

---

HOUSE BILL 1732

---

State of Washington

67th Legislature

2022 Regular Session

**By** Representatives Sullivan, Chopp, J. Johnson, Walen, Chapman, Berry, Cody, Dolan, Fey, Macri, Peterson, Ryu, Santos, Senn, Shewmake, Wylie, Simmons, Callan, Slatter, Ramos, Bergquist, Tharinger, Valdez, Thai, Pollet, Morgan, Taylor, Stonier, Ortiz-Self, Gregerson, Davis, Riccelli, Ormsby, Duerr, Orwall, Bateman, Kloba, and Frame

Prefiled 01/03/22. Read first time 01/10/22. Referred to Committee on Appropriations.

1 AN ACT Relating to delaying the implementation of the long-term  
2 services and supports trust program by 18 months to allow for the  
3 extension of benefits to persons born before January 1, 1968, by  
4 modifying conditions for becoming a qualified individual and eligible  
5 beneficiary and allowing for the refunding of prematurely collected  
6 premiums; amending RCW 50B.04.020, 50B.04.050, 50B.04.060,  
7 50B.04.080, and 50B.04.090; adding a new section to chapter 50B.04  
8 RCW; and declaring an emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **Sec. 1.** RCW 50B.04.020 and 2021 c 113 s 2 are each amended to  
11 read as follows:

12 (1) The health care authority, the department of social and  
13 health services, the office of the state actuary, and the employment  
14 security department each have distinct responsibilities in the  
15 implementation and administration of the program. In the performance  
16 of their activities, they shall actively collaborate to realize  
17 program efficiencies and provide persons served by the program with a  
18 well-coordinated experience.

19 (2) The health care authority shall:

1 (a) Track the use of lifetime benefit units to verify the  
2 individual's status as an eligible beneficiary as determined by the  
3 department of social and health services;

4 (b) Ensure approved services are provided through audits or  
5 service verification processes within the service provider payment  
6 system for registered long-term services and supports providers and  
7 recoup any inappropriate payments;

8 (c) Establish criteria for the payment of benefits to registered  
9 long-term services and supports providers under RCW 50B.04.070;

10 (d) Establish rules and procedures for benefit coordination when  
11 the eligible beneficiary is also funded for medicaid and other long-  
12 term services and supports, including medicare, coverage through the  
13 department of labor and industries, and private long-term care  
14 coverage; and

15 (e) Adopt rules and procedures necessary to implement and  
16 administer the activities specified in this section related to the  
17 program.

18 (3) The department of social and health services shall:

19 (a) Make determinations regarding an individual's status as an  
20 eligible beneficiary under RCW 50B.04.060;

21 (b) Approve long-term services and supports eligible for payment  
22 as approved services under the program, as informed by the  
23 commission;

24 (c) Register long-term services and supports providers that meet  
25 minimum qualifications;

26 (d) Discontinue the registration of long-term services and  
27 supports providers that: (i) Fail to meet the minimum qualifications  
28 applicable in law to the approved service that they provide; or (ii)  
29 violate the operational standards of the program;

30 (e) Disburse payments of benefits to registered long-term  
31 services and supports providers, utilizing and leveraging existing  
32 payment systems for the provision of approved services to eligible  
33 beneficiaries under RCW 50B.04.070;

34 (f) Prepare and distribute written or electronic materials to  
35 qualified individuals, eligible beneficiaries, and the public as  
36 deemed necessary by the commission to inform them of program design  
37 and updates;

38 (g) Provide customer service and address questions and  
39 complaints, including referring individuals to other appropriate  
40 agencies;

1 (h) Provide administrative and operational support to the  
2 commission;

3 (i) Track data useful in monitoring and informing the program, as  
4 identified by the commission; and

5 (j) Adopt rules and procedures necessary to implement and  
6 administer the activities specified in this section related to the  
7 program.

8 (4) The employment security department shall:

9 (a) Collect and assess employee premiums as provided in RCW  
10 50B.04.080;

11 (b) Assist the commission, council, and state actuary in  
12 monitoring the solvency and financial status of the program;

13 (c) Perform investigations to determine the compliance of premium  
14 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the  
15 same activities conducted under the family and medical leave act,  
16 Title 50A RCW, to the extent possible;

17 (d) Make determinations regarding an individual's status as a  
18 qualified individual under RCW 50B.04.050, including criteria to  
19 determine the status of persons receiving partial benefit units under  
20 RCW 50B.04.050(2); and

21 (e) Adopt rules and procedures necessary to implement and  
22 administer the activities specified in this section related to the  
23 program.

24 (5) The office of the state actuary shall:

25 (a) Beginning (~~January 1, 2024~~) July 1, 2026, and biennially  
26 thereafter, perform an actuarial audit and valuation of the long-term  
27 services and supports trust fund. Additional or more frequent  
28 actuarial audits and valuations may be performed at the request of  
29 the council;

30 (b) Make recommendations to the council and the legislature on  
31 actions necessary to maintain trust solvency. The recommendations  
32 must include options to redesign or reduce benefit units, approved  
33 services, or both, to prevent or eliminate any unfunded actuarially  
34 accrued liability in the trust or to maintain solvency; and

35 (c) Select and contract for such actuarial, research, technical,  
36 and other consultants as the actuary deems necessary to perform its  
37 duties under chapter 363, Laws of 2019.

