

## HEALTH REFORM IMPACT

### What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

#### **CLASS Act: Public Long-Term Care Insurance Is Coming (Eventually)**

**June 7, 2010**

The new health reform legislation includes the Community Living Assistance Services and Supports Act ("CLASS Act") which establishes a nationwide public program for purchasing voluntary long-term care insurance. The CLASS Act program is designed to provide options for people who become functionally disabled and require community living assistance and support. The CLASS Act program will go into effect on January 1, 2011, but the payout of the CLASS Act program benefits will not begin until 2017. By October 2012, the Department of Health and Human Services ("HHS") will issue guidance on the exact CLASS Act program benefits with enrollment to begin soon after. This alert describes some of the key issues for the CLASS Act program, including eligibility, benefits, financing, and interaction with Medicaid.

#### **Who Can Enroll in the CLASS Act Program?**

Anyone over the age of 18 who earns income subject to Social Security tax may enroll in the CLASS Act program. Employers are not required to offer the CLASS Act program; it is entirely voluntary. Additionally, compliance with the CLASS Act program will not give rise to any fiduciary obligations under ERISA. This may entice some otherwise doubtful employers to offer the CLASS Act program to employees. Employees of employers that choose to offer the CLASS Act program will be automatically enrolled (unless they opt out) and will pay their premiums through payroll deduction. Individuals who are self-employed or who work for an employer that does not offer the CLASS Act program may enroll in the program under an alternative method to be established by HHS. Open enrollment periods will be established by HHS for employees who do not enroll at the time of their initial eligibility. Pre-existing conditions may not be used to prevent an individual from enrolling in or setting the amount of premiums.

#### **Who is Eligible for Benefits?**

Adults with multiple functional limitations or "equivalent cognitive impairments" (as defined by HHS) will be eligible for benefits if they have paid monthly premiums for at least five years and have been employed during three of those five years. Functional limitations will be determined similarly to the criteria used for other federal tax-qualified long-term care programs. Generally, an individual will be entitled to receive benefits if he or she is unable to perform a certain number of "Activities of Daily Living" or has an equivalent cognitive impairment that is expected to last more than 90 days. Activities of Daily Living include eating, bathing, dressing,

continence, ability to move oneself about (e.g., into or out of bed), and perform basic personal hygiene.

### **What are the Benefits?**

Adults who meet the eligibility criteria will receive a cash benefit that can be used to purchase non-medical services and support. Payments for institutional care are also permitted. The benefit is not subject to any lifetime or aggregate limit and is based on the degree of impairment or disability. The CLASS Act program benefits will average at least \$50 per day and will be adjusted annually for inflation. Benefits may be paid on a daily or weekly basis and will be deposited into a debit account that the individual may access for withdrawals. Unused benefits may be rolled over from month to month, but not year to year.

### **Who Pays for the CLASS Act Program?**

The CLASS Act program is financed by enrollee premiums, and benefits will be paid out of a trust fund consisting of deposited premiums and accumulated interest. The CLASS Act program explicitly states that no taxpayer funds may be used to pay benefits. Monthly premiums may vary only by age and are intended to be level for the life of an enrollee. This means that younger enrollees will pay less than older enrollees or participants who enroll at a later date. If an individual misses three months of premium payments, premiums will be adjusted in the event that the individual re-enrolls. The new premium will be based on the individual's age at re-enrollment. Individuals with incomes below the federal poverty line and full-time students under age 22 who are actively employed will pay reduced premiums, capped at \$5 per month as adjusted for inflation.

### **How Does the CLASS Act Program Interact with Medicaid?**

A primary goal of the CLASS Act program is to reduce the strain placed on many state Medicaid programs by long-term care expenses. For this reason, the CLASS Act program generally will be the primary payer of long-term care expenses for individuals who are also eligible for Medicaid, and state Medicaid programs will be secondary. Eligibility for benefits under the CLASS Act program will have no other effect on eligibility for Medicaid, Medicare, or Social Security benefits. Individuals who wish to purchase other long-term coverage may continue to do so through the private insurance market, and employers may offer private long-term care arrangements in addition to or instead of the CLASS Act program (or they may choose to offer no long-term care coverage at all). Individuals who are low-income, or become low-income as a result of their medical expenses or other factors, will still qualify for long-term Medicaid services and supports.

If you have any questions regarding the information in this client alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefit plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

Also, please [click here](#) to visit our special Web page for Health Reform IMPACT.

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