 the applicable annual benefit paid to the eligible
 5 tier II beneficiary.

6 “(C) RECOUPMENT OF UNPAID, ACCRUED
 7 BENEFITS.—

8 “(i) IN GENERAL.—The Secretary
 9 shall recoup any accrued benefits in the
 10 event of—

11 “(I) the death of a beneficiary; or

12 “(II) the failure of a beneficiary
 13 to elect under paragraph (4)(B) to re-
 14 ceive such benefits as a lump-sum
 15 payment before the end of the 12-
 16 month period in which such benefits
 17 accrued.

18 “(ii) PAYMENT INTO INDEPENDENCE
 19 FUND.—Any benefits recouped in accord-
 20 ance with clause (i) shall be paid into the
 21 Independence Fund and used in accord-
 22 ance with section 2905.

23 “(6) REQUIREMENT TO RECERTIFY ELIGIBILITY
 24 FOR RECEIPT OF BENEFITS AND TO NOTIFY THE
 25 SECRETARY IF NOT EARNING WAGES OR INCOME.—

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

4 “(A) annually—

5 “(i) recertify by submission of medical
 6 evidence the beneficiary’s continued eligi-
 7 bility for receipt of tier I or tier II benefits
 8 (as applicable); and

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

13 “(B) notify the Secretary if the beneficiary
 14 is not earning wages or deriving self-employ-
 15 ment income and should not have to pay a
 16 monthly premium to maintain enrollment in the
 17 CLASS program in accordance with section
 18 2903(e)(2).

19 “(7) SUPPLEMENT, NOT SUPPLANT OTHER
 20 HEALTH CARE BENEFITS.—Subject to the Medicaid
 21 payment rules under paragraph (1)(C), benefits re-
 22 ceived by an eligible tier I beneficiary or an eligible
 23 tier II beneficiary shall supplement, but not sup-
 24 plant, other health care benefits for which the bene-
 25 ficiary is eligible under Medicaid or any other Feder-

1 ally funded program that provides health care bene-
 2 fits or assistance.

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

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

11 “(A) information regarding how to access
 12 the appeals process established for the program;

13 “(B) assistance with respect to the annual
 14 recertification and notification required under
 15 subsection (d)(6); and

16 “(C) such other services as the Secretary,
 17 by regulation, shall require; and

18 “(2) ensure that the System and such coun-
 19 selors comply with the requirements of subsection
 20 (i).

21 “(f) ADVICE AND ASSISTANCE COUNSELING.—An
 22 agreement entered into under subsection (a)(2)(A)(iii)
 23 shall require the entity to assign, as requested by an eligi-
 24 ble tier I beneficiary or an eligible tier II beneficiary that
 25 is covered by such agreement, an advice and assistance

1 counselor who provides an eligible tier I beneficiary or an
 2 eligible tier II beneficiary with information regarding—

3 “(1) accessing and coordinating long-term serv-
 4 ices and supports in the most integrated setting;

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

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

9 “(4) such other services as the Secretary, by
 10 regulation, may require.

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

24 “(h) COST-OF-LIVING AND OTHER ADJUSTMENTS.—

1 “(1) IN GENERAL.—Beginning with 2007, the
 2 dollar amounts specified in subsections (b)(1) and
 3 (c)(1) shall be annually increased by the percentage
 4 increase in the consumer price index for all urban
 5 consumers (U.S. city average) over the previous
 6 year.

7 “(2) ADDITIONAL ADJUSTMENT.—With respect
 8 to any year for which the Secretary has determined
 9 under section 2903(b)(4)(C) that an adjustment to
 10 the monthly premium amounts is necessary to en-
 11 sure program solvency, the Secretary shall decrease
 12 the increase in the dollar amounts specified in sub-
 13 sections (b)(1) and (c)(1) that would otherwise be
 14 applicable under paragraph (1) for that year, by
 15 such amount as the Secretary determines is appro-
 16 priate for that year (but shall ensure that there is
 17 an increase in such dollar amounts for that year) .

18 “(i) RULE OF CONSTRUCTION.—Nothing in this title
 19 shall be construed as prohibiting tier I or tier II benefits
 20 paid under the CLASS program from being used to com-
 21 pensate a family caregiver for providing community living
 22 assistance services and supports to an eligible tier I bene-
 23 ficiary or an eligible tier II beneficiary.

