

EXHIBIT Q

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p>Mandated availability: In the House and Senate bills, there is an optional employer auto-enrollment process. This proposed language adds a requirement to Section 1512 of the Senate bill that employers inform their employees about the CLASS program, in addition to information on the Exchange.</p>	Senate	Senate: Section 1512, p. 347	Addition	<p>Page 347, lines 9-11, amend section 1512 by striking "The Fair Labor Standards Act" and the remaining text through the colon and inserting the following:</p> <p>(a) NOTICE TO EMPLOYEES CONCERNING EXCHANGE.—The Fair Labor Standards Act of 1938 is amended by inserting after section 18A (as added by section 1511) the following:</p> <p>Page 347, line 12, amend the section heading of proposed section 18B of the Fair Labor Standards Act of 1938 (as added by section 1512)) by adding "CONCERNING EXCHANGE" after "EMPLOYEES".</p> <p>Page 348, after line 15, amend section 1512 by adding the following new subsection:</p> <p>(b) NOTICE TO EMPLOYEES CONCERNING CLASS PROGRAM.—The Fair Labor Standards Act of 1938 is amended by inserting after section 18B (as added by subsection (a)) the following:</p> <p>"SEC. 18C. NOTICE TO EMPLOYEES CONCERNING CLASS PROGRAM. "(a) IN GENERAL.—In accordance with regulations promulgated by the Secretary, an employer to which this Act applies shall provide to each employee at the time of hiring (or with respect to current employees, not later than []),</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

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<p><u>Language on ADLs:</u> This language would give the Secretary the same flexibility in determining the list of ADLs as currently exists in the IRC for insurers. (Also included in first round edits)</p>	Both	<p>Senate: Section 3202, p. 1927 House: Section 3202, p. 1581</p>	Addition and Deletion	<p>written notice informing the employee of the existence of the CLASS program under title XXXII of the Public Health Service Act, including a description of the benefits provided under the program and other terms and conditions to maintain coverage under the program.</p> <p>"(b) EFFECTIVE DATE.—Subsection (a) shall take effect with respect to employers in a State beginning on []".</p>
<p><u>Active employment:</u> In the current Senate bill, an enrollee must have active employment for three out of the first five years of the program. In the current House bill, the employment requirement is five of the first five years. Active employment is defined as one quarter of coverage (\$1,120 in 2010) only in each year. This raises gaming concerns that individuals may report fraudulent self-employment wages solely in order to meet the work requirement, and could also lead to adverse selection in the program. We recommend increasing the work requirement to five of the first five years enrolled in the program (which is the current House level) and increasing the income requirement to the substantial gainful activity level (\$12,000 in 2010) to decrease</p>	Both	<p>Senate: Section 3202, p. 1928 House: Section 3202, p. 1581-1582</p>		<p>Beginning on page 1927, strike lines 19, and all that follows through page 1928, line 3, and insert the following: "(3) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' means activities specified in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986."</p> <p>Change in Senate bill: p. 1928, line 20, delete "3" and insert "5"</p> <p>Change in both bills: p. 1928, line 24, delete "amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage under section 213 (d) of the Social Security Act for the year" and insert "level of substantial gainful activity as described in Section 223 (d)(4)(A) of the Social Security Act for each year"</p> <p>p. 1929, line 10, insert "(iv) Protection Against Fraud and Abuse: The Secretary shall establish procedures to identify cases</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p>adverse selection and gaming. Further, we recommend providing additional authority to the Secretary of HHS to identify cases of fraud and abuse.</p>	Both	<p>Senate: Section 3202, p. 1928-1929 and Section 3203, p. 1941-1942</p> <p>House: Section 3202, p. 1581-1582</p>	Addition	<p>of fraudulent reporting of wages for the purposes of meeting the work requirement and may take appropriate measures to discipline such individuals, including termination of the individual's eligibility."</p> <p>Add a new Title 26 § 6103(I)(7)(D)(x) – "community living assistance services and supports under § 3201 et seq. of the Public Health Service Act, 42 U.S.C. § 201 et seq.</p>
<p><u>Disclosure of wage information:</u> The House and Senate bills do not provide the mechanism for the Secretary of HHS to obtain wage information to verify that individuals are working upon enrollment and that they meet the earnings requirement in section 3202(6)(A)(ii). Recommend adding language to the Internal Revenue Code Section 6103 that allows the Secretary of the Treasury to disclose wage information to the Secretary of HHS for administering the CLASS program.</p> <p><u>Premium Structure:</u> Gives the Secretary additional flexibility to change the premiums. (Also included in first round edits)</p>	Both	<p>Senate: Section 3203, p. 1937</p> <p>House: Section 3203, p. 1587-1588</p>		<p>On page 1937, line 20, insert "and premium structure" after "premiums".</p>
<p><u>Exemption from Premium Increases:</u> This change gives the Secretary increased discretion in granting exemptions from premium increases. This allows the Secretary greater latitude to expand or reduce the groups eligible for such exemptions according to the financial health of the program. (Also included in first round edits)</p>	Both	<p>Senate: Section 3203, p. 1938</p> <p>House: Section 3203, p. 1588</p>	Addition and Deletion	<p>On page 1938, strike lines 1 through 11, and insert the following: "(ii) EXEMPTION FROM INCREASE.— The Secretary may exempt any vulnerable population 55 years of age or older from an adjustment to monthly premiums under clause (i), but only if in so doing, the Secretary determines that the exemption would not compromise the 75-year solvency of the program or substantially increase premiums for other active enrollees."</p> <p>Page 1938, line 12, strike subparagraph (C) of section 3203(b)(1) and replace with:</p>
<p><u>Anti-Gaming Provisions:</u> The bills currently allow an individual to rejoin the program within five</p>	Both	Senate: Section 3203, p. 1938 to	Addition and Deletion	Page 1938, line 12, strike subparagraph (C) of section 3203(b)(1) and replace with:

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p>years without penalty. This would encourage individuals to pay premiums for a short period of time and then rejoin when their health status declines. This modification would change the provisions so that an individual would start losing vesting once missing a payment. The recommended new language would also prevent an individual from "banking" excess months of vesting in anticipation of nonpayment—vesting maxes out at 60 months. The new language would also allow the Secretary to apply a stiffer penalty if needed (e.g., 2 months vesting lost for every 1 month lapsed). Further, an individual would be given some credit for previously paying premiums by reducing the attained-age premium by the amount of months they had been paying premiums prior to lapsing. For example, if an individual paid premiums between age 35 and 40, lapsed for 10 years, and re-enrolled at age 50, their new premium amount would be based on age 45 (attained age of 50 minus five years of payment status). This feature would create an incentive for those who lapse to reenroll in the program.</p>		<p>1939 House: Section 3203, p. 1589-1590</p>		<p>"(C) RECALCULATION OF PREMIUM AMOUNT AND VESTING CREDIT AFTER LAPSE IN ENROLLMENT.—An individual who reenrolls in the CLASS program after any period during which the individual failed to pay the monthly premium required to maintain the individual's enrollment in the program (a "lapse period")—</p> <p>"(i) shall be subject to an adjusted monthly premium amount calculated by reducing the age the individual has attained at the time of such reenrollment by the number of months of paid premiums that accrued prior to the start of such lapse period ("accrued paid premiums"); and</p> <p>"(ii) for purposes of determining whether such individual has met the requirements of section 3202(6)(A)(i) (or such requirements as the Secretary may establish pursuant to subsection (d)), shall be credited with any months of accrued paid premiums (but not to exceed 60 such months), less a period equal to one month (or such longer period as the Secretary may establish if the Secretary deems such action necessary to reduce the incidence of non-payment of premiums in the CLASS program) for every month that such individual failed to pay a monthly premium after such individual's initial enrollment in such program.</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p><u>Failsafe:</u> In the current bills, the Secretary can alter the premiums in response to threats to financial stability of the CLASS program. However, it is possible the authority in the bill to modify premiums will not be sufficient to ensure the program is sustainable. The failsafe provision gives the Secretary authority to alter earnings and vesting provisions of the CLASS Act to further decrease adverse selection and maintain long-run stability.</p>	Both	<p>Senate: Section 3203, p. 1942 House: Section 3203, p. 1591</p>		<p>Make the following conforming changes: Page 1928, line 16, insert " , subject to section 3203(b)(1)(C)" before the dash. Page 1929, line 7, strike "of more than 3 months". Page 1931, line 16, insert " , subject to subsection (b)(1)(C)" before the colon. Page 1940, lines 8-9, strike "the end of the 5-year period described in subparagraph (C)(ii)." and insert "the end of a lapse period (as defined in subparagraph (C)) that extends for 5 or more years".</p>
			Addition	<p>Page 1942, after line 13, insert the following new subsection at the end of section 3203: "(1) FAILSAFE.— "(1) IN GENERAL.—If the Secretary determines that the structure and level of premiums cannot be established in a manner that will ensure the solvency of the CLASS program as required by clauses (i) or (iii) of subsection (a)(1)(A), the Secretary may lengthen, to the extent, and for such period, as the Secretary considers necessary to ensure solvency as required by such clauses, any or all of the time periods described in paragraph (2), but only with respect to those enrollees who have not met the criteria specified in section 3202(6) as of the date of such</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p>Primary payor rules for CLASS beneficiaries enrolled in Medicaid. Under CLASS' coordination of benefits requirements, States are only eligible to receive 50 percent of the cash benefit if its HCBS program in which the CLASS beneficiary is enrolled has certain features (statewide and comparability) and the State more broadly offers a minimum standard of HCBS. Of the 315 HCBS waivers in operation nationally, every one waives comparability. Thus, no State is likely to qualify, as the potential cost or liability of doing that would</p>	Both	<p>Senate: Sec. 8002(a)(1), new sec. 3205(c)(1)(D)(ii) of the Public Health Service Act. House: Sec. 2581, new sec. 3205(c)(1)(D)(ii) of the Public Health</p>	<p>Addition and Deletion</p>	<p>determination.</p> <p>"(2) TIME PERIODS DESCRIBED.—For purposes of paragraph (1), the time periods described in this paragraph are those specified in clauses (i) and (ii) of section 3202(6)(A) and subsection (a)(1)(B).".</p> <p>Make the following conforming changes: Page 1928, line 16, insert ", subject to section 3203(d)" before the dash. (if proposed section 3202(a)(6)(A) is amended in accordance with the suggested revisions to the Anti-gaming Provisions (above), insert "subject to subsections (b)(1)(C) and (d) of section 3203" before the dash).</p> <p>Page 1931, line 16, insert ", subject to subsection (d)" before the colon. (if proposed section 3203(a)(1) is amended in accordance with the suggested revisions to the Anti-gaming Provisions (above), insert "subject to subsections (b)(1)(C) and (d)" before the colon).</p> <p>p. 1953, lines 20-21, strike "subject to subclause (ii)."</p> <p>p 1954, lines 12-25 and p. 1955, lines 1-8, strike subclause (I) and add language, so that the clause reads: "(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</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
<p>far exceed the funds due the State from the 50 percent benefit payment.</p> <p>Recommend modifying the primary payer rules for Medicaid HCBS to the specific services that the individual receives, rather than to the attributes of the program in which s/he is enrolled.</p>		<p>Service Act.</p>		<p>under Medicaid for home and community based services, the beneficiary shall retain an amount equal to contribute up to 50 percent of the beneficiary's daily or weekly cash benefit 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.</p> <p>(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 (e) or (f) 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 (relating to statewideness) or of section 1902(a)(10)(B) of such Act (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.</p> <p>"(iii) DEFINITION OF HOME AND</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

