SUBCHAPTER XXX—COMMUNITY LIVING ASSISTANCE SERVICES AND SUPPORTS

§ 300ll. Purpose

The purpose of this subchapter is to establish a national voluntary insurance program for purchasing community living assistance services and supports in order to—

1. provide individuals with functional limitations with tools that will allow them to maintain their personal and financial independence and live in the community through a new financing strategy for community living assistance services and supports;
2. establish an infrastructure that will help address the Nation’s community living assistance services and supports needs;
3. alleviate burdens on family caregivers; and
4. address institutional bias by providing a financing mechanism that supports personal choice and independence to live in the community.


Effective Date

Pub. L. 111–148, title VIII, § 8002(e), Mar. 23, 2010, 124 Stat. 847, provided that: "The amendments made by subsections (a), (b), and (d) [enacting this subchapter, amending section 1396a of this title, and amending provisions set out as a note under section 1396p of this title] take effect on January 1, 2011."

Construction

Pub. L. 111–148, title VIII, § 8002(f), Mar. 23, 2010, 124 Stat. 847, provided that: "Nothing in this title [enacting this subchapter, amending section 1396a of this title, and amending provisions set out as a note under section 1396p of this title] or the amendments made by this title are [sic] intended to replace or displace public or private disability insurance benefits, including such benefits that are for income replacement."

PERSONAL CARE ATTENDANTS WORKFORCE ADVISORY PANEL

Pub. L. 111–148, title VIII, § 8002(c), Mar. 23, 2010, 124 Stat. 846, provided that:

(1) Establishment.—Not later than 90 days after the date of enactment of this Act [Mar. 23, 2010], the Secretary of Health and Human Services shall establish a Personal Care Attendants Workforce Advisory Panel for the purpose of examining and advising the Secretary and Congress on workforce issues related to personal care attendant workers, including with respect to the adequacy of the number of such workers, the salaries, wages, and benefits of such workers, and access to the services provided by such workers.

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

(A) Individuals with disabilities of all ages.

(B) Senior individuals.

(C) Representatives of individuals with disabilities.

(D) Representatives of senior individuals.

(E) Representatives of workforce and labor organizations.

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

(G) Representatives of assisted living providers.

§ 300ll–1. Definitions

In this subchapter:

(1) Active enrollee

The term “active enrollee” means an individual who is enrolled in the CLASS program in accordance with section 300ll–3 of this title and who has paid any premiums due to maintain such enrollment.

(2) Actively employed

The term “actively employed” means an individual who—

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

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

(3) Activities of daily living

The term “activities of daily living” means each of the following activities specified in section 7702B(c)(2)(B) of title 26:

(A) Eating.

(B) Toileting.

(C) Transferring.

(D) Bathing.

(E) Dressing.

(F) Continence.

(4) CLASS program

The term “CLASS program” means the program established under this subchapter.

(5) Eligibility Assessment System

The term “Eligibility Assessment System” means the entity established by the Secretary under section 300ll–4(a)(2) of this title to make functional eligibility determinations for the CLASS program.

(6) Eligible beneficiary

(A) In general

The term “eligible beneficiary” means any individual who is an active enrollee in the CLASS program and, as of the date described in subparagraph (B)—

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

(ii) has earned, with respect to at least 3 calendar years that occur during the first 60 months for which the individual has paid premiums for enrollment in the program, at least an amount equal to the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213(d) of the Social Security Act [42 U.S.C. 413(d)] for the year; and

(iii) has paid premiums for enrollment in such program for at least 24 consecutive months, if a lapse in premium payments of more than 3 months has occurred during
§ 300ll–2. CLASS Independence Benefit Plan

(a) Process for development

(1) In general

The Secretary, in consultation with appropriate actuaries and other experts, shall develop at least 3 actuarially sound benefit plans as alternatives for consideration for designation by the Secretary as the CLASS Independence Benefit Plan under which eligible beneficiaries shall receive benefits under this subchapter. Each of the plan alternatives developed shall be designed to provide eligible beneficiaries with the benefits described in section 300ll–4 of this title consistent with the following requirements:

(A) Premiums

(i) In general

Beginning with the first year of the CLASS program, and for each year thereafter, subject to clauses (ii) and (iii), the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis of the 75-year costs of the program that ensures solvency throughout such 75-year period.

