

Medicare Long-Term Care Services and Supports Act of 2018
Section-by-Section
May 2018

Section 1. Short Title; Purpose; Table of Contents

The stated purpose of the "Medicare Long-Term Care Services and Supports Act of 2018" is to establish a public long-term care benefit as part of the Medicare program for the elderly and individuals with disabilities to –

1. Assist individuals with functional limitations to maintain their personal and financial independence;
2. Protect individuals and families from high out-of-pocket costs;
3. Alleviate burdens on family caregivers; and
4. Address the unmet health care needs of and provide financial security for those with significant long-term care expenditures.

Section 2. Establishment of Long-Term Care Services and Supports Program as Part of Medicare

This section would amend Title XVIII (Medicare) of the Social Security Act (SSA) by redesignating Part E as Part F and inserting the following new Part E - Long-Term Care Services and Supports with the following new SSA Sections 1860E-1 through 1860E-5, described below.

Section 1860E-1. Eligibility; Enrollment; Coverage

This section would establish eligibility, enrollment, and coverage for the Medicare Part E - Long-Term Services and Supports Program (LTSS Program).

Eligibility, Enrollment, Coverage, and Entitlement to Benefits. In general, eligibility for the LTSS Program would be extended to two categories of individuals. The first category would be individuals entitled to benefits (or enrolled) under Medicare Part A. The second category would be individuals who meet the "insured-status" requirements for Social Security Disability Insurance (SSDI), meaning they are under the age of 65 and have the appropriate work quarters, but additionally also meet the functional disability criteria under the new Medicare Part E. Individuals certified and enrolled in the LTSS program who are qualified individuals and have met the waiting period or cash deductible are entitled to a self-directed cash-based long term care benefit. Benefits would not be available under the LTSS program before January 2023.

Definitions. The term "qualified individual" would be defined to mean an individual who is certified as such under Section 7702B(c)(2) of the Internal Revenue Code of 1986 (IRC). The IRC defines "chronically ill individual" to mean any individual who has been certified by a licensed health care practitioner as ---

- i. being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,
- ii. having a level of disability similar (as determined under regulations prescribed by the Secretary of the Treasury in consultation with the Department of Health and Human Services (HHS) Secretary) to the level of disability described in clause (i), or
- iii. requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

The term "activities of daily living" would be defined to mean activities specified in IRC Section

7702B(c)(2)(B), which are eating, toileting, transferring, bathing, dressing, and continence.

Certification Process. No later than July 1, 2022, the HHS Secretary would be required to establish procedures under which an individual could apply for a determination as a "qualified individual" and, if qualified, for a determination of the level of functional limitations in order to discern the appropriate benefit level under the LTSS Program. These certification procedures would include an appeals process and redetermination process. An individual's initial certification would remain valid until the end of the two-year waiting period, at which time the individual must recertify before they can receive benefits. After an individual begins receiving benefits they must recertify annually thereafter, with special rules at the HHS Secretary's discretion for individuals who are not expected to medically improve.

Section 1860E-2. Benefits

This section would establish benefits, benefit payment, and benefit-counseling assistance under the LTSS Program.

LTSS Benefit and Waiting Period or Cash Deductible. Individuals entitled to benefits under the LTSS Program would be paid a daily self-directed benefit after satisfying a two-year waiting period requirement (or cash deductible), which would begin the first month following the date of their eligibility determination. The amount of the benefit would be determined from a specified minimum amount, the equivalent of five hours of home care services per day, and scaled upward based on one's functional ability, with not less than two and not more than four benefit level amounts. There are also certain adjustments made for geographic variation and inflation. As an alternative to the waiting period, the Committee is also soliciting comments on a one-time cash deductible option scaled based on the individual's income in lieu of a two year waiting period, for those Individuals with 3 or more ADLs and substantial functional impairment.

Payment of LTSS Benefits. The HHS Secretary would be required to establish procedures for administering the provision of cash benefits, including payment of cash benefits into a Qualified Individual Long-Term Care Benefit Account (LTC Account) established on behalf of each individual. Funds in this account would be accessed through debit cards, as a traditional self-directed benefit.

Use of Amounts in Account. Self-directed cash benefits paid into a LTC Account could be used to purchase services and supports that individuals would need to maintain their independence at home or in the community, including, but not limited to, home care aides, nursing support, respite care, and personal care assistance services, housing and home modifications, assistive technology, accessible transportation, homemaker and home maintenance services, and care in a skilled nursing facility, group home, or assisted living facility. Individuals could also use their cash benefit to obtain assistance with end of life decision making concerning medical care. Family Caregivers would be allowed to receive the benefit as payment for home care services provided.

