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**HOUSE BILL 1732**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Sullivan, Chopp, J. Johnson, Walen, Chapman, Berry, Cody, Dolan, Fey, Macri, Peterson, Ryu, Santos, Senn, Shewmake, Wylie, Simmons, Callan, Slatter, Ramos, Bergquist, Tharinger, Valdez, Thai, Pollet, Morgan, Taylor, Stonier, Ortiz-Self, Gregerson, Davis, Riccelli, Ormsby, Duerr, Orwall, Bateman, Kloba, and Frame

AN ACT Relating to delaying the implementation of the long-term services and supports trust program by 18 months to allow for the extension of benefits to persons born before January 1, 1968, by modifying conditions for becoming a qualified individual and eligible beneficiary and allowing for the refunding of prematurely collected premiums; amending RCW 50B.04.020, 50B.04.050, 50B.04.060, 50B.04.080, and 50B.04.090; adding a new section to chapter 50B.04 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 50B.04.020 and 2021 c 113 s 2 are each amended to read as follows:

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

(2) The health care authority shall:

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

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

(c) Establish criteria for the payment of benefits to registered long-term services and supports providers under RCW 50B.04.070;

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

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

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

(a) Make determinations regarding an individual's status as an eligible beneficiary under RCW 50B.04.060;

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

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

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

(e) Disburse payments of benefits to registered long-term services and supports providers, utilizing and leveraging existing payment systems for the provision of approved services to eligible beneficiaries under RCW 50B.04.070;

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

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

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

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

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

(4) The employment security department shall:

(a) Collect and assess employee premiums as provided in RCW 50B.04.080;

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

(c) Perform investigations to determine the compliance of premium payments in RCW 50B.04.080 and 50B.04.090 in coordination with the same activities conducted under the family and medical leave act, Title 50A RCW, to the extent possible;

(d) Make determinations regarding an individual's status as a qualified individual under RCW 50B.04.050, including criteria to determine the status of persons receiving partial benefit units under RCW 50B.04.050(2); and

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

(5) The office of the state actuary shall:

(a) Beginning ((~~January 1, 2024~~)) July 1, 2026, and biennially thereafter, perform an actuarial audit and valuation of the long-term services and supports trust fund. Additional or more frequent actuarial audits and valuations may be performed at the request of the council;

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

(c) Select and contract for such actuarial, research, technical, and other consultants as the actuary deems necessary to perform its duties under chapter 363, Laws of 2019.

(6) By October 1, 2021, the employment security department and the department of social and health services shall jointly conduct outreach to provide employers with educational materials to ensure employees are aware of the program and that the premium assessments will begin on ((~~January 1, 2022~~)) July 1, 2023. In conducting the outreach, the employment security department and the department of social and health services shall provide on a public website information that explains the program and premium assessment in an easy to understand format. Outreach information must be available in English and other primary languages as defined in RCW 74.04.025.

**Sec.**  RCW 50B.04.050 and 2021 c 113 s 4 are each amended to read as follows:

(1) ((~~The~~)) Except as provided in subsection (2) of this section, the employment security department shall deem a person to be a qualified individual as provided in this chapter if the person has paid the long-term services and supports premiums required by RCW 50B.04.080 for the equivalent of either:

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

(b) Three years within the last six years from the date of application for benefits.

(2) A person born before January 1, 1968, who has not met the duration requirements under subsection (1)(a) of this section may become a qualified individual with fewer than the number of years identified in subsection (1)(a) of this section if the person has paid the long-term services and supports premiums required by RCW 50B.04.080 for at least one year. A person becoming a qualified individual pursuant to this subsection (2) may receive one-tenth of the maximum number of benefit units available under RCW 50B.04.060(3)(b) for each year of premium payments. In accordance with RCW 50B.04.060, nothing in this section requires the department of social and health services to accept applications for determining an individual's status as an eligible beneficiary prior to July 1, 2026. Nothing in this subsection (2) prohibits a person born before January 1, 1968, who meets the conditions of subsection (1)(b) of this section from receiving the maximum number of benefit units available under RCW 50B.04.060(3)(b).

(3) When deeming a person to be a qualified individual, the employment security department shall require that the person have worked at least five hundred hours during each of the ten years in subsection (1)(a) of this section ((~~or~~)), each of the three years in subsection (1)(b) of this section, or each of the years identified in subsection (2) of this section.

