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**SENATE BILL 6238**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Palumbo, Bailey, Cleveland, King, Keiser, Billig, Frockt, and Conway

AN ACT Relating to long-term care services and supports; and adding a new chapter to Title 50A RCW.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) Long-term care is not covered by medicare or other health insurance plans, and private long-term care insurance plans that do exist are unaffordable for most people; this leaves more than ninety percent of seniors uninsured for long-term care. The current market for long-term care insurance is broken: In 2002 there were one hundred two companies offering long-term care insurance coverage, but today the number stands at just twelve.

(2) The majority of people over sixty-five years of age will need long-term services and supports within their lifetime. The senior population has doubled in Washington since 1980, to currently over one million, and will more than double again by 2040. Without access to insurance, seniors must rely on family care and spend down their life savings to poverty levels in order to access long-term care through medicaid. In Washington, more than eight hundred fifty thousand unpaid family caregivers provide care valued at eleven billion dollars in 2015. Furthermore, family caregivers who leave the workforce to provide unpaid long-term services and supports lose an average of three hundred thousand dollars in their own income, and health and retirement benefits.

(3) Paying out of pocket for long-term care is expensive. In Washington the average cost for medicaid in-home care is twenty-four thousand dollars per year and the average cost for nursing home care is sixty-five thousand dollars per year. These are costs that most seniors cannot afford.

(4) Seniors and the state will not be able to continue their reliance on family caregivers in the near future. Demographic shifts mean that fewer potential family caregivers will be available in the future. Today there are around seven potential caregivers for each senior, but by 2030 that ratio will decrease to just four to one.

(5) Long-term services and supports comprise approximately six percent of the state operating budget and demand for these services will double by 2030 to over twelve percent. This would result in an additional six billion dollars in increased near-general fund costs for the state by 2030.

(6) An alternative funding mechanism for long-term care access in Washington state could relieve hardship on families and lessen the burden of medicaid on the state budget. In addition, such a program could result in positive economic impact to our state through increased state competition and fewer Washingtonians leaving the workforce to provide unpaid care.

(7) The average aging and long-term supports administration medicaid consumer utilizes ninety-six hours of care per month. Under current costs, a one hundred dollars per day benefit for three hundred sixty-five days would provide complete financial relief for the average in-home care consumer and substantial relief for the average facility care consumer for a full year or more.

(8) Under current caseload and demographic projections, such an alternative funding mechanism for long-term care access could save the state almost one and one-half billion dollars per biennium by 2040 in reduced medicaid costs.

(9) As the state pursues an alternative funding mechanism for long-term care access, the state must continue its commitment to promoting choice in long-term care settings. Therefore, any program must assure:

(a) That individuals are able to use their benefits in the setting of their choice, whether that is in the home, a residential community-based setting, or a skilled nursing facility;

(b) Seamless transitions from private and public funding sources for consumers; and

(c) Collection of long-term care health status data across all home and community-based settings.

(10) That the creation of a long-term care insurance benefit of an established dollar amount per day, for three hundred sixty-five days, for all eligible Washington employees, paid through an employee payroll premium is in the best interest of the state of Washington.

NEW SECTION. **Sec.**  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 section 10 of this act.

(2) "Benefit unit" means up to one hundred dollars, increasing at a three percent index subject to annual commission approval, paid by the department of social and health services to a long-term services and supports provider as reimbursement for care provided to an eligible beneficiary on a specific date.

(3) "Commission" means the long-term services and supports trust commission established in section 4 of this act.

(4)(a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(5)(a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(6)(a) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state; and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact;

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact;

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes;

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or

(ii) Services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

(7) "Long-term services and supports provider" means 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 health program, or other entities as approved by the commission pursuant to recommendations by the department of social and health services.

(8) "Premium" or "premiums" means the payments required by section 8 of this act and paid to the employment security department for deposit in the account under section 10 of this act.

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

(10) "Wages" has the same meaning as in RCW 50A.04.010.

NEW SECTION. **Sec.**  The health care authority, the department of social and health services, 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.

(1) The health care authority shall:

(a) Make determinations regarding an individual's status as a qualified individual under section 5 of this act;

(b) Assure 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; and

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

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

(a) Make determinations regarding an individual's status as an eligible beneficiary under section 6 of this act;

(b) Register long-term services and supports providers that meet minimum qualifications, as established by the commission, and discontinue the registration of long-term services and supports providers that fail to meet the minimum qualifications of the program or violate the operational standards of the program;

(c) Disburse payments of benefits to registered long-term services and supports providers, utilizing and leveraging existing payment systems for the provision of services to eligible beneficiaries under section 7 of this act;

(d) Perform assessments to determine a qualified individual's functional eligibility for the program;

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

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

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

(h) Establish rules and procedures for benefit coordination when the beneficiary is eligible for medicaid funded long-term services and supports; and

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

(3) The employment security department shall:

(a) Collect and assess employee premiums as provided under section 8 of this act;

(b) Assist the commission in monitoring the solvency and financial status of the program;

(c) Perform investigations to determine the compliance of premium payments under section 8 of this act; and

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

NEW SECTION. **Sec.**  (1) The long-term services and supports trust commission is established.

(2) The commission includes:

(a) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(b) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

(c) The commissioner of the employment security department, or his or her designee;

(d) The secretary of the department of social and health services, or his or her designee;

(e) The director of the health care authority, or his or her designee;

(f) One representative of a union representing long-term care workers;

(g) One representative of an organization representing retired persons;

(h) One representative of an association representing the majority of skilled and assisted living providers;

(i) One representative of an association representing adult family home providers; and

(j) Two individuals receiving long-term services and supports, or their designees, or representatives of consumers receiving long-term services and supports under the program.

