SENATE BILL REPORT
SB 6072

As Reported by Senate Committee On:
Labor & Commerce, January 30, 2024

Title: An act relating to addressing recommendations of the long-term services and supports trust commission.

Brief Description: Addressing recommendations of the long-term services and supports trust commission.

Sponsors: Senators Keiser, Conway, Dhingra, Kuderer, Liias, Salomon, Stanford, Wellman and Wilson, C..

Brief History:
Committee Activity: Labor & Commerce: 1/25/24, 1/30/24 [DP, DNP, w/oRec].

Brief Summary of Bill

- Allows an employee or self-employed person who leaves Washington to elect to continue participating in the Long-Term Services and Supports (LTSS) Trust Program (Trust Program) if they have been assessed the premium for at least three years in which they worked at least 1000 hours in each of those years and notify ESD within one year of leaving Washington beginning July 1, 2026; and beginning in 2030, upon being deemed an eligible beneficiary, they may receive long-term services and supports through the Trust Program.
- Provide eligibility requirements for benefits specific to in-state participants and to out-of-state participants.
- Establishes an exemption for military service members working in a civilian capacity and provides that persons holding a nonimmigrant visa for temporary workers are not subject to the Trust Program, rather than requiring them to affirmatively apply for an exemption.
- Allows persons who opted out of the Trust Program based on having

---

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

purchased long-term care insurance to rescind the exemption and participate in the program.

- Establishes an enforcement structure for the Employment Security Department to collect premiums.
- Allows for the establishment of a pilot project in 2026 to assess the program's capabilities on a limited number of persons before the full program takes effect.
- Establishes requirements for supplemental long-term care insurance to provide coverage for persons once their LTSS benefits are exhausted with oversight and consumer education by the Office of the Insurance Commissioner.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.
Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

Minority Report: Do not pass.
Signed by Senators Braun, MacEwen and Schoesler.

Minority Report: That it be referred without recommendation.
Signed by Senator King, Ranking Member.

Staff: Susan Jones (786-7404)

Background: Long-Term Services and Supports Trust Program. In 2019 the Long-Term Services and Supports (LTSS) Trust Program (Trust Program) was enacted to provide long-term services and supports benefits to persons who have paid into the Trust Program for a specific amount of time and who have been assessed as needing a certain amount of assistance with activities of daily living (ADL).

Beginning July 1, 2023, a premium of 0.58 percent began being assessed on the wages of all employees in Washington who have worked at least 500 hours during the year. A Washington resident who is at least 18 years old and who has paid the premium for either: (1) a total of ten years without interruption of five or more consecutive years; or (2) three years within the last six years from the date of application for benefits is deemed qualified individual status.

A qualified individual may become an eligible beneficiary upon having been assessed as requiring assistance with at least three ADLs. Eligible beneficiaries must be at least 18 years old, must be a Washington resident, and may not have been disabled before the age of 18. Beginning July 1, 2026, (1) a qualified individual may become an eligible beneficiary by filing an application with the Department of Social and Health Services (DSHS) and undergoing an eligibility determination; and (2) approved services must be available and benefits payable to a registered long-term services and supports provider on behalf of an eligible beneficiary.

Benefit units are currently $100 and may be adjusted by the LTSS Council at a rate no greater than the adjustment to the consumer price index (CPI). An eligible beneficiary may not receive more than the dollar equivalent of 365 benefit units over the course of the eligible beneficiary's lifetime or $36,500—$100 benefit units x 365 days.

Persons who are self-insured may elect coverage under the Trust Program and may withdraw from coverage according to time frames established by the Employment Security Department (ESD). Certain individuals were eligible for a voluntary exemption from the Trust Program.

The Trust Program is administered jointly by DSHS, ESD, and the Health Care Authority. Trust Program oversight is provided by the LTSS Commission (Commission) which includes legislators, agency directors, and representatives from area agencies on aging, stakeholders, and consumers of approved services. The Commission has provided reports to the Legislature with recommendations in 2021, 2022, 2023, and 2024.

Long-Term Care Insurance. Long-term care (LTC) insurance pays for care generally not covered by regular health insurance or Medicare. LTC insurance policies include an elimination period which is the number of days that the policyholder is financially responsible for their own care before benefits start. Elimination periods can range from zero to 180 days. LTC policies do not guarantee coverage unless the policyholder satisfy certain requirements. These are called benefit triggers, which vary by policy. LTC insurance provides a daily benefit, which is the maximum daily amount the insurance policy will pay in any single day for the policyholder's care. The daily benefit may include room and board, home care, adult day care, hospice, respite care, etc. It can vary based on the dollar amount selected when the policy is purchased and the type of care that is received.

Washington law provides standards and requirements for LTC insurance policies and their sale in Washington.

Summary of Bill: Portability. Beginning July 1, 2026, an employee or self-employed person who has left Washington may elect to continue participating in the Trust Program if they:
- have been assessed the premium for at least three years in which they worked at least 1000 hours in each of those years; and
- notify ESD within one year of leaving Washington.

