

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.

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## 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

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## 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 personal and financial independence and live in  
 6 the community through a new financing strategy for  
 7 community living 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. 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 CLASS enrollees with low-income.
- 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 XXXI—COMMUNITY LIV-**  
 13 **ING ASSISTANCE SERVICES**  
 14 **AND SUPPORTS**

15 **“SEC. 3101. 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 3102  
 20 and who has paid any premiums due to maintain  
 21 such enrollment in accordance with section 3103.

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

1 location to which the individual’s employer re-  
 2 quires the individual to travel (or in the case of  
 3 an individual who is a member of the uniformed  
 4 services, is on active duty and is physically able  
 5 to perform the duties of the individual’s posi-  
 6 tion);

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

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

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

17 “(A) Eating.

18 “(B) Toileting.

19 “(C) Transferring.

20 “(D) Bathing.

21 “(E) Dressing.

22 “(F) Continence.

23 “(4) CLASS PROGRAM.—The term ‘CLASS  
 24 program’ means the program established under this  
 25 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.—

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

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

16                 “(ii) except as provided in section  
17                 3103(e)(2), has paid premiums for enroll-  
18                 ment in such program for at least 12 con-  
19                 secutive months if a lapse in premium pay-  
20                 ments of more than 3 months has occurred  
21                 during the period that begins on the date  
22                 of the individual’s enrollment and ends on  
23                 the date of such determination.

24                 “(B) DATE DESCRIBED.—For purpose of  
25                 subparagraph (A), the date described in this

1           subparagraph is the date on which the indi-  
2           vidual is determined—

3                   “(i) to be unable to perform at least  
4                   2 activities of daily living or to require su-  
5                   pervision, cueing, or hands-on assistance to  
6                   plan or perform at least 2 such activities;  
7                   or

8                   “(ii) due to a cognitive or psychiatric  
9                   impairment, to require supervision, cueing,  
10                  or hands-on assistance to engage in activi-  
11                  ties that will enable the individual to per-  
12                  form at least 2 of the following critical life  
13                  functions:

14                           “(I) Communicating.

15                           “(II) Taking medications.

16                           “(III) Household management.

17                           “(IV) Basic money management.

18                  “(7) ELIGIBLE TIER II BENEFICIARY.—The  
19                  term ‘eligible tier II beneficiary’ means any indi-  
20                  vidual who is an eligible tier I beneficiary who has  
21                  been determined—

22                           “(A) to be unable to perform at least 4 ac-  
23                           tivities of daily living or to require supervision,  
24                           cueing, or hands-on assistance to plan or per-  
25                           form at least 4 such activities; or

1           “(B) due to a cognitive or psychiatric im-  
 2           pairment, to require supervision, cueing, or  
 3           hands-on assistance to engage in activities that  
 4           will enable the individual to perform at least 4  
 5           of the following critical life functions:

6                   “(i) Communicating.

7                   “(ii) Taking medications.

8                   “(iii) Household management.

9                   “(iv) Basic money management.

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

17           “(9) INDEPENDENCE FUND.—The term ‘Inde-  
 18           pendence Fund’ or ‘Fund’ means the fund estab-  
 19           lished under section 3105.

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

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

1 2110(e)(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. 3102. 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. 3103. 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

1 under paragraph (1), (2), or (3) (whichever is  
2 applicable). Such amounts shall be nominal  
3 and, in the case of an individual who, but for  
4 this paragraph, would be subject to the pre-  
5 mium imposed under paragraph (3), may be ad-  
6 justed in accordance with the factors described  
7 in that paragraph.

8 “(C) SELF-ATTESTATION AND  
9 VERIFICATION OF INCOME.—The Secretary  
10 shall establish procedures to—

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

16 “(ii) verify the validity of such self-at-  
17 testation.

