
SENATE BILL 6238

State of Washington

65th Legislature

2018 Regular Session

By Senators Palumbo, Bailey, Cleveland, King, Keiser, Billig, Frockt, and Conway

Read first time 01/10/18. Referred to Committee on Health & Long Term Care.

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) Seamless transitions from private and public funding sources
2 for consumers; and

3 (c) Collection of long-term care health status data across all
4 home and community-based settings.

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

9 NEW SECTION. **Sec. 2.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires
11 otherwise.

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

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

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

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

23 (b) "Employee" does not include employees of the United States of
24 America.

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

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

37 (6)(a) "Employment" means personal service, of whatever nature,
38 unlimited by the relationship of master and servant as known to the
39 common law or any other legal relationship performed for wages or

1 under any contract calling for the performance of personal services,
2 written or oral, express or implied. The term "employment" includes
3 an individual's entire service performed within or without or both
4 within and without this state, if:

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

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

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

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

15 (b) "Employment" does not include:

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

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

21 (II) Such service is either outside the usual course of business
22 for which such service is performed, or that such service is
23 performed outside of all the places of business of the enterprises
24 for which such service is performed; and

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

28 (B) As a separate alternative:

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

32 (II) Such service is either outside the usual course of business
33 for which such service is performed, or that such service is
34 performed outside of all the places of business of the enterprises
35 for which such service is performed, or the individual is
36 responsible, both under the contract and in fact, for the costs of
37 the principal place of business from which the service is performed;

38 (III) Such individual is customarily engaged in an independently
39 established trade, occupation, profession, or business, of the same
40 nature as that involved in the contract of service, or such

1 individual has a principal place of business for the work the
2 individual is conducting that is eligible for a business deduction
3 for federal income tax purposes;

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

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

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

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

26 (B) The service is either outside the usual course of business
27 for which the service is performed, or the service is performed
28 outside of all the places of business of the enterprise for which the
29 service is performed, or the individual is responsible, both under
30 the contract and in fact, for the costs of the principal place of
31 business from which the service is performed;

32 (C) The individual is customarily engaged in an independently
33 established trade, occupation, profession, or business, of the same
34 nature as that involved in the contract of service, or the individual
35 has a principal place of business for the business the individual is
36 conducting that is eligible for a business deduction for federal
37 income tax purposes, other than that furnished by the employer for
38 which the business has contracted to furnish services;

39 (D) On the effective date of the contract of service, the
40 individual is responsible for filing at the next applicable filing

1 period, both under the contract of service and in fact, a schedule of
2 expenses with the internal revenue service for the type of business
3 the individual is conducting;

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

13 (F) On the effective date of the contract of service, the
14 individual is maintaining a separate set of books or records that
15 reflect all items of income and expenses of the business that the
16 individual is conducting; and

17 (G) On the effective date of the contract of service, the
18 individual has a valid contractor registration pursuant to chapter
19 18.27 RCW or an electrical contractor license pursuant to chapter
20 19.28 RCW.

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

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

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

32 (10) "Wages" has the same meaning as in RCW 50A.04.010.

33 NEW SECTION. **Sec. 3.** The health care authority, the department
34 of social and health services, and the employment security department
35 each have distinct responsibilities in the implementation and
36 administration of the program. In the performance of their
37 activities, they shall actively collaborate to realize program
38 efficiencies and provide persons served by the program with a well-
39 coordinated experience.

1 (1) The health care authority shall:
2 (a) Make determinations regarding an individual's status as a
3 qualified individual under section 5 of this act;
4 (b) Assure services are provided through audits or service
5 verification processes within the service provider payment system for
6 registered long-term services and supports providers and recoup any
7 inappropriate payments; and
8 (c) Adopt rules and procedures necessary to implement and
9 administer the activities specified in this section related to the
10 program.
11 (2) The department of social and health services shall:
12 (a) Make determinations regarding an individual's status as an
13 eligible beneficiary under section 6 of this act;
14 (b) Register long-term services and supports providers that meet
15 minimum qualifications, as established by the commission, and
16 discontinue the registration of long-term services and supports
17 providers that fail to meet the minimum qualifications of the program
18 or violate the operational standards of the program;
19 (c) Disburse payments of benefits to registered long-term
20 services and supports providers, utilizing and leveraging existing
21 payment systems for the provision of services to eligible
22 beneficiaries under section 7 of this act;
23 (d) Perform assessments to determine a qualified individual's
24 functional eligibility for the program;
25 (e) Prepare and distribute written or electronic materials to
26 qualified individuals and eligible beneficiaries as deemed necessary
27 by the commission to inform them of program design and updates;
28 (f) Provide administrative and operational support to the
29 commission;
30 (g) Track data useful in monitoring and informing the program, as
31 identified by the commission;
32 (h) Establish rules and procedures for benefit coordination when
33 the beneficiary is eligible for medicaid funded long-term services
34 and supports; and
35 (i) Adopt rules and procedures necessary to implement and
36 administer the activities specified in this section related to the
37 program.
38 (3) The employment security department shall:
39 (a) Collect and assess employee premiums as provided under
40 section 8 of this act;

1 (b) Assist the commission in monitoring the solvency and
2 financial status of the program;

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

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

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

10 (2) The commission includes:

11 (a) One member from each of the two largest caucuses of the house
12 of representatives, appointed by the speaker of the house of
13 representatives;

14 (b) One member from each of the two largest caucuses of the
15 senate, appointed by the president of the senate;

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

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

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

22 (f) One representative of a union representing long-term care
23 workers;

24 (g) One representative of an organization representing retired
25 persons;

26 (h) One representative of an association representing the
27 majority of skilled and assisted living providers;

28 (i) One representative of an association representing adult
29 family home providers; and

30 (j) Two individuals receiving long-term services and supports, or
31 their designees, or representatives of consumers receiving long-term
32 services and supports under the program.

