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**SUBSTITUTE HOUSE BILL 2467**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Macri, Chopp, Thai, Bateman, and Pollet)

AN ACT Relating to increasing access to the long-term services and supports trust program by allowing participants who move out-of-state the option of maintaining benefit eligibility or opting out, and by prohibiting discrimination including based upon race, gender, age, or preexisting condition; amending RCW 50B.04.010, 50B.04.020, 50B.04.060, 50B.04.070, and 50B.04.100; reenacting and amending RCW 50B.04.050; adding new sections to chapter 50B.04 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  The purpose of this act is to preserve and strengthen Washington's long-term care program by giving participants who move out-of-state the option of maintaining benefit eligibility or opting out, and prohibiting discrimination based upon race, gender, age, or preexisting condition.

Extending coverage to Washington workers when they move out-of-state will protect employees' investments in the state's long-term care program, ensuring that eligible beneficiaries can receive long-term care benefits when they need them, even if they move out-of-state, while preserving the right for out-of-state participants to opt out. The extension of the program will increase the state's investment in long-term care services. The prohibition in this act against discrimination will ensure that the program is implemented uniformly and that all program participants are equally protected from discrimination regardless of the laws in their home state.

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

(1) Beginning July 1, 2026, an employee or self-employed person, who has elected coverage under RCW 50B.04.090, who relocates outside of Washington may elect to continue participation in the program if:

(a) The employee or self-employed person has been assessed premiums by the employment security department for at least three years in which the employee or self-employed person has worked at least 500 hours in each of those years in Washington; and

(b) The employee or self-employed person notifies the employment security department within one year of establishing a primary residence outside of Washington that the employee or self-employed person is no longer a resident of Washington and elects to continue participation in the program.

(2) Out-of-state participants under subsection (1) of this section must report their wages or self-employment earnings to the employment security department according to standards for manner and timing of reporting and documentation submission, as adopted by rule by the employment security department. An out-of-state participant must submit documentation to the employment security department whether or not the out-of-state participant earned wages or self-employment earnings, as applicable, during the applicable reporting period. When an out-of-state participant reaches the age of 67, the participant is no longer required to provide the documentation of their wages or self-employment earnings, but if the participant earns wages or self-employment earnings, the participant must submit reports of those wages or self-employment earnings and remit the required premiums.

(3) Out-of-state participants under subsection (1) of this section must provide documentation of wages and self-employment earnings earned at the time that they report their wages or self-employment earnings to the employment security department.

(4) The employment security department may cancel elective coverage if the out-of-state participant fails to make required payments or submit 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 30 days from the date of the notice in writing advising the out-of-state participant of the cancellation.

(5) The employment security department shall:

(a) Adopt standards by rule for the manner and timing of reporting and documentation submission for out-of-state participants. The employment security department must consider user experience with the wage and self-employment earnings reporting process and the document submission process and regularly update the standards to minimize the procedural burden on out-of-state participants and support the accurate reporting of wages and self-employment earnings at the time of the payment of premiums;

(b) Collect premiums from out-of-state participants as provided in RCW 50B.04.080 and 50B.04.090, as relevant to out-of-state participants; and

(c) Verify the wages or self-employment earnings as reported by an out-of-state participant.

(6) For the purposes of this section, "wages" includes remuneration for services performed within or without or both within and without this state.

(7) Entities providing services to an eligible beneficiary outside Washington are subject to section 9 of this act and may not discriminate based upon race, gender, age, or preexisting condition.

(8) An employee or self-employed person who has elected coverage under RCW 50B.04.090 who relocates outside of Washington may elect to opt out of coverage by no longer reporting wages to the department, rather than become an out-of-state participant in the program.

(9) By extending the premium base to out-of-state participants under subsection (1) of this section, this act will increase the state's investment in long-term care services.

**Sec.**  RCW 50B.04.010 and 2021 c 113 s 1 are each amended to read as follows:

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

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

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

(a) Adult day services;

(b) Care transition coordination;

(c) Memory care;

(d) Adaptive equipment and technology;

(e) Environmental modification;

(f) Personal emergency response system;

(g) Home safety evaluation;

(h) Respite for family caregivers;

(i) Home delivered meals;

(j) Transportation;

(k) Dementia supports;

(l) Education and consultation;

(m) Eligible relative care;

(n) Professional services;

(o) Services that assist paid and unpaid family members caring for eligible individuals, including training for individuals providing care who are not otherwise employed as long-term care workers under RCW 74.39A.074;

(p) In-home personal care;

(q) Assisted living services;

(r) Adult family home services; and

(s) Nursing home services.

(3) "Benefit unit" means up to ((~~one hundred dollars~~)) $100 paid by the department of social and health services to a long-term services and supports provider as reimbursement for approved services provided to an eligible beneficiary on a specific date. The benefit unit must be adjusted annually at a rate no greater than the Washington state consumer price index, as determined solely by the council. Any changes adopted by the council shall be subject to revision by the legislature.

(4) "Commission" means the long-term services and supports trust commission established in RCW 50B.04.030.

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

(6) "Eligible beneficiary" means a qualified individual who is age ((~~eighteen~~)) 18 or older, ((~~residing in the state of Washington,~~)) has been determined to meet the minimum level of assistance with activities of daily living necessary to receive benefits through the trust program, as established in this chapter, and has not exhausted the lifetime limit of benefit units.