18 “(5) ADJUSTMENT OF PREMIUMS.—

19 “(A) IN GENERAL.—Except as provided in  
20 subparagraphs (C) and (D), the amount of the  
21 monthly premium determined for an individual  
22 upon such individual’s enrollment in the  
23 CLASS program shall remain the same for as  
24 long as the individual is an active enrollee in  
25 the program.

1           “(B) PROGRAM SOLVENCY PROJEC-  
2           TIONS.—Beginning with 2012 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 3105 that are required  
8           to pay tier I and tier II benefits under section  
9           3104 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 2017 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 3105 are required to pay tier I and  
23           tier II benefits under section 3104 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.

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

4           “(i) IN GENERAL.—Except as pro-  
5 vided in subsection (e)(2), the reenrollment  
6 of an individual after a 90-day period dur-  
7 ing which the individual failed to pay the  
8 monthly premium required to maintain the  
9 individual’s enrollment in the CLASS pro-  
10 gram shall be treated as an initial enroll-  
11 ment for purposes of age-adjusting the  
12 premium for enrollment in the program.

13           “(ii) CREDIT FOR PRIOR MONTHS.—  
14 An individual who reenrolls in the CLASS  
15 program after such a 90-day period shall  
16 be—

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

21           “(II) notwithstanding the total  
22 amount of any such credited months,  
23 required to satisfy section  
24 3101(6)(B)(ii) before being eligible to  
25 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. 3104. 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.—

1           “(A) IN GENERAL.—Not later than Octo-  
2 ber 1, 2012, the Secretary shall enter into  
3 agreements with—

4                   “(i) the Disability Determination  
5 Service for each State to provide for eligi-  
6 bility assessments of active enrollees who  
7 apply for receipt of benefits;

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

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

15           “(B) 30-DAY PERIOD FOR APPROVAL OR  
16 DISAPPROVAL.—An agreement under subpara-  
17 graph (A) shall require that a Disability Deter-  
18 mination Service determine within 30 days of  
19 the receipt of an application for benefits under  
20 the CLASS program whether an applicant is an  
21 eligible tier I beneficiary or an eligible tier II  
22 beneficiary. An application that is pending after  
23 45 days shall be deemed approved.

24           “(C) PRESUMPTIVE ELIGIBILITY FOR CER-  
25 TAIN 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           of their choice in the community, such as home  
17           modifications, assistive technology, accessible  
18           transportation, homemaker services, respite  
19           care, personal assistance services, and home  
20           care aides.

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

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

4           “(ii) accessing such account through  
5           debit cards; and

6           “(iii) accounting for withdrawals by  
7           the beneficiary from such account.

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

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

1 the beneficiary's care, and Medicaid shall  
2 provide secondary coverage for such care.

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

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

23 “(II) REQUIREMENT FOR STATE  
24 OFFSET.—A State shall be paid the  
25 remainder of a beneficiary's daily cash

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

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

1 of section 1915 of such Act (42  
2 U.S.C. 1396n).

3 “(2) AUTHORIZED REPRESENTATIVES.—

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

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

22 “(3) COMMENCEMENT OF BENEFITS.—Tier I  
23 benefits or tier II benefits, as applicable, shall be  
24 paid to, or on behalf of, an eligible tier I beneficiary  
25 or an eligible tier II beneficiary, respectively, begin-

1       ning with the first month in which an application for  
2       such benefits is approved.

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

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

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

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

14               “(ii) the applicable annual benefit.

15               “(5) PERIOD FOR DETERMINATION OF ANNUAL  
16       BENEFITS.—

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

1           “(B) INCLUSION OF TIER I BENEFITS.—

2           The Secretary shall establish procedures under  
3           which benefits paid to an eligible tier I bene-  
4           ficiary who becomes an eligible tier II bene-  
5           ficiary before the end of a 12-month benefit pe-  
6           riod shall be included in the determination of  
7           the applicable annual benefit paid to the eligible  
8           tier II beneficiary.