33 (3)(a) Other than the agency heads identified in subsection (2)
34 of this section, members of the commission are appointed for terms of
35 two years, except that the governor shall appoint the initial members
36 identified in subsection (2)(f), (g), (h), and (i) of this section to
37 staggered terms not to exceed four years.

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

4 (c) Members of the commission must be compensated in accordance
5 with RCW 43.03.250 and must be reimbursed for their travel expenses
6 while on official business in accordance with RCW 43.03.050 and
7 43.03.060.

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

10 (a) The establishment of criteria for determining that an
11 individual has met the requirements to be a qualified individual as
12 established in section 5 of this act or an eligible beneficiary as
13 established in section 6 of this act;

14 (b) The establishment of minimum qualifications for the
15 registration of long-term services and supports providers who provide
16 services to eligible beneficiaries. The minimum qualifications must
17 be based upon the eligibility criteria for long-term services and
18 supports providers to become qualified, certified, or licensed under
19 medicaid long-term services and supports;

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

23 (d) The establishment of operational standards for the program
24 that must be met by registered long-term services and supports
25 providers and penalties for the violation of the operational
26 standards;

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

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

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

34 (1) Is at least eighteen years old;

35 (2) Is a Washington resident; and

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

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

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

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

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

10 (a) Is not eligible for long-term services and supports under
11 medicare; and

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

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

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

22 (c) An eligible beneficiary may not receive more than the dollar
23 equivalent of three hundred sixty-five benefit units over the course
24 of the eligible beneficiary's lifetime. If the department of social
25 and health services reimburses a long-term services and supports
26 provider for care provided to an eligible beneficiary and the payment
27 is less than the benefit unit, the department of social and health
28 services shall credit the unused portion of the benefit unit to the
29 eligible beneficiary for future use.

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

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

36 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2022, the
37 employment security department shall assess for each individual in

1 employment with an employer a premium based on the amount of the
2 individual's wages. The premium is forty-nine hundredths of one
3 percent of the individual's wages.

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

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

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

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

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

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

22 NEW SECTION. **Sec. 9.** (1) Beginning January 1, 2023, any self-
23 employed person, including a sole proprietor, independent contractor,
24 partner, or joint venturer, may elect coverage under this chapter.
25 Those electing coverage under this subsection are responsible for
26 payment of one hundred percent of all premiums assessed to an
27 employee under section 8 of this act. The self-employed person must
28 file a notice of election in writing with the employment security
29 department, in a manner as required by the employment security
30 department in rule. The self-employed person is eligible for benefits
31 after paying the long-term services and supports premium for the time
32 required under section 5 of this act.

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

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

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

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

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

17 NEW SECTION. **Sec. 10.** The long-term services and supports trust
18 account is created in the state treasury. All receipts from employers
19 under section 8 of this act must be deposited in the account. Moneys
20 in the account may be spent only after appropriation. Expenditures
21 from the account may be used for the administrative activities and
22 payment of benefits associated with the program. The account must
23 provide reimbursement of any amounts from other sources that may have
24 been used for the initial establishment of the program.

25 NEW SECTION. **Sec. 11.** (1) Determinations made by the health
26 care authority or the department of social and health services under
27 this chapter, including determinations regarding functional
28 eligibility or related to registration of long-term services and
29 supports providers, are subject to appeal in accordance with chapter
30 34.05 RCW. In addition, the standards and procedures adopted for
31 these appeals must address the following:

- 32 (a) Timelines;
- 33 (b) Eligibility and benefit determination;
- 34 (c) Judicial review; and
- 35 (d) Fees.

36 (2) Determinations made by the employment security department
37 under this chapter are subject to appeal in accordance with the
38 appeal procedures under chapter 50A.04 RCW. The employment security

1 department shall adopt standards and procedures for appeals for
2 persons aggrieved by any determination or redetermination made by the
3 department. The standards and procedures must be consistent with
4 those adopted for the family and medical leave program under chapter
5 50A.04 RCW and must address topics including:

- 6 (a) Premium liability;
- 7 (b) Premium collection;
- 8 (c) Judicial review; and
- 9 (d) Fees.

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

- 13 (1) Projected and actual program participation;
- 14 (2) Adequacy of premium rates;
- 15 (3) Fund balances;
- 16 (4) Benefits paid;
- 17 (5) Demographic information on program participants, including
18 age, gender, race, ethnicity, geographic distribution by county,
19 legislative district, and employment sector; and
- 20 (6) The extent to which the operation of the program has resulted
21 in savings to the medicaid program by avoiding costs that would have
22 otherwise been the responsibility of the state.

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

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

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