
SUBSTITUTE HOUSE BILL 2533

State of Washington

65th Legislature

2018 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Jenkins, Johnson, Cody, Tharinger, Harris, Slatter, Appleton, Frame, Robinson, Haler, Stonier, Fitzgibbon, Fey, Wylie, Pollet, and Macri)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to long-term care services and supports; and
2 adding a new chapter to Title 50A RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) Long-term care is not covered by medicare or other health
6 insurance plans, and private long-term care insurance plans that do
7 exist are unaffordable for most people; this leaves more than ninety
8 percent of seniors uninsured for long-term care. The current market
9 for long-term care insurance is broken: In 2002 there were one
10 hundred two companies offering long-term care insurance coverage, but
11 today the number stands at just twelve.

12 (2) The majority of people over sixty-five years of age will need
13 long-term services and supports within their lifetime. The senior
14 population has doubled in Washington since 1980, to currently over
15 one million, and will more than double again by 2040. Without access
16 to insurance, seniors must rely on family care and spend down their
17 life savings to poverty levels in order to access long-term care
18 through medicaid. In Washington, more than eight hundred fifty
19 thousand unpaid family caregivers provide care valued at eleven
20 billion dollars in 2015. Furthermore, family caregivers who leave the
21 workforce to provide unpaid long-term services and supports lose an

1 average of three hundred thousand dollars in their own income, and
2 health and retirement benefits.

3 (3) Paying out of pocket for long-term care is expensive. In
4 Washington the average cost for medicaid in-home care is twenty-four
5 thousand dollars per year and the average cost for nursing home care
6 is sixty-five thousand dollars per year. These are costs that most
7 seniors cannot afford.

8 (4) Seniors and the state will not be able to continue their
9 reliance on family caregivers in the near future. Demographic shifts
10 mean that fewer potential family caregivers will be available in the
11 future. Today there are around seven potential caregivers for each
12 senior, but by 2030 that ratio will decrease to just four to one.

13 (5) Long-term services and supports comprise approximately six
14 percent of the state operating budget and demand for these services
15 will double by 2030 to over twelve percent. This would result in an
16 additional six billion dollars in increased near-general fund costs
17 for the state by 2030.

18 (6) An alternative funding mechanism for long-term care access in
19 Washington state could relieve hardship on families and lessen the
20 burden of medicaid on the state budget. In addition, such a program
21 could result in positive economic impact to our state through
22 increased state competition and fewer Washingtonians leaving the
23 workforce to provide unpaid care.

24 (7) The average aging and long-term supports administration
25 medicaid consumer utilizes ninety-six hours of care per month. Under
26 current costs, a one hundred dollars per day benefit for three
27 hundred sixty-five days would provide complete financial relief for
28 the average in-home care consumer and substantial relief for the
29 average facility care consumer for a full year or more.

30 (8) Under current caseload and demographic projections, such an
31 alternative funding mechanism for long-term care access could save
32 the state almost one and one-half billion dollars per biennium by
33 2040 in reduced medicaid costs.

34 (9) As the state pursues an alternative funding mechanism for
35 long-term care access, the state must continue its commitment to
36 promoting choice in long-term care settings. Therefore, any program
37 must assure:

38 (a) That individuals are able to use their benefits in the
39 setting of their choice, whether that is in the home, a residential
40 community-based setting, or a skilled nursing facility;

1 (b) That the choice of provider types is the same or greater than
2 currently available through the medicaid long-term services and
3 supports program, including both eligible relative care and
4 professional services;

5 (c) Seamless transitions from private and public funding sources
6 for consumers; and

7 (d) Collection of long-term care health status data across all
8 home and community-based settings.

9 (10) That the creation of a long-term care insurance benefit of
10 an established dollar amount per day, for three hundred sixty-five
11 days, for all eligible Washington employees, paid through an employee
12 payroll premium is in the best interest of the state of Washington.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply
14 throughout this chapter unless the context clearly requires
15 otherwise.

16 (1) "Account" means the long-term services and supports trust
17 account created in section 10 of this act.

18 (2) "Benefit unit" means up to one hundred dollars, increasing at
19 a three percent index subject to annual commission approval, paid by
20 the department of social and health services to a long-term services
21 and supports provider as reimbursement for care provided to an
22 eligible beneficiary on a specific date.