(3)(a) Other than the agency heads identified in subsection (2) of this section, members of the commission are appointed for terms of two years, except that the governor shall appoint the initial members identified in subsection (2)(f), (g), (h), and (i) of this section to staggered terms not to exceed four years.

(b) The secretary of the department of social and health services, or his or her designee, shall serve as chair of the commission. Meetings of the commission are at the call of the chair.

(c) Members of the commission must be compensated in accordance with RCW 43.03.250 and must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060.

(4) Beginning January 1, 2019, the commission shall establish rules and policies regarding:

(a) The establishment of criteria for determining that an individual has met the requirements to be a qualified individual as established in section 5 of this act or an eligible beneficiary as established in section 6 of this act;

(b) The establishment of minimum qualifications for the registration of long-term services and supports providers who provide services to eligible beneficiaries. The minimum qualifications must be based upon the eligibility criteria for long-term services and supports providers to become qualified, certified, or licensed under medicaid long-term services and supports;

(c) The establishment of criteria for the payment of benefits to registered long-term services and supports providers under section 7 of this act;

(d) The establishment of operational standards for the program that must be met by registered long-term services and supports providers and penalties for the violation of the operational standards;

(e) The annual adjustment of the benefit unit in accordance with the formula established in section 2 of this act; and

(f) The preparation of regular actuarial reports on the solvency and financial status of the program.

NEW SECTION. **Sec.**  The health care authority shall deem a person to be a qualified individual as provided in this chapter if the person:

(1) Is at least eighteen years old;

(2) Is a Washington resident; and

(3) Has paid the long-term services and supports premiums required by section 8 of this act 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.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2025, long-term services and supports are available and benefits are payable to a registered long-term services and supports provider on behalf of a qualified individual under this section.

(2) A qualified individual may receive long-term services and supports and benefits that are payable to a registered long-term services and supports provider on behalf of a qualified individual under this section if he or she:

(a) Is not eligible for long-term services and supports under medicare; and

(b) Has been determined by the department of social and health services to require assistance with at least three activities of daily living.

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

(b) The eligible beneficiary may not receive benefits until thirty days following the determination by the department of social and health services that the qualified individual meets the functional eligibility standards of an eligible beneficiary.

(c) An eligible beneficiary may not receive more than the dollar equivalent of three hundred sixty-five benefit units over the course of the eligible beneficiary's lifetime. If the department of social and health services reimburses a long-term services and supports provider for care provided to an eligible beneficiary and the payment is less than the benefit unit, the department of social and health services shall credit the unused portion of the benefit unit to the eligible beneficiary for future use.

(d) An eligible beneficiary who is also receiving medicaid funded long-term services and supports is subject to federal medicaid third-party liability requirements.

NEW SECTION. **Sec.**  Benefits provided under this chapter shall be paid periodically and promptly to registered long-term services and supports providers.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2022, 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 premium is forty-nine hundredths of one percent of the individual's wages.

(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)(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 existing premium assessment, collection, and reporting procedures as under this title.

(4) The employment security department shall deposit all premiums collected under this section in the long-term services and supports trust account created in section 10 of this act.

(5) Premiums collected under this section are placed in trust for the individuals that the program is intended to assist.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2023, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter. Those electing coverage under this subsection are responsible for payment of one hundred percent of all premiums assessed to an employee under section 8 of this act. The self-employed person must file a notice of election in writing with the employment security department, in a manner as 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 section 5 of this act.

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

(3) 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 shall be effective no later than thirty days from the date of the notice in writing advising the self-employed person of the cancellation.

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

(5) For the purposes of this section, "independent contractor" means an individual excluded from employment under section 2(6)(b) of this act.

(6) 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.**  The long-term services and supports trust account is created in the state treasury. All receipts from employers under section 8 of this act must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the administrative activities and payment of benefits associated with the program. The account must provide reimbursement of any amounts from other sources that may have been used for the initial establishment of the program.

NEW SECTION. **Sec.**  (1) Determinations made by the health care authority or the department of social and health services under this chapter, including determinations regarding functional eligibility or related to registration of long-term services and supports providers, are subject to appeal in accordance with chapter 34.05 RCW. In addition, the standards and procedures adopted for these appeals must address the following:

(a) Timelines;

(b) Eligibility and benefit determination;

(c) Judicial review; and

(d) Fees.

(2) Determinations made by the employment security department under this chapter are subject to appeal in accordance with the appeal procedures under chapter 50A.04 RCW. The employment security department shall adopt standards and procedures for appeals for persons aggrieved by any determination or redetermination made by the department. The standards and procedures must be consistent with those adopted for the family and medical leave program under chapter 50A.04 RCW and must address topics including:

(a) Premium liability;

(b) Premium collection;

(c) Judicial review; and

(d) Fees.

NEW SECTION. **Sec.**  Beginning in December 1, 2023, and annually thereafter, the long-term services and supports trust commission shall report to the legislature on the program, including:

(1) Projected and actual program participation;

(2) Adequacy of premium rates;

(3) Fund balances;

(4) Benefits paid;

(5) Demographic information on program participants, including age, gender, race, ethnicity, geographic distribution by county, legislative district, and employment sector; and

(6) The extent to which the operation of the program has resulted in savings to the medicaid program by avoiding costs that would have otherwise been the responsibility of the state.

NEW SECTION. **Sec.**  Any benefits used by an individual under this chapter are not income for any determinations of eligibility for any other state program or benefit.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 50A RCW.

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