38 (6) By October 1, 2021, the employment security department and  
39 the department of social and health services shall jointly conduct  
40 outreach to provide employers with educational materials to ensure

1 employees are aware of the program and that the premium assessments  
2 will begin on (~~January 1, 2022~~) July 1, 2023. In conducting the  
3 outreach, the employment security department and the department of  
4 social and health services shall provide on a public website  
5 information that explains the program and premium assessment in an  
6 easy to understand format. Outreach information must be available in  
7 English and other primary languages as defined in RCW 74.04.025.

8 **Sec. 2.** RCW 50B.04.050 and 2021 c 113 s 4 are each amended to  
9 read as follows:

10 (1) (~~The~~) Except as provided in subsection (2) of this section,  
11 the employment security department shall deem a person to be a  
12 qualified individual as provided in this chapter if the person has  
13 paid the long-term services and supports premiums required by RCW  
14 50B.04.080 for the equivalent of either:

15 (a) A total of ten years without interruption of five or more  
16 consecutive years; or

17 (b) Three years within the last six years from the date of  
18 application for benefits.

19 (2) A person born before January 1, 1968, who has not met the  
20 duration requirements under subsection (1)(a) of this section may  
21 become a qualified individual with fewer than the number of years  
22 identified in subsection (1)(a) of this section if the person has  
23 paid the long-term services and supports premiums required by RCW  
24 50B.04.080 for at least one year. A person becoming a qualified  
25 individual pursuant to this subsection (2) may receive one-tenth of  
26 the maximum number of benefit units available under RCW  
27 50B.04.060(3)(b) for each year of premium payments. In accordance  
28 with RCW 50B.04.060, nothing in this section requires the department  
29 of social and health services to accept applications for determining  
30 an individual's status as an eligible beneficiary prior to July 1,  
31 2026. Nothing in this subsection (2) prohibits a person born before  
32 January 1, 1968, who meets the conditions of subsection (1)(b) of  
33 this section from receiving the maximum number of benefit units  
34 available under RCW 50B.04.060(3)(b).

35 (3) When deeming a person to be a qualified individual, the  
36 employment security department shall require that the person have  
37 worked at least five hundred hours during each of the ten years in  
38 subsection (1)(a) of this section (~~or~~), each of the three years in

1 subsection (1)(b) of this section, or each of the years identified in  
2 subsection (2) of this section.

3 ~~((3))~~ (4) An exempt employee may never be deemed to be a  
4 qualified individual.

5 **Sec. 3.** RCW 50B.04.060 and 2019 c 363 s 7 are each amended to  
6 read as follows:

7 (1) Beginning ~~((January 1, 2025))~~ July 1, 2026, approved services  
8 must be available and benefits payable to a registered long-term  
9 services and supports provider on behalf of an eligible beneficiary  
10 under this section.

11 (2) ~~((A))~~ Beginning July 1, 2026, a qualified individual may  
12 become an eligible beneficiary by filing an application with the  
13 department of social and health services and undergoing an  
14 eligibility determination which includes an evaluation that the  
15 individual requires assistance with at least three activities of  
16 daily living. The department of social and health services must  
17 engage sufficient qualified assessor capacity, including via  
18 contract, so that the determination may be made within ~~((forty-five))~~  
19 45 days from receipt of a request by a beneficiary to use a benefit.  
20 The department of social and health services may not accept  
21 applications for the determination of an individual's status as an  
22 eligible beneficiary under this section prior to July 1, 2026.

23 (3)(a) An eligible beneficiary may receive approved services and  
24 benefits through the program in the form of a benefit unit payable to  
25 a registered long-term services and supports provider.

26 (b) ~~((A))~~ Except as limited in RCW 50B.04.050(2), an eligible  
27 beneficiary may not receive more than the dollar equivalent of  
28 ~~((three hundred sixty-five))~~ 365 benefit units over the course of the  
29 eligible beneficiary's lifetime.

30 (i) If the department of social and health services reimburses a  
31 long-term services and supports provider for approved services  
32 provided to an eligible beneficiary and the payment is less than the  
33 benefit unit, only the portion of the benefit unit that is used shall  
34 be taken into consideration when calculating the person's remaining  
35 lifetime limit on receipt of benefits.

36 (ii) Eligible beneficiaries may combine benefit units to receive  
37 more approved services per day as long as the total number of  
38 lifetime benefit units has not been exceeded.

