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**HOUSE BILL 2423**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Riccelli, Cody, Tharinger, Ormsby, and Pollet; by request of Employment Security Department

AN ACT Relating to modifying the long-term services and supports trust program by clarifying the ability for individuals with existing long-term care insurance to opt-out of the premium assessment and making technical corrections; amending RCW 50B.04.010, 50B.04.020, 50B.04.050, 50B.04.080, 50B.04.090, and 50B.04.120; and adding a new section to chapter 50B.04 RCW.

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

**Sec.**  RCW 50B.04.010 and 2019 c 363 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means the long-term services and supports trust account created in RCW 50B.04.100.

(2) "Approved service" means long-term services and supports including, but not limited to:

(a) Adult day services;

(b) Care transition coordination;

(c) Memory care;

(d) Adaptive equipment and technology;

(e) Environmental modification;

(f) Personal emergency response system;

(g) Home safety evaluation;

(h) Respite for family caregivers;

(i) Home delivered meals;

(j) Transportation;

(k) Dementia supports;

(l) Education and consultation;

(m) Eligible relative care;

(n) Professional services;

(o) Services that assist paid and unpaid family members caring for eligible individuals, including training for individuals providing care who are not otherwise employed as long-term care workers under RCW 74.39A.074;

(p) In-home personal care;

(q) Assisted living services;

(r) Adult family home services; and

(s) Nursing home services.

(3) "Benefit unit" means up to one hundred dollars paid by the department of social and health services to a long-term services and supports provider as reimbursement for approved services provided to an eligible beneficiary on a specific date. The benefit unit must be adjusted annually at a rate no greater than the Washington state consumer price index, as determined solely by the council. Any changes adopted by the council shall be subject to revision by the legislature.

(4) "Commission" means the long-term services and supports trust commission established in RCW 50B.04.030.

(5) "Council" means the long-term services and supports trust council established in RCW 50B.04.040.

(6) "Eligible beneficiary" means a qualified individual who is age eighteen or older, residing in the state of Washington, was not disabled before the age of eighteen, has been determined to meet the minimum level of assistance with activities of daily living necessary to receive benefits through the trust program, as established in this chapter, and who has not exhausted the lifetime limit of benefit units.

(7) "Employee" has the meaning provided in RCW ((~~50A.04.010~~)) 50A.05.010.

(8) "Employer" has the meaning provided in RCW ((~~50A.04.010~~)) 50A.05.010.

(9) "Employment" has the meaning provided in RCW ((~~50A.04.010~~)) 50A.05.010.

(10) "Long-term services and supports provider" means an entity that meets the qualifications applicable in law to the approved service they provide, including a qualified or certified home care aide, licensed assisted living facility, licensed adult family home, licensed nursing home, licensed in-home services agency, adult day services program, vendor, instructor, qualified family member, or other entities as registered by the department of social and health services.

(11) "Premium" or "premiums" means the payments required by RCW 50B.04.080 and paid to the employment security department for deposit in the account created in RCW 50B.04.100.

(12) "Program" means the long-term services and supports trust program established in this chapter.

(13) "Qualified family member" means a relative of an eligible beneficiary qualified to meet requirements established in state law for the approved service they provide that would be required of any other long-term services and supports provider to receive payments from the state.

(14) "Qualified individual" means an individual who meets the duration of payment requirements, as established in this chapter.

(15) "State actuary" means the office of the state actuary created in RCW 44.44.010.

(16) ((~~"Wages" has the meaning provided in RCW 50A.04.010, except that all~~)) "Wage or wages" means all remuneration paid by an employer to an employee. Remuneration has the meaning provided in RCW 50A.05.010. All wages are subject to a premium assessment and not limited by the commissioner of the employment security department, as provided under RCW ((~~50A.04.115~~)) 50A.10.030(4).

(17) "Exempt employee" means a person who has been granted a premium assessment exemption by the employment security department.

