

2SHB 1087 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AND ENGROSSED 4/16/19

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

11 (2) The majority of people over sixty-five years of age will need
12 long-term services and supports within their lifetimes. The senior
13 population has doubled in Washington since 1980, to currently over
14 one million, and will more than double again by 2040. Without access
15 to insurance, seniors must rely on family care and spend their life
16 savings down to poverty levels in order to access long-term care
17 through medicaid. Middle class families are at the greatest risk
18 because most have not saved enough to cover long-term care costs.
19 When seniors reach the point of needing assistance with eating,
20 dressing, and personal care, they must spend down to their last
21 remaining two thousand dollars before they qualify for state
22 assistance, leaving family members in jeopardy for their own future
23 care needs. In Washington, more than eight hundred fifty thousand
24 unpaid family caregivers provided care valued at eleven billion
25 dollars in 2015. Furthermore, family caregivers who leave the
26 workforce to provide unpaid long-term services and supports lose an
27 average of three hundred thousand dollars in their own income and
28 health and retirement benefits.

29 (3) Paying out-of-pocket for long-term care is expensive. In
30 Washington, the average cost for medicaid in-home care is twenty-four
31 thousand dollars per year and the average cost for nursing home care

1 is sixty-five thousand dollars per year. These are costs that most
2 seniors cannot afford.

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

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

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

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

26 (8) Under current caseload and demographic projections, an
27 alternative funding mechanism for long-term care access could save
28 the medicaid program eight hundred ninety-eight million dollars in
29 the 2051-2053 biennium.

30 (9) As the state pursues an alternative funding mechanism for
31 long-term care access, the state must continue its commitment to
32 promoting choice in approved services and long-term care settings.
33 Therefore, any alternative funding mechanism program should be
34 structured such that:

35 (a) Individuals are able to use their benefits for long-term care
36 services in the setting of their choice, whether in the home, a
37 residential community-based setting, or a skilled nursing facility;

38 (b) The choice of provider types and approved services is the
39 same or greater than currently available through Washington's
40 publicly funded long-term services and supports;

1 (c) Transitions from private and public funding sources for
2 consumers are seamless;

3 (d) Long-term care health status data is collected across all
4 home and community-based settings; and

5 (e) Program design focuses on the need to provide meaningful
6 assistance to middle class families.

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

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

14 (1) "Account" means the long-term services and supports trust
15 account created in section 11 of this act.

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

18 (a) Adult day services;

19 (b) Care transition coordination;

20 (c) Memory care;

21 (d) Adaptive equipment and technology;

22 (e) Environmental modification;

23 (f) Personal emergency response system;

24 (g) Home safety evaluation;

25 (h) Respite for family caregivers;

26 (i) Home delivered meals;

27 (j) Transportation;

28 (k) Dementia supports;

29 (l) Education and consultation;

30 (m) Eligible relative care;

31 (n) Professional services;

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

36 (p) In-home personal care;

37 (q) Assisted living services;

38 (r) Adult family home services; and

39 (s) Nursing home services.

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

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

11 (5) "Council" means the long-term services and supports trust
12 council established in section 5 of this act.

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

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

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

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

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

31 (11) "Premium" or "premiums" means the payments required by
32 section 9 of this act and paid to the employment security department
33 for deposit in the account created in section 11 of this act.

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

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

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

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

5 (16) "Wages" has the meaning provided in RCW 50A.04.010, except
6 that all wages are subject to a premium assessment and not limited by
7 the commissioner of the employment security department, as provided
8 under RCW 50A.04.115.

9 NEW SECTION. **Sec. 3.** (1) The health care authority, the
10 department of social and health services, the office of the state
11 actuary, and the employment security department each have distinct
12 responsibilities in the implementation and administration of the
13 program. In the performance of their activities, they shall actively
14 collaborate to realize program efficiencies and provide persons
15 served by the program with a well-coordinated experience.