23 (3) "Commission" means the long-term services and supports trust
24 commission established in section 4 of this act.

25 (4)(a) "Employee" means an individual who is in the employment of
26 an employer.

27 (b) "Employee" does not include employees of the United States of
28 America.

29 (5)(a) "Employer" means: (i) Any individual or type of
30 organization, including any partnership, association, trust, estate,
31 joint stock company, insurance company, limited liability company, or
32 corporation, whether domestic or foreign, or the receiver, trustee in
33 bankruptcy, trustee, or the legal representative of a deceased
34 person, having any person in employment or, having become an
35 employer, has not ceased to be an employer as provided in this
36 chapter; (ii) the state, state institutions, and state agencies; and
37 (iii) any unit of local government including, but not limited to, a
38 county, city, town, municipal corporation, quasi-municipal
39 corporation, or political subdivision.

1 (b) "Employer" does not include the United States of America.

2 (6)(a) "Employment" means personal service, of whatever nature,
3 unlimited by the relationship of master and servant as known to the
4 common law or any other legal relationship performed for wages or
5 under any contract calling for the performance of personal services,
6 written or oral, express or implied. The term "employment" includes
7 an individual's entire service performed within or without or both
8 within and without this state, if:

9 (i) The service is localized in this state; or

10 (ii) The service is not localized in any state, but some of the
11 service is performed in this state; and

12 (A) The base of operations of the employee is in the state, or if
13 there is no base of operations, then the place from which such
14 service is directed or controlled is in this state; or

15 (B) The base of operations or place from which such service is
16 directed or controlled is not in any state in which some part of the
17 service is performed, but the individual's residence is in this
18 state.

19 (b) "Employment" does not include:

20 (i) Services for remuneration when it is shown to the
21 satisfaction of the commissioner that:

22 (A)(I) Such individual has been and will continue to be free from
23 control or direction over the performance of such service, both under
24 his or her contract of service and in fact;

25 (II) Such service is either outside the usual course of business
26 for which such service is performed, or that such service is
27 performed outside of all the places of business of the enterprises
28 for which such service is performed; and

29 (III) Such individual is customarily engaged in an independently
30 established trade, occupation, profession, or business, of the same
31 nature as that involved in the contract of service; or

32 (B) As a separate alternative:

33 (I) Such individual has been and will continue to be free from
34 control or direction over the performance of such service, both under
35 his or her contract of service and in fact;

36 (II) Such service is either outside the usual course of business
37 for which such service is performed, or that such service is
38 performed outside of all the places of business of the enterprises
39 for which such service is performed, or the individual is

1 responsible, both under the contract and in fact, for the costs of
2 the principal place of business from which the service is performed;

3 (III) Such individual is customarily engaged in an independently
4 established trade, occupation, profession, or business, of the same
5 nature as that involved in the contract of service, or such
6 individual has a principal place of business for the work the
7 individual is conducting that is eligible for a business deduction
8 for federal income tax purposes;

9 (IV) On the effective date of the contract of service, such
10 individual is responsible for filing at the next applicable filing
11 period, both under the contract of service and in fact, a schedule of
12 expenses with the internal revenue service for the type of business
13 the individual is conducting;

14 (V) On the effective date of the contract of service, or within a
15 reasonable period after the effective date of the contract, such
16 individual has established an account with the department of revenue,
17 and other state agencies as required by the particular case, for the
18 business the individual is conducting for the payment of all state
19 taxes normally paid by employers and businesses and has registered
20 for and received a unified business identifier number from the state
21 of Washington; and

22 (VI) On the effective date of the contract of service, such
23 individual is maintaining a separate set of books or records that
24 reflect all items of income and expenses of the business which the
25 individual is conducting; or

26 (ii) Services that require registration under chapter 18.27 RCW
27 or licensing under chapter 19.28 RCW rendered by an individual when:

28 (A) The individual has been and will continue to be free from
29 control or direction over the performance of the service, both under
30 the contract of service and in fact;