(ii) Nominal premium for poorest individuals and full-time students

(I) In general

The monthly premium for enrollment in the CLASS program shall not exceed the applicable dollar amount per month determined under subclause (II) for—

(aa) any individual whose income does not exceed the poverty line; and

(bb) any individual who has not attained age 22, and is actively employed during any period in which the individual is a full-time student (as determined by the Secretary).

(II) Applicable dollar amount

The applicable dollar amount described in this subclause is the amount equal to $5, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for each year occurring after 2009 and before such year.

(iii) CLASS Independence Fund reserves

At such time as the CLASS program has been in operation for 10 years, the Secretary shall establish all premiums to be paid by enrollees for the year based on an actuarial analysis that accumulated reserves in the CLASS Independence Fund would not decrease in that year. At such time as the Secretary determines the CLASS program demonstrates a sustained ability to finance expected yearly expenses with expected yearly premiums and interest credited to the CLASS Independence Fund, the Secretary may decrease the required amount of CLASS Independence Fund reserves.

(B) Vesting period

A 5-year vesting period for eligibility for benefits.

(C) Benefit triggers

A benefit trigger for provision of benefits that requires a determination that an individual has a functional limitation, as certified by a licensed health care practitioner,
described in any of the following clauses that is expected to last for a continuous period of more than 90 days:

(i) The individual is determined to be unable to perform at least the minimum number (which may be 2 or 3) of activities of daily living as are required under the plan for the provision of benefits without substantial assistance (as defined by the Secretary) from another individual.

(ii) The individual requires substantial supervision to protect the individual from threats to health and safety due to substantial cognitive impairment.

(iii) The individual has a level of functional limitation similar (as determined under regulations prescribed by the Secretary) to the level of functional limitation described in clause (i) or (ii).

(D) Cash benefit
Payment of a cash benefit that satisfies the following requirements:

(i) Minimum required amount
The benefit amount provides an eligible beneficiary with not less than an average of $50 per day (as determined based on the reasonably expected distribution of beneficiaries receiving benefits at various benefit levels).

(ii) Amount scaled to functional ability
The benefit amount is varied based on a scale of functional ability, with not less than 2, and not more than 6, benefit level amounts.

(iii) Daily or weekly
The benefit is paid on a daily or weekly basis.

(iv) No lifetime or aggregate limit
The benefit is not subject to any lifetime or aggregate limit.

(2) Review and recommendation by the CLASS Independence Advisory Council
The CLASS Independence Advisory Council shall—

(A) evaluate the alternative benefit plans developed under paragraph (1); and

(B) recommend for designation as the CLASS Independence Benefit Plan as the CLASS Independence Advisory Council independence benefit taking into consideration the recommendation of the CLASS Independence Advisory Council under paragraph (2)(B), shall designate a benefit plan as the CLASS Independence Benefit Plan. The Secretary shall publish such designation, along with details of the plan and the reasons for the selection by the Secretary, in a final rule that allows for a period of public comment.

(b) Additional premium requirements

(1) Adjustment of premiums

(A) In general

Except as provided in subparagraphs (B), (C), (D), and (E), the amount of the monthly premium determined for an individual upon such individual’s enrollment in the CLASS program shall remain the same for as long as the individual is an active enrollee in the program.

(B) Recalculated premium if required for program solvency

(i) In general

Subject to clause (ii), if the Secretary determines, based on the most recent report of the Board of Trustees of the CLASS Independence Fund, the advice of the CLASS Independence Advisory Council, and the annual report of the Inspector General of the Department of Health and Human Services, and waste, fraud, and abuse, or such other information as the Secretary determines appropriate, that the monthly premiums and income to the CLASS Independence Fund for a year are projected to be insufficient with respect to the 20-year period that begins with that year, the Secretary shall adjust the monthly premiums for individuals enrolled in the CLASS program as necessary (but maintaining a nominal premium for enrollees whose income is below the poverty line or who are full-time students actively employed).

(ii) Exemption from increase

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

(I) has attained age 65;

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

(III) is not actively employed.

