



## THE BASICS

# The Community Living Assistance Services and Supports (CLASS) Act: Major Legislative Provisions

JUNE 9, 2010

UPDATE (DECEMBER 20, 2011) — *The Patient Protection and Affordable Care Act requires the Secretary of the Department of Health and Human Services (HHS) to publish a final rule designating the CLASS Benefit Plan by October 1, 2012. Subsequent to passage of the law, HHS conducted an analysis of possible CLASS implementation options consistent with the statutory requirements that the program be actuarially solvent over the next 75 years and self-funded. After a 19-month period of analysis, HHS officials stated in testimony before the House Committee on Energy and Commerce on October 26, 2011, that the Department has “not identified a way to make CLASS sustainable, legal and attractive to potential buyers...” and therefore “decided not to move forward with CLASS at this time...” (HHS testimony before the House Energy and Commerce Committee, October 26, 2011, [http://republicans.energycommerce.house.gov/Media/file/Hearings/Joint/102611\\_Health\\_OI/HHSTestimony.pdf](http://republicans.energycommerce.house.gov/Media/file/Hearings/Joint/102611_Health_OI/HHSTestimony.pdf).)*

The Patient Protection and Affordable Care Act (PPACA, P.L. 111-148, enacted March 23, 2010) established the Community Living Assistance Services and Supports (CLASS) program, a new federally administered voluntary insurance program to help adults age 18 and over with disabilities pay for long-term services and supports (LTSS).

Added as a new title XXXII of the Public Health Service Act, the CLASS program is a departure from the way the federal government currently supports LTSS.<sup>1</sup> The program is administered by the federal government [the Department of Health and Human Services (HHS)] but, unlike other federal LTSS programs, CLASS program benefits will be financed entirely by individuals' age-adjusted premiums. Individuals who are eligible for CLASS program benefits will receive cash payments to help them pay for services and supports they need to live in the community, or in a residential or institutional setting.

This publication describes the major provisions<sup>2</sup> of the CLASS Act legislation, including requirements for enrollment and eligibility,

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benefits and services, premium amounts, the CLASS Act trust fund, and timelines.

**ENROLLMENT IN THE CLASS PROGRAM**

Individuals who meet certain conditions may voluntarily enroll in the CLASS program. They must be age 18 or older, receive taxable wages or self-employment income, and be actively employed.<sup>3</sup> People who are patients in hospitals or mental institutions or residents of nursing homes or intermediate care facilities for individuals with mental retardation (ICFs/MR) and are Medicaid recipients are not eligible to enroll.<sup>4</sup> The law prohibits the use of underwriting requirements that would prevent an individual from enrolling (see also section on premiums, below).

Employers, at their option, may choose to automatically enroll employees in the CLASS program and to deduct CLASS premiums from employee wages. Employees may elect to waive enrollment in the CLASS program, referred to as the “opt-out” provision. The law requires the Secretaries of HHS and Treasury to establish an alternate enrollment process for individuals whose employers who do not elect to participate, who are self-employed, or who have more than one employer.

**ELIGIBILITY FOR CLASS PROGRAM BENEFITS**

In order to be eligible to receive CLASS program benefits, an individual must (i) have voluntarily enrolled and be an active enrollee<sup>5</sup>; (ii) have paid premiums for five years (that is, meet a five-year vesting period requirement); and (iii) have minimum earnings sufficient to be credited for one quarter of Social Security coverage (\$1,120 in 2010)<sup>6</sup> in at least three of the first five years of enrollment.<sup>7</sup>

**Functional Eligibility Requirements**

An individual is eligible to begin receiving CLASS program benefits when the eligibility assessment system (see below) determines that he or she has a functional limitation (as certified by a licensed health care practitioner) that is expected to last for a continuous period of 90 days or more. An individual is defined to

have a functional limitation if he or she meets at least one of the following criteria:

- Is unable to perform at least the minimum number (the law specifies that the number may be two or three) of activities of daily living<sup>8</sup> without substantial assistance (to be defined by the Secretary of HHS) from another individual
- Requires substantial supervision to protect him or her from threats to health and safety due to substantial cognitive impairment
- Has a level of functional limitation similar (as determined by HHS regulations) to the level of functional limitations specified above

Beneficiaries are required to periodically<sup>9</sup> recertify their eligibility status by submitting medical evidence regarding continued eligibility. They must also submit records of their benefit expenditures for the prior year.