Out-of-state participants must report and document their wages or earnings to ESD and pay premiums. Once an out-of-state participant reaches age 67, they are no longer required to document earnings but must submit reports and remit premiums. Once coverage is elected, a participant may not withdraw from coverage. ESD may cancel coverage if a participant fails to make payments or submit reports with 30 days' notice. ESD must collect the premiums and verify the earnings and wages. For out-of-state participants, benefits are available beginning July 1, 2030.

Statutory provisions are modified to provide for requirements for service providers providing services to eligible beneficiaries outside of Washington. Out-of-state providers must meet minimum standards set by ESD.

Miscellaneous. Certain definitions are modified. The benefit units must be adjusted annual by the CPI. The provision related to the LTSS Council are removed. HCA must assist DSHS with leveraging of existing payments systems for the provision of approved services to beneficiaries. DSHS may contract with a third party to administer payments to the providers. Requirements are provided for employers for recordkeeping, providing information, confidentiality of information received; and penalties are provided for willful failure to provide reports and pay premiums. A temporary company is considered an employer. A process is provided for ESD to issue orders and notice assessments and collect delinquent amounts.

Qualified Individuals. One of the alternatives to deem an individual as a qualified individual is modified to a total of ten years, rather than a total of ten years without interruption of five or more consecutive years. An individual must have worked at least 1000 hours, rather than 500 hours, in the time periods to be deemed a qualified individual.

Exemptions and Rescission. Individuals holding a nonimmigrant visa for temporary workers are automatically exempt from the Trust Program, rather than requiring them to affirmatively apply for an exemption. Beginning January 1, 2025, a U.S. armed forces active duty service member concurrently engaged in off-duty civilian employment may apply for a voluntary exemption. This exemption must be discontinued within 90 days of discharge or separation from service. Prior to July 1, 2028, an exempt individuals, who attested to purchasing LTC insurance before November 1, 2021, may rescind the exemption and be assessed premiums going forward.

Eligible Beneficiary. For an in-state qualified individual to become an eligible beneficiary beginning July 1, 2026, the requirement of needing assistance with at least three ADLs is modified to provide that the ADLs are defined by DSHS and assistance is expected to last for at least 90 days.

For an out-of-state qualified individual to become an eligible beneficiary beginning July 1, 2030, the individual either: (1) is unable to perform, without substantial assistance from another individual, at least two of the following ADLs for a period of at least 90 days due to a loss of functional capacity: eating, toileting, transferring, bathing, dressing, or continence, or (2) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairments.

Pilot Program. Between January 1, 2026, and June 30, 2026, DSHS, ESD, and HCA may conduct a pilot program with no more than 500 participants to assess the administrative processes and system capacities to manage eligibility and payment distribution to LTSS providers.

Supplemental Long Term Care Insurance. A new chapter is provided for standards and requirements for supplemental LTC insurance policies delivered after January 1, 2026, designed for coverage after LTSS benefits are exhausted. The provision includes current requirements for LTC insurance with the following additional requirements:

- prohibits providing a deductible greater than the Trust Program maximum dollar equivalent benefit;
- requires the issuer to accept notice from DSHS that the policyholder has exhausted benefits under the Trust Program as evidence of satisfying the deductible;
- prohibits providing an elimination period of greater than 12 months;
- prohibits requiring a policyholder to undergo a functional assessment to satisfy a benefit trigger for the elimination period. The issuer may require the policyholder to undergo a functional assessment and apply a benefit trigger for purposes of approving a claim and authorizing benefits;
- requires the outline of coverage to include additional disclosures of how the policy interacts with Trust Program benefits, about premium increases and options, that premiums continue after retirement, and that the policy does not exempt the policyholder from Trust Program premiums;
- mandates the policy allow for continuity of care settings and providers, including family providers with limited appealable exceptions;
- requires the issuer to request written consent from the policyholder to share limited information with DSHS for care coordination when a policyholder purchases a supplemental LTC policy; and
- prohibits an issuer from offering a policy unless the issuer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase by at least 3 percent annually.

The Office of the Insurance Commissioner must develop a consumer education guide and the expand existing consumer educations programs for supplemental LTC insurance. The guide and counseling should provide additional information for consumers born before 1968.

Appropriation: None.

Fiscal Note: Requested on January 12, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony: PRO: The bill includes recommendations of the Commission. We knew there would need to be improvements because this program is the first in the nation. The bill contains crucial improvement and enhancements to the program.

Many Washingtonians will need care. The program allows them flexibility on where they can receive care which is limited under Medicare. Portability is important. The wraparound insurance policy may act as a bridge. There are 15,000 employees who would like to opt back in.

Although we didn't support the original bill, implementing portability ensures that employees who paid into the program get to enjoy the benefits.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Cathy MacCaul, AARP Washington State; Sarah Clark, Seattle Metro Chamber; Alyssa Odegaard, LeadingAge Washington.

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