9           “(C) RECOUPMENT OF UNPAID, ACCRUED  
10          BENEFITS.—

11           “(i) IN GENERAL.—The Secretary  
12           shall recoup any accrued benefits in the  
13           event of—

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

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

21           “(ii) PAYMENT INTO INDEPENDENCE  
22          FUND.—Any benefits recouped in accord-  
23          ance with clause (i) shall be paid into the  
24          Independence Fund and used in accord-  
25          ance with section 3105.

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

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

7                   “(A) annually—

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

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

16                   “(B) notify the Secretary if the beneficiary  
17                   is not earning wages or deriving self-employ-  
18                   ment income and should not have to pay a  
19                   monthly premium to maintain enrollment in the  
20                   CLASS program in accordance with section  
21                   3103(e)(2).

22           “(7) SUPPLEMENT, NOT SUPPLANT OTHER  
23           HEALTH CARE BENEFITS.—Subject to the Medicaid  
24           payment rules under paragraph (1)(C), benefits re-  
25           ceived by an eligible tier I beneficiary or an eligible

1 tier II beneficiary shall supplement, but not sup-  
2 plant, other health care benefits for which the bene-  
3 ficiary is eligible under Medicaid or any other feder-  
4 ally funded program that provides health care bene-  
5 fits or assistance.

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

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

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

16 “(B) assistance with respect to the annual  
17 recertification and notification required under  
18 subsection (d)(6); and

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

21 “(2) ensure that the System and such coun-  
22 selors comply with the requirements of subsection  
23 (i).

24 “(f) **ADVICE AND ASSISTANCE COUNSELING.**—An  
25 agreement entered into under subsection (a)(2)(A)(iii)

1 shall require the entity to assign, as requested by an eligi-  
2 ble tier I beneficiary or an eligible tier II beneficiary that  
3 is covered by such agreement, an advice and assistance  
4 counselor who provides an eligible tier I beneficiary or an  
5 eligible tier II beneficiary with information regarding—

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

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

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

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

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

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

1 Veterans Affairs, under low-income housing assistance  
2 programs, or under the food stamp program established  
3 under the Food Stamp Act of 1977 (7 U.S.C. 2011).

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

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

11 “(2) ADDITIONAL ADJUSTMENT.—With respect  
12 to any year for which the Secretary has determined  
13 under section 3103(b)(4)(C) that an adjustment to  
14 the monthly premium amounts is necessary to en-  
15 sure program solvency, the Secretary shall decrease  
16 the increase in the dollar amounts specified in sub-  
17 sections (b)(1) and (c)(1) that would otherwise be  
18 applicable under paragraph (1) for that year, by  
19 such amount as the Secretary determines is appro-  
20 priate for that year (but shall ensure that there is  
21 an increase in such dollar amounts for that year).

22 “(i) RULE OF CONSTRUCTION.—Nothing in this title  
23 shall be construed as prohibiting tier I or tier II benefits  
24 paid under the CLASS program from being used to com-  
25 pensate a family caregiver for providing community living

1 assistance services and supports to an eligible tier I bene-  
2 ficiary or an eligible tier II beneficiary.

3 “(j) PROTECTION AGAINST CONFLICT OF INTER-  
4 ESTS.—The Secretary shall establish procedures to ensure  
5 that the Disability Determination Service and Protection  
6 and Advocacy System for a State, advocacy counselors for  
7 eligible tier I or eligible tier II beneficiaries, and any other  
8 entities that provide services to active enrollees and eligi-  
9 ble tier I or eligible tier II beneficiaries under the CLASS  
10 program comply with the following:

11 “(1) If the entity provides counseling or plan-  
12 ning services, such services are provided in a manner  
13 that fosters the best interests of the active enrollee  
14 or beneficiary.

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

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

23 “(4) The entity assists the active enrollee or  
24 beneficiary to access desired services, regardless of  
25 the provider.