### Eligibility Assessment System

The Secretary of HHS is required to establish an eligibility assessment system to determine the eligibility of active enrollees for CLASS program benefits. The Secretary is also required to promulgate regulations for an “expedited nationally equitable eligibility determination process.”<sup>10</sup> The law does not specify the types of entities that will make eligibility determinations, but does exclude state disability determination services [which make eligibility determinations for Social Security or Supplemental Security Income (SSI) disability payments] from serving as those entities.

### CLASS PROGRAM BENEFITS

The Secretary is required to define the CLASS Independence Benefit Plan that will set forth program benefits and the premium structure. Prior to publishing the final benefit plan, the Secretary is to develop at least three actuarially sound benefit plan alternatives, in consultation with actuarial and other experts. Each plan alternative must be designed to provide eligible beneficiaries with a cash benefit, advocacy services, and advice and assistance counseling. The CLASS Independent Advisory Council (described below) is to evaluate the alternatives and recommend the plan

that best balances price and benefits to meet enrollees' needs in an actuarially sound manner and that optimizes the long-term sustainability of the CLASS program.

Unlike most other public LTSS programs where recipients receive services authorized, provided, and/or paid for by an agency or other entity, eligible CLASS program beneficiaries will receive cash benefits to purchase services.<sup>11</sup>

### Cash Benefits

Benefits are to be based on a functional ability scale with at least two, but not more than six, benefit levels. The average benefit must be at least \$50 per day (plus an annual inflation adjustment), based on the expected distribution of beneficiaries receiving the varying benefit levels. A lifetime or aggregate limit on benefits is prohibited by the law. Benefits are to be paid on a daily or weekly basis.

**Purchase of services by beneficiaries** — The Secretary is required to establish procedures for administering benefits for beneficiaries under the plan. This includes payment of cash benefits into a Life Independence Account on behalf of each eligible beneficiary. Beneficiaries may use cash benefits paid into his or her account to pay for nonmedical services and supports needed to maintain independence at home or in a residential setting. These include home modifications, assistive technology, accessible transportation, homemaker and personal assistance services, home care aides, respite care and nursing support. Beneficiaries may use CLASS cash benefits to compensate family caregivers who provide community living assistance. Also, beneficiaries may use the cash benefit to obtain assistance on decision making regarding the right to accept or refuse medical or surgical treatment as well as the right to formulate advance directives, such as a living will or durable power of attorney for health care.

**Cash benefits for beneficiaries enrolled in Medicaid** — CLASS beneficiaries who have begun to receive Medicaid-financed institutional care<sup>12</sup> or home and community-based services (HCBS),<sup>13</sup> or who are enrolled in Program of All-Inclusive Care for the Elderly (PACE), will be allowed to retain part of their CLASS cash benefit. Institutionalized beneficiaries, including those in PACE, will retain 5 percent of their CLASS cash benefit, and the remainder will be applied to the cost of the institutional care, with Medicaid

providing secondary coverage.<sup>14</sup> HCBS beneficiaries, including those in PACE, will retain 50 percent of their CLASS cash benefit and the remaining 50 percent will be applied, under certain circumstances,<sup>15</sup> to the state's Medicaid costs. Medicaid will provide secondary coverage for the remainder of a beneficiary's costs.

**Election for rollover of cash program benefits** — Eligible beneficiaries may elect to defer benefit payments and to roll over benefits from month to month (but they may not roll over benefits from year to year). Beneficiaries may receive a lump sum benefit up to either the total accrued deferred benefit amount or the annual benefit amount, whichever is less.

**Disregard of CLASS program benefits in determining eligibility for other public programs** — The law stipulates that an individual's CLASS cash benefits may not be considered income for the purpose of determining (or redetermining) his or her eligibility for any other federal benefit programs, including Social Security, Supplemental Security Income, Medicare, Medicaid, the Children's Health Insurance Program (CHIP), Veterans Administration programs, low-income housing assistance programs, or the Food and Nutrition Act supplemental nutrition assistance program. Nor can CLASS benefits be considered as income for state or local assistance programs.