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<p><u>Collection of Information:</u> The Secretary has limited information on expected utilization by the enrollees in the CLASS program, making it difficult to properly set the premium and benefit levels. This proposed language would give the CLASS Independence Advisory Council authority to conduct an annual representative sample of enrollees in each year to determine the risk profile of the enrolled population. The information would not be used to exclude anyone from participation, and would be shared with the Secretary of HHS in aggregate for the purposes of administering the CLASS program.</p>	Both	Senate: Section 3207, p. 1971 House: Section 3207, p. 1620	Addition	<p>COMMUNITY-BASED SERVICES- In this clause, the term 'home and community-based services' means any services which are not provided in an institution, including the following: (aa) may be services provided under subsection (c), (d), or (i) of section 1915 of the Social Security Act (42 U.S.C. 1396n) or under a waiver 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 (e) or (d) of section 1915 of such Act (42 U.S.C. 1396n) or under a State plan amendment under subsection (f) of such section. (bb) home health care services. (cc) personal care services.</p>
<p><u>Collection of Information:</u> The Secretary has limited information on expected utilization by the enrollees in the CLASS program, making it difficult to properly set the premium and benefit levels. This proposed language would give the CLASS Independence Advisory Council authority to conduct an annual representative sample of enrollees in each year to determine the risk profile of the enrolled population. The information would not be used to exclude anyone from participation, and would be shared with the Secretary of HHS in aggregate for the purposes of administering the CLASS program.</p>	Both	Senate: Section 3207, p. 1971 House: Section 3207, p. 1620	Addition	<p>Pages 1971-1972, redesignate subsections (d) and (e) of proposed section 3207 as subsections (e) and (f), respectively, and insert the following new subsection after subsection (c): "(d) AUTHORITY TO COLLECT INFORMATION GERMANE TO ADMINISTERING THE PROGRAM—The CLASS Independence Advisory Council may collect, from time to time, information from program enrollees for the purpose of monitoring enrollment. Such information may be shared with the Secretary of HHS in any form requested by the Secretary, provided it is aggregated and cannot be used to identify any individual enrollee.</p>