Authorized Representatives. The HHS Secretary would be required to establish procedures to allow access to an individual's cash benefits by an authorized representative based on existing standards for authorized representatives; such procedures would ensure authorized representatives comply with existing standards of conduct.

Rollover Option for Lump-Sum Payment. Individuals would be allowed to defer benefits and rollover any such deferred benefits on a quarterly basis but are not allowed to roll-over accumulated funds in the account from one quarter to the next. Individuals would also be allowed to receive a lump-sum payment of such deferred benefits, subject to certain limits.

Period of Determination for Annual Benefits. Individuals would be required to use accumulated funds in the LTC Account in the quarterly period that begins with the first month in which the individual became eligible to receive the cash benefit. The HHS Secretary, in consultation with the Centers for Medicare and Medicaid Services and the Administration for Community Living, would establish procedures under which cash benefits paid to an individual that increase or decrease as a result of a change in functional status before the end of a 12-month benefit period shall be determined. The HHS Secretary, in consultation with the Secretary of the Treasury, would be required to recoup any accrued benefits in the event of an individual's death or failure to receive a lump-sum payment before the end of the quarterly period. Any recouped benefits would be paid into the LTSS Account and used for outreach activities.

Accounting for Expenditures. Individuals would be required to submit quarterly records of expenditures from the aggregate cash benefit received.

Supplement, Not Supplant Other Health Care Benefits. Subject to Medicaid payment rules, cash benefits received by an eligible individual are to supplement, but not supplant, other health care benefits for which the individual is eligible under Medicaid or any other federally funded program that provides health care benefits or assistance.

Eligibility for Other Benefits. Cash benefits paid to an individual would be disregarded for purposes of determining an individual's initial or continuing eligibility for benefits under any other federal, state, or locally funded assistance program, including Social Security, Supplemental Security Income (SSI), Medicare, Medicaid, the Children's Health Insurance Program (CHIP), veterans' benefits, low-income housing assistance programs, or the Supplemental Nutrition Assistance Program (SNAP).

Advice and Benefit Management Counseling. The HHS Secretary, in consultation with the Centers for Medicare and Medicaid Services and the Administration for Community Living, would be required to assign a counselor to each qualified individual enrolled under the LTSS Program who would provide information regarding resources for managing assistance under the LTSS Program; assistance with the annual recertification requirements; a description of the benefits available; information regarding possible eligibility for other benefits and services; assistance with the development of a service and support plan and coordination of care; and information about services offered under the Assistive Technology Act of 1998. The HHS Secretary would be required to establish procedures to ensure that counselors and any other entities that provide services to individuals enrolled under the LTSS Program minimize conflicts of interest.

Protection and Advocacy Systems. Protection and Advocacy Systems (P&As) work at the state level to protect individuals with disabilities by empowering them and advocating on their behalf. In this legislation, they would take on a new role, with funding, to advocate for individuals with this benefit.

Rule of Construction. Nothing would prohibit the compensation of family caregivers for providing LTSS to an individual entitled to benefits with cash benefits paid under the LTSS program.

Section 1860E-3. LTSS Account within the Supplementary Medical Insurance (SMI) Trust Fund

This section would establish within the Federal Supplementary Medical Insurance Trust Fund a separate Part E Account.

Payments from and Deposits into LTSS Account. The Managing Trustee (the Secretary of the Treasury) would be required to pay from the Part E Account such amounts as the HHS Secretary certifies are necessary to make payments to operate the program including payments of cash benefits and payments for administrative expenses. Amounts payable from the Part E Account would not be taken into

account in computing actuarial rates or premium amounts under Medicare Part B.

Transitional Funding and Reporting. In order to assure prompt payment of cash benefits provided under the LTSS Program and administrative expenses during the early months of the program, and to provide a contingency reserve, it would authorize to be appropriated, out of any moneys in the U.S. Treasury not otherwise appropriated, an amount equal to \$___ (not specified yet) multiplied by the number of individuals enrolled under Medicare Part A as of enactment, as estimated by the HHS Secretary. It would propose additional reporting regarding the Part E Account in the annual report of the Board of Trustees of the Federal Supplementary Medical Insurance (SMI) Trust Fund.

Section 1860E-4. LTSS Advisory Council

This section would create an LTSS Advisory Council that consists of up to 15 individuals appointed by the President, to include representatives of Medicare and Medicaid beneficiaries and other stakeholder groups, as well as those with expertise in long-term care and other relevant disciplines. The LTSS Advisory Council would advise the HHS Secretary on matters of general policy in the administration of the LTSS program and in the formulation of regulations. The Federal Advisory Committee Act of 1972 (FACA, P.L. 92-463), other than Section 14, would apply to the LTSS Advisory Council.

