

SENATE BILL REPORT

2SHB 1087

As Passed Senate - Amended, April 16, 2019

Title: An act relating to long-term services and supports.

Brief Description: Concerning long-term services and supports.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Jinkins, MacEwen, Cody, Harris, Tharinger, Slatter, Kloba, Ryu, Macri, DeBolt, Bergquist, Doglio, Robinson, Stanford, Stonier, Frame and Leavitt).

Brief History: Passed House: 2/21/19, 63-33.

Committee Activity: Health & Long Term Care: 3/15/19, 3/29/19 [DPA-WM, DNP, w/oRec].

Ways & Means: 4/05/19, 4/09/19 [DPA (HLTC), DNP, w/oRec].

Floor Activity:

Passed Senate - Amended: 4/16/19, 26-22.

Brief Summary of Bill (As Amended by Senate)

- Establishes a long-term services and supports (LTSS) trust program (trust program) that provides up to \$36,500 in lifetime benefits for eligible beneficiaries to apply to the cost of their long-term care.
- Assesses a maximum of 0.58 percent premium on an employee's wages to fund the trust program.
- Requires the Health Care Authority, Department of Social and Health Services, the Employment Security Department, the Office of the State Actuary, the Pension Funding Council, a newly established LTSS Trust Council, and a newly established LTSS Trust Commission to work together to administer the program.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Dhingra, Frockt, Keiser and Van De Wege.

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

Minority Report: Do not pass.

Signed by Senators Bailey, Becker and Rivers.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban, Ranking Member.

Staff: LeighBeth Merrick (786-7445)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Van De Wege and Warnick.

Minority Report: Do not pass.

Signed by Senators Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Bailey, Becker, Rivers, Schoesler and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Staff: Michele Alishahi (786-7433)

Background: LTSS is a range of services and supports for individuals who need assistance with daily living (ADL) tasks such as bathing, dressing, ambulation, transfers, toileting, medication assistance or administration, personal hygiene, transportation, and other health-related tasks. People need LTSS when they experience difficulty completing daily-living tasks as a result of aging, chronic illness, cognitive functioning, or disability and may need it for several weeks, months, or years. LTSS is delivered in institutional, home, and community-based settings through paid and unpaid providers. In Washington, LTSS settings include services provided in a person's home, assisted living facilities, adult day centers, adult family homes, skilled nursing facilities, or continuing care retirement communities. Medicaid is the primary public payer for LTSS. If a person does not qualify for Medicaid, they must use their private resources and income to pay for LTSS.

The 2015-2017 operating budget funded the Department of Social and Health Services (DSHS) to contract for an independent feasibility study and actuarial modeling of two options to provide financial assistance to persons with LTSS needs. The first option was to review a public, time-limited long-term care benefit for workers funded through a payroll deduction. The second option was to review a public-private reinsurance model to provide a stable and ongoing source of reimbursement to insurers for a portion of catastrophic LTSS losses. The study was submitted to the Legislature in January 2017. The 2017-19 operating budget funded an update to the 2016 feasibility study and directed the study to also review alternative variations of the public long-term care benefit. In addition, the 2017-19 operating budget established a work group to develop a proposal to include family members as providers of long-term services and supports under the public long-term care benefit.

Summary of Amended Bill: Long-Term Services and Supports Trust Program. The trust program is established to provide a LTSS benefit that funds approved LTSS services to eligible beneficiaries. The benefits are funded through a 0.58 percent premium on all employee's wages in Washington State. The Health Care Authority (HCA), DSHS, Employment Security Department (ESD), the Office of the State Actuary (OSA), the Pension Funding Council, LTSS Trust Council, and LTSS Trust Commission all are involved in administering the trust program.

Eligible Beneficiaries. An individual may become eligible to receive the benefit when they have paid the LTSS trust premiums while working at least 500 hours per year for either ten years with at least five years uninterrupted, or three of the last six years, and has been assessed by DSHS with needing assistance with at least three ADLs, is at least eighteen years old, resides in the state of Washington, and was not disabled before the age of eighteen.

ESD is required to track an individual's premium payments and to determine if their payment history makes them eligible to receive the benefit. DSHS is required to make the benefit eligibility determinations regarding the age, residency, disability status, and ADLs requirements. DSHS must have sufficient assessor capacity to make eligibility determinations within 45 days of request. HCA is required to track an individual's use of benefits. Once an individual exhausts their lifetime benefit, they are no longer eligible to receive benefits.

Long-Term Services and Supports Benefit. Beginning, January 1, 2025, eligible beneficiaries may begin accessing their LTSS benefit. The benefit is paid in benefit units to LTSS providers that provide approved services to eligible beneficiaries. Each beneficiary may receive up to 365 benefit units over the course of their lifetime. A benefit unit is worth up to \$100, is adjusted annually by the LTSS Council at a rate no greater than the Washington Consumer Price Index, and may be combined with other benefit units to fