

SENATE BILL REPORT

SB 5331

As of February 17, 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, 1/30/19 [DPS-WM, DNP].
Ways & Means: 2/13/19.

Brief Summary of First Substitute 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.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5331 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Conway, Dhingra, Frockt, Keiser and Van De Wege.

Minority Report: Do not pass.

Signed by Senators O'Ban, Ranking Member; Bailey and Becker.

Staff: LeighBeth Merrick (786-7445)

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.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Michele Alishahi (786-7433)

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, 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 (First Substitute): 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. Once an eligible beneficiary exhausts their lifetime benefit, they are no longer considered an eligible beneficiary.

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, and must have sufficient assessor capacity to make eligibility determinations within 45 days of request.. 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 cost of an approved service is less than the \$100 benefit unit, only the portion of the benefit unit that is used shall be taken into consideration when calculating the person's remaining lifetime benefits.

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 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 basic training, 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 must coordinate the premium assessment, collection, and reporting procedures with the same activities conducted for the Family Medical Leave Act. 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. Administrative expenses paid by the LTSS Trust must be appropriated, while benefit payments made by the LTSS Trust do not need to be appropriated. 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 who is a non-voting member, 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, two individuals receiving LTSS, a worker who is, or will likely be, paying the LTSS premium, and one representative of an organization of employers whose members collect, or will likely be collecting, the premium. The Commission is required to monitor agency administrative expenses. Beginning November 15, 2020, the Commission must report annually to the Governor and the Legislature on agency administrative expenditures and anticipated administrative expenses. The November 15, 2025 report must include recommendations for a method to calculate future agency administrative expenses.

By December 1, 2032, the Joint Legislative Audit and Review Committee (JLARC) must report on the performance of the Commission which includes providing recommendations for improvement and whether or not the Commission should continue to exist.

Demonstration Waiver. DSHS must 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.

**EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE
(First Substitute):**

- Requires the Trust Account to be appropriated for administrative expenses and nonappropriated for benefit payments.
- Directs the Commission to monitor agency administrative expenses and submit annual reports of expenses.
- Requires the Commission to submit recommendations for a method of calculating future agency administrative expenses by November 15, 2025.
- Adds a member to the Commission who is a worker who is, or will be, paying the premium and another who represents employers who is, or will be, collecting the premium.
- Makes the member of the Commission from the HCA a nonvoting member.
- Requires JLARC to report on the performance of the Commission and make recommendations on improvements and whether or not the Commission should continue.
- Specifies 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.
- Removes the requirement that relative care, professional services, and services to assist family caregivers be evidence-based.
- Specifies the requirement to have not exhausted one's benefits applies to eligible beneficiaries and not qualified individuals.
- Includes adult day services, rather than adult day health in the definition of long-term services and supports provider.
- Directs DSHS to have sufficient assessor capacity to make determinations of eligibility within 45 days of request.
- Directs ESD to coordinate premium payment compliance activities with those same activities conducted for the Family Medical Leave Act.
- Defines the terms employee, employer, and employment in the same way they are defined under the Family Medical Leave Act.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* 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 they need so they can live independently. It provides choices to consumers about how and where they receive their care and provides critical support 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 sixty-five and older will require some form of LTSS, and the majority

of people polled 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 an administrative burden on small businesses.

Persons Testifying (Health & Long Term Care): PRO: Senator Guy Palumbo, Prime Sponsor; Dan Murphy, Executive Director, Northwest 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 (Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: Seven out of ten people will require long-term care services, which 90 percent of the public does not have the insurance for. If you do have insurance, it covers little. The problem will get worse. We are asking everyone to pay a little on the insurance premium to provide care down the road. Long-term care is our biggest uninsured health risk. People become impoverished to qualify for Medicaid which is the default payer. They get to keep \$1,000 of income and \$2,000 in the bank. The rest goes for the cost of their care and Medicaid picks up the difference. This bill puts another solution into the mix. The bill offers families a fiscally responsible alternative to Medicaid in long-term care. Startup costs will be reimbursed from the Trust once the fees are collected. The plan before you is actuarially sound for 75 years. The bill will curb Medicaid spending. The Trust Act predicts

Washington taxpayers will save \$34 million by 2025 and \$470 million by 2052. AAA conducted a survey of 613 registered voters. Seven out of ten supported the state creating a long-term care trust, and six out of ten would vote for such a bill on the ballot. The benefit unit is \$100 a day. It buys 25 hours a week of a paid personal care aid in your home, 9-18 months of licensed residential care, 5-6 months in a nursing home, or up to 5 years for an unpaid family caregiver to get support like respite, training, equipment and supplies to care for a loved one. The biennial spend on long-term care services is \$5 billion. It is hard to imagine that doubling in the next 20 years as the population increases. Washington is one of a handful of states with a shared savings agreement with CMS related to long-term care services. The bill directs DSHS and HCA to approach CMS about sharing the savings the Trust will accrue in Medicaid and Medicare. By mid-century a quarter of a million Washington residents will be living with Alzheimer's or other forms of dementia. The vast majority of them will need help paying for cost of care.

Persons Testifying (Ways & Means): PRO: Senator Guy Palumbo, Prime Sponsor; Dan Murphy, Executive Director, North West Regional Council; Brenda Orffer, Executive Vice President Washington Health Care Association; Bob Le Roy, Executive Director Alzheimer's Association, Washington State Chapter; John Ficker, Executive Director, Adult Family Home Council; Bea Rector, Director, Home and Community Services Division Aging and Long Term Support Administration, DSHS; Joanna Grist, AARP.

Persons Signed In To Testify But Not Testifying (Ways & Means): PRO: Amy Anderson, Association of Washington Business.