1           “(5) The entity reports the number of active  
2           enrollees and beneficiaries provided with assistance  
3           by age, disability, and whether such enrollees and  
4           beneficiaries received services from the entity or an-  
5           other entity.

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

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

14   **“SEC. 3105. INDEPENDENCE FUND.**

15           “(a) ESTABLISHMENT OF INDEPENDENCE FUND.—  
16   There is established in the Treasury of the United States  
17   a trust fund to be known as the ‘Independence Fund’. The  
18   Secretary shall serve as Managing Trustee of such Fund.  
19   The Fund shall consist of all amounts derived from pay-  
20   ments into the Fund under sections 3103(d) and  
21   3104(d)(5)(C)(ii), and remaining after investment of such  
22   amounts under subsection (b), including additional  
23   amounts derived as income from such investments. The  
24   amounts held in the Fund are appropriated and shall re-  
25   main available without fiscal year limitation—

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

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

6           “(3) to pay tier I and tier II benefits under sec-  
7           tion 3104.

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

15          “(c) OFF-BUDGET STATUS; LOCK-BOX PROTEC-  
16          TION.—

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

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

25                         “(B) the congressional budget; or

1           “(C) the Balanced Budget and Emergency  
2 Deficit Control Act of 1985.

3           “(2) LOCK-BOX PROTECTION.—

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

11           “(B) 60-VOTE WAIVER REQUIRED IN THE  
12 SENATE.—

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

17           “(ii) APPEALS.—

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

1 purpose other than a purpose author-  
2 ized under this title.

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

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

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

23 “(ii) with full recognition of the con-  
24 stitutional right of either House to change  
25 the rules (so far as they relate to the pro-

1                   cedure of that House) at any time, in the  
2                   same manner, and to the same extent as in  
3                   the case of any other rule of that House.

4           “(d) **ADDITIONAL APPROPRIATIONS TO ENSURE**  
5 **SOLVENCY DURING INITIAL BENEFIT YEARS.**—In addi-  
6 tion to the amounts appropriated to the Fund under sub-  
7 section (a), out of any money in the Treasury of the  
8 United States not otherwise appropriated, there are ap-  
9 propriated to the Fund, for each of fiscal years 2013  
10 through 2017, such sums as are necessary for each such  
11 fiscal year (and which, in the case of each of fiscal years  
12 2014 through 2017, shall be less than the amount appro-  
13 priated for the preceding fiscal year) to ensure the sol-  
14 vency of the Fund during the first 5 years in which tier  
15 I or tier II benefits are paid from the Fund. Amounts ap-  
16 propriated under this subsection shall remain available  
17 without fiscal year limitation for the purposes specified in  
18 paragraphs (1), (2), and (3) of subsection (a).

19 **“SEC. 3106. REGULATIONS; ANNUAL REPORT.**

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

1       “(b) ANNUAL REPORT.—Beginning with fiscal year  
2 2013, the Secretary shall submit an annual report to Con-  
3 gress on the CLASS program. Each report shall include  
4 the following:

5           “(1) The total amount of enrollees in the pro-  
6 gram.

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

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

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

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

18 **“SEC. 3107. TAX TREATMENT OF PROGRAM.**

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

23           (2) CONFORMING AMENDMENTS TO MED-  
24 ICAID.—Section 1902(a) of the Social Security Act  
25 (42 U.S.C. 1396a(a)), as amended by section

1 5006(e)(2)(A) of division B of Public Law 111–5, is  
2 amended—

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

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

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

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

17 (b) ASSURANCE OF ADEQUATE INFRASTRUCTURE  
18 FOR THE PROVISION OF PERSONAL CARE ATTENDANT  
19 WORKERS.—Section 1902(a) of the Social Security Act  
20 (42 U.S.C. 1396a(a)), as amended by subsection (a)(2),  
21 is amended—

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

24 (2) in paragraph (74), by striking the period at  
25 the end and inserting “; and”; and

