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Health Reform Law Includes Voluntary Long-Term Care Insurance Program

Included among the many provisions of the new health reform law is one creating the Community Living Assistance Services and Support (CLASS) program. Participants in this new voluntary federal program who become “functionally limited” can receive cash benefits to enable them to live in the community rather than in institutions such as nursing homes.

Background

Individuals who become severely limited in basic living activities through age and/or disability often have limited options for getting the expensive custodial care they may need. Although long-term care insurance can provide a solution, it is not widely used. Individuals who become incapable of self-care often end up depleting their assets and then receiving institutional care under Medicaid. The CLASS program is designed to address this situation by enabling individuals to pay premiums that would ultimately result in cash benefits that could help them remain in the community (rather than institutions) if they become unable to care for themselves.

CLASS Act

The CLASS Act adds new provisions to the Public Health Services Act to provide individuals with a new long-term care option. This new federal insurance program differs from a traditional long-term care program in that it is meant to provide supplemental income to cover the extra expenses of living disabled in the community rather than pay amounts directly for caregiver or institutional care expenses. Participation is completely voluntary and employers may choose to facilitate employees' participation by allowing them an option to pay premiums through payroll deduction. Although the program is to go into effect on January 1, 2011, its implementation is expected to take two or more years. Many of the law's provisions are sketchy and significant issues will need to be decided before the program can operate.

Program Eligibility

To participate in CLASS, individuals must be at least 18 years old, actively employed (not necessarily full-time), and receiving wages or income subject to FICA, Railroad Retirement taxes, or self-employment taxes. However,

once an individual begins participation in the program, the receipt of wages is not required to continue participation. An individual who is a patient in a hospital or other institution (and is receiving medical assistance under Medicaid) or an inmate is ineligible to enroll in the program.

Premium Payments

The premiums are to be determined by HHS “based on an actuarial analysis of the 75-year costs of the program.” The law does provide, however, that for those whose income is at or below the Federal Poverty Level, or for an actively employed full-time student under age 22, the premium will be a nominal \$5 per month. Premiums are to remain constant for as long as an individual is an active enrollee in the program, unless changes are needed to keep the program solvent. Further, the nominal premium for full-time students will be adjusted once student status is lost. There are also adjustments if there are lapses in participation – e.g., increased premiums will apply if participation ceases for more than three months.

BUCK COMMENT. *Preliminary estimates of average premiums by the CMS Actuary, the CBO and insurers range from \$123 to \$240 per month, but initial premium rates are still unknown. Premiums are likely to vary significantly by age.*

Benefit Entitlement

Participants must have met the following requirements to receive benefits –

- They must have paid premiums for 60 months.
- In at least 3 calendar years of the first 60 months in which they paid premiums, they must have had sufficient earnings for one quarter of Social Security coverage.
- If coverage lapses for more than 3 months, they must have paid premiums for at least 24 consecutive months during the time between the initial enrollment date and the date of disability.
- They must have been determined to have one of the following functional limitations that is expected to last more than 90 days –
 - unable to perform 2 or 3 activities of daily living (e.g., eating, bathing, dressing) without substantial assistance
 - require substantial supervision due to cognitive impairment
 - another similar limitation as defined by regulations.

BUCK COMMENT. *Importantly, the disabling condition need not arise after the person meets the requirements for CLASS benefits. This means that those with significant impairments who are currently able to work on at least a limited basis will qualify to enroll in the plan. As long as these individuals make*

premium payments for five years and meet all other program requirements, they could begin receiving benefits. This is a significant difference from the typical underwriting process associated with long-term care policies.

CLASS Benefits

The CLASS program provides cash benefits rather than reimbursements for expenses. Although the actual benefits to be paid under the program have yet to be determined by HHS, the law establishes certain guidelines –

- The benefit may not be less than an average of \$50 per day.
- The amount is scaled to functional ability, with at least 2 but no more than 6 benefit level amounts.
- The benefit must be paid daily or weekly.
- There may not be a lifetime or aggregate limit.

BUCK COMMENT. *The level of the benefit will not be enough to provide nursing home care, but is aimed at providing a supplement for community living, such as a home health aide or funds to build a wheelchair ramp.*

Employer Involvement

The CLASS program is voluntary and there is no requirement for employers to implement payroll deductions for this program. HHS is to issue regulations establishing rules for automatic enrollment in the program if an employer elects to do so.

BUCK COMMENT. *It appears that the CLASS program with its emphasis on community living benefits could be offered alongside an existing group long-term care program, especially one that emphasizes nursing home coverage.*

Conclusion

With so many unknowns at this time, it is difficult to know whether the program will be of interest to employers and what its ultimate success will be. As noted earlier, implementation of the CLASS Act is expected to take 2 years or more, so employers do not need to take immediate action. Buck's consultants would be pleased to discuss this program with you, as well as other long-term care insurance options, and will keep you updated as more information becomes available.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.