1       **Sec. 4.** RCW 50B.04.080 and 2020 c 98 s 4 are each amended to  
2 read as follows:

3       (1) Beginning (~~(January 1, 2022)~~) July 1, 2023, the employment  
4 security department shall assess for each individual in employment  
5 with an employer a premium based on the amount of the individual's  
6 wages. The initial premium rate is (~~((fifty-eight hundredths of~~  
7 ~~one))~~) .58 percent of the individual's wages. Beginning January 1,  
8 2024, and biennially thereafter, the premium rate shall be set by the  
9 pension funding council at a rate no greater than (~~((fifty-eight~~  
10 ~~hundredths of one))~~) .58 percent. In addition, the pension funding  
11 council must set the premium rate at the lowest amount necessary to  
12 maintain the actuarial solvency of the long-term services and  
13 supports trust account created in RCW 50B.04.100 in accordance with  
14 recognized insurance principles and designed to attempt to limit  
15 fluctuations in the premium rate. To facilitate the premium rate  
16 setting the office of the state actuary must perform a biennial  
17 actuarial audit and valuation of the fund and make recommendations to  
18 the pension funding council.

19       (2) (a) The employer must collect from the employees the premiums  
20 provided under this section through payroll deductions and remit the  
21 amounts collected to the employment security department.

22       (b) In collecting employee premiums through payroll deductions,  
23 the employer shall act as the agent of the employees and shall remit  
24 the amounts to the employment security department as required by this  
25 chapter.

26       (3) Nothing in this chapter requires any party to a collective  
27 bargaining agreement in existence on October 19, 2017, to reopen  
28 negotiations of the agreement or to apply any of the responsibilities  
29 under this chapter unless and until the existing agreement is  
30 reopened or renegotiated by the parties or expires.

31       (4) (a) Premiums shall be collected in the manner and at such  
32 intervals as provided in this chapter and directed by the employment  
33 security department.

34       (b) To the extent feasible, the employment security department  
35 shall use the premium assessment, collection, and reporting  
36 procedures in Title 50A RCW.

37       (5) The employment security department shall deposit all premiums  
38 collected in this section in the long-term services and supports  
39 trust account created in RCW 50B.04.100.

1 (6) Premiums collected in this section are placed in the trust  
2 account for the individuals who become eligible for the program.

3 (7) If the premiums established in this section are increased,  
4 the legislature shall notify each qualified individual by mail that  
5 the person's premiums have been increased, describe the reason for  
6 increasing the premiums, and describe the plan for restoring the  
7 funds so that premiums are returned to (~~(fifty-eight hundredths of~~  
8 ~~one)~~) .58 percent of the individual's wages.

9 **Sec. 5.** RCW 50B.04.090 and 2021 c 113 s 6 are each amended to  
10 read as follows:

11 (1) Beginning (~~(January 1, 2022)~~) July 1, 2023, any self-employed  
12 person, including a sole proprietor, independent contractor, partner,  
13 or joint venturer, may elect coverage under this chapter. Coverage  
14 must be elected before (~~(January 1, 2025)~~) July 1, 2026, or within  
15 three years of becoming self-employed for the first time. Those  
16 electing coverage under this subsection are responsible for payment  
17 of (~~(one hundred)~~) 100 percent of all premiums assessed to an  
18 employee under RCW 50B.04.080. The self-employed person must file a  
19 notice of election in writing with the employment security  
20 department, in the manner required by the employment security  
21 department in rule. The self-employed person is eligible for benefits  
22 after paying the long-term services and supports premium for the time  
23 required under RCW 50B.04.050.

24 (2) A self-employed person who has elected coverage may not  
25 withdraw from coverage.

26 (3) A self-employed person who elects coverage must continue to  
27 pay premiums until such time that the individual retires from the  
28 workforce or is no longer self-employed. To cease premium assessment  
29 and collection, the self-employed person must file a notice with the  
30 employment security department if the individual retires from the  
31 workforce or is no longer self-employed.

32 (4) The employment security department may cancel elective  
33 coverage if the self-employed person fails to make required payments  
34 or file reports. The employment security department may collect due  
35 and unpaid premiums and may levy an additional premium for the  
36 remainder of the period of coverage. The cancellation must be  
37 effective no later than (~~(thirty)~~) 30 days from the date of the  
38 notice in writing advising the self-employed person of the  
39 cancellation.

1 (5) Those electing coverage are considered employers or employees  
2 where the context so dictates.

3 (6) For the purposes of this section, "independent contractor"  
4 means an individual excluded from the definition of "employment" in  
5 RCW 50B.04.010.

6 (7) The employment security department shall adopt rules for  
7 determining the hours worked and the wages of individuals who elect  
8 coverage under this section and rules for enforcement of this  
9 section.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 50B.04  
11 RCW to read as follows:

12 Any premiums collected from the employee prior to July 1, 2023,  
13 shall be refunded to the employee within 120 days of the collection  
14 of the premiums. If the premiums were collected but not yet remitted  
15 to the employment security department, the employer shall refund the  
16 collected premiums to the employee. If the collected premiums were  
17 remitted to the employment security department, the employment  
18 security department shall refund the premiums to the employer within  
19 120 days of the collection of the premiums, who shall then return any  
20 premiums collected from the employee.

21 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of  
23 the state government and its existing public institutions, and takes  
24 effect immediately.

--- END ---