31 (B) The service is either outside the usual course of business
32 for which the service is performed, or the service is performed
33 outside of all the places of business of the enterprise for which the
34 service is performed, or the individual is responsible, both under
35 the contract and in fact, for the costs of the principal place of
36 business from which the service is performed;

37 (C) The individual is customarily engaged in an independently
38 established trade, occupation, profession, or business, of the same
39 nature as that involved in the contract of service, or the individual
40 has a principal place of business for the business the individual is

1 conducting that is eligible for a business deduction for federal
2 income tax purposes, other than that furnished by the employer for
3 which the business has contracted to furnish services;

4 (D) On the effective date of the contract of service, the
5 individual is responsible for filing at the next applicable filing
6 period, both under the contract of service and in fact, a schedule of
7 expenses with the internal revenue service for the type of business
8 the individual is conducting;

9 (E) On the effective date of the contract of service, or within a
10 reasonable period after the effective date of the contract, the
11 individual has an active and valid certificate of registration with
12 the department of revenue, and an active and valid account with any
13 other state agencies as required by the particular case, for the
14 business the individual is conducting for the payment of all state
15 taxes normally paid by employers and businesses and has registered
16 for and received a unified business identifier number from the state
17 of Washington;

18 (F) On the effective date of the contract of service, the
19 individual is maintaining a separate set of books or records that
20 reflect all items of income and expenses of the business that the
21 individual is conducting; and

22 (G) On the effective date of the contract of service, the
23 individual has a valid contractor registration pursuant to chapter
24 18.27 RCW or an electrical contractor license pursuant to chapter
25 19.28 RCW.

26 (7) "Long-term services and supports provider" means a qualified
27 or certified home care aide, licensed assisted living facility,
28 licensed adult family home, licensed nursing home, licensed in-home
29 services agency, adult day health program, or other entities as
30 approved by the commission pursuant to recommendations by the
31 department of social and health services.

32 (8) "Premium" or "premiums" means the payments required by
33 section 8 of this act and paid to the employment security department
34 for deposit in the account under section 10 of this act.

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

37 (10) "Wages" means, for the purpose of payment of the premium,
38 the remuneration paid by one employer during any calendar year to an
39 individual in its employment.

1 NEW SECTION. **Sec. 3.** The health care authority, the department
2 of social and health services, and the employment security department
3 each have distinct responsibilities in the implementation and
4 administration of the program. In the performance of their
5 activities, they shall actively collaborate to realize program
6 efficiencies and provide persons served by the program with a well-
7 coordinated experience.

8 (1) The health care authority shall:

9 (a) Make determinations regarding an individual's status as a
10 qualified individual under section 5 of this act;

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

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

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

19 (a) Make determinations regarding an individual's status as an
20 eligible beneficiary under section 6 of this act;

21 (b) Register long-term services and supports providers that meet
22 minimum qualifications, as established by the commission, and
23 discontinue the registration of long-term services and supports
24 providers that fail to meet the minimum qualifications of the program
25 or violate the operational standards of the program;

26 (c) Disburse payments of benefits to registered long-term
27 services and supports providers, utilizing and leveraging existing
28 payment systems for the provision of services to eligible
29 beneficiaries under section 7 of this act;

30 (d) Perform assessments to determine a qualified individual's
31 functional eligibility for the program;

32 (e) Prepare and distribute written or electronic materials to
33 qualified individuals and eligible beneficiaries as deemed necessary
34 by the commission to inform them of program design and updates;

35 (f) Provide administrative and operational support to the
36 commission;

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

1 (h) Establish rules and procedures for benefit coordination when
2 the beneficiary is eligible for medicaid funded long-term services
3 and supports; and

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

7 (3) The employment security department shall:

8 (a) Collect and assess employee premiums as provided under
9 section 8 of this act;

10 (b) Assist the commission in monitoring the solvency and
11 financial status of the program;

12 (c) Perform investigations to determine the compliance of premium
13 payments under section 8 of this act; and

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

17 NEW SECTION. **Sec. 4.** (1) The long-term services and supports
18 trust commission is established.

19 (2) The commission includes:

20 (a) Two members from each of the two largest caucuses of the
21 house of representatives, appointed by the speaker of the house of
22 representatives;

23 (b) Two members from each of the two largest caucuses of the
24 senate, appointed by the president of the senate;

