
SUBSTITUTE HOUSE BILL 1323

State of Washington

67th Legislature

2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Tharinger, Macri, Simmons, Fitzgibbon, Cody, Hackney, Santos, Ortiz-Self, Lekanoff, and Pollet)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to the long-term services and supports trust
2 program; amending RCW 50B.04.010, 50B.04.020, 50B.04.050, 50B.04.085,
3 and 50B.04.090; and adding a new section to chapter 50B.04 RCW.

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

5 **Sec. 1.** RCW 50B.04.010 and 2020 c 98 s 1 are each amended to
6 read as follows:

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

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

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

13 (a) Adult day services;

14 (b) Care transition coordination;

15 (c) Memory care;

16 (d) Adaptive equipment and technology;

17 (e) Environmental modification;

18 (f) Personal emergency response system;

19 (g) Home safety evaluation;

20 (h) Respite for family caregivers;

21 (i) Home delivered meals;

- 1 (j) Transportation;
- 2 (k) Dementia supports;
- 3 (l) Education and consultation;
- 4 (m) Eligible relative care;
- 5 (n) Professional services;
- 6 (o) Services that assist paid and unpaid family members caring
- 7 for eligible individuals, including training for individuals
- 8 providing care who are not otherwise employed as long-term care
- 9 workers under RCW 74.39A.074;
- 10 (p) In-home personal care;
- 11 (q) Assisted living services;
- 12 (r) Adult family home services; and
- 13 (s) Nursing home services.

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

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

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

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

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

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

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

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

38 (11) "Long-term services and supports provider" means an entity
39 that meets the qualifications applicable in law to the approved
40 service they provide, including a qualified or certified home care

1 aide, licensed assisted living facility, licensed adult family home,
2 licensed nursing home, licensed in-home services agency, adult day
3 services program, vendor, instructor, qualified family member, or
4 other entities as registered by the department of social and health
5 services.

6 ~~((11))~~ (12) "Premium" or "premiums" means the payments required
7 by RCW 50B.04.080 and paid to the employment security department for
8 deposit in the account created in RCW 50B.04.100.

9 ~~((12))~~ (13) "Program" means the long-term services and supports
10 trust program established in this chapter.

11 ~~((13))~~ (14) "Qualified family member" means a relative of an
12 eligible beneficiary qualified to meet requirements established in
13 state law for the approved service they provide that would be
14 required of any other long-term services and supports provider to
15 receive payments from the state.

16 ~~((14))~~ (15) "Qualified individual" means an individual who
17 meets the duration of payment requirements, as established in this
18 chapter.

19 ~~((15))~~ (16) "State actuary" means the office of the state
20 actuary created in RCW 44.44.010.

21 ~~((16))~~ (17) "Wage or wages" means all remuneration paid by an
22 employer to an employee. Remuneration has the meaning provided in RCW
23 50A.05.010. All wages are subject to a premium assessment and not
24 limited by the commissioner of the employment security department, as
25 provided under RCW 50A.10.030(4).

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

28 **Sec. 2.** RCW 50B.04.020 and 2020 c 98 s 2 are each amended to
29 read as follows:

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

37 (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; and

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

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

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

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

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

35 **Sec. 3.** RCW 50B.04.050 and 2020 c 98 s 3 are each amended to
36 read as follows:

37 (1) The employment security department shall deem a person to be
38 a qualified individual as provided in this chapter if the person has

1 paid the long-term services and supports premiums required by RCW
2 50B.04.080 for the equivalent of either:

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

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

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

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

14 **Sec. 4.** RCW 50B.04.085 and 2020 c 98 s 7 are each amended to
15 read as follows:

16 (1) An employee who attests that the employee has long-term care
17 insurance purchased before the effective date of this act, may apply
18 for an exemption from the premium assessment under RCW 50B.04.080. An
19 exempt employee may not become a qualified individual or eligible
20 beneficiary and is permanently ineligible for coverage under this
21 title.

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

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

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

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

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

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

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

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

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

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

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

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

15 **Sec. 5.** RCW 50B.04.090 and 2020 c 98 s 5 are each amended to
16 read as follows:

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

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

35 (3) A self-employed person who elects coverage must continue to
36 pay premiums until such time that the individual retires from the
37 workforce or is no longer self-employed. To cease premium assessment
38 and collection, the self-employed person must file a notice with the

1 employment security department if the individual retires from the
2 workforce or is no longer self-employed.

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

10 ~~((4))~~ (5) Those electing coverage are considered employers or
11 employees where the context so dictates.

12 ~~((5))~~ (6) For the purposes of this section, "independent
13 contractor" means an individual excluded from the definition of
14 "employment" in RCW 50B.04.010.

15 ~~((6))~~ (7) The employment security department shall adopt rules
16 for determining the hours worked and the wages of individuals who
17 elect coverage under this section and rules for enforcement of this
18 section.

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

21 A federally recognized tribe may elect coverage under RCW
22 50B.04.080. The employment security department shall adopt rules to
23 implement this section.

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