**Tax treatment of program benefits** — For tax purposes, the CLASS program is to be treated like a qualified long-term care insurance contract for qualified long-term care services.<sup>16</sup>

**Other provisions** — Cash benefits are subject to other provisions as well, including recoupment of unpaid accrued benefits, electronic management of cash benefits, and use of cash benefits by authorized representatives.<sup>17</sup>

### Advocacy Services

Under an agreement developed between the Secretary of HHS and each state's Protection and Advocacy (P&A) System,<sup>18</sup> each enrollee is to be assigned (as needed) an advocacy counselor who is to provide beneficiaries with information on ways to access the CLASS appeals system, assistance on annual recertification and notification systems, and other assistance required to be offered under HHS regulations.

### Advice and Assistance Counseling

Under an agreement between the Secretary and public and private entities, each beneficiary is to receive (at his or her request) information and advice from an assistance counselor regarding access to and coordination of LTSS, eligibility about other benefits and services, development of a service and support plan, programs and services under the Assistance Technology Act of 1998, and decision making on medical care and advance directives.

### PREMIUMS

The Secretary is required to establish annual age-adjusted premium amounts to be paid by enrollees. The premiums must be based on an actuarial analysis of 75-year program costs that will ensure the program's solvency over that period. Nominal premium amounts of \$5 (plus an annual inflation adjustment) will apply to individuals who have income below the federal poverty level, and to those age 18 to 21 who are full-time students and actively employed.<sup>19</sup> No underwriting factors, other than age, may be used to determine an individual's premium amount.

Once an individual enrolls and as long as he or she remains active in the program, his or her premiums cannot be increased. There are certain exceptions to this general prohibition. First, the Secretary may increase premiums if he or she determines<sup>20</sup> that premium collections<sup>21</sup> will be insufficient for an upcoming 20-year period. Second, any increase in the premiums made as a result of that determination are not to apply to people age 65 and older, who have paid premiums for at least 20 years, and who are not actively employed. Third, the Secretary must maintain nominal premiums for low-income individuals and full-time students who are actively employed. The law does not specify whether beneficiaries are required to continue paying premiums once they start receiving benefits.

Aside from these requirements, the law prescribes circumstances when premiums for certain individuals will be recalculated. If an individual fails to pay the premium for 90 days, and decides to reenroll, his or her premium will be age-adjusted at the time of reenrollment (and prior premiums paid will be credited to the individual under certain circumstances). Also, an individual age

18 to 21 who is no longer a full-time student and actively employed will be required to pay an age-adjusted premium when his or her status changes.

The Secretary of HHS, in coordination with the Secretary of the Treasury, is required to set up alternative procedures for payment of premiums by enrollees whose employer has not chosen to participate or who does not earn wages or have self-employment income.

### ADMINISTRATIVE COSTS

Up to 3 percent of premiums collected from enrollees may be used for administration of the CLASS program. Advocacy services and advice and assistance counseling are considered administrative costs.

### CLASS INDEPENDENCE FUND

The law establishes the CLASS Independence Fund in the U.S. Treasury with the Secretary of the Treasury to serve as the managing trustee. The Fund will consist of premiums collected, any cash benefits recouped from enrollees, and income derived from the investment of funds held.

The Board of Trustees is to be composed of the Secretaries of Treasury, HHS, and Labor as ex-officio members. Two public members of different political parties are to be nominated by the President for four-year terms and confirmed by the Senate. Trustees are not considered fiduciaries and will not be held liable for Independence Fund actions.

The Board of Trustees must report to Congress on the status and operation of the Fund. Reports are to include the Fund's assets and disbursements, expected income and disbursements, and its actuarial status. They are also to contain an actuarial opinion by the chief actuary of the Centers for Medicare & Medicaid Services (CMS) certifying that the techniques and methods used by the Fund are generally accepted by the actuarial profession and that assumptions and estimates are reasonable. The Board may recommend adjustments in monthly premiums or impose a temporary moratorium on new enrollments if enrollment trends and

expected future claims are not actuarially sound and are unlikely to be resolved with reasonable premium increases.

