

HOUSE BILL REPORT

HB 1087

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to long-term services and supports.

Brief Description: Concerning long-term services and supports.

Sponsors: Representatives Jinkins, MacEwen, Cody, Harris, Tharinger, Slatter, Kloba, Ryu, Macri, DeBolt, Bergquist, Doglio, Robinson, Stanford, Stonier, Frame and Leavitt.

Brief History:

Committee Activity:

Health Care & Wellness: 1/16/19, 1/25/19 [DPS];

Appropriations: 2/4/19, 2/13/19 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Establishes the Long-Term Services and Supports Trust Program (Trust Program) to provide benefits for long-term services and supports to qualified individuals who need assistance with at least three activities of daily living.
- Establishes eligibility requirements for the Trust Program for persons who pay a premium of 0.58 percent of a person's wages for a specific amount of time.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Macri, Vice Chair; Caldier, Assistant Ranking Minority Member; Chambers, Davis, DeBolt, Harris, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Maycumber.

Staff: Chris Blake (786-7392).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Persons who need assistance with activities of daily living such as bathing, dressing, medication administration, personal hygiene, or other health-related tasks may access assistance through several types of care providers in different settings. Many of these settings also provide skilled nursing and therapists, activities, rehabilitation, and coordinated care. Providers of long-term services and supports include unpaid family caregivers, nursing homes, assisted living facilities, adult family homes, home health services, and individual and agency providers. Sources of funding for long-term services and supports include personal resources, private long-term care insurance, and Medicaid.

The 2015-17 Operating Budget funded the Department of Social and Health Services to contract for an independent feasibility study and actuarial modeling of two options to provide financial assistance to persons with preparations for long-term services and supports needs. The first option was to review a public long-term care benefit for workers funded through a payroll tax deduction. The second option was to review a public-private reinsurance model to provide a stable source of reimbursement for insurers for a portion of catastrophic long-term services and supports losses. The study was released in January 2017. The 2017-19 Operating Budget funded an update to the 2016 feasibility study and directed the study to also review alternative variations of the public long-term care benefit. In addition, the 2017-19 Operating Budget established a work group to develop a proposal to include family members as providers of long-term services and supports under the public long-term care benefit.

Summary of Substitute Bill:

The Long-Term Services and Supports Trust Program (Trust Program) is established to provide long-term services and supports benefits to persons who have paid into the Trust Program for a specific amount of time and who have been assessed as needing a certain amount of assistance with activities of daily living.

Beginning January 1, 2022, employees in Washington who are working at least 10 percent of full-time employment status shall be assessed a premium of 0.58 percent of their wages. Washington residents receive "qualified individual" status if they are at least 18 years old and have paid the premium for either: (1) three years within the last six years, or (2) for a total of 10 years, with at least five of those years paid without interruption. Beginning January 1, 2025, a qualified individual may become an "eligible beneficiary" if the individual has been determined by the Department of Social and Health Services (DSHS) to require assistance with at least three activities of daily living.

Upon becoming an eligible beneficiary, a person may receive approved services through a benefit unit model. A benefit unit is the equivalent of up to \$100, adjusted by an annual 3 percent index, that the DSHS pays to a long-term services and supports provider for providing approved services to an eligible beneficiary. An eligible beneficiary may receive up to 365 benefit units over the course of the beneficiary's lifetime. Eligible beneficiaries may combine benefit units to fund approved services, as long as they do not exceed their

lifetime limit. Partial benefit units may be retained by the eligible beneficiary if a day of care costs less than the value of the benefit unit.

Approved services are long-term services and supports, including adult day services, in-home personal care, assisted living services, adult family home services, nursing home services, care transition coordination, dementia supports, home safety evaluation, adaptive equipment, respite for family caregivers, transportation, home-delivered meals, education and consultation, relative care, professional service, and services to assist family members care for eligible individuals.

Approved services must be provided by a long-term services and supports provider that is qualified to provide the approved service and is registered with the DSHS to participate in the Trust Program. Long-term services and supports providers may be a home care aide, assisted living facility, adult family home, nursing home, in-home services agency, adult day health program, vendor, instructor, qualified family member, or other entity. Within 120 days of becoming a long-term care worker, a spouse or registered domestic partner who is a long-term care worker under the Trust Program for a spouse or domestic partner must receive 15 hours of basic training and six hours of focused training based on the spouse or domestic partner's needs. The spouse or domestic partner acting as a long-term care worker does not need to become certified as a home care aide.

The Trust Program is administered jointly by the DSHS, the Employment Security Department (ESD), and the Health Care Authority (HCA). Each agency has the following responsibilities:

- The DSHS shall make determinations regarding eligible beneficiary status, identify approved services that are eligible for payment, register long-term services and supports providers and discontinue the registration of those that fail to meet minimum qualifications or that violate Trust Program operating standards, disburse payments to long-term services and supports providers, prepare informational materials, provide customer service, provide support to the Long-Term Services and Supports Trust Commission (Commission), track data relevant to the Commission, and establish rules and procedures for benefit coordination.
- The ESD shall assess and collect employee premiums, assist the Commission in monitoring the solvency and financial status of the Trust Program, and perform investigations to determine compliance with premium payments.
- The HCA shall make determinations regarding the status of a person as a qualified individual, assure that services are provided, and establish criteria for making payments to long-term services and supports providers.

The Commission is established and is comprised of:

- eight legislators;
- the Commissioner of the ESD;
- the Secretary of the DSHS;
- the Director of the HCA, who is a nonvoting member;
- a representative of the organization representing the area agencies on aging;
- a representative of a home care association that represents caregivers who care for private pay and Medicaid clients;
- a representative of a union representing long-term care workers;

- a representative of an association representing retired persons;
- a representative of an association representing skilled nursing facilities and assisted living providers;
- a representative of an association representing adult family home providers;
- two individuals receiving long-term services and supports, or their designees, or representatives of consumers receiving long-term services and supports under the Trust Program;
- a worker who is, or will likely be, paying the premium and who is not employed by a long-term services and supports provider; and
- a representative of an employer whose members collect, or will likely be collecting, the premium.

The Commission shall propose recommendations related to criteria for qualified individuals and eligible beneficiaries, minimum qualifications for the registration of long-term services and supports providers, improvements to the operation of the Trust Program, annual adjustments of the value of the benefit unit, and the preparation of actuarial reports on the solvency and financial status of the Trust Program. In addition, the Commission must monitor agency administrative expenses. Beginning November 15, 2020, the Commission must submit annual reports to the Governor and fiscal committees of the Legislature related to administrative expenses. The November 15, 2025 report must include recommendations for a method of calculating future agency administrative expenses to limit administrative spending while allowing for sufficient funds to adequately operate the Trust Program.

The DSHS must seek data to analyze the potential savings in Medicare expenditures resulting from the Trust Program. In addition, the DSHS must apply for a federal demonstration waiver to allow the state to share in savings to the federal government in Medicaid long-term services and supports and Medicare due to the operation of the Trust Program. By December 1, 2022, the DSHS must submit a report to the Office of Financial Management and the appropriate committees of the Legislature regarding the status of the waiver request.

Beginning December 1, 2026, the Commission must submit an annual report to the Legislature on the Trust Program. The report must include information about projected and actual Trust Program participation, the adequacy of premium rates, fund balances, benefits paid, demographic information on Trust Program participants, and the extent to which the Trust Program has resulted in savings to the Medicaid program through cost avoidance.

Monies collected from the premium must be deposited in the Long-Term Services and Supports Trust Account (Trust Account). The Trust Account may only be used for supporting the administrative activities and payment of benefits related to the Trust Program. An appropriation is required for administrative expenses, but not for benefit payments.

Determinations made by the HCA and the ESD are subject to appeal procedures.

Beginning January 1, 2023, self-employed persons may elect coverage under the Trust Program. Those who elect such coverage may voluntarily withdraw from participation. The ESD may cancel elective coverage if the self-employed person fails to make the required payments or file reports.

By December 1, 2032, the Joint Legislative Audit and Review Committee must report on the performance of the Commission in its role of providing oversight to the Trust Program. The report must include recommendations to the Legislature on ways to improve the functioning, efficiency, and membership of the Commission, as well as whether the Commission should continue to exist or should expire.

Legislative findings are made related to the difficulty in obtaining coverage for long-term care, the need for long-term care, the cost of long-term care, the inability of seniors to rely on family caregivers, the cost to the state of providing long-term services and supports, the need for an alternative funding mechanism for long-term services and supports, and the need for the state to continue to promote consumer choice in selecting approved services and long-term care settings.

Substitute Bill Compared to Original Bill:

The substitute bill requires that the Long-Term Services and Supports Trust Account be appropriated for administrative expenses and nonappropriated for benefit payments.

The substitute bill directs the Long-Term Services and Supports Trust Commission (Commission) to monitor agency administrative expenses and submit annual reports of expenses. The Commission must submit recommendations for a method of calculating future agency administrative expenses by November 15, 2025. A member is added to the Commission who is a worker who is, or will be, paying the premium and another who represents employers who are, or will be, collecting the premium. The member of the Commission from the Health Care Authority is a nonvoting member.

The substitute bill requires the Joint Legislative Audit and Review Committee to report on the performance of the Commission and make recommendations on improvements and whether or not the Commission should continue.

The substitute bill specifies that the 15 hours of training that must be taken by spouses or registered domestic partners who are providing paid care to their spouses or registered domestic partners is basic training. The requirement that relative care, professional services, and services to assist family caregivers be evidence-based is removed.

The substitute bill specifies that the requirement to have not exhausted one's benefits applies to eligible beneficiaries and not qualified individuals. The definition of "long-term services and supports provider" includes adult day services, rather than adult day health.

The substitute bill directs the Department of Social and Health Services to have sufficient assessor capacity to make determinations of eligibility within 45 days of request. The Employment Security Department must coordinate premium payment compliance activities with those same activities conducted for the Family Medical Leave Act. The terms "employee," "employer," and "employment" are defined in the same way that they are defined under the Family Medical Leave Act.

Appropriation: None.

Fiscal Note: Requested on January 9, 2019.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Most Washingtonians are financially unprepared for the care that they will need to have as they age. Seven out of 10 people over age 65 will need long-term care and 90 percent of those people have no savings for it. People are forced to spend into poverty before they can get care. If the Long-Term Services and Supports Trust Program (Trust Program) benefit were available there would be another solution for people needing care and for family members who need to go back to work. The need to improve long-term care financing has been foreseeable for some time and this approach has been studied extensively and declared to be actuarially sound for the next 75 years.

Long-term care insurance is out of reach for many. This bill could help save the long-term care insurance market that still exists and could create a market for supplemental long-term care insurance beyond this benefit.

There are 850,000 Washingtonians who are serving as family caregivers and providing \$11 billion of care and services each year. By 2030, the pool of family caregivers will be cut in half. Family caregivers are forced to spend into poverty to care for a family member. This bill is about consumer choice and supports family caregivers. This bill will allow family caregivers to be reimbursed for their services. This bill can reduce stress, illness, and physical strain for caregivers. The bill allows for flexibility in the use of the benefits, including training one's family caregiver. This bill will help those in the sandwich generation who take care of their elders while raising a young family and cannot save for themselves.

This bill will add new pathways into the caregiving workforce and help alleviate the growing workforce shortage. By allowing family members to be compensated for their work, the bill provides additional pathways into caregiving. Demand for care far exceeds the current workforce and is expected to grow.

This bill has flexibility to allow access to private pay home care, skilled nursing in the home, palliative care, and hospice care.

The need for services for this population will have a large impact on the budget over time. The Trust Program benefit will encourage people to get care earlier and it will diminish the pressure on the state budget. This bill will provide Washington with resources for the impending age wave. This bill is expected to save Washington \$34 million to the taxpayers by 2025 and \$470 million by 2052. This bill will help to shore up the existing Medicaid funding crisis in assisted living and skilled nursing. There is an opportunity to work with the federal government to share in the savings to the federal government.

(Opposed) None.

Persons Testifying: Representative Jinkins, prime sponsor; Dan Murphy, North West Regional Council; Cathleen MacCaul, AARP Washington; Ruth Egger, Puget Sound Advocates for Retirement Action; John Ficker, Adult Family Home Council; Brenda Orffer, Washington Health Care Association; Barbara Kaelberer; Peter Newbold, Alzheimer's Association; Madeleine Foutch, Service Employees International Union 775; Adriana Hutchings; Bea Rector, Department of Social and Health Services; Lonnie Johns-Brown, Office of the Insurance Commissioner; Leslie Emerick, Washington Hospice and Palliative Care Organization; and Nathaniel Kwak, Huntingtons Association of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 20 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; MacEwen, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 7 members: Representatives Rude, Assistant Ranking Minority Member; Dye, Hoff, Kraft, Schmick, Volz and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Stokesbary, Ranking Minority Member; Mosbrucker.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The second substitute bill makes several changes.

The State Investment Board, rather than the State Treasurer, is responsible for investing funds in the Long-Term Services and Supports Trust Account (Trust Account). An Investment Strategy Subcommittee of the Long-Term Services and Supports Trust Commission (Commission) is established. Investment income generated by the Trust Account will be reinvested into the Trust Account.

If moneys in the Trust Account are appropriated for any purpose other than supporting the Long-Term Services and Supports Trust Program (Trust Program), the Legislature must notify each qualified individual by mail that the individual's premiums have been appropriated for an alternate use, describe the alternate use, and state its plan for restoring funds so that premiums are not increased and benefits are not reduced.

A majority of the Commission constitutes a quorum for any votes of the Commission. Approval of at least 60 percent of the voting members is required for passage of any

vote. Commissioners who are agency heads must only recuse themselves from voting on reports related to the calculation of administrative expenses.

The Commission is authorized to advise the Legislature on actions necessary to maintain the solvency of the Trust Program.

Persons who become disabled prior to age 18 are excluded from being eligible beneficiaries of the Trust Program. The Commission must make recommendations regarding extending coverage to people who become disabled before age 18.

The option for self-employed persons to participate in the Trust Program becomes effective January 2022 rather than January 2023.

The premium applies to employees who work at least 10 percent of full-time equivalent employee status, rather than to employees who have worked at least 208 hours in the applicable year.

The Employment Security Department, rather than the Health Care Administration (HCA), is authorized to make decisions over qualified individuals, and is directed to track a person's use of lifetime benefit units. The HCA, rather than the Department of Social and Health Services (DSHS), must adopt procedures for benefit coordination with other programs.

The Trust Program does not require collective-bargaining agreements to be reopened.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support)) Long-term care is the last remaining uninsured healthcare risk. People who make it to age 65 have a seven in 10 chance of needing long-term care. In Washington there are 850,000 unpaid caregivers providing \$11 billion worth of uncompensated services. Currently, the only option is for people to spend down to eligibility for Medicaid long-term care services. The Trust Program provides another solution. It solves both a Medicaid problem and an individual family problem. The actuarial analysis estimates that the Trust program will save taxpayers \$19 million in 2025, and over \$400 million per year by 2050. The DSHS will work with the Centers for Medicare and Medicaid Services to see if the state can share in savings that may result from the Trust Program. The Trust Program is projected to be solvent for 75 years. Start-up costs paid by the State General Fund will be reimbursed by the Trust Account. The long-term care insurance market is broken, and 90 percent of people cannot afford long-term care insurance. No private insurer is offering the product because no one wants to buy it. The Trust Program gets people to buy into long-term care insurance in a way that is mandatory, and provides a robust, although somewhat limited, benefit. The Trust Program will take the pressure off the existing long-term care insurance

market and may create a market for a supplemental insurance produce. A recent poll showed that seven of 10 registered voters support the concept of a Trust Program. Six of 10 registered voters would vote for a bill to establish a Trust Program if it appeared on the ballot. Adults age 18 to 34 are the population most likely to support creation of a Trust Program. The \$100 daily benefit unit is meaningful when an individual wants to remain in his own home or another community setting. The benefit could purchase 25 hours of care per week in one's own home, five to six months in a nursing home, or five years of training and support for a family caregiver. The three state agencies charged with implementing the Trust Program will leverage their skill sets and infrastructure for maximum efficiency.

(Opposed) None.

Persons Testifying: Representative Jenkins, prime sponsor; Dan Murphy, Northwest Regional Council; Cathleen MacCaul, AARP Washington; Bea Rector, Aging and Long Term Support Administration, Department of Social and Health Services; and Lonnie Johns-Brown, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.