1           (3) by inserting after paragraph (74), the fol-  
2           lowing:

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

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

21          “(B) designate or create such entities to  
22          serve as fiscal agents for, employers of, and  
23          providers of employment-related benefits for,  
24          such workers to ensure an adequate supply of  
25          the workers for individuals receiving benefits

1 under the CLASS program, including in rural  
2 and underserved areas; and

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

16 (c) PERSONAL CARE ATTENDANTS WORKFORCE AD-  
17 VISORY PANEL.—

18 (1) ESTABLISHMENT.—Not later than 90 days  
19 after the date of enactment of this Act, the Sec-  
20 retary of Health and Human Services shall establish  
21 a Personal Care Attendants Workforce Advisory  
22 Panel for the purpose of examining and advising the  
23 Secretary and Congress on workforce issues related  
24 to personal care attendant workers, including with  
25 respect to the adequacy of the number of such work-

1       ers, the salaries, wages, and benefits of such work-  
2       ers, and access to the services provided by such  
3       workers.

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

8                       (A) Individuals with disabilities of all ages.

9                       (B) Senior individuals.

10                      (C) Representatives of individuals with dis-  
11       abilities.

12                      (D) Representatives of senior individuals.

13                      (E) Representatives of workforce and labor  
14       organizations.

15                      (F) Representatives of home and commu-  
16       nity-based service providers.

17                      (G) Representatives of assisted living pro-  
18       viders.

19       **TITLE II—AMENDMENTS TO THE**  
20       **INTERNAL REVENUE CODE**  
21       **OF 1986**

22       **SEC. 201. ABOVE-THE-LINE DEDUCTION FOR PREMIUM**  
23       **COSTS.**

24               (a) IN GENERAL.—Section 62(a) of the Internal Rev-  
25       enue Code of 1986 (defining adjusted gross income) is

1 amended by inserting after paragraph (21) the following  
 2 new paragraph:

3           “(22) CLASS PROGRAM PREMIUMS.—The deduc-  
 4           tion allowed by section 213 (determined without re-  
 5           gard to any adjusted gross income limitation) which  
 6           consists of amounts paid by the taxpayer for enroll-  
 7           ment in the CLASS program (as defined in section  
 8           36B(d)) for eligible enrollment months (as defined  
 9           in section 36(b)) beginning in the taxable year.”.

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

13 **SEC. 202. CREDIT FOR PREMIUM COSTS OF CLASS ENROLL-**  
 14 **EES WITH LOW-INCOME.**

15          (a) IN GENERAL.—Subpart C of part IV of sub-  
 16 chapter A of chapter 1 of the Internal Revenue Code of  
 17 1986 (relating to refundable credits) is amended by insert-  
 18 ing after section 36A the following new section:

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

21          “(a) IN GENERAL.—In the case of a CLASS enrollee  
 22 with low-income, there shall be allowed as a credit against  
 23 the tax imposed by subtitle A an amount equal to 50 per-  
 24 cent of the amount paid by the taxpayer for enrollment  
 25 of the taxpayer and the taxpayer’s spouse in the CLASS

1 program for eligible enrollment months beginning in the  
2 taxable year.

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

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

10 “(2) JOINT RETURNS.—In the case of a joint  
11 return, the requirements of paragraph (1) shall be  
12 treated as met with respect to any month if at least  
13 1 spouse satisfies such requirements.

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

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

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

22 “(d) CLASS PROGRAM.—For purposes of this sec-  
23 tion, the term ‘CLASS program’ means the program for  
24 community living assistance services and supports estab-  
25 lished under title XXIX of the Public Health Service Act.

1 “(e) SPECIAL RULES.—

2 “(1) COORDINATION WITH OTHER DEDUC-  
3 TIONS.—Amounts taken into account under sub-  
4 section (a) shall not be taken into account in deter-  
5 mining any deduction allowed under section  
6 62(a)(22), 162(l), or 213.