CLASS: Suggested Technical Corrections
Last Updated 01/04/10

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<p>Assurance of Infrastructure: The bill currently requires State Medicaid Agencies to ensure that there is adequate infrastructure for personal care workers and fiscal agents. It also requires States to designate existing or new entities to ensure the service infrastructure is adequate to meet the needs of beneficiaries. States are not uniformly equipped to perform these activities, which will likely pose significant and potentially costly administrative challenges, particularly in light of the 2 year implementation deadline. For example, a State may require authorizing legislation from its state legislature, which may only meet biennially. This in turn puts CLASS at risk; to the extent that a State is not able to meet its obligation, CLASS enrollees may have insufficient access to personal care attendant workers.</p> <p>Recommend changing to HHS Secretary. This also provides flexibility in the way counseling services are provided in conjunction with CLASS benefits. Also delete subsection (C), which creates difficult to enforce requirements that are not also required of other comparable current community support service providers.</p>	Both	<p>Senate: Sec. 8002(b), p. 1975 to 1977</p> <p>House: Sec 1739, p. 1098-1101</p>	Addition and Deletion	<p>Senate: p. 1975, strike 1902(a) amendment beginning line 11 through p. 1977, line 2 and replace with: , (b) Assurance of Adequate Infrastructure for the Provision of Personal Care Attendant Workers-- (1) In General.--Not later than 3 years after the date of enactment and on a periodic basis thereafter, the Secretary shall assess the capacity of entities described in paragraph (3) to serve as fiscal agents for, employers of, and providers of employment-related benefits for, personal care attendant workers who provide personal care services to individuals receiving benefits under the CLASS program established under title XXXII of the Public Health Service Act, including in rural and underserved areas.</p> <p>(2) Designation of New Entities.--To the extent that such entities have insufficient capacity for purposes of ensuring an adequate supply of workers for such individuals, the Secretary shall designate or create entities to serve as fiscal agents for, employers of, and providers of employment-related benefits for, such workers.</p> <p>(3) Entities Described.--For purposes of serving as a fiscal agent for, or employers of, and providers of employment-related benefits for personal care attendant workers, entities may include providers of home care, home health services, home</p>

CLASS: Suggested Technical Corrections
 Last Updated 01/04/10

Issue	House or Senate Bill	Citation	Addition/Deletion	Suggested Change
				and community service providers, public authorities created to provide personal care services to individuals eligible for Medicaid, nonprofit organizations, and other entities as determined by the Secretary.