((~~(3)~~)) (4) An exempt employee may never be deemed to be a qualified individual.

**Sec.**  RCW 50B.04.060 and 2019 c 363 s 7 are each amended to read as follows:

(1) Beginning ((~~January 1, 2025~~)) July 1, 2026, approved services must be available and benefits payable to a registered long-term services and supports provider on behalf of an eligible beneficiary under this section.

(2) ((~~A~~)) Beginning July 1, 2026, a qualified individual may become an eligible beneficiary by filing an application with the department of social and health services and undergoing an eligibility determination which includes an evaluation that the individual requires assistance with at least three activities of daily living. The department of social and health services must engage sufficient qualified assessor capacity, including via contract, so that the determination may be made within ((~~forty-five~~)) 45 days from receipt of a request by a beneficiary to use a benefit. The department of social and health services may not accept applications for the determination of an individual's status as an eligible beneficiary under this section prior to July 1, 2026.

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

(b) ((~~An~~)) Except as limited in RCW 50B.04.050(2), an eligible beneficiary may not receive more than the dollar equivalent of ((~~three hundred sixty-five~~)) 365 benefit units over the course of the eligible beneficiary's lifetime.

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

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

**Sec.**  RCW 50B.04.080 and 2020 c 98 s 4 are each amended to read as follows:

(1) Beginning ((~~January 1, 2022~~)) July 1, 2023, the employment security department shall assess for each individual in employment with an employer a premium based on the amount of the individual's wages. The initial premium rate is ((~~fifty-eight hundredths of one~~)) .58 percent of the individual's wages. Beginning January 1, 2024, and biennially thereafter, the premium rate shall be set by the pension funding council at a rate no greater than ((~~fifty-eight hundredths of one~~)) .58 percent. In addition, the pension funding council must set the premium rate at the lowest amount necessary to maintain the actuarial solvency of the long-term services and supports trust account created in RCW 50B.04.100 in accordance with recognized insurance principles and designed to attempt to limit fluctuations in the premium rate. To facilitate the premium rate setting the office of the state actuary must perform a biennial actuarial audit and valuation of the fund and make recommendations to the pension funding council.

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

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

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

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

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

(5) The employment security department shall deposit all premiums collected in this section in the long-term services and supports trust account created in RCW 50B.04.100.

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

(7) If the premiums established in this section are increased, the legislature shall notify each qualified individual by mail that the person's premiums have been increased, describe the reason for increasing the premiums, and describe the plan for restoring the funds so that premiums are returned to ((~~fifty-eight hundredths of one~~)) .58 percent of the individual's wages.

**Sec.**  RCW 50B.04.090 and 2021 c 113 s 6 are each amended to read as follows:

(1) Beginning ((~~January 1, 2022~~)) July 1, 2023, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter. Coverage must be elected before ((~~January 1, 2025~~)) July 1, 2026, or within three years of becoming self-employed for the first time. Those electing coverage under this subsection are responsible for payment of ((~~one hundred~~)) 100 percent of all premiums assessed to an employee under RCW 50B.04.080. The self-employed person must file a notice of election in writing with the employment security department, in the manner required by the employment security department in rule. The self-employed person is eligible for benefits after paying the long-term services and supports premium for the time required under RCW 50B.04.050.

(2) A self-employed person who has elected coverage may not withdraw from coverage.

(3) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed. To cease premium assessment and collection, the self-employed person must file a notice with the employment security department if the individual retires from the workforce or is no longer self-employed.

(4) The employment security department may cancel elective coverage if the self-employed person fails to make required payments or file reports. The employment security department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation must be effective no later than ((~~thirty~~)) 30 days from the date of the notice in writing advising the self-employed person of the cancellation.

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

(6) For the purposes of this section, "independent contractor" means an individual excluded from the definition of "employment" in RCW 50B.04.010.

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

NEW SECTION. **Sec.**  A new section is added to chapter 50B.04 RCW to read as follows:

Any premiums collected from the employee prior to July 1, 2023, shall be refunded to the employee within 120 days of the collection of the premiums. If the premiums were collected but not yet remitted to the employment security department, the employer shall refund the collected premiums to the employee. If the collected premiums were remitted to the employment security department, the employment security department shall refund the premiums to the employer within 120 days of the collection of the premiums, who shall then return any premiums collected from the employee.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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