16 (2) The health care authority shall:

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

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

24 (c) Establish criteria for the payment of benefits to registered
25 long-term services and supports providers under section 8 of this
26 act;

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

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

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

36 (a) Make determinations regarding an individual's status as an
37 eligible beneficiary under section 7 of this act;

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

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

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

10 (e) Disburse payments of benefits to registered long-term
11 services and supports providers, utilizing and leveraging existing
12 payment systems for the provision of approved services to eligible
13 beneficiaries under section 8 of this act;

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

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

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

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

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

28 (4) The employment security department shall:

29 (a) Collect and assess employee premiums as provided in section 9
30 of this act;

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

33 (c) Perform investigations to determine the compliance of premium
34 payments in section 9 of this act in coordination with the same
35 activities conducted under the family and medical leave act, chapter
36 50A.04 RCW, to the extent possible;

37 (d) Make determinations regarding an individual's status as a
38 qualified individual under section 6 of this act; and

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

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

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

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

14 (c) Select and contract for such actuarial, research, technical,
15 and other consultants as the actuary deems necessary to perform its
16 duties under this act.

17 NEW SECTION. **Sec. 4.** (1) The long-term services and supports
18 trust commission is established. The commission's recommendations and
19 decisions must be guided by the joint goals of maintaining benefit
20 adequacy and maintaining fund solvency and sustainability.

21 (2) The commission includes:

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

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

27 (c) The commissioner of the employment security department, or
28 the commissioner's designee;

29 (d) The secretary of the department of social and health
30 services, or the secretary's designee;

31 (e) The director of the health care authority, or the director's
32 designee, who shall serve as a nonvoting member;

33 (f) One representative of the organization representing the area
34 agencies on aging;

35 (g) One representative of a home care association that represents
36 caregivers who provide services to private pay and medicaid clients;

37 (h) One representative of a union representing long-term care
38 workers;

1 (i) One representative of an organization representing retired
2 persons;

3 (j) One representative of an association representing skilled
4 nursing facilities and assisted living providers;

5 (k) One representative of an association representing adult
6 family home providers;

7 (l) Two individuals receiving long-term services and supports, or
8 their designees, or representatives of consumers receiving long-term
9 services and supports under the program;

10 (m) One member who is a worker who is, or will likely be, paying
11 the premium established in section 9 of this act and who is not
12 employed by a long-term services and supports provider; and

13 (n) One representative of an organization of employers whose
14 members collect, or will likely be collecting, the premium
15 established in section 9 of this act.

16 (3) (a) Other than the legislators and agency heads identified in
17 subsection (2) of this section, members of the commission are
18 appointed by the governor for terms of two years, except that the
19 governor shall appoint the initial members identified in subsection
20 (2) (f) through (n) of this section to staggered terms not to exceed
21 four years.

22 (b) The secretary of the department of social and health
23 services, or the secretary's designee, shall serve as chair of the
24 commission. Meetings of the commission are at the call of the chair.
25 A majority of the voting members of the commission shall constitute a
26 quorum for any votes of the commission. Approval of sixty percent of
27 those voting members of the commission who are in attendance is
28 required for the passage of any vote.

29 (c) Members of the commission and the subcommittee established in
30 subsection (6) of this section must be compensated in accordance with
31 RCW 43.03.250 and must be reimbursed for their travel expenses while
32 on official business in accordance with RCW 43.03.050 and 43.03.060.

33 (4) Beginning January 1, 2021, the commission shall propose
34 recommendations to the appropriate executive agency or the
35 legislature regarding:

36 (a) The establishment of criteria for determining that an
37 individual has met the requirements to be a qualified individual as
38 established in section 6 of this act or an eligible beneficiary as
39 established in section 7 of this act;

1 (b) The establishment of criteria for minimum qualifications for
2 the registration of long-term services and supports providers who
3 provide approved services to eligible beneficiaries;

4 (c) The establishment of payment maximums for approved services
5 consistent with actuarial soundness which shall not be lower than
6 medicaid payments for comparable services. A service or supply may be
7 limited by dollar amount, duration, or number of visits. The
8 commission shall engage affected stakeholders to develop this
9 recommendation;

10 (d) Changes to rules or policies to improve the operation of the
11 program;

12 (e) Providing a recommendation to the council for the annual
13 adjustment of the benefit unit in accordance with sections 2 and 5 of
14 this act;

15 (f) A refund of premiums for a deceased qualified individual with
16 a dependent who is an individual with a developmental disability who
17 is dependent for support from a qualified individual. The qualified
18 individual must not have been determined to be an eligible
19 beneficiary by the department of social and health services. The
20 refund shall be deposited into an individual trust account within the
21 developmental disabilities endowment trust fund for the benefit of
22 the dependent with a developmental disability. The commission shall
23 consider:

24 (i) The value of the refund to be one hundred percent of the
25 current value of the qualified individual's lifetime premium payments
26 at the time that certification of death of the qualified individual
27 is submitted, less any administrative process fees; and

28 (ii) The criteria for determining whether the individual is
29 developmentally disabled. The determination shall not be based on
30 whether or not the individual with a developmental disability is
31 receiving services under Title 71A RCW, or another state or local
32 program;

33 (g) Assisting the state actuary with the preparation of regular
34 actuarial reports on the solvency and financial status of the program
35 and advising the legislature on actions necessary to maintain trust
36 solvency. The commission shall provide the office of the state
37 actuary with all actuarial reports for review. The office of the
38 state actuary shall provide any recommendations to the commission and
39 the legislature on actions necessary to maintain trust solvency;

1 (h) For the January 1, 2021, report only, recommendations on
2 whether and how to extend coverage to individuals who became disabled
3 before the age of eighteen, including the impact on the financial
4 status and solvency of the trust. The commission shall engage
5 affected stakeholders to develop this recommendation; and

6 (i) For the January 1, 2021, report only, the commission shall
7 consult with the office of the state actuary on the development of an
8 actuarial report of the projected solvency and financial status of
9 the program. The office of the state actuary shall provide any
10 recommendations to the commission and the legislature on actions
11 necessary to achieve trust solvency.

12 (5) The commission shall monitor agency administrative expenses
13 over time. Beginning November 15, 2020, the commission must annually
14 report to the governor and the fiscal committees of the legislature
15 on agency spending for administrative expenses and anticipated
16 administrative expenses as the program shifts into different phases
17 of implementation and operation. The November 15, 2025, report must
18 include recommendations for a method of calculating future agency
19 administrative expenses to limit administrative expenses while
20 providing sufficient funds to adequately operate the program. The
21 agency heads identified in subsection (2) of this section may advise
22 the commission on the reports prepared under this subsection, but
23 must recuse themselves from the commission's process for review,
24 approval, and submission to the legislature.

25 (6) The commission shall establish an investment strategy
26 subcommittee consisting of the members identified in subsection
27 (2)(a) through (d) of this section as voting members of the
28 subcommittee. In addition, four members appointed by the governor who
29 are considered experienced and qualified in the field of investment
30 shall serve as nonvoting members. The subcommittee shall provide
31 guidance and advice to the state investment board on investment
32 strategies for the account, including seeking counsel and advice on
33 the types of investments that are constitutionally permitted.

34 NEW SECTION. **Sec. 5.** (1) The long-term services and supports
35 council is established. The council includes the members identified
36 in section 4(2)(a) through (e) of this act and the director of the
37 office of financial management, or the director's designee.

38 (2) On an annual basis, the council must determine adjustments to
39 the benefit unit as provided in the definition of "benefit unit" in

1 section 2 of this act to assure benefit adequacy and solvency of the
2 long-term services and supports trust account established in section
3 11 of this act. In determining adjustments to the benefit unit, the
4 council must review the state actuary's actuarial audit and valuation
5 of the trust account, any recommendations by the state actuary and
6 commission, data on relevant economic indicators and program costs,
7 and sustainability.

8 (3) The director of the office of financial management, or the
9 director's designee, shall serve as chair of the council. The council
10 must meet at least once annually to determine adjustments to the
11 benefit unit as defined in section 2 of this act. Additional meetings
12 of the council are at the call of the chair. A majority of the voting
13 members of the council shall constitute a quorum for any votes of the
14 council. Approval of sixty percent of the members of the council who
15 are in attendance is required for the passage of any vote. The
16 council may adopt rules for the conduct of meetings, including
17 provisions for meetings and voting to be conducted by telephonic,
18 video, or other conferencing process.

19 (4) Members of the council must be compensated in accordance with
20 RCW 43.03.250 and must be reimbursed for their travel expenses while
21 on official business in accordance with RCW 43.03.050 and 43.03.060.

22 NEW SECTION. **Sec. 6.** (1) The employment security department
23 shall deem a person to be a qualified individual as provided in this
24 chapter if the person has paid the long-term services and supports
25 premiums required by section 9 of this act for the equivalent of
26 either:

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

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

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

35 NEW SECTION. **Sec. 7.** (1) Beginning January 1, 2025, approved
36 services must be available and benefits payable to a registered long-
37 term services and supports provider on behalf of an eligible
38 beneficiary under this section.