## SOLVENCY AND FISCAL INDEPENDENCE

The Secretary of HHS is required to regularly consult with the Board of Trustees and the Advisory Council to ensure that enrollee premiums are adequate to ensure the financial solvency of the CLASS program over the short term, as well as over 20- and 75-five year periods.

No taxpayer funds may be used for CLASS program benefits. The law defines taxpayer funds as “any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.”<sup>22</sup>

## CLASS INDEPENDENCE ADVISORY COUNCIL

The CLASS Independence Advisory Council is to advise the Secretary of HHS regarding the administration of the CLASS program and the development of governing regulations, including the CLASS benefit plan, the monthly premiums, and financial solvency. The Council will be composed of up to 15 members appointed by the President. A majority of the members are to be CLASS participants or those likely to participate, including both older and younger workers; individuals with disabilities; family caregivers of those who need services and supports at home or in a residential setting; and individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines. Members will serve terms of three years and may not serve more than two consecutive terms.

## TIMELINE

The CLASS Act establishes a number of dates for accomplishing certain actions, described below. It does not specify when enrollment in the CLASS program is to begin, or when enrollees are to begin paying premiums.<sup>23</sup>

*June 23, 2010* — The Secretary is required to establish a Personal Care Attendants Workforce Advisory Panel. The purpose of

the Panel is to advise the Secretary and Congress on workforce issues related to the adequacy of personal care attendant workers, including the supply of workers and their wages and benefits. The law sets forth the membership of the Panel.

*January 1, 2012* — The Secretary must establish an Eligibility Assessment System to determine the eligibility of enrollees who apply for services and must enter into agreements with each state's P&A System and with other public and private entities that will provide advocacy services and advice and assistance counseling for CLASS program participants.

*October 1, 2012* — The Secretary must publish a final rule designating the CLASS Benefit Plan, describing the reasons for the selection of the Plan, and requesting public comments.

*March 23, 2012* — States will be required to assess their infrastructures to support personal care attendant workers. The assessment must include the extent to which various providers<sup>24</sup> have the capacity to employ and serve as fiscal agents and provide employment-related benefits for personal care attendant workers of CLASS program beneficiaries. States are required to designate or create entities to carry out these functions, and ensure that these entities will not negatively alter or impede existing programs, models, methods of administration of services delivery for consumer-directed home and community services,<sup>25</sup> or impede individuals from relying on family members for personal care services.<sup>26</sup>

*January 1, 2014* — The Secretary is to submit the first annual CLASS Act report to Congress. The report is to include the number of enrollees, eligible beneficiaries, the total amount of cash benefits provided, a description of instances of fraud and abuse, and recommendations for administrative or legislative actions that are necessary to improve the program, ensure its solvency, and prevent fraud or abuse.

## ENDNOTES

1. For information on LTSS spending, see "National Spending for Long-Term Services and Supports (LTSS)," National Health Policy Forum, March 15, 2011, by Carol V. O'Shaughnessy; available at [www.nhpf.org/library/details.cfm/2783](http://www.nhpf.org/library/details.cfm/2783).

2. This report does not describe all provisions and is not intended to be a section-by section analysis of the legislation.
3. An individual is defined as “actively employed” if he or she is reporting for work at his or her usual place of employment, and is able to perform the usual and customary duties of employment; or another location where he or she is assigned due to employment-related travel requirements; or if the individual is a member of the uniformed services, is on active duty, and is physically able to perform the duties of his or her position.
4. Also ineligible are those who are confined to jail, prisons, penal institutions, or other correctional facilities.
5. An “active enrollee” is defined as an individual who is enrolled in the CLASS program and has paid premiums to maintain enrollment.
6. The Secretary is required to issue regulations that specify exceptions to this minimum earnings requirement.
7. Eligible beneficiaries also include those who have failed to pay premiums for three months or more during enrollment, but are determined to have a functional limitation as long as they have paid premiums for at least two years.
8. “Activities of daily living” are defined by the law as eating, toileting, transferring, bathing, dressing, and continence.
9. As determined by the Secretary of HHS.
10. Section 3205(a)(2)(B) of the law.
11. Some Medicaid LTSS services are delivered to beneficiaries in the form of cash under various state consumer direction programs.
12. Institutions include hospitals, nursing facilities, ICFs/MR, or institutions for mental diseases.
13. Medicaid home and community-based services are defined as those that the state provides under Section 1115, Sections 1915(c) or (d) of the Social Security Act, or under a Medicaid state plan amendment.
14. The CLASS program benefit retained by an institutionalized individual will be added to the personal needs amount for those in institutions allowed by Medicaid.
15. In the case of home and community-based services, the remaining 50 percent of the CLASS benefit will be used to reimburse the state’s Medicaid costs for the beneficiary, only if a state’s services under Section 1115 or Sections 1915(c), (d), or (i) of the Social Security Act are statewide, comparable to other services the state offers, and if the state provides, at a minimum, case management, personal care, habilitation, and respite care.
16. Under provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, long-term care insurance benefits are exempt from taxation, up to certain limits, and long-term care insurance premiums can