24 “(j) PROTECTION AGAINST CONFLICT OF INTER-
 25 ESTS.—The Secretary shall establish procedures to ensure

1 that the Disability Determination Service and Protection
2 and Advocacy System for a State, advocacy counselors for
3 eligible tier I or eligible tier II beneficiaries, and any other
4 entities that provide services to active enrollees and eligi-
5 ble tier I or eligible tier II beneficiaries under the CLASS
6 program comply with the following:

7 “(1) If the entity provides counseling or plan-
8 ning services, such services are provided in a manner
9 that fosters the best interests of the active enrollee
10 or beneficiary.

11 “(2) The entity has established operating proce-
12 dures that are designed to avoid or minimize con-
13 flicts of interest between the entity and an active en-
14 rollee or beneficiary.

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

19 “(4) The entity assists the active enrollee or
20 beneficiary to access desired services, regardless of
21 the provider.

22 “(5) The entity reports the number of active
23 enrollees and beneficiaries provided with assistance
24 by age, disability, and whether such enrollees and

1 beneficiaries received services from the entity or an-
 2 other entity.

3 “(6) If the entity provides counseling or plan-
 4 ning services, the entity ensures that an active en-
 5 rollee or beneficiary is informed of any financial in-
 6 terest that the entity has in a service provider.

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

11 **“SEC. 2905. INDEPENDENCE FUND.**

12 “(a) ESTABLISHMENT OF INDEPENDENCE FUND.—
 13 There is established in the Treasury of the United States
 14 a trust fund to be known as the ‘Independence Fund’. The
 15 Secretary shall serve as Managing Trustee of such Fund.
 16 The Fund shall consist of all amounts derived from pay-
 17 ments into the Fund under sections 2903(d) and
 18 2904(d)(5)(C)(ii), and remaining after investment of such
 19 amounts under subsection (b), including additional
 20 amounts derived as income from such investments. The
 21 amounts held in the Fund are appropriated and shall re-
 22 main available without fiscal year limitation—

23 “(1) to be held for investment on behalf of indi-
 24 viduals enrolled in the CLASS program;

1 “(2) to pay the administrative expenses related
2 to the Fund and to investment under subsection (b);
3 and

4 “(3) to pay tier I and tier II benefits under sec-
5 tion 2904.

6 “(b) INVESTMENT OF FUND BALANCE.—The Sec-
7 retary, through the Secretary of the Treasury, shall invest
8 the Independence Fund in the same manner, and to the
9 same extent, as the Federal Old-Age and Survivors Trust
10 Fund and the Federal Disability Insurance Trust Fund
11 may be invested under section 201(d) of the Social Secu-
12 rity Act (42 U.S.C. 401(d)).

13 “(c) OFF-BUDGET STATUS; LOCK-BOX PROTEC-
14 TION.—

15 “(1) EXCLUSION OF TRUST FUNDS FROM ALL
16 BUDGETS.—Notwithstanding any other provision of
17 law, the amounts derived from payments into the
18 Fund and amounts paid from the Fund shall not be
19 counted as new budget authority, outlays, receipts,
20 or deficit or surplus for purposes of—

21 “(A) the budget of the United States Gov-
22 ernment, as submitted by the President;

23 “(B) the congressional budget; or

24 “(C) the Balanced Budget and Emergency
25 Deficit Control Act of 1985.

1 “(2) LOCK-BOX PROTECTION.—

2 “(A) IN GENERAL.—Notwithstanding any
3 other provision of law, it shall not be in order
4 in the Senate or the House of Representatives
5 to consider any measure that would authorize
6 the payment or use of amounts in the Fund for
7 any purpose other than a purpose authorized
8 under this title.

9 “(B) 60-VOTE WAIVER REQUIRED IN THE
10 SENATE.—

11 “(i) IN GENERAL.—Subparagraph (A)
12 may be waived or suspended in the Senate
13 only by the affirmative vote of $\frac{3}{5}$ of the
14 Members, duly chosen and sworn.

15 “(ii) APPEALS.—

16 “(I) PROCEDURE.—Appeals in
17 the Senate from the decisions of the
18 Chair relating to clause (i) shall be
19 limited to 1 hour, to be equally di-
20 vided between, and controlled by, the
21 mover and the manager of the meas-
22 ure that would authorize the payment
23 or use of amounts in the Fund for a
24 purpose other than a purpose author-
25 ized under this title.