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

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

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

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

(11) "Long-term services and supports provider" means:

(a) For entities providing services to an eligible beneficiary in Washington, an entity that meets the qualifications applicable in law to the approved service they provide, including a qualified or certified home care aide, licensed assisted living facility, licensed adult family home, licensed nursing home, licensed in-home services agency, adult day services program, vendor, instructor, qualified family member, or other entities as registered by the department of social and health services; and

(b) For entities providing services to an eligible beneficiary outside Washington, an entity that meets minimum standards for care provision and program administration, as established by the department of social and health services, and that is appropriately credentialed in the jurisdiction in which the services are being provided as established by the department of social and health services.

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

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

(14) "Qualified family member" means a relative of an eligible beneficiary qualified to meet requirements established in state law for the approved service they provide that would be required of any other long-term services and supports provider to receive payments from the state.

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

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

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

**Sec.**  RCW 50B.04.020 and 2022 c 1 s 1 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) Develop criteria to deem a family member as qualified when providing approved services outside of Washington; and

(k) 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 and 50B.04.090 and section 2 of this act;

(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 and section 2 of this act 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 out-of-state participants under section 2 of this act; 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 July 1, 2025, 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 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 2022 c 2 s 3 and 2022 c 1 s 3 are each reenacted and amended to read as follows:

(1) 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, benefits for eligible beneficiaries in Washington will not be available until July 1, 2026, and benefits for out-of-state participants who become eligible beneficiaries will not be available until July 1, 2030, and 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~~)) 500 hours during each of the ten years in subsection (1)(a) of this section, each of the three years in subsection (1)(b) of this section, or each of the years identified in subsection (2) of this section.

(4) An exempt employee may never be deemed to be a qualified individual, unless the employee's exemption was discontinued under RCW 50B.04.055.

**Sec.**  RCW 50B.04.060 and 2022 c 1 s 4 are each amended to read as follows:

(1) Beginning 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) ((~~Beginning~~)) (a)(i) Except for qualified individuals residing outside of Washington as provided in (a)(ii) of this subsection, 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.

(ii) For a qualified individual residing outside of Washington, beginning January 1, 2030, the out-of-state qualified individual may become an eligible beneficiary by filing an application with the department of social and health services and undergoing an eligibility determination. The eligibility determination must include an evaluation that the individual either (A) is unable to perform, without substantial assistance from another individual, at least two of the following activities of daily living for a period of at least 90 days due to a loss of functional capacity: Eating, toileting, transferring, bathing, dressing, or continence, or (B) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairments.

(b) The department of social and health services must engage sufficient qualified assessor capacity, including via contract, so that the determination may be made within 45 days from receipt of a request by a beneficiary to use a benefit.

(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) Except as limited in RCW 50B.04.050(2), an eligible beneficiary may not receive more than the dollar equivalent of 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.04.070 and 2019 c 363 s 8 are each amended to read as follows:

(1) Benefits provided under this chapter shall be paid periodically and promptly to ((~~registered~~)) long-term services and supports providers((~~.~~

~~(2)~~)) who provide approved services to:

(a) Eligible beneficiaries in Washington if the long-term services and supports provider is registered with the department of social and health services; and

(b) Eligible beneficiaries outside Washington if the long-term services and supports providers meet minimum standards established by the department.

(2) Qualified family members may be paid for approved personal care services in the same way as individual providers, through a licensed home care agency, or through a third option if recommended by the commission and adopted by the department of social and health services.

**Sec.**  RCW 50B.04.100 and 2019 c 363 s 11 are each amended to read as follows:

(1) The long-term services and supports trust account is created in the custody of the state treasurer. All receipts from employers under RCW 50B.04.080 and from out-of-state participants under section 2 of this act must be deposited in the account. Expenditures from the account may be used for the administrative activities of the department of social and health services, the health care authority, and the employment security department. Benefits associated with the program must be disbursed from the account by the department of social and health services. Only the secretary of the department of social and health services or the secretary's designee may authorize disbursements from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. The account must provide reimbursement of any amounts from other sources that may have been used for the initial establishment of the program.

(2) The revenue generated pursuant to this chapter shall be utilized to expand long-term care in the state. These funds may not be used either in whole or in part to supplant existing state or county funds for programs that meet the definition of approved services.

(3) The moneys deposited in the account must remain in the account until expended in accordance with the requirements of this chapter. If moneys are appropriated for any purpose other than supporting the long-term services and supports program, the legislature shall notify each qualified individual by mail that the person's premiums have been appropriated for an alternate use, describe the alternate use, and state its plan for restoring the funds so that premiums are not increased and benefits are not reduced.

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

(1) In carrying out this chapter, discrimination against any person based upon race, gender, age, or preexisting condition is prohibited.

(2) The department of social and health services shall adopt rules to prohibit discrimination pursuant to this section, which shall govern all state agencies and all persons and entities involved in implementing this chapter, including but not limited to long-term services and supports providers.

(3) The prohibition against discrimination adopted in this section shall equally protect in state participants and out-of-state participants under section 2 of this act.

(4) The prohibition against discrimination will ensure that the program is implemented uniformly and that all program participants are treated fairly and protected from discrimination regardless of the laws in their home state.

(5) The prohibitions provided in this section are additional and supplemental to existing protections against discrimination under federal, state, and local laws, including chapter 49.60 RCW, as may be applicable.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act takes effect July 1, 2025.

**--- END ---**