**Sec.**  RCW 50B.04.020 and 2019 c 363 s 3 are each amended to read as follows:

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

(2) The health care authority shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The employment security department shall:

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

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

(c) Perform investigations to determine the compliance of premium payments in RCW 50B.04.080 in coordination with the same activities conducted under the family and medical leave act, ((~~chapter 50A.04~~)) Title 50A RCW, to the extent possible;

(d) Make determinations regarding an individual's status as a qualified individual under RCW 50B.04.050; and

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

(5) The office of the state actuary shall:

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

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

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

**Sec.**  RCW 50B.04.050 and 2019 c 363 s 6 are each amended to read as follows:

(1) The employment security department shall deem a person to be a qualified individual as provided in this chapter if the person has paid the long-term services and supports premiums required by RCW 50B.04.080 for the equivalent of either:

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

(b) Three years within the last six years.

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

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

**Sec.**  RCW 50B.04.080 and 2019 c 363 s 9 are each amended to read as follows:

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

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

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

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

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

(b) To the extent feasible, the employment security department shall use the premium assessment, collection, and reporting procedures in ((~~chapter 50A.04~~)) Title 50A RCW.

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

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

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

((~~(8) An employee who demonstrates that the employee has long-term care insurance is exempt from the premium assessment in this section.~~))

**Sec.**  RCW 50B.04.090 and 2019 c 363 s 10 are each amended to read as follows:

(1) Beginning January 1, 2022, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter. Those electing coverage under this subsection are responsible for payment of one hundred percent of all premiums assessed to an employee under RCW 50B.04.080. The self-employed person must file a notice of election in writing with the employment security department, in the manner required by the employment security department in rule. The self-employed person is eligible for benefits after paying the long-term services and supports premium for the time required under RCW 50B.04.050.

(2) A self-employed person who has elected coverage may withdraw from coverage, at such times as the employment security department may adopt by rule, by filing a notice of withdrawal in writing with the employment security department, with the withdrawal to take effect not sooner than thirty days after filing the notice with the employment security department.

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

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

(5) For the purposes of this section, "independent contractor" means an individual excluded from the definition of "employment" in RCW 50B.04.010((~~(8)~~)).

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

**Sec.**  RCW 50B.04.120 and 2019 c 363 s 13 are each amended to read as follows:

(1) Determinations made by the health care authority or the department of social and health services under this chapter, including determinations regarding functional eligibility or related to registration of long-term services and supports providers, are subject to appeal in accordance with chapter 34.05 RCW. In addition, the standards and procedures adopted for these appeals must address the following:

(a) Timelines;

(b) Eligibility and benefit determination;

(c) Judicial review; and

(d) Fees.

(2) Determinations made by the employment security department under this chapter are subject to appeal in accordance with the appeal procedures under ((~~chapter 50A.04~~)) Title 50A RCW. The employment security department shall adopt standards and procedures for appeals for persons aggrieved by any determination or redetermination made by the department. The standards and procedures must be consistent with those adopted for the family and medical leave program under ((~~chapter 50A.04~~)) Title 50A RCW and must address topics including:

(a) Premium liability;

(b) Premium collection;

(c) Judicial review; and

(d) Fees.

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

(1) An employee who attests that the employee has long-term care insurance may apply for an exemption from the premium assessment under RCW 50B.04.080. An exempt employee may not become a qualified individual or eligible beneficiary and is permanently ineligible for coverage under this title.

(2)(a) The employment security department must accept applications for exemptions only from July 1, 2021, through December 31, 2022.

(b) Only employees who are eighteen years of age or older may apply for an exemption.

(3) The employment security department is not required to verify the attestation of an employee that the employee has long-term care insurance.

(4) Approved exemptions will take effect on the first day of the quarter immediately following the approval of the exemption.

(5) Exempt employees are not entitled to a refund of any premium deductions made before the effective date of an approved exemption.

(6) An exempt employee must provide written notification to all current and future employers of an approved exemption.

(7) If an exempt employee fails to notify an employer of an exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification is provided.

(8) Employers must not deduct premiums after being notified by an employee of an approved exemption.

(a) Employers must retain written notifications of exemptions received from employees.

(b) An employer who deducts premiums after being notified by the employee of an exemption is solely responsible for refunding to the employee any premiums deducted after the notification.

(c) The employer is not entitled to a refund from the employment security department for any premiums remitted to the employment security department that were deducted from exempt employees.

(9) The department must adopt rules necessary to implement and administer the activities specified in this section related to the program, including rules on the submission and processing of applications under this section.

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