1 “(II) 60-VOTES REQUIRED.—An
 2 affirmative vote of $\frac{3}{5}$ of the Members,
 3 duly chosen and sworn, shall be re-
 4 quired in the Senate to sustain an ap-
 5 peal of the ruling of the Chair on a
 6 point of order raised in relation to
 7 clause (i).

8 “(C) RULES OF THE SENATE AND HOUSE
 9 OF REPRESENTATIVES.—This section is enacted
 10 by Congress—

11 “(i) as an exercise of the rulemaking
 12 power of the Senate and House of Rep-
 13 resentatives, respectively, and is deemed to
 14 be part of the rules of each House, respec-
 15 tively, but applicable only with respect to
 16 the procedure to be followed in that House
 17 in the case of a measure described in sub-
 18 paragraph (A), and it supersedes other
 19 rules only to the extent that it is incon-
 20 sistent with such rules; and

21 “(ii) with full recognition of the con-
 22 stitutional right of either House to change
 23 the rules (so far as they relate to the pro-
 24 cedure of that House) at any time, in the

1 same manner, and to the same extent as in
2 the case of any other rule of that House.

3 “(d) ADDITIONAL APPROPRIATIONS TO ENSURE SOL-
4 VENCY DURING INITIAL BENEFIT YEARS.—In addition to
5 the amounts appropriated to the Fund under subsection
6 (a), out of any money in the Treasury of the United States
7 not otherwise appropriated, there are appropriated to the
8 Fund, for each of fiscal years 2011 through 2015, such
9 sums as are necessary for each such fiscal year (and
10 which, in the case of each of fiscal years 2012 through
11 2015, shall be less than the amount appropriated for the
12 preceding fiscal year) to ensure the solvency of the Fund
13 during the first 5 years in which tier I or tier II benefits
14 are paid from the Fund. Amounts appropriated under this
15 subsection shall remain available without fiscal year limi-
16 tation for the purposes specified in paragraphs (1), (2),
17 and (3) of subsection (a).

18 **“SEC. 2906. REGULATIONS; ANNUAL REPORT.**

19 “(a) REGULATIONS.—The Secretary shall promulgate
20 such regulations as are necessary to carry out the CLASS
21 program in accordance with this title. Such regulations
22 shall include provisions to prevent fraud and abuse under
23 the program.

24 “(b) ANNUAL REPORT.—Beginning with fiscal year
25 2011, the Secretary shall submit an annual report to Con-

1 gress on the CLASS program. Each report shall include
 2 the following:

3 “(1) The total amount of enrollees in the pro-
 4 gram.

5 “(2) The total number of eligible tier I bene-
 6 ficiaries and eligible tier II beneficiaries during the
 7 fiscal year.

8 “(3) The total amount of tier I and tier II ben-
 9 efits provided during the fiscal year.

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

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

16 **“SEC. 2907. TAX TREATMENT OF PROGRAM.**

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

21 (2) CONFORMING AMENDMENTS TO MED-
 22 ICAID.—Section 1902(a) of the Social Security Act
 23 (42 U.S.C. 1396a(a)) is amended—

24 (A) in paragraph (66), by striking “and”
 25 at the end;

1 (B) in paragraph (67), by striking the pe-
 2 riod and inserting “; and”; and

3 (C) by inserting after paragraph (67) the
 4 following:

5 “(68) provide that the State will comply with
 6 such regulations regarding the application of pri-
 7 mary and secondary payor rules with respect to indi-
 8 viduals who are eligible for medical assistance under
 9 this title and are eligible tier I beneficiaries or eligi-
 10 ble tier II beneficiaries under the CLASS program
 11 established under title XXIX of the Public Health
 12 Service Act as the Secretary shall establish.”.