25 (c) The commissioner of the employment security department, or
26 his or her designee;

27 (d) The secretary of the department of social and health
28 services, or his or her designee;

29 (e) The director of the health care authority, or his or her
30 designee;

31 (f) One representative of an organization representing the
32 managers of in-home long-term care;

33 (g) One representative of a union representing long-term care
34 workers;

35 (h) One representative of an organization representing retired
36 persons;

37 (i) One representative of an association representing the
38 majority of skilled and assisted living providers;

1 (j) One representative of an association representing adult
2 family home providers; and

3 (k) Two individuals receiving long-term services and supports, or
4 their designees, or representatives of consumers receiving long-term
5 services and supports under the program.

6 (3)(a) Other than the agency heads identified in subsection (2)
7 of this section, members of the commission are appointed for terms of
8 two years, except that the governor shall appoint the initial members
9 identified in subsection (2)(g), (h), (i), and (j) of this section to
10 staggered terms not to exceed four years.

11 (b) The secretary of the department of social and health
12 services, or his or her designee, shall serve as chair of the
13 commission. Meetings of the commission are at the call of the chair.

14 (c) Members of the commission must be compensated in accordance
15 with RCW 43.03.250 and must be reimbursed for their travel expenses
16 while on official business in accordance with RCW 43.03.050 and
17 43.03.060.

18 (4) Beginning January 1, 2019, the commission shall establish
19 rules and policies regarding:

20 (a) The establishment of criteria for determining that an
21 individual has met the requirements to be a qualified individual as
22 established in section 5 of this act or an eligible beneficiary as
23 established in section 6 of this act;

24 (b) The establishment of minimum qualifications for the
25 registration of long-term services and supports providers who provide
26 services to eligible beneficiaries. The minimum qualifications must
27 be based upon the eligibility criteria for long-term services and
28 supports providers to become qualified, certified, or licensed under
29 medicaid long-term services and supports;

30 (c) The establishment of criteria for the payment of benefits to
31 registered long-term services and supports providers under section 7
32 of this act;

33 (d) The establishment of operational standards for the program
34 that must be met by registered long-term services and supports
35 providers and penalties for the violation of the operational
36 standards;

37 (e) The annual adjustment of the benefit unit in accordance with
38 the formula established in section 2 of this act; and

39 (f) The preparation of regular actuarial reports on the solvency
40 and financial status of the program.

1 NEW SECTION. **Sec. 5.** The health care authority shall deem a
2 person to be a qualified individual as provided in this chapter if
3 the person:

4 (1) Is at least eighteen years old;

5 (2) Is a Washington resident; and

6 (3) Has paid the long-term services and supports premiums
7 required by section 8 of this act for the equivalent of either:

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

10 (b) Three years within the last six years.

11 NEW SECTION. **Sec. 6.** (1) Beginning January 1, 2025, long-term
12 services and supports are available and benefits are payable to a
13 registered long-term services and supports provider on behalf of a
14 qualified individual under this section.

15 (2) A qualified individual may receive long-term services and
16 supports and benefits that are payable to a registered long-term
17 services and supports provider on behalf of a qualified individual
18 under this section if he or she:

19 (a) Is not currently utilizing medicare-paid rehabilitation
20 services; and

21 (b) Has been determined by the department of social and health
22 services to require assistance with at least three activities of
23 daily living.

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

27 (b) The eligible beneficiary may not receive benefits until
28 thirty days following the determination by the department of social
29 and health services that the qualified individual meets the
30 functional eligibility standards of an eligible beneficiary.

31 (c) An eligible beneficiary may not receive more than the dollar
32 equivalent of three hundred sixty-five benefit units over the course
33 of the eligible beneficiary's lifetime. If the department of social
34 and health services reimburses a long-term services and supports
35 provider for care provided to an eligible beneficiary and the payment
36 is less than the benefit unit, the department of social and health
37 services shall credit the unused portion of the benefit unit to the
38 eligible beneficiary for future use.

1 (d) An eligible beneficiary who is also receiving medicaid funded
2 long-term services and supports is subject to federal medicaid third-
3 party liability requirements.

4 NEW SECTION. **Sec. 7.** Benefits provided under this chapter shall
5 be paid periodically and promptly to registered long-term services
6 and supports providers.