(C) Recalculated premium if reenrollment after more than a 3-month lapse

(i) In general

The reenrollment of an individual after a 90-day period during which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program shall be treated as an initial enrollment for purposes of age-adjusting the premium for reenrollment in the program.

(ii) Credit for prior months if reenrolled within 5 years

An individual who reenrolls in the CLASS program after such a 90-day period and before the end of the 5-year period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the program shall be—

(I) credited with any months of paid premiums that accrued prior to the individual’s lapse in enrollment; and
(II) notwithstanding the total amount of any such credited months, required to satisfy section 300ll–1(6)(A)(i) of this title before being eligible to receive benefits.

(D) No longer status as a full-time student

An individual subject to a nominal premium on the basis of being described in subsection (a)(1)(A)(ii) who ceases to be so described, shall be subject to the same monthly premium as the monthly premium that applies to an individual of the same age who first enrolls in the program under the most similar circumstances as the individual (such as the first year of eligibility for enrollment in the program or in a subsequent year).

(E) Penalty for reenrollment after 5-year lapse

In the case of an individual who reenrolls in the CLASS program after the end of the 5-year period described in subparagraph (C)(ii), the monthly premium required for the individual shall be the age-adjusted premium that would be applicable to an initially enrolling individual who is the same age as the reenrolling individual, increased by the greater of—

(i) an amount that the Secretary determines is actuarially sound for each month that occurs during the period that begins with the first month for which the individual failed to pay the monthly premium required to maintain the individual’s enrollment in the CLASS program and ends with the month preceding the month in which the reenrollment is effective; or

(ii) 1 percent of the applicable age-adjusted premium for each such month occurring in such period.

(2) Administrative expenses

In determining the monthly premiums for the CLASS program the Secretary may factor in costs for administering the program, not to exceed for any year in which the program is in effect under this subchapter, an amount equal to 3 percent of all premiums paid during the year.

(3) No underwriting requirements

No underwriting (other than on the basis of age in accordance with subparagraphs (D) and (E) of paragraph (1)) shall be used to—

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

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

(c) Self-attestation and verification of income

The Secretary shall establish procedures to—

(1) permit an individual who is eligible for the nominal premium required under subsection (a)(1)(A)(ii) to self-attest that their income does not exceed the poverty line or that their status as a full-time student who is actively employed;\(^1\)

(2) verify, using procedures similar to the procedures used by the Commissioner of Social Security under section 1338(e)(1)(B)(ii) of this title and consistent with the requirements applicable to the conveyance of data and information under section 1396w–2 of this title, the validity of such self-attestation; and

(3) require an individual to confirm, on at least an annual basis, that their income does not exceed the poverty line or that they continue to maintain such status.


AMENDMENTS


Subsec. (c)(1). Pub. L. 111–148, §10801(a)(1)(C), struck out ‘‘as part of their automatic enrollment in the CLASS program’’ after ‘‘subsection (a)(1)(A)(ii)’’.

§300ll–3. Enrollment and disenrollment requirements

(a) Automatic enrollment

(1) In general

Subject to paragraph (2), the Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which each individual described in subsection (c) may be automatically enrolled in the CLASS program by an employer of such individual in the same manner as an employer may elect to automatically enroll employees in a plan under section 401(k), 403(b), or 457 of title 26.

(2) Alternative enrollment procedures

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

(A) who is self-employed;

(B) who has more than 1 employer; or

(C) whose employer does not elect to participate in the automatic enrollment process established by the Secretary.

(3) Administration

(A) In general

The Secretary and the Secretary of the Treasury shall, by regulation, establish procedures to ensure that an individual is not automatically enrolled in the CLASS program by more than 1 employer.

(B) Form

Enrollment in the CLASS program shall be made in such manner as the Secretary may prescribe in order to ensure ease of administration.

(b) Election to opt-out

An individual described in subsection (c) may elect to waive enrollment in the CLASS program at any time in such form and manner as the Secretary and the Secretary of the Treasury shall prescribe.
(c) Individual described

For purposes of enrolling in the CLASS program, an individual described in this paragraph is an individual—

(1) who has attained age 18;

(2) who—

(A) receives wages or income on which there is imposed a tax under section 3101(a) or 3201(a) of title 26; or

(B) derives self-employment income on which there is imposed a tax under section 1401(a) of title 26;

(3) who is actively employed; and

(4) who is not—

(A) a patient in a hospital or nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases and receiving medical assistance under Medicaid; or

(B) confined in a jail, prison, other penal institution or correctional facility, or by court order pursuant to conviction of a criminal offense or in connection with a verdict or finding described in section 402(x)(1)(A)(ii) of this title.

d) Rule of construction

Nothing in this subchapter shall be construed as requiring an active enrollee to continue to satisfy subparagraph (A) or (B) of subsection (c)(2) in order to maintain enrollment in the CLASS program.

e) Payment

(1) Payroll deduction

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

(2) Alternative payment mechanism

The Secretary, in coordination with the Secretary of the Treasury, shall establish alternative procedures for the payment of monthly premiums by an individual enrolled in the CLASS program—

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

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

(f) Transfer of premiums collected

(1) In general

During each calendar year the Secretary of the Treasury shall deposit into the CLASS Independence Fund a total amount equal, in the aggregate, to 100 percent of the premiums collected during that year.

(2) Transfers based on estimates

The amount deposited pursuant to paragraph (1) shall be transferred in at least monthly payments to the CLASS Independence Fund on the basis of estimates by the Secretary and certified to the Secretary of the Treasury of the amounts collected in accordance with subparagraphs (A) and (B) of paragraph (5).\(^1\) Proper adjustments shall be made in amounts subsequently transferred to the Fund to the extent prior estimates were in excess of, or were less than, actual amounts collected.

g) Other enrollment and disenrollment opportunities

The Secretary, in coordination with the Secretary of the Treasury, shall establish procedures under which—

(1) an individual who, in the year of the individual’s initial eligibility to enroll in the CLASS program, has not enrolled in the program, is eligible to elect to enroll in the program, in such form and manner as the Secretaries shall establish, only during an open enrollment period established by the Secretaries that is specific to the individual and that may not occur more frequently than biennially after the date on which the individual first elected to waive enrollment in the program, and

(2) an individual shall only be permitted to disenroll from the program (other than for nonpayment of premiums) during an annual disenrollment period established by the Secretaries and in such form and manner as the Secretaries shall establish.


MENDMENTS

2010—Subsec. (c)(2)(A). Pub. L. 111–148, § 10801(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “receives wages on which there is imposed a tax under section 3201(a) of title 26; or”.

Subsec. (d). Pub. L. 111–148, § 10801(a)(2)(B), substituted “subparagraph (A) or (B) of subsection (c)(2)” for “subparagraph (B) or (C) of subsection (c)(1)”.


Subsec. (g)(1). Pub. L. 111–148, § 10801(a)(2)(D), substituted “has not enrolled” for “has elected to waive enrollment”.

§ 300ll–4. Benefits

(a) Determination of eligibility

(1) Application for receipt of benefits

The Secretary shall establish procedures under which an active enrollee shall apply for receipt of benefits under the CLASS Independence Benefit Plan.

(2) Eligibility assessments

(A) In general

Not later than January 1, 2012, the Secretary shall—

(i) establish an Eligibility Assessment System (other than a service with which the Commissioner of Social Security has entered into an agreement, with respect to any State, to make disability determinations for purposes of title II or XVI of the Social Security Act [42 U.S.C. 401 et seq.],

\(^{1}\) So in original. No par. (b) has been enacted.
Benefits

Benefit Plan:

following benefits under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary from such account. (B) Use of cash benefits

Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

(C) Electronic management of funds

The Secretary shall establish procedures for—

(i) crediting an account established on behalf of a beneficiary with the beneficiary’s cash daily benefit; (ii) allowing the beneficiary to access such account through debit cards; and (iii) accounting for withdrawals by the beneficiary from such account.

(D) Primary payor rules for beneficiaries who are enrolled in Medicaid

In the case of an eligible beneficiary who is enrolled in Medicaid, the following pay-ment rules shall apply:

urban consumers (U.S. city average) over the previous year.

(2) Advocacy services

Advocacy services in accordance with subsection (d).

(3) Advice and assistance counseling

Advise and assistance counseling in accordance with subsection (e).

(4) Administrative expenses

Advocacy services and advise and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3007-2(b)(2) of this title.

(c) Payment of benefits

(1) Life independence account

(A) In general

The Secretary shall establish procedures for administering the provision of benefits to eligible beneficiaries under the CLASS Independence Benefit Plan, including the payment of the cash benefit for the beneficiary into a Life Independence Account established by the Secretary on behalf of each eligible beneficiary.

(B) Use of cash benefits

Cash benefits paid into a Life Independence Account of an eligible beneficiary shall be used to purchase nonmedical services and supports that the beneficiary needs to maintain his or her independence at home or in another residential setting of their choice in the community, including (but not limited to) home modifications, assistive technology, accessible transportation, homemaker services, respite care, personal assistance services, home care aides, and nursing support. Nothing in the preceding sentence shall prevent an eligible beneficiary from using cash benefits paid into a Life Independence Account for obtaining assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions.

(C) Electronic management of funds

The Secretary shall establish procedures for—

(i) crediting an account established on behalf of a beneficiary with the beneficiary’s cash daily benefit; (ii) allowing the beneficiary to access such account through debit cards; and (iii) accounting for withdrawals by the beneficiary from such account.

(D) Primary payor rules for beneficiaries who are enrolled in Medicaid

In the case of an eligible beneficiary who is enrolled in Medicaid, the following pay-ment rules shall apply:

1So in original. Probably should be followed by “with”. 

See References in Text note below.
(i) Institutionalized beneficiary

If the beneficiary is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall retain an amount equal to 5 percent of the beneficiary’s daily or weekly cash benefit (as applicable) (which shall be in addition to the amount of the beneficiary’s personal needs allowance provided under Medicaid), and the remainder of such benefit shall be applied toward the facility’s cost of providing the beneficiary’s care, and Medicaid shall provide secondary coverage for such care.

(ii) Beneficiaries receiving home and community-based services

(I) 50 percent of benefit retained by beneficiary

Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for home and community-based services, the beneficiary shall retain an amount equal to 50 percent of the beneficiary’s daily or weekly cash benefit (as applicable), and the remainder of the daily or weekly cash benefit shall be applied toward the cost to the State of providing such assistance (and shall not be used to claim Federal matching funds under Medicaid), and Medicaid shall provide secondary coverage for the remainder of any costs incurred in providing such assistance.

(II) Requirement for State offset

A State shall be paid the remainder of a beneficiary’s daily or weekly cash benefit under subclause (I) only if the State home and community-based waiver under section 1115 of the Social Security Act (42 U.S.C. 1315) or subsection (c) or (d) of section 1915 of such Act (42 U.S.C. 1396n), or the State plan amendment under subsection (i) of such section does not include a waiver of the requirements of section 1902(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) (relating to statewideness) or of section 1902(a)(10)(B) of such Act (42 U.S.C. 1396a(a)(10)(B)) (relating to comparability) and the State offers at a minimum case management services, personal care services, habilitation services, and respite care under such a waiver or State plan amendment.

(III) Definition of home and community-based services

In this clause, the term “home and community-based services” means any services which may be offered under a beneficiary on whose behalf such benefits are paid.

(2)Authorized representatives

(A) In general

The Secretary shall establish procedures to allow access to a beneficiary’s cash benefits by an authorized representative of the eligible beneficiary on whose behalf such benefits are paid.

(B) Quality assurance and protection against fraud and abuse

The procedures established under subparagraph (A) shall ensure that authorized representatives of eligible beneficiaries comply with standards of conduct established by the Secretary, including standards requiring that such representatives provide quality services on behalf of such beneficiaries, do not have conflicts of interest, and do not misuse benefits paid on behalf of such beneficiaries or otherwise engage in fraud or abuse.

(3)Commencement of benefits

Benefits shall be paid to, or on behalf of, an eligible beneficiary beginning with the first month in which an application for such benefits is approved.

(4) Rollover option for lump-sum payment

An eligible beneficiary may elect to—

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

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

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

So in original. Probably should be “an".
(ii) the applicable annual benefit.

(5) Period for determination of annual benefits
(A) In general
The applicable period for determining with respect to an eligible beneficiary the applicable annual benefit and the amount of any accrued deferred benefits is the 12-month period that commences with the first month in which the beneficiary began to receive such benefits, and each 12-month period thereafter.

(B) Inclusion of increased benefits
The Secretary shall establish procedures under which cash benefits paid to an eligible beneficiary that increase or decrease as a result of a change in the functional status of the beneficiary before the end of a 12-month benefit period shall be included in the determination of the applicable annual benefit paid to the eligible beneficiary.

(C) Recoupment of unpaid, accrued benefits
(i) In general
The Secretary, in coordination with the Secretary of the Treasury, shall recoup any accrued benefits in the event of—
(I) the death of a beneficiary; or
(II) the failure of a beneficiary to elect under paragraph (4)(B) to receive such benefits as a lump-sum payment before the end of the 12-month period in which such benefits accrued.

(ii) Payment into CLASS Independence Fund
Any benefits recouped in accordance with clause (i) shall be paid into the CLASS Independence Fund and used in accordance with section 300ll–5 of this title.

(6) Requirement to recertify eligibility for receipt of benefits
An eligible beneficiary shall periodically, as determined by the Secretary—
(A) recertify by submission of medical evidence the beneficiary’s continued eligibility for receipt of benefits; and
(B) submit records of expenditures attributable to the aggregate cash benefit received by the beneficiary during the preceding year.

(7) Supplement, not supplant other health care benefits
Subject to the Medicaid payment rules under paragraph (1)(D), benefits received by an eligible beneficiary shall supplement, but not supplant, other health care benefits for which the beneficiary is eligible under Medicaid or any other Federally funded program that provides health care benefits or assistance.

(d) Advocacy services
An agreement entered into under subsection (a)(2)(A)(ii) shall require the Protection and Advocacy System for the State to—
(1) assign, as needed, an advocacy counselor to each eligible beneficiary that is covered by such agreement and who shall provide an eligible beneficiary with—
(A) information regarding how to access the appeals process established for the program;

(B) assistance with respect to the annual recertification and notification required under subsection (c)(6); and
(C) such other assistance with obtaining services as the Secretary, by regulation, shall require; and
(2) ensure that the System and such counselors comply with the requirements of subsection (h).

(e) Advice and assistance counseling
An agreement entered into under subsection (a)(2)(A)(iii) shall require the entity to assign, as requested by an eligible beneficiary that is covered by such agreement, an advice and assistance counselor who shall provide an eligible beneficiary with information regarding—
(1) accessing and coordinating long-term services and supports in the most integrated setting;
(2) possible eligibility for other benefits and services;
(3) development of a service and support plan;
(4) information about programs established under the Assistive Technology Act of 1998 [29 U.S.C. 3001 et seq.] and the services offered under such programs;
(5) available assistance with decision making concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives or other written instructions recognized under State law, such as a living will or durable power of attorney for health care, in the case that an injury or illness causes the individual to be unable to make health care decisions; and
(6) such other services as the Secretary, by regulation, may require.

(f) No effect on eligibility for other benefits
Benefits paid to an eligible beneficiary under the CLASS program shall be disregarded for purposes of determining or continuing the beneficiary’s eligibility for receipt of benefits under any other Federal, State, or locally funded assistance program, including benefits paid under titles II, XVI, XVIII, XIX, or XXI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.), under the laws administered by the Secretary of Veterans Affairs, under low-income housing assistance programs, or under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(g) Rule of construction
Nothing in this subchapter shall be construed as prohibiting benefits paid under the CLASS Independence Benefit Plan from being used to compensate a family caregiver for providing community living assistance services and supports to an eligible beneficiary.

(h) Protection against conflict of interests
The Secretary shall establish procedures to ensure that the Eligibility Assessment System, the Protection and Advocacy System for a

*So in original. Probably should be “title”.