13 (b) ASSURANCE OF ADEQUATE INFRASTRUCTURE
 14 FOR THE PROVISION OF PERSONAL CARE ATTENDANT
 15 WORKERS.—Section 1902(a) of the Social Security Act
 16 (42 U.S.C. 1396a(a)), as amended by subsection (a)(2),
 17 is amended—

18 (1) in paragraph (67), by striking “and” at the
 19 end;

20 (2) in paragraph (68), by striking the period at
 21 the end and inserting “; and”; and

22 (3) by inserting after paragraph (68), the fol-
 23 lowing:

24 “(69) provide that, not later than 2 years after
 25 the date of enactment of the Community Living As-

1 sistance Services and Supports Act, each State
2 shall—

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

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

24 “(C) ensure that the designation or cre-
25 ation of such entities will not impede the ability

1 of such individuals to retain, manage, or dis-
2 miss such workers or inhibit such individuals
3 from relying on family members for the provi-
4 sion of personal care services.”.

5 (c) PERSONAL CARE ATTENDANTS WORKFORCE AD-
6 VISORY PANEL.—

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

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

- 22 (A) Individuals with disabilities of all ages.
- 23 (B) Senior individuals.
- 24 (C) Representatives of individuals with dis-
25 abilities.

1 (D) Representatives of senior individuals.

2 (E) Representatives of workforce and labor
3 organizations.

4 (F) Representatives of home and commu-
5 nity-based service providers.

6 (G) Representatives of assisted living pro-
7 viders.

8 **TITLE II—AMENDMENTS TO THE**
9 **INTERNAL REVENUE CODE**
10 **OF 1986**

11 **SEC. 201. ABOVE-THE-LINE DEDUCTION FOR PREMIUM**
12 **COSTS.**

13 (a) IN GENERAL.—Section 62(a) of the Internal Rev-
14 enue Code of 1986 (defining adjusted gross income) is
15 amended by redesignating paragraph (19), as added by
16 section 703(a) of the American Jobs Creation Act of 2004,
17 as paragraph (20), and by inserting after paragraph (20)
18 (as so redesignated) the following new paragraph:

19 “(21) CLASS PROGRAM PREMIUMS.—The deduc-
20 tion allowed by section 213 (determined without re-
21 gard to any adjusted gross income limitation) which
22 consists of amounts paid by the taxpayer for enroll-
23 ment in the CLASS program (as defined in section
24 36(d)) for eligible enrollment months (as defined in
25 section 36(b)) beginning in the taxable year.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2005.

4 **SEC. 202. CREDIT FOR PREMIUM COSTS OF LOW-INCOME**
 5 **CLASS ENROLLEES.**

6 (a) IN GENERAL.—Subpart C of part IV of sub-
 7 chapter A of chapter 1 of the Internal Revenue Code of
 8 1986 (relating to refundable credits) is amended by redes-
 9 ignating section 36 as section 37 and inserting after sec-
 10 tion 35 the following new section:

11 **“SEC. 36. PREMIUM COSTS OF LOW-INCOME CLASS ENROLL-**
 12 **EES.**

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

20 “(b) ELIGIBLE ENROLLMENT MONTH.—For pur-
 21 poses of this section—

22 “(1) IN GENERAL.—The term ‘eligible enroll-
 23 ment month’ means any month if, as of the first day
 24 of such month, the taxpayer is a low-income CLASS

1 enrollee enrolled in the CLASS program, the pre-
 2 mium for which is paid by the taxpayer.

3 “(2) JOINT RETURNS.—In the case of a joint
 4 return, the requirements of paragraph (1) shall be
 5 treated as met with respect to any month if at least
 6 1 spouse satisfies such requirements.

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

10 “(1) who is an active enrollee in the CLASS
 11 program (as defined in section 2901(1) of the Public
 12 Health Service Act); and

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

15 “(d) CLASS PROGRAM.—For purposes of this section,
 16 the term ‘CLASS program’ means the program for com-
 17 munity living assistance services and supports established
 18 under title XXIX of the Public Health Service Act.

19 “(e) SPECIAL RULES.—

20 “(1) COORDINATION WITH OTHER DEDUC-
 21 TIONS.—Amounts taken into account under sub-
 22 section (a) shall not be taken into account in deter-
 23 mining any deduction allowed under section
 24 62(a)(21), 162(l), or 213.

1 “(2) MSA DISTRIBUTIONS.—Amounts distrib-
 2 uted from an Archer MSA (as defined in section
 3 220(d)) shall not be taken into account under sub-
 4 section (a).

5 “(3) DENIAL OF CREDIT TO DEPENDENTS.—No
 6 credit shall be allowed under this section to any indi-
 7 vidual with respect to whom a deduction under sec-
 8 tion 151 is allowable to another taxpayer for a tax-
 9 able year beginning in the calendar year in which
 10 such individual’s taxable year begins.