1 (2) A qualified individual may become an eligible beneficiary by
2 filing an application with the department of social and health
3 services and undergoing an eligibility determination which includes
4 an evaluation that the individual requires assistance with at least
5 three activities of daily living. The department of social and health
6 services must engage sufficient qualified assessor capacity,
7 including via contract, so that the determination may be made within
8 forty-five days from receipt of a request by a beneficiary to use a
9 benefit.

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

13 (b) An eligible beneficiary may not receive more than the dollar
14 equivalent of three hundred sixty-five benefit units over the course
15 of the eligible beneficiary's lifetime.

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

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

25 NEW SECTION. **Sec. 8.** (1) Benefits provided under this chapter
26 shall be paid periodically and promptly to registered long-term
27 services and supports providers.

28 (2) Qualified family members may be paid for approved personal
29 care services in the same way as individual providers, through a
30 licensed home care agency, or through a third option if recommended
31 by the commission and adopted by the department of social and health
32 services.

33 NEW SECTION. **Sec. 9.** (1) Beginning January 1, 2022, the
34 employment security department shall assess for each individual in
35 employment with an employer a premium based on the amount of the
36 individual's wages. The initial premium rate is fifty-eight
37 hundredths of one percent of the individual's wages. Beginning
38 January 1, 2024, and biennially thereafter, the premium rate shall be

1 set by the pension funding council at a rate no greater than fifty-
2 eight hundredths of one percent. In addition, the pension funding
3 council must set the premium rate at the lowest amount necessary to
4 maintain the actuarial solvency of the long-term services and
5 supports trust account created in section 11 of this act in
6 accordance with recognized insurance principles and designed to
7 attempt to limit fluctuations in the premium rate. To facilitate the
8 premium rate setting the office of the state actuary must perform a
9 biennial actuarial audit and valuation of the fund and make
10 recommendations to the pension funding council.

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

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

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

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

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

29 (5) The employment security department shall deposit all premiums
30 collected in this section in the long-term services and supports
31 trust account created in section 11 of this act.

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

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

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

3 NEW SECTION. **Sec. 10.** (1) Beginning January 1, 2022, any self-
4 employed person, including a sole proprietor, independent contractor,
5 partner, or joint venturer, may elect coverage under this chapter.
6 Those electing coverage under this subsection are responsible for
7 payment of one hundred percent of all premiums assessed to an
8 employee under section 9 of this act. The self-employed person must
9 file a notice of election in writing with the employment security
10 department, in the manner required by the employment security
11 department in rule. The self-employed person is eligible for benefits
12 after paying the long-term services and supports premium for the time
13 required under section 6 of this act.

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

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

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

29 (5) For the purposes of this section, "independent contractor"
30 means an individual excluded from the definition of "employment" in
31 section 2(8) of this act.

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

36 NEW SECTION. **Sec. 11.** (1) The long-term services and supports
37 trust account is created in the custody of the state treasurer. All
38 receipts from employers under section 9 of this act must be deposited

1 in the account. Expenditures from the account may be used for the
2 administrative activities of the department of social and health
3 services, the health care authority, and the employment security
4 department. Benefits associated with the program must be disbursed
5 from the account by the department of social and health services.
6 Only the secretary of the department of social and health services or
7 the secretary's designee may authorize disbursements from the
8 account. The account is subject to the allotment procedures under
9 chapter 43.88 RCW. An appropriation is required for administrative
10 expenses, but not for benefit payments. The account must provide
11 reimbursement of any amounts from other sources that may have been
12 used for the initial establishment of the program.

13 (2) The revenue generated pursuant to this chapter shall be
14 utilized to expand long-term care in the state. These funds may not
15 be used either in whole or in part to supplant existing state or
16 county funds for programs that meet the definition of approved
17 services.

18 (3) The moneys deposited in the account must remain in the
19 account until expended in accordance with the requirements of this
20 chapter. If moneys are appropriated for any purpose other than
21 supporting the long-term services and supports program, the
22 legislature shall notify each qualified individual by mail that the
23 person's premiums have been appropriated for an alternate use,
24 describe the alternate use, and state its plan for restoring the
25 funds so that premiums are not increased and benefits are not
26 reduced.

27 NEW SECTION. **Sec. 12.** (1) The department of social and health
28 services shall have the state investment board invest the funds in
29 the account. The state investment board has the full power to invest,
30 reinvest, manage, contract, sell, or exchange investment money in the
31 account. All investment and operating costs associated with the
32 investment of money shall be paid under RCW 43.33A.160 and 43.84.160.
33 With the exception of these expenses, the earnings from the
34 investment of the money shall be retained by the accounts.

35 (2) All investments made by the state investment board shall be
36 made with the degree of judgment and care required under RCW
37 43.33A.140 and the investment policy established by the state
38 investment board.

1 (3) As deemed appropriate by the state investment board, money in
2 the account may be commingled for investment with other funds subject
3 to investment by the state investment board.

4 (4) Members of the state investment board may not be considered
5 an insurer of the funds or assets and are not liable for any action
6 or inaction.

7 (5) Members of the state investment board are not liable to the
8 state, to the account, or to any other person as a result of their
9 activities as members, whether ministerial or discretionary, except
10 for willful dishonesty or intentional violations of law. The state
11 investment board in its discretion may purchase liability insurance
12 for members.

13 (6) The authority to establish all policies relating to the
14 account, other than the investment policies as provided in
15 subsections (1) through (3) of this section, resides with the
16 department of social and health services acting in accordance with
17 the principles set forth in this chapter. With the exception of
18 expenses of the state investment board under subsection (1) of this
19 section, disbursements from the account shall be made only on the
20 authorization of the department of social and health services or its
21 designee, and moneys in the account may be spent only for the
22 purposes specified in this chapter.

23 (7) The state investment board shall routinely consult and
24 communicate with the department of social and health services on the
25 investment policy, earnings of the accounts, and related needs of the
26 program.

27 NEW SECTION. **Sec. 13.** (1) Determinations made by the health
28 care authority or the department of social and health services under
29 this chapter, including determinations regarding functional
30 eligibility or related to registration of long-term services and
31 supports providers, are subject to appeal in accordance with chapter
32 34.05 RCW. In addition, the standards and procedures adopted for
33 these appeals must address the following:

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

38 (2) Determinations made by the employment security department
39 under this chapter are subject to appeal in accordance with the

1 appeal procedures under chapter 50A.04 RCW. The employment security
2 department shall adopt standards and procedures for appeals for
3 persons aggrieved by any determination or redetermination made by the
4 department. The standards and procedures must be consistent with
5 those adopted for the family and medical leave program under chapter
6 50A.04 RCW and must address topics including:

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

11 NEW SECTION. **Sec. 14.** The department of social and health
12 services must:

13 (1) Seek access to medicare data from the federal centers for
14 medicare and medicaid services to analyze the potential savings in
15 medicare expenditures due to the operation of the program;

16 (2) Apply for a demonstration waiver from the federal centers for
17 medicare and medicaid services to allow for the state to share in the
18 savings generated in the federal match for medicaid long-term
19 services and supports and medicare due to the operation of the
20 program;

21 (3) Submit a report, in compliance with RCW 43.01.036, on the
22 status of the waiver to the office of financial management and the
23 appropriate committees of the legislature by December 1, 2022.

24 NEW SECTION. **Sec. 15.** Beginning December 1, 2026, and annually
25 thereafter, and in compliance with RCW 43.01.036, the commission must
26 report to the legislature on the program, including:

- 27 (1) Projected and actual program participation;
- 28 (2) Adequacy of premium rates;
- 29 (3) Fund balances;
- 30 (4) Benefits paid;

31 (5) Demographic information on program participants, including
32 age, gender, race, ethnicity, geographic distribution by county,
33 legislative district, and employment sector; and

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

1 NEW SECTION. **Sec. 16.** Any benefits used by an individual under
2 this chapter are not income or resources for any determinations of
3 eligibility for any other state program or benefit, for medicaid, for
4 a state-federal program, or for any other means-tested program.

5 NEW SECTION. **Sec. 17.** Nothing in this chapter creates an
6 entitlement for a person to receive, or requires a state agency to
7 provide, case management services including, but not limited to, case
8 management services under chapter 74.39A RCW.

