

111TH CONGRESS
1ST SESSION

H. R. 1721

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2009

Mr. PALLONE (for himself, Mr. DINGELL, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Rules, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are as follows:

6 (1) To provide individuals with functional limi-
7 tations with tools that will allow them to maintain
8 their personal and financial independence and live in
9 the community through a new financing strategy for
10 community living assistance services and supports.

11 (2) To establish an infrastructure that will help
12 address America’s community living assistance serv-
13 ices and supports needs.

14 (3) To alleviate burdens on family caregivers.

15 **SEC. 3. TABLE OF CONTENTS.**

16 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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