be counted as unreimbursed long-term care expenses subject to age-adjusted limits and other requirements. HIPAA defines qualified long-term care insurance and qualified long-term care services.

17. Cash benefit provisions include the following: (i) Recoupment of unpaid accrued benefits: The Secretary of HHS is required to recoup a beneficiary's accrued benefits when the beneficiary dies or failed to elect to receive lump-sum benefits. These funds are to be paid into the CLASS Independence Fund. (ii) Electronic management of cash benefits: The Secretary of HHS is required to establish procedures that will credit a beneficiary's CLASS Life Independence Account with his or her daily cash benefit, and to allow the beneficiary to access the account through use of a debit card. These procedures will also be used to track beneficiary withdrawals. (iii) Use of cash benefits by authorized representatives: The Secretary is required to establish procedures to allow a beneficiary's authorized representative to access cash benefits under conditions that the representative complies with standards of conduct specified by the law.
18. Protection and Advocacy (P&A) Systems are established by the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and are administered at the federal level by the Administration on Developmental Disabilities (ADD) within HHS. For further information, see [www.acf.hhs.gov/opa/fact\\_sheets/add\\_factsheet.html#pas](http://www.acf.hhs.gov/opa/fact_sheets/add_factsheet.html#pas) and [www.acf.hhs.gov/programs/add/ddact/DDACT2.html](http://www.acf.hhs.gov/programs/add/ddact/DDACT2.html).
19. The HHS Secretary is required to establish procedures to permit people who have income below the poverty level and full-time students who are actively employed to self-attest, and annually confirm, their status. The Secretary is also required to verify and validate the self-attestation information using procedures similar to those used for SSI eligibility determinations.
20. The HHS Secretary's determination is to be based on the most recent report of the CLASS program Fund's Board of Trustees, Advisory Council advice, the HHS Inspector General's report; waste, fraud, and abuse reports; and other appropriate information.
21. And other income paid to the Fund.
22. Section 3208(b) of the law.
23. The law stipulates that the CLASS program is effective on January 1, 2011. This date is not the date when enrollment will begin or when enrollees will begin to pay premiums.
24. Providers identified in the law include home care, home health services, home and community service providers, public authorities created to provide personal care services to individuals eligible for Medicaid, and non-profit organizations.
25. This includes an individual's ability to select, manage, dismiss, co-employ, or employ personal care attendant workers.
26. The law specifies that this provision is effective on January 1, 2011.

## HHS IMPLEMENTATION RESOURCES

- “Memorandum on the CLASS Program” to Secretary Sebelius from Kathy Greenlee, CLASS Administrator, October 14, 2011, available at <http://aspe.hhs.gov/daltcp/reports/2011/class/CLASSmemo.pdf>.
- U.S. Department of Health and Human Services, “A Report on the Actuarial, Market, and Legal Analyses of the CLASS Program,” available at <http://aspe.hhs.gov/daltcp/reports/2011/class/index.pdf>.
- Statement of Assistant Secretary Kathy Greenlee, and Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, on the Community Living Assistance Services and Supports Act (CLASS), before the House Committee on Energy and Commerce, October 26, 2011, [http://republicans.energycommerce.house.gov/Media/file/Hearings/Joint/102611\\_Health\\_OI/HHSTestimony.pdf](http://republicans.energycommerce.house.gov/Media/file/Hearings/Joint/102611_Health_OI/HHSTestimony.pdf).
- For all October 26, 2011, testimony, see <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9022>.