7 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2022, the
8 employment security department shall assess for each individual in
9 employment with an employer a premium based on the amount of the
10 individual's wages. The premium is forty-nine hundredths of one
11 percent of the individual's wages.

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

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

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

22 (b) To the extent feasible, the employment security department
23 shall use existing premium assessment, collection, and reporting
24 procedures as under this title.

25 (4) The employment security department shall deposit all premiums
26 collected under this section in the long-term services and supports
27 trust account created in section 10 of this act.

28 (5) Premiums collected under this section are placed in trust for
29 the individuals that the program is intended to assist.

30 NEW SECTION. **Sec. 9.** (1) Beginning January 1, 2023, any self-
31 employed person, including a sole proprietor, independent contractor,
32 partner, or joint venturer, may elect coverage under this chapter.
33 Those electing coverage under this subsection are responsible for
34 payment of one hundred percent of all premiums assessed to an
35 employee under section 8 of this act. The self-employed person must
36 file a notice of election in writing with the employment security
37 department, in a manner as required by the employment security

1 department in rule. The self-employed person is eligible for benefits
2 after paying the long-term services and supports premium for the time
3 required under section 5 of this act.

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

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

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

19 (5) For the purposes of this section, "independent contractor"
20 means an individual excluded from employment under section 2(6)(b) of
21 this act.

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

26 NEW SECTION. **Sec. 10.** (1) The long-term services and supports
27 trust account is created in the state treasury. All receipts from
28 employers under section 8 of this act must be deposited in the
29 account. Moneys in the account may be spent only after appropriation.
30 Expenditures from the account may be used for the administrative
31 activities and payment of benefits associated with the program. The
32 account must provide reimbursement of any amounts from other sources
33 that may have been used for the initial establishment of the program.

34 (2) The moneys deposited in the account must remain in the
35 account until expended in accordance with the requirements of this
36 chapter. If moneys are appropriated for any purpose other than
37 supporting the long-term services and supports program, the
38 legislature shall notify each qualified individual by mail that the
39 person's premiums have been appropriated for an alternate use,

1 describe the alternate use, and state its plan for restoring the
2 moneys so that premiums are not increased and benefits are not
3 reduced.

4 NEW SECTION. **Sec. 11.** (1) Determinations made by the health
5 care authority or the department of social and health services under
6 this chapter, including determinations regarding functional
7 eligibility or related to registration of long-term services and
8 supports providers, are subject to appeal in accordance with chapter
9 34.05 RCW. In addition, the standards and procedures adopted for
10 these appeals must address the following:

- 11 (a) Timelines;
- 12 (b) Eligibility and benefit determination;
- 13 (c) Judicial review; and
- 14 (d) Fees.

15 (2) Determinations made by the employment security department
16 under this chapter are subject to appeal in accordance with the
17 appeal procedures under chapter 50A.04 RCW. The employment security
18 department shall adopt standards and procedures for appeals for
19 persons aggrieved by any determination or redetermination made by the
20 department. The standards and procedures must be consistent with
21 those adopted for the family and medical leave program under chapter
22 50A.04 RCW and must address topics including:

- 23 (a) Premium liability;
- 24 (b) Premium collection;
- 25 (c) Judicial review; and
- 26 (d) Fees.

27 NEW SECTION. **Sec. 12.** Beginning in December 1, 2023, and
28 annually thereafter, the long-term services and supports trust
29 commission shall report to the legislature on the program, including:

- 30 (1) Projected and actual program participation;
- 31 (2) Adequacy of premium rates;
- 32 (3) Fund balances;
- 33 (4) Benefits paid;
- 34 (5) Demographic information on program participants, including
35 age, gender, race, ethnicity, geographic distribution by county,
36 legislative district, and employment sector; and

1 (6) The extent to which the operation of the program has resulted
2 in savings to the medicaid program by avoiding costs that would have
3 otherwise been the responsibility of the state.

4 NEW SECTION. **Sec. 13.** Any benefits used by an individual under
5 this chapter are not income for any determinations of eligibility for
6 any other state program or benefit.

7 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
8 constitute a new chapter in Title 50A RCW.

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