

# SENATE BILL REPORT

## SB 5331

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As of January 24, 2019

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

**Brief Description:** Concerning long-term services and supports.

**Sponsors:** Senators Palumbo, Honeyford, Cleveland, Walsh, Randall, King, Frockt, Billig, Conway, Dhingra, Keiser, Kuderer, Pedersen, Saldaña and Warnick.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/23/19.

**Brief Summary of Bill**

- Establishes a long-term services and supports (LTSS) trust program (Trust Program) that provides up to \$36,500 in lifetime benefits for eligible beneficiaries to apply to the cost of their long-term care.
- Assesses a .58 percent premium on an employee's wages to fund the Trust Program.
- Requires that the Health Care Authority, Department of Social and Health Services, the Employment Security Department, and a newly established LTSS Trust Commission (Commission) work together to administer the program.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** LeighBeth Merrick (786-7445)

**Background:** LTSS is a range of services and supports for individuals who need assistance with daily living tasks such as bathing, dressing, ambulation, transfers, toileting, medication assistance or administration, personal hygiene, transportation, and other health-related tasks. People need LTSS when they experience difficulty completing daily-living tasks as a result of aging, chronic illness, cognitive functioning, or disability and may need it for several weeks, months, or years. LTSS is delivered in institutional, home, and community-based settings through paid and unpaid providers. In Washington, LTSS settings include services provided in a person's home, assisted living facilities, adult day centers, adult family homes,

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skilled nursing facilities, or continuing care retirement communities. Medicaid is the primary public payer for LTSS. If a person does not qualify for Medicaid, they must use their private resources and income to pay for LTSS.

The 2015-2017 operating budget funded the Department of Social and Health Services (DSHS) to contract for an independent feasibility study and actuarial modeling of two options to provide financial assistance to persons with LTSS needs. The first option was to review a public, time-limited long-term care benefit for workers funded through a payroll deduction. The second option was to review a public-private reinsurance model to provide a stable and ongoing source of reimbursement to insurers for a portion of catastrophic LTSS losses. The study was submitted to the Legislature 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 Bill:** Long-Term Services and Supports Trust Program. The Trust Program is established to provide a LTSS benefit that funds approved LTSS services to eligible beneficiaries. The benefits are funded through a .58 percent premium on all employee's wages in Washington State. The Health Care Authority (HCA), DSHS, the Employment Security Department (ESD), and LTSS Trust Commission all are involved in administering the Trust Program.

Eligible Beneficiaries. When an individual financially and functionally qualifies, they become an eligible beneficiary and may access their LTSS benefit.

HCA determines if individuals are financially qualified. The criteria for financially qualifying is that the individual must be at least eighteen years old, a Washington State resident, and has paid the LTSS Trust premiums while working ten percent full-time employment status for either ten years without interruption of five or more years or three of the last six years.

DSHS determines if individuals are functionally qualified. An individual must require assistance with at least three activities of daily living to be functionally qualified.

Long-Term Services and Supports Benefit. Beginning, January 1, 2025, eligible beneficiaries may begin accessing their LTSS benefit. The benefit is paid in benefit units to LTSS providers that provide approved services to eligible beneficiaries. Each beneficiary may receive up to 365 benefit units over the course of their lifetime. A benefit unit is worth up to \$100, is adjusted annually for inflation, and may be combined with other benefit units to fund approved services. If the benefit amount exceeds the cost of the approved service, the unused portion of the benefit is credited to the beneficiary for future use.

Approved Services. The LTSS benefit may be used to pay for the following LTSS approved services: adult day services; care transition coordination; memory care; adaptive equipment and technology; environmental modification; personal emergency response system; home safety evaluation; respite for family caregivers; home delivered meals; transportation; dementia supports; education and consultation; eligible relative care; professional services;

services that assist paid and unpaid family members caring for eligible individuals; in-home personal care; assisted living services; adult family home services; and nursing home services.

Long-Term Services and Supports Provider. Approved services must be provided by a LTSS provider that meets the qualification in state law and is registered with DSHS. All benefit payments are paid by DSHS to the LTSS provider. LTSS providers include: home care aides, assisted living facilities, adult family homes, nursing homes, in-home services agencies, adult day health programs, vendors, instructors, qualified family members. Qualified family members include spouses or registered domestic partners. Spouses or registered domestic partners who are LTSS providers must receive fifteen hours of training related to needs of adults with disabilities, and at least six hours of additional training based on the care needs of their spouse or partner.

Premiums. Beginning January 1, 2022, ESD will assess a 0.58 percent premium on each individual's wages that is employed at least 10 percent of full time employment status. The employer is responsible for collecting the employees' premiums and remitting the amounts collected to ESD. A self-employed person that elects coverage is required to pay the 0.58 percent premium of their wages to ESD beginning January 1, 2023. ESD will deposit all of the premiums collected into the LTSS Trust and funds will be used to assist covered individuals to pay for LTSS. The LTSS Trust must reimburse any other sources that are used in the establishment of the LTSS Trust.

