

On Tuesday, March 23, President Obama signed into law the “Patient Protection and Affordable Care Act” (“PPACA”) which had been passed by the House just days earlier. A reconciliation bill was signed by the President on March 30, 2010. The PPACA as amended by the reconciliation bill is collectively referred to as the “Act” in this summary. This summary provides an overview of one portion of the Act: the “Community Living Assistance Services and Supports Act” (“CLASS Act”).

Summary: The CLASS Act creates a national voluntary long-term care insurance program called the CLASS Independence Benefit Plan (“CLASS Plan”) to be administered by the Department of Health and Human Services (“HHS”). (§ 3201 of the Act). The program is self-funded by premiums and does not rely on any taxpayer funding. (§ 3208(b) of the Act). By paying beneficiaries directly, the program is intended to give individuals significant control over how they choose to provide for their long-term care. (§ 3205(c)(1)(A) of the Act). Individuals can choose to spend benefits on home modifications, transportation, homemaker services, personal assistant services, residential facilities, decision making assistance (legal and other), or to pay a family caregiver. (§ 3205(c)(1)(B) of the Act). The CLASS Plan is also expected to decrease the burden on Medicaid by offsetting the cost of long-term care. (§ 3205(c)(1)(D) of the Act).

Enrollment Eligibility: Individuals who are: (1) 18 years of age; (2) receive taxable income; (3) are actively employed; and (4) are not currently residing in a medical care facility or incarcerated, may enroll in the CLASS Plan. (§ 3204(c) of the Act). The CLASS Plan will collect premiums in an amount to be determined by HHS that will be contributed to the Class Independence Fund and used to pay for members’ long-term care costs. (§ 3206(a) of the Act).

Eligibility to Receive Benefits: A person is eligible to receive CLASS benefits if they: (1) are an active enrollee; (2) have paid premiums through the five year vesting period; (3) have worked a minimum of three calendar years during the course of the vesting period and earned a sufficient amount to qualify for a quarter of coverage under section 213(d) of the Social Security Act; (4) have paid premiums for at least twenty four consecutive months; and (5) have a qualifying functional limitation that is expected to last at least ninety days. (§ 3202(6) of the Act).

For a functional limitation to qualify, the individual must be unable to perform at least the minimum number of activities of daily living as defined by the Secretary of HHS, or require substantial supervision to protect the individual from threats to health and safety due to a substantial cognitive impairment. (§ 3203(a)(1)(C) of the Act).

Eligible beneficiaries will receive a per day amount to pay for the cost of care. (§ 3203(d)(i) of the Act). Amounts received will be scaled to the beneficiary’s functional abilities, with a floor of fifty dollars per day. (§ 3203(D) of the Act). There are no limits placed on the duration or amount of benefits a beneficiary can receive. (§ 3203(d)(iv) of the Act).

Employer Based Administration: The CLASS Act provides for an automatic enrollment system, whereby employers enroll employees in the plan unless they opt out. (§ 3204(a)(1) of the Act). It also provides for an automatic payroll deduction system for the payment of premiums. (§ 3204(e)(1) of the Act). However, employers are not required to participate in the automatic enrollment or payroll deduction system and HHS will provide for alternative means for enrollment and payment for employees whose employer does not participate as well as for those who are self-employed. (§ 3204(a)(2) of the Act).

Premiums: Premiums are to be set by HHS and will not be subject to an underwriting process except to the extent members vary by age. (§ 3203(b)(2) of the Act).

Premiums will stay the same for each individual as long as they remain an active enrollee unless the Secretary of HHS determines that premiums must be increased for the program to remain solvent. (§ 3203(b)(1)(B) of the Act).

The legislation mandates that the CLASS Plan implement a nominal premium for those who fall below the poverty line as well as any actively employed full-time student under the age of twenty two. (§ 3202(a)(1)(A) of the Act). The nominal premium will begin at five dollars per month and increase yearly to reflect the percentage increase in the consumer price index. (§ 3203(a)(1)(A) of the Act).

Collected premiums are to be kept in a trust created by the Secretary called the CLASS Independence Fund which will be overseen by a Board of Trustees. (§ 3206(a) of the Act).

Tax Implications: Employers: In the event that an employer chooses to pay CLASS Plan premiums for employees, those amounts would seemingly be deductible as ordinary and necessary business expenses for the reasonable cost of compensating employees. (I.R.C. § 162(a)(1)).

Employees: The CLASS Act states that the CLASS Plan will be treated as a qualified long-term care insurance contract for qualified long-term care services for tax purpose. (§ 3210 of the Act). Benefits received from the CLASS Plan are not taxable to the individual, as long-term care insurance benefits are considered reimbursement for expenses incurred for medical care. (I.R.C. § 7702B(a)(2)). Under the Internal Revenue Code, an employee who pays the premium for long-term care insurance may deduct premiums paid from their taxable income. (I.R.C. § 7702B(a)(4); I.R.C. § 213(d)(1)(D)). Thus, presumably individuals could also deduct premiums paid into the CLASS Plan from their taxable income. (§ 3210 of the Act). In addition, the Internal Revenue Code excludes employer-provided coverage under an accident or health plan from an employee's income. (I.R.C. § 106(a)). Because the internal revenue code treats long-term care insurance as health or accident insurance for tax purposes, an employee would not have to include any premiums paid by their employer for the CLASS Plan in their calculation of taxable income. (I.R.C. § 7702B(a)(3)).

Effective Date: The Secretary of HHS must choose a final version of the CLASS Plan by October 1, 2012. (§ 3203(E)(3) of the Act). The selection of a CLASS Plan will be followed by a public comment period. As a result, it is not likely that enrollments will begin prior to the start of 2013. The Secretary must also issue regulations governing all aspects of the CLASS Plan. Until regulations are issued and finalized, there will be significant uncertainty about the contours of the program.

References: PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh3590enr.txt.pdf
Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh4872pcs.txt.pdf

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