11 “(4) BOTH SPOUSES ELIGIBLE INDIVIDUALS.—
 12 For purposes of subsection (a), the amount paid for
 13 enrollment of the taxpayer’s spouse shall be dis-
 14 regarded if—

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

17 “(B) the taxpayer and the taxpayer’s
 18 spouse are both low-income CLASS enrollees
 19 during the taxable year, and

20 “(C) the taxpayer files a separate return
 21 for the taxable year.

22 “(5) MARITAL STATUS; CERTAIN MARRIED IN-
 23 DIVIDUALS LIVING APART.—Rules similar to the
 24 rules of paragraph (3) and (4) of section 21(e) shall
 25 apply for purposes of this section.

1 “(f) REGULATIONS.—The Secretary may prescribe
2 such regulations and guidance as may be necessary or ap-
3 propriate to carry out this section.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Paragraph (2) of section 1324(b) of title
6 31, United States Code, is amended by inserting “or
7 36” after “35”.

8 (2) The table of section for subpart C of part
9 IV of chapter 1 of the Internal Revenue Code of
10 1986 is amended by striking the last item and in-
11 serting the following new items:

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

“Sec. 37. Overpayments of tax.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2005.

15 **SEC. 203. CREDIT FOR COSTS OF EMPLOYERS WHO ELECT**
16 **TO AUTOMATICALLY ENROLL EMPLOYEES**
17 **AND WITHHOLD CLASS PREMIUMS FROM**
18 **WAGES.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
20 chapter A of chapter 1 of the Internal Revenue Code of
21 1986 (relating to business credits) is amended by inserting
22 after section 45M the following:

1 **“SEC. 45N. CREDIT FOR COSTS OF AUTOMATICALLY EN-**
 2 **ROLLING EMPLOYEES AND WITHHOLDING**
 3 **CLASS PREMIUMS FROM WAGES.**

4 “(a) GENERAL RULE.—For purposes of section 38,
 5 the CLASS automatic enrollment and premium with-
 6 holding credit determined under this section for the tax-
 7 able year is an amount equal to 25 percent of the total
 8 amount paid or incurred by the taxpayer during the tax-
 9 able year to—

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

13 “(2) withhold monthly CLASS premiums on be-
 14 half of an employee who is enrolled in that program.

15 “(b) DENIAL OF DOUBLE BENEFIT.—No deduction
 16 shall be allowed under this chapter for any amount taken
 17 into account in determining the credit under this section.

18 “(c) ELECTION NOT TO CLAIM CREDIT.—This sec-
 19 tion shall not apply to a taxpayer for any taxable year
 20 if such taxpayer elects to have this section not apply for
 21 such taxable year.”.

22 (b) CREDIT MADE PART OF GENERAL BUSINESS
 23 CREDIT.—Subsection (b) of section 38 of the Internal
 24 Revenue Code of 1986 (relating to general business credit)
 25 is amended by striking “plus” at the end of paragraph
 26 (23), by striking the period at the end of paragraph (24)

1 and inserting “, plus”, and by inserting after paragraph
 2 (24) the following new paragraph:

3 “(25) the CLASS automatic enrollment and
 4 premium withholding credit.”.

5 (c) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part IV of subchapter A of chapter 1
 7 of the Internal Revenue Code of 1986 is amended by in-
 8 serting after the item relating to section 45M the following
 9 new item:

“Sec. 45N. Credit for costs of automatically enrolling employees and with-
 holding CLASS premiums from wages.”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to expenses paid or incurred after
 12 December 31, 2005, in taxable years ending after such
 13 date.

14 **SEC. 204. LONG-TERM CARE INSURANCE INCLUDIBLE IN**
 15 **CAFETERIA PLANS.**

16 (a) IN GENERAL.—Section 125(f) of the Internal
 17 Revenue Code of 1986 is amended by striking the last sen-
 18 tence.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 subsection (a) shall apply to taxable years beginning after
 21 December 31, 2005.

1 **TITLE III—EFFECTIVE DATE**

2 **SEC. 301. EFFECTIVE DATE.**

3 Except as provided in sections 201(b), 202(c), and
4 203(b), this Act and the amendments made by this Act
5 take effect on January 1, 2006.

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