9 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.09
10 RCW to read as follows:

11 By December 1, 2032, the state auditor must conduct a
12 comprehensive evaluation of the long-term services and supports trust
13 program established in chapter 50B.--- RCW (the new chapter created
14 in section 23 of this act) and deliver a report, including a
15 conclusion and recommendations for improvement to the legislature
16 regarding:

17 (1) Program operations, including the performance of the long-
18 term services and supports trust commission established in section 4
19 of this act;

20 (2) Program financial status, including solvency, the value of
21 the benefit provided, and the financial balance of program benefits
22 to costs;

23 (3) The overall efficacy of the program, based on the established
24 goals under this act including, but not limited to:

25 (a) Delaying middle class families' need to spend to poverty to
26 receive medicaid-funded long-term care;

27 (b) Strengthening the state economy through improving workforce
28 participation;

29 (c) Reducing the caseload and expenditures of the state medicaid
30 program on long-term care; and

31 (d) Obtaining shared savings through a medicaid demonstration
32 waiver.

33 **Sec. 19.** RCW 74.39A.076 and 2018 c 220 s 1 are each amended to
34 read as follows:

35 (1) Beginning January 7, 2012, except for long-term care workers
36 exempt from certification under RCW 18.88B.041(1) (a):

1 (a) A biological, step, or adoptive parent who is the individual
2 provider only for ~~((his or her))~~ the person's developmentally
3 disabled son or daughter must receive twelve hours of training
4 relevant to the needs of adults with developmental disabilities
5 within the first one hundred twenty days after becoming an individual
6 provider.

7 (b) A spouse or registered domestic partner who is a long-term
8 care worker only for a spouse or domestic partner, pursuant to the
9 long-term services and supports trust program established in chapter
10 50B.--- RCW (the new chapter created in section 23 of this act), must
11 receive fifteen hours of basic training, and at least six hours of
12 additional focused training based on the care-receiving spouse's or
13 partner's needs, within the first one hundred twenty days after
14 becoming a long-term care worker.

15 (c) A person working as an individual provider who (i) provides
16 respite care services only for individuals with developmental
17 disabilities receiving services under Title 71A RCW or only for
18 individuals who receive services under this chapter, and (ii) works
19 three hundred hours or less in any calendar year, must complete
20 fourteen hours of training within the first one hundred twenty days
21 after becoming an individual provider. Five of the fourteen hours
22 must be completed before becoming eligible to provide care, including
23 two hours of orientation training regarding the caregiving role and
24 terms of employment and three hours of safety training. The training
25 partnership identified in RCW 74.39A.360 must offer at least twelve
26 of the fourteen hours online, and five of those online hours must be
27 individually selected from elective courses.

28 ~~((e))~~ (d) Individual providers identified in ~~((e))~~ (d)(i) or
29 (ii) of this subsection must complete thirty-five hours of training
30 within the first one hundred twenty days after becoming an individual
31 provider. Five of the thirty-five hours must be completed before
32 becoming eligible to provide care. Two of these five hours shall be
33 devoted to an orientation training regarding an individual provider's
34 role as caregiver and the applicable terms of employment, and three
35 hours shall be devoted to safety training, including basic safety
36 precautions, emergency procedures, and infection control. Individual
37 providers subject to this requirement include:

38 (i) An individual provider caring only for ~~((his or her))~~ the
39 individual provider's biological, step, or adoptive child or parent
40 unless covered by (a) of this subsection; and

1 (ii) A person working as an individual provider who provides
2 twenty hours or less of care for one person in any calendar month.

3 (2) In computing the time periods in this section, the first day
4 is the date of hire.

5 (3) Only training curriculum approved by the department may be
6 used to fulfill the training requirements specified in this section.
7 The department shall only approve training curriculum that:

8 (a) Has been developed with input from consumer and worker
9 representatives; and

10 (b) Requires comprehensive instruction by qualified instructors.

11 (4) The department shall adopt rules to implement this section.

12 **Sec. 20.** RCW 18.88B.041 and 2015 c 152 s 1 are each amended to
13 read as follows:

14 (1) The following long-term care workers are not required to
15 become a certified home care aide pursuant to this chapter:

16 (a) (i) (A) Registered nurses, licensed practical nurses, certified
17 nursing assistants or persons who are in an approved training program
18 for certified nursing assistants under chapter 18.88A RCW, medicare-
19 certified home health aides, or other persons who hold a similar
20 health credential, as determined by the secretary, or persons with
21 special education training and an endorsement granted by the
22 superintendent of public instruction, as described in RCW
23 28A.300.010, if the secretary determines that the circumstances do
24 not require certification.

25 (B) A person who was initially hired as a long-term care worker
26 prior to January 7, 2012, and who completes all of (~~his or her~~) the
27 training requirements in effect as of the date (~~he or she~~) the
28 person was hired.

29 (ii) Individuals exempted by (a) (i) of this subsection may obtain
30 certification as a home care aide without fulfilling the training
31 requirements in RCW 74.39A.074(1)(d)(ii) but must successfully
32 complete a certification examination pursuant to RCW 18.88B.031.

33 (b) All long-term care workers employed by community residential
34 service businesses.

35 (c) An individual provider caring only for (~~his or her~~) the
36 individual provider's biological, step, or adoptive child or parent.

37 (d) A person working as an individual provider who provides
38 twenty hours or less of care for one person in any calendar month.

1 (e) A person working as an individual provider who only provides
2 respite services and works less than three hundred hours in any
3 calendar year.

4 (f) A long-term care worker providing approved services only for
5 a spouse or registered domestic partner, pursuant to the long-term
6 services and supports trust program established in chapter 50B.---
7 RCW (the new chapter created in section 23 of this act).

8 (2) A long-term care worker exempted by this section from the
9 training requirements contained in RCW 74.39A.074 may not be
10 prohibited from enrolling in training pursuant to that section.

11 (3) The department shall adopt rules to implement this section.

12 **Sec. 21.** RCW 43.79A.040 and 2018 c 260 s 28, 2018 c 258 s 4, and
13 2018 c 127 s 6 are each reenacted and amended to read as follows:

14 (1) Money in the treasurer's trust fund may be deposited,
15 invested, and reinvested by the state treasurer in accordance with
16 RCW 43.84.080 in the same manner and to the same extent as if the
17 money were in the state treasury, and may be commingled with moneys
18 in the state treasury for cash management and cash balance purposes.

19 (2) All income received from investment of the treasurer's trust
20 fund must be set aside in an account in the treasury trust fund to be
21 known as the investment income account.

22 (3) The investment income account may be utilized for the payment
23 of purchased banking services on behalf of treasurer's trust funds
24 including, but not limited to, depository, safekeeping, and
25 disbursement functions for the state treasurer or affected state
26 agencies. The investment income account is subject in all respects to
27 chapter 43.88 RCW, but no appropriation is required for payments to
28 financial institutions. Payments must occur prior to distribution of
29 earnings set forth in subsection (4) of this section.

30 (4)(a) Monthly, the state treasurer must distribute the earnings
31 credited to the investment income account to the state general fund
32 except under (b), (c), and (d) of this subsection.

33 (b) The following accounts and funds must receive their
34 proportionate share of earnings based upon each account's or fund's
35 average daily balance for the period: The 24/7 sobriety account, the
36 Washington promise scholarship account, the Gina Grant Bull memorial
37 legislative page scholarship account, the Washington advanced college
38 tuition payment program account, the Washington college savings
39 program account, the accessible communities account, the Washington

1 achieving a better life experience program account, the community and
2 technical college innovation account, the agricultural local fund,
3 the American Indian scholarship endowment fund, the foster care
4 scholarship endowment fund, the foster care endowed scholarship trust
5 fund, the contract harvesting revolving account, the Washington state
6 combined fund drive account, the commemorative works account, the
7 county enhanced 911 excise tax account, the toll collection account,
8 the developmental disabilities endowment trust fund, the energy
9 account, the fair fund, the family and medical leave insurance
10 account, the fish and wildlife federal lands revolving account, the
11 natural resources federal lands revolving account, the food animal
12 veterinarian conditional scholarship account, the forest health
13 revolving account, the fruit and vegetable inspection account, the
14 future teachers conditional scholarship account, the game farm
15 alternative account, the GET ready for math and science scholarship
16 account, the Washington global health technologies and product
17 development account, the grain inspection revolving fund, the
18 Washington history day account, the industrial insurance rainy day
19 fund, the juvenile accountability incentive account, the law
20 enforcement officers' and firefighters' plan 2 expense fund, the
21 local tourism promotion account, the low-income home rehabilitation
22 revolving loan program account, the multiagency permitting team
23 account, the northeast Washington wolf-livestock management account,
24 the pilotage account, the produce railcar pool account, the regional
25 transportation investment district account, the rural rehabilitation
26 account, the Washington sexual assault kit account, the stadium and
27 exhibition center account, the youth athletic facility account, the
28 self-insurance revolving fund, the children's trust fund, the
29 Washington horse racing commission Washington bred owners' bonus fund
30 and breeder awards account, the Washington horse racing commission
31 class C purse fund account, the individual development account
32 program account, the Washington horse racing commission operating
33 account, the life sciences discovery fund, the Washington state
34 heritage center account, the reduced cigarette ignition propensity
35 account, the center for childhood deafness and hearing loss account,
36 the school for the blind account, the Millersylvania park trust fund,
37 the public employees' and retirees' insurance reserve fund, the
38 school employees' benefits board insurance reserve fund, (~~{the}~~)
39 the public employees' and retirees' insurance account, (~~{the}~~) the

1 school employees' insurance account, the long-term services and
2 supports trust account, and the radiation perpetual maintenance fund.

3 (c) The following accounts and funds must receive eighty percent
4 of their proportionate share of earnings based upon each account's or
5 fund's average daily balance for the period: The advanced right-of-
6 way revolving fund, the advanced environmental mitigation revolving
7 account, the federal narcotics asset forfeitures account, the high
8 occupancy vehicle account, the local rail service assistance account,
9 and the miscellaneous transportation programs account.

10 (d) Any state agency that has independent authority over accounts
11 or funds not statutorily required to be held in the custody of the
12 state treasurer that deposits funds into a fund or account in the
13 custody of the state treasurer pursuant to an agreement with the
14 office of the state treasurer shall receive its proportionate share
15 of earnings based upon each account's or fund's average daily balance
16 for the period.

17 (5) In conformance with Article II, section 37 of the state
18 Constitution, no trust accounts or funds shall be allocated earnings
19 without the specific affirmative directive of this section.

20 **Sec. 22.** RCW 44.44.040 and 2011 1st sp.s. c 12 s 7 are each
21 amended to read as follows:

22 The office of the state actuary shall have the following powers
23 and duties:

24 (1) Perform all actuarial services for the department of
25 retirement systems, including all studies required by law.

26 (2) Advise the legislature and the governor regarding pension
27 benefit provisions, and funding policies and investment policies of
28 the state investment board.

29 (3) Consult with the legislature and the governor concerning
30 determination of actuarial assumptions used by the department of
31 retirement systems.

32 (4) Prepare a report, to be known as the actuarial fiscal note,
33 on each pension bill introduced in the legislature which briefly
34 explains the financial impact of the bill. The actuarial fiscal note
35 shall include: (a) The statutorily required contribution for the
36 biennium and the following twenty-five years; (b) the biennial cost
37 of the increased benefits if these exceed the required contribution;
38 and (c) any change in the present value of the unfunded accrued
39 benefits. An actuarial fiscal note shall also be prepared for all

1 amendments which are offered in committee or on the floor of the
2 house of representatives or the senate to any pension bill. However,
3 a majority of the members present may suspend the requirement for an
4 actuarial fiscal note for amendments offered on the floor of the
5 house of representatives or the senate.

6 (5) Provide such actuarial services to the legislature as may be
7 requested from time to time.

8 (6) Provide staff and assistance to the committee established
9 under RCW 41.04.276.

10 (7) Provide actuarial assistance to the law enforcement officers'
11 and firefighters' plan 2 retirement board as provided in chapter 2,
12 Laws of 2003. Reimbursement for services shall be made to the state
13 actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of
14 2003.

15 (8) Provide actuarial assistance to the committee on advanced
16 tuition payment pursuant to chapter 28B.95 RCW, including
17 recommending a tuition unit price to the committee on advanced
18 tuition payment to be used in the ensuing enrollment period.
19 Reimbursement for services shall be made to the state actuary under
20 RCW 39.34.130.

21 (9) Provide actuarial assistance to the long-term services and
22 supports trust commission pursuant to chapter 50B.--- RCW (the new
23 chapter created in section 23 of this act). Reimbursement for
24 services shall be made to the state actuary under RCW 39.34.130.

25 NEW SECTION. **Sec. 23.** Sections 1 through 17 of this act
26 constitute a new chapter in a new title to be codified as Title 50B
27 RCW."

2SHB 1087 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AND ENGROSSED 4/16/19

28 On page 1, line 1 of the title, after "supports;" strike the
29 remainder of the title and insert "amending RCW 74.39A.076,
30 18.88B.041, and 44.44.040; reenacting and amending RCW 43.79A.040;
31 adding a new section to chapter 43.09 RCW; and adding a new title to
32 the Revised Code of Washington to be codified as Title 50B RCW."

--- END ---