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State, advocacy counselors for eligible beneficiaries, and any other entities that provide services to active enrollees and eligible beneficiaries under the CLASS program comply with the following:

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

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

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

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

(5) The entity reports the number of active enrollees and beneficiaries provided with assistance by age, disability, and whether such enrollees and beneficiaries received services from the entity or another entity.

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

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


REFERENCES IN TEXT


For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 29 and Tables.

Section 300l–2(b)(2) of this title, referred to in subsec. (b)(4), was in the original section “3203(b)(3)”, and was translated as meaning section 3203(b)(2) of act July 1, 1944, to reflect the probable intent of Congress.


§ 300ll–5. CLASS Independence Fund

(a) Establishment of CLASS Independence Fund

There is established in the Treasury of the United States a trust fund to be known as the “CLASS Independence Fund”. The Secretary of the Treasury shall serve as Managing Trustee of such Fund. The Fund shall consist of all amounts derived from payments into the Fund under sections 300l–3(f) and 300ll–4(c)(5)(C)(i) of this title, and remaining after investment of such amounts under subsection (b), including additional amounts derived as income from such investments. The amounts held in the Fund are appropriated and shall remain available without fiscal year limitation—

(1) to be held for investment on behalf of individuals enrolled in the CLASS program;

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

(3) to pay cash benefits to eligible beneficiaries under the CLASS Independence Benefit Plan.

(b) Investment of Fund balance

The Secretary of the Treasury shall invest and manage the CLASS Independence Fund in the same manner, and to the same extent, as the Federal Supplementary Medical Insurance Trust Fund may be invested and managed under subsections (c), (d), and (e) of section 1395c of this title.

(c) Board of Trustees

(1) In general

With respect to the CLASS Independence Fund, there is hereby created a body to be known as the Board of Trustees of the CLASS Independence Fund (hereinafter in this section referred to as the “Board of Trustees”) composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of 4 years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(2) Duties

(A) In general

It shall be the duty of the Board of Trustees to do the following:

(i) Hold the CLASS Independence Fund.

(ii) Report to the Congress not later than the first day of April of each year on the operation and status of the CLASS Inde-

1 See References in Text note below.
§ 300l–6

CLASS Independence Advisory Council

(a) Establishment

There is hereby created an Advisory Committee to be known as the “CLASS Independence Advisory Council”.

(b) Membership

(1) In general

The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, and individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

(2) Terms

(A) In general

The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

(B) Limitation

A member shall not be eligible to serve for more than 2 consecutive terms.

(3) Chair

The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

(c) Duties

The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this subchapter and in the formulation of regulations under this subchapter including with respect to—

(1) the development of the CLASS Independence Benefit Plan under section 300l–2 of this title;

(2) the determination of monthly premiums under such plan; and

(3) the financial solvency of the program.

(d) Application of FACA

The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall be applicable to the CLASS Independence Advisory Council.

REFERENCES IN TEXT

Section 1385t of this title, referred to in subsec. (b), was in the original “section 1341(d) of the Social Security Act”, and was translated as meaning section 1841 of act Aug. 14, 1935, ch. 531, to reflect the probable intent of Congress.

§ 300l–6. CLASS Independence Advisory Council

(a) Establishment

There is hereby created an Advisory Committee to be known as the “CLASS Independence Advisory Council”.

(b) Membership

(1) In general

The CLASS Independence Advisory Council shall be composed of not more than 15 individuals, not otherwise in the employ of the United States—

(A) who shall be appointed by the President without regard to the civil service laws and regulations; and

(B) a majority of whom shall be representatives of individuals who participate or are likely to participate in the CLASS program, and shall include representatives of older and younger workers, individuals with disabilities, family caregivers of individuals who require services and supports to maintain their independence at home or in another residential setting of their choice in the community, and individuals with expertise in long-term care or disability insurance, actuarial science, economics, and other relevant disciplines, as determined by the Secretary.

(2) Terms

(A) In general

The members of the CLASS Independence Advisory Council shall serve overlapping terms of 3 years (unless appointed to fill a vacancy occurring prior to the expiration of a term, in which case the individual shall serve for the remainder of the term).

(B) Limitation

A member shall not be eligible to serve for more than 2 consecutive terms.

(3) Chair

The President shall, from time to time, appoint one of the members of the CLASS Independence Advisory Council to serve as the Chair.