Section 1860E-5. Annual Report

This section would establish reporting requirements, make conforming amendments to Medicaid and Medicare, and extend funding under the National Clearinghouse for Long-Term Care Information.

Annual Report. The HHS Secretary would be required to submit an annual report, as specified, to Congress on the LTSS Program, beginning January 1, 2024.

Section 1860E-6. Outreach, Education, and Enrollment Fund

This section would provide \$1,000,000,000 upon enactment for purposes of outreach, education, and enrollment activities for the LTSS Program. The funds would remain available until 2025.

Interaction with Medicaid Benefits. This section would make certain conforming amendments to the Medicaid and Medicare programs to address Part E interactions with LTSS benefits available under Medicaid, and the SMI Trust Fund.

Medicaid Benefits. For those individuals also enrolled in Medicaid, the LTSS program's cash benefit would apply towards Medicaid LTSS costs, with separate payment rules applying to Medicaid beneficiaries (1) receiving institutionalized care, (2) receiving Medicaid home and community-based services (HCBS), or (3) enrolled in Programs of All-Inclusive Care for the Elderly (PACE).

Medicaid and Institutional Care. For those receiving Medicaid covered institutional care (e.g., in a hospital, nursing facility, or intermediate care facility for individuals with intellectual and development disabilities), the individual may retain 5 percent of the LTSS program's daily or weekly applicable cash benefit (in addition to Medicaid's personal needs allowance). The remainder of the benefit is applied to the facility's cost of providing care, and Medicaid is required to provide secondary coverage of such care.

Medicaid and Home and Community-Based Services. For those receiving Medicaid HCBS or Medicaid covered PACE program services, the individual may retain 75 percent of the LTSS program's daily or weekly applicable cash benefit, with the remainder of the benefit applied toward the cost to the state of providing such assistance. Medicaid is required to provide secondary coverage for the remainder of any costs incurred in providing such assistance. Institutionalized Medicaid PACE recipients are treated

similarly to those other institutionalized Medicaid recipients described above.

Medicaid and Programs of All-Inclusive Care for the Elderly (PACE). For those Individuals enrolled in PACE Program Services, the individual may retain 5 percent of the LTSS program's daily or weekly applicable cash benefit. Medicaid is required to provide secondary coverage for the remainder of any costs incurred in providing such assistance. Institutionalized Medicaid PACE recipients are treated similarly to those other institutionalized Medicaid recipients described above.

National Clearinghouse for Long-Term Care Information. This section would amend Section 6021(d) of the Deficit Reduction Act of 2005 (DRA, P.L. 109-171) to extend mandatory funding of \$3 million per year through fiscal year (FY) 2023 for the National Clearinghouse for Long-Term Care Information. It would require the Clearinghouse to include information regarding how benefits provided under a LTSS Program differ from disability insurance benefits.

Section 3. Financing

The Committee has left a placeholder for financing, and is soliciting financing options for the benefit.

Section 4. Outreach, Education, and Enrollment Supports

This section would provide increased funding for several beneficiary assistance programs.

Funding for State Health Insurance Assistance Programs. This section would increase funding for State Health Insurance Assistance Programs (SHIPs); providing \$15 million for each of FYs 2020 through 2024. SHIPs operate in all 50 states and offer community based, personalized counseling and assistance to Medicare beneficiaries and their families.

Funding for Area Agencies on Aging. This section would increase funding for Area Agencies on Aging (AAAs); providing \$15 million for each of FYs 2020 through 2024. AAAs coordinate and provide a wide range of LTSS services to older adults, caregivers, and individuals with disabilities. AAAs play a key role in connecting individuals to LTSS services available in the community.

Funding for Aging and Disability Resource Centers. This section would increase funding for Aging and Disability Resource Centers (ADRCs); providing \$15 million for each of FYs 2020 through 2024. ADRCs help consumers regardless of age, disability, or income connect to LTSS and serve as a single access point for information and counseling on the full range of public and private LTSS available to consumers.

Section 5. Reauthorization of Lifespan Respite Care Program

This section would reauthorize the Lifespan Respite Care Program for five years, FY2019FY through FY2023, at \$15 million each year. The Lifespan Respite Care Program provides critically needed community-based respite services for family caregivers.

Section 6. Miscellaneous Provisions

This section would amend certain provisions in the tax code to reference the LTSS Program.