Trust Program Administration. HCA, DSHS, ESD and the LTSS Trust Commission all have a role in administering the Trust Program.

HCA will determine an individual's financial eligibility; verify approved services are provided for any payments that are issued; and establish payment criteria.

DSHS will determine an individual's functional eligibility; determine approved services; register LTSS providers; discontinue registration for LTSS providers that violate Trust Program standards and fail to meet state law qualifications; disburse payment of benefits to LTSS providers; issue communication to inform the public about the Trust Program; provide customer service; provide administrative support to the Commission; track data identified by the Commission to monitor the Trust Program; and establish procedures for benefit coordination when an individual also has other coverage for LTSS.

ESD will collect and assess employee premiums; assist the Commission in monitoring the solvency and financial status of the program; and perform investigations to determine the compliance of premium payments.

The Commission will propose rules and policies to agencies for administering the LTSS benefit.

Long-Term Services and Supports Trust Commission. The Commission is formed and beginning January 1, 2021, will establish rules and policies for administering the LTSS benefit, including: beneficiary eligibility, qualifications for LTSS providers, program improvement, benefit unit adjustment, and preparation of actuarial reports. The DSHS

secretary is the chair of the Commission. The Commission is comprised of eight members of the Legislature, the commissioner of the ESD, the DSHS secretary, the HCA director, one representative of the organization representing the area agencies on aging; one representative of a home care association that represents caregivers who provide services to private pay and Medicaid clients; one representative from a union representing long-term care workers, one representative from an organization representing retired people, one representative from an association representing nursing homes and assisted living, one representative from an association representing adult family homes, and two individuals receiving LTSS. The Commission is required to report annually on the status of the LTSS Trust to the Legislature, beginning December 1, 2026.

Demonstration Waiver. DSHS is required to apply for a Center for Medicare and Medicaid Services demonstration waiver to allow the state to share in the savings generated in the federal match for Medicaid LTSS and Medicare as a result of the Trust Program. By December 1, 2022, DSHS must submit a report of the waiver's status to the Office of Financial Management and the appropriate legislative committees.

**Appropriation:** None.

**Fiscal Note:** Requested on January 16, 2019.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The majority of people do not have long-term care insurance and do not realize the resources that are required to cover long-term care until they need the services. People end up impoverishing themselves so they can access Medicaid LTSS or go without receiving the care they need. When people do not receive the care they need, they end up in higher cost settings like emergency rooms. This bill would help people pay for the care that they need so they can live independently in their own. It provides choices to consumers and about how and where they receive their care and provides critical supports to family caregivers who are often unpaid and providing care at the detriment to their own physical, emotional, and financial well-being. The majority of people 65 and older will require some form of LTSS, and the majority of people polled on a survey said they would be in favor of this option. This bill would help alleviate the stress for individuals who need LTSS, but do not have the means to pay for it and do not want to impoverish themselves in Medicaid. Washington's population is aging which means more pressure on the LTSS Medicaid system. This bill would help decrease the dependence on Medicaid and ensure that Medicaid dollars were dedicated to the most needy, while saving the tax payer millions of dollars. This proposal has been studied, negotiated by stakeholders, and is actuarially sound. Often times people needing to care for family members are forced to leave the workforce. This would help alleviate that and would also provide family members with the option of receiving payment for the care they provide. This could also help bring more people into the long-term care workforce where there is already a shortage of workers. Long-term care insurance is expensive and does not always provide needed coverage or allow new people to enter the market. This bill could help stabilize the market

and allow the private LTC insurance market to offer supplemental plans. Home health, hospice and home care should be included as approved services under the benefit.

OTHER: The employee premium payment would cause administrative burden on small businesses.

**Persons Testifying:** PRO: Senator Guy Palumbo, Prime Sponsor; Dan Murphy, Executive Director, North West Regional Council; Cathleen MacCaul MPS, Advocacy Director, AARP Washington; Ruth Egger, Family Caregiver and Puget Sound Advocates for Retirement Action; Brenda Orffer, CAE, Executive Vice President, Washington Health Care Association; John Ficker, Executive Director, Adult Family Home Council; Barbara Kaelberer, Family Caregiver; Peter Newbould, Public Policy Manager, Alzheimer's Association Washington State Chapter; Madeleine Foutch, Campaigns Manager, SEIU 775; Adriana Hutchings, Family Caregiver; Lonnie Johns-Brown, Legislative Director, Washington State Office of the Insurance Commissioner; Bea Rector, DSHS, Aging and Long Term Support Administration, Director, Home and Community Services Division; Leslie Emerick, Washington Home Care Association, Home Care Association of Washington, Washington State Hospice and Palliative Care; Tom Nogler, citizen; Nathan Kwak, Law Liason, Huntington's Disease Society of America Washington Chapter; Loretta Seppanen, Washington Community Action Network.

OTHER: Patrick Connor, NFIB.

**Persons Signed In To Testify But Not Testifying:** No one.