7 “(2) MSA DISTRIBUTIONS.—Amounts distrib-  
8 uted from an Archer MSA (as defined in section  
9 220(d)) shall not be taken into account under sub-  
10 section (a).

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

17 “(4) BOTH SPOUSES ELIGIBLE INDIVIDUALS.—  
18 For purposes of subsection (a), the amount paid for  
19 enrollment of the taxpayer’s spouse shall be dis-  
20 regarded if—

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

23 “(B) the taxpayer and the taxpayer’s  
24 spouse are both CLASS enrollee with low-in-  
25 come during the taxable year, and

1           “(C) the taxpayer files a separate return  
2           for the taxable year.

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

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

10          (b) CONFORMING AMENDMENTS.—

11           (1) Paragraph (2) of section 1324(b) of title  
12           31, United States Code, is amended by striking  
13           “section 35” and all that follows through “53(e)”  
14           and inserting “section 35, 36, 36A, 36B, 53(e), or  
15           6428”.

16           (2) Section 6211(b)(4)(A) is amended by insert-  
17           ing “36B,” after “36A,”.

18           (3) The table of sections for subpart C of part  
19           IV of chapter 1 of the Internal Revenue Code of  
20           1986 is amended by inserting after the item relating  
21           to section 36A the following new item:

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

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

1 **SEC. 203. CREDIT FOR COSTS OF EMPLOYERS WHO ELECT**  
 2 **TO AUTOMATICALLY ENROLL EMPLOYEES**  
 3 **AND WITHHOLD CLASS PREMIUMS FROM**  
 4 **WAGES.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-  
 6 chapter A of chapter 1 of the Internal Revenue Code of  
 7 1986 (relating to business credits) is amended by inserting  
 8 after section 45Q the following:

9 **“SEC. 45R. CREDIT FOR COSTS OF AUTOMATICALLY EN-**  
 10 **ROLLING EMPLOYEES AND WITHHOLDING**  
 11 **CLASS PREMIUMS FROM WAGES.**

12 “(a) GENERAL RULE.—For purposes of section 38,  
 13 the CLASS automatic enrollment and premium with-  
 14 holding credit determined under this section for the tax-  
 15 able year is an amount equal to 25 percent of the total  
 16 amount paid or incurred by the taxpayer during the tax-  
 17 able year to—

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

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

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

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

5       (b) CREDIT MADE PART OF GENERAL BUSINESS  
 6 CREDIT.—Subsection (b) of section 38 of the Internal  
 7 Revenue Code of 1986 (relating to general business credit)  
 8 is amended by striking “plus” at the end of paragraph  
 9 (34), by striking the period at the end of paragraph (35)  
 10 and inserting “, plus”, and by inserting after paragraph  
 11 (35) the following new paragraph:

12               “(36) the CLASS automatic enrollment and  
 13 premium withholding credit determined under sec-  
 14 tion 45R(a).”.

15       (c) CLERICAL AMENDMENT.—The table of sections  
 16 for subpart D of part IV of subchapter A of chapter 1  
 17 of the Internal Revenue Code of 1986 is amended by in-  
 18 serting after the item relating to section 45Q the following  
 19 new item:

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

20       (d) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply to expenses paid or incurred after  
 22 December 31, 2009, in taxable years ending after such  
 23 date.

1 **SEC. 204. LONG-TERM CARE INSURANCE INCLUDIBLE IN**  
2 **CAFETERIA PLANS.**

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

6 (b) EFFECTIVE DATE.—The amendment made by  
7 subsection (a) shall apply to taxable years beginning after  
8 December 31, 2009.

9 **TITLE III—EFFECTIVE DATE**

10 **SEC. 301. EFFECTIVE DATE.**

11 Except as provided in sections 201(b), 202(e),  
12 203(d), and 204(b), this Act and the amendments made  
13 by this Act take effect on January 1, 2010.

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