(c) Duties

The CLASS Independence Advisory Council shall advise the Secretary on matters of general policy in the administration of the CLASS program established under this subchapter and in the formulation of regulations under this subchapter including with respect to—

(1) the development of the CLASS Independence Benefit Plan under section 300l–2 of this title;

(2) the determination of monthly premiums under such plan; and

(3) the financial solvency of the program.

(d) Application of FACA

The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of that Act, shall

So in original. Probably should be “determines”.

2So in original. The word “and” probably should appear.
apply to the CLASS Independence Advisory Council.

(e) Authorization of appropriations
   (1) In general
      There are authorized to be appropriated to the CLASS Independence Advisory Council to carry out its duties under this section, such sums as may be necessary for fiscal year 2011 and for each fiscal year thereafter.

   (2) Availability
      Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

(July 1, 1944, ch. 373, title XXXII, § 3207, as added Pub. L. 111–148, title VIII, § 8002(a)(1), Mar. 23, 2010, 124 Stat. 844.)

REFERENCES IN TEXT
The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 300ll–7. Solvency and fiscal independence; regulations; annual report

(a) Solvency
      The Secretary shall regularly consult with the Board of Trustees of the CLASS Independence Fund and the CLASS Independence Advisory Council, for purposes of ensuring that enrollees' premiums are adequate to ensure the financial solvency of the CLASS program, both with respect to fiscal years occurring in the near-term and fiscal years occurring over 20- and 75-year periods, taking into account the projections required for such periods under subsections (a)(1)(A)(i) and (b)(1)(B)(i) of section 300ll–2 of this title.

(b) No taxpayer funds used to pay benefits
      No taxpayer funds shall be used for payment of benefits under a CLASS Independent Benefit Plan. For purposes of this subsection, the term "taxpayer funds" means any Federal funds from a source other than premiums deposited by CLASS program participants in the CLASS Independence Fund and any associated interest earnings.

(c) Regulations
      The Secretary shall promulgate such regulations as are necessary to carry out the CLASS program in accordance with this subchapter. Such regulations shall include provisions to prevent fraud and abuse under the program.

(d) Annual report
      Beginning January 1, 2014, the Secretary shall submit an annual report to Congress on the CLASS program. Each report shall include the following:

      (1) The total number of enrollees in the program.
      (2) The total number of eligible beneficiaries during the fiscal year.
      (3) The total amount of cash benefits provided during the fiscal year.

      (4) A description of instances of fraud or abuse identified during the fiscal year.
      (5) Recommendations for such administrative or legislative action as the Secretary determines is necessary to improve the program, ensure the solvency of the program, or to prevent the occurrence of fraud or abuse.


REFERENCES IN TEXT
Section 300ll–2 of this title, referred to in subsec. (a), was in the original section "3202", and was translated as meaning section 3203 of act July 1, 1944, to reflect the probable intent of Congress. Section 3202, which is classified to section 300ll–1 of this title, does not contain a subsec. (a) or (b).

§ 300ll–8. Inspector General's report
      The Inspector General of the Department of Health and Human Services shall submit an annual report to the Secretary and Congress relating to the overall progress of the CLASS program and of the existence of waste, fraud, and abuse in the CLASS program. Each such report shall include findings in the following areas:

      (1) The eligibility determination process.
      (2) The provision of cash benefits.
      (3) Quality assurance and protection against waste, fraud, and abuse.
      (4) Recouping of unpaid and accrued benefits.


§ 300ll–9. Tax treatment of program
      The CLASS program shall be treated for purposes of title 26 in the same manner as a qualified long-term care insurance contract for qualified long-term care services.


SUBCHAPTER XXXI—WORLD TRADE CENTER HEALTH PROGRAM

PART A—ESTABLISHMENT OF PROGRAM; ADVISORY COMMITTEE

§ 300mm. Establishment of World Trade Center Health Program

(a) In general
      There is hereby established within the Department of Health and Human Services a program to be known as the World Trade Center Health Program, which shall be administered by the WTC Program Administrator, to provide beginning on July 1, 2011—

      (1) medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks; and
      (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New