

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 pro-

gram, 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.

(July 1, 1944, ch. 373, title XXXII, § 3204, as added and amended Pub. L. 111-148, title VIII, § 8002(a)(1), title X, § 10801(a)(2), Mar. 23, 2010, 124 Stat. 834, 1015.)

AMENDMENTS

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. (e)(2)(A). Pub. L. 111-148, § 10801(a)(2)(C), substituted “paragraph (1)” for “subparagraph (A)”.

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

§ 300I-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., 1381 et seq.]) to provide for eligibility assessments of active enrollees who apply for receipt of benefits;

(ii) enter into an agreement with the Protection and Advocacy System for each State to provide advocacy services in accordance with subsection (d); and

(iii) enter into an agreement with public and private entities to provide advice and assistance counseling in accordance with subsection (e).

(B) Regulations

The Secretary shall promulgate regulations to develop an expedited nationally equitable eligibility determination process, as certified by a licensed health care practitioner, an appeals process, and a redeter-

¹ So in original. No par. (5) has been enacted.

mination process, as certified by a licensed health care practitioner, including whether an active enrollee is eligible for a cash benefit under the program and if so, the amount of the cash benefit (in accordance¹ the sliding scale established under the plan).

(C) Presumptive eligibility for certain institutionalized enrollees planning to discharge

An active enrollee shall be deemed presumptively eligible if the enrollee—

(i) has applied for, and attests is eligible for, the maximum cash benefit available under the sliding scale established under the CLASS Independence Benefit Plan;

(ii) is a patient in a hospital (but only if the hospitalization is for long-term care), nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases; and

(iii) is in the process of, or about to begin the process of, planning to discharge from the hospital, facility, or institution, or within 60 days from the date of discharge from the hospital, facility, or institution.

(D) Appeals

The Secretary shall establish procedures under which an applicant for benefits under the CLASS Independence Benefit Plan shall be guaranteed the right to appeal an adverse determination.

(b) Benefits

An eligible beneficiary shall receive the following benefits under the CLASS Independence Benefit Plan:

(1) Cash benefit

A cash benefit established by the Secretary in accordance with the requirements of section 3001-2(a)(1)(D) of this title that—

(A) the first year in which beneficiaries receive the benefits under the plan, is not less than the average dollar amount specified in clause (i) of such section; and

(B) for any subsequent year, is not less than the average per day dollar limit applicable under this subparagraph for the preceding year, increased by the percentage increase in the consumer price index for all 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

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

(4) Administrative expenses

Advocacy services and advice and assistance counseling services under paragraphs (2) and (3) of this subsection shall be included as administrative expenses under section 3001-2(b)(2)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 payment rules shall apply:

(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.

¹ So in original. Probably should be followed by "with".

² See References in Text note below.

(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 home and community-based waiver authorized for a State 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 under a State plan amendment under subsection (i) of such section.

(iii) Beneficiaries enrolled in programs of all-inclusive care for the elderly (PACE)**(I) In general**

Subject to subclause (II), if a beneficiary is receiving medical assistance under Medicaid for PACE program services under section 1934 of the Social Security Act (42 U.S.C. 1396u-4), 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) Institutionalized recipients of PACE program services

If a beneficiary receiving assistance under Medicaid for PACE program services is a patient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental diseases, the beneficiary shall be treated as in³ institutionalized beneficiary under clause (i).

(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

(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

³ So in original. Probably should be "an".

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 3001I-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 titles⁴ 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 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.

⁴So in original. Probably should be "title".

(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.

(July 1, 1944, ch. 373, title XXXII, § 3205, as added Pub. L. 111-148, title VIII, § 8002(a)(1), Mar. 23, 2010, 124 Stat. 836.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2)(A)(i) and (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, XVIII, XIX, and XXI of the Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 300I-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.

The Assistive Technology Act of 1998, referred to in subsec. (e)(4), is Pub. L. 105-394, Nov. 13, 1998, 112 Stat. 3627, which is classified principally to chapter 31 (§ 3001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 29 and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (f), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

§ 300I-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 300I-3(f) and 300I-4(c)(5)(C)(ii) 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 1395t¹ 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 Independence Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years.

(iii) Report immediately to the Congress whenever the Board is of the opinion that the amount of the CLASS Independence Fund is not actuarially sound in regards to the projection under section 300I-2(b)(1)(B)(i) of this title.

(iv) Review the general policies followed in managing the CLASS Independence Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the CLASS Independence Fund is to be managed.

¹ See References in Text note below.