

SHB 1323 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AS AMENDED 04/10/2021

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

3 "Sec. 1. RCW 50B.04.010 and 2020 c 98 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Account" means the long-term services and supports trust
8 account created in RCW 50B.04.100.

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

- 11 (a) Adult day services;
- 12 (b) Care transition coordination;
- 13 (c) Memory care;
- 14 (d) Adaptive equipment and technology;
- 15 (e) Environmental modification;
- 16 (f) Personal emergency response system;
- 17 (g) Home safety evaluation;
- 18 (h) Respite for family caregivers;
- 19 (i) Home delivered meals;
- 20 (j) Transportation;
- 21 (k) Dementia supports;
- 22 (l) Education and consultation;
- 23 (m) Eligible relative care;
- 24 (n) Professional services;
- 25 (o) Services that assist paid and unpaid family members caring
26 for eligible individuals, including training for individuals
27 providing care who are not otherwise employed as long-term care
28 workers under RCW 74.39A.074;
- 29 (p) In-home personal care;
- 30 (q) Assisted living services;
- 31 (r) Adult family home services; and
- 32 (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 RCW 50B.04.030.

11 (5) "Council" means the long-term services and supports trust
12 council established in RCW 50B.04.040.

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
16 the minimum level of assistance with activities of daily living
17 necessary to receive benefits through the trust program, as
18 established in this chapter, and (~~who~~) has not exhausted the
19 lifetime limit of benefit units.

20 (7) "Employee" has the meaning provided in RCW 50A.05.010.

21 (8) "Employer" has the meaning provided in RCW 50A.05.010.

22 (9) "Employment" has the meaning provided in RCW 50A.05.010.

23 (10) "Exempt employee" means a person who has been granted a
24 premium assessment exemption by the employment security department.

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

33 (~~(11)~~) (12) "Premium" or "premiums" means the payments required
34 by RCW 50B.04.080 and paid to the employment security department for
35 deposit in the account created in RCW 50B.04.100.

36 (~~(12)~~) (13) "Program" means the long-term services and supports
37 trust program established in this chapter.

38 (~~(13)~~) (14) "Qualified family member" means a relative of an
39 eligible beneficiary qualified to meet requirements established in
40 state law for the approved service they provide that would be

1 required of any other long-term services and supports provider to
2 receive payments from the state.

3 ~~((14))~~ (15) "Qualified individual" means an individual who
4 meets the duration of payment requirements, as established in this
5 chapter.

6 ~~((15))~~ (16) "State actuary" means the office of the state
7 actuary created in RCW 44.44.010.

8 ~~((16))~~ (17) "Wage or wages" means all remuneration paid by an
9 employer to an employee. Remuneration has the meaning provided in RCW
10 50A.05.010. All wages are subject to a premium assessment and not
11 limited by the commissioner of the employment security department, as
12 provided under RCW 50A.10.030(4).

13 ~~((17) "Exempt employee" means a person who has been granted a
14 premium assessment exemption by the employment security department.)~~

15 **Sec. 2.** RCW 50B.04.020 and 2020 c 98 s 2 are each amended to
16 read as follows:

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

24 (2) The health care authority shall:

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

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

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

34 (d) Establish rules and procedures for benefit coordination when
35 the eligible beneficiary is also funded for medicaid and other long-
36 term services and supports, including medicare, coverage through the
37 department of labor and industries, and private long-term care
38 coverage; 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 (3) The department of social and health services shall:

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

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

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

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

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

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

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

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

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

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

34 (4) The employment security department shall:

35 (a) Collect and assess employee premiums as provided in RCW
36 50B.04.080;

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

39 (c) Perform investigations to determine the compliance of premium
40 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the

1 same activities conducted under the family and medical leave act,
2 Title 50A RCW, to the extent possible;

3 (d) Make determinations regarding an individual's status as a
4 qualified individual under RCW 50B.04.050; and

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

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

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

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

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

21 **Sec. 3.** RCW 50B.04.050 and 2020 c 98 s 3 are each amended to
22 read as follows:

23 (1) The employment security department shall deem a person to be
24 a qualified individual as provided in this chapter if the person has
25 paid the long-term services and supports premiums required by RCW
26 50B.04.080 for the equivalent of 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 from the date of
30 application for benefits.

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

36 (3) An exempt employee may never be deemed to be a qualified
37 individual.

1 **Sec. 4.** RCW 50B.04.085 and 2020 c 98 s 7 are each amended to
2 read as follows:

3 (1) An employee who attests that the employee has long-term care
4 insurance purchased before the effective date of this act, may apply
5 for an exemption from the premium assessment under RCW 50B.04.080. An
6 exempt employee may not become a qualified individual or eligible
7 beneficiary and is permanently ineligible for coverage under this
8 title.

9 (2)(a) The employment security department must accept
10 applications for exemptions only from October 1, 2021, through
11 December 31, 2022.

12 (b) Only employees who are eighteen years of age or older may
13 apply for an exemption.

14 (3) The employment security department is not required to verify
15 the attestation of an employee that the employee has long-term care
16 insurance.

17 (4) Approved exemptions will take effect on the first day of the
18 quarter immediately following the approval of the exemption.

19 (5) Exempt employees are not entitled to a refund of any premium
20 deductions made before the effective date of an approved exemption.

21 (6) An exempt employee must provide written notification to all
22 current and future employers of an approved exemption.

23 (7) If an exempt employee fails to notify an employer of an
24 exemption, the exempt employee is not entitled to a refund of any
25 premium deductions made before notification is provided.

26 (8) Employers must not deduct premiums after being notified by an
27 employee of an approved exemption.

28 (a) Employers must retain written notifications of exemptions
29 received from employees.

30 (b) An employer who deducts premiums after being notified by the
31 employee of an exemption is solely responsible for refunding to the
32 employee any premiums deducted after the notification.

33 (c) The employer is not entitled to a refund from the employment
34 security department for any premiums remitted to the employment
35 security department that were deducted from exempt employees.

36 (9) The department must adopt rules necessary to implement and
37 administer the activities specified in this section related to the
38 program, including rules on the submission and processing of
39 applications under this section.

1 **Sec. 5.** RCW 50B.04.090 and 2020 c 98 s 5 are each amended to
2 read as follows:

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

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

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

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

34 ~~((4))~~ (5) Those electing coverage are considered employers or
35 employees where the context so dictates.

36 ~~((5))~~ (6) For the purposes of this section, "independent
37 contractor" means an individual excluded from the definition of
38 "employment" in RCW 50B.04.010.

39 ~~((6))~~ (7) The employment security department shall adopt rules
40 for determining the hours worked and the wages of individuals who

1 elect coverage under this section and rules for enforcement of this
2 section.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 50B.04
4 RCW to read as follows:

5 A federally recognized tribe may elect coverage under RCW
6 50B.04.080. If a federally recognized tribe has elected coverage
7 under this section, it must also have the option to opt out at any
8 time for any reason it deems necessary. The employment security
9 department shall adopt rules to implement this section."

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10 On page 1, line 2 of the title, after "program;" strike the
11 remainder of the title and insert "amending RCW 50B.04.010,
12 50B.04.020, 50B.04.050, 50B.04.085, and 50B.04.090; and adding a new
13 section to chapter 50B.04 RCW."

EFFECT: Allows a tribe that has chosen to participate in the
program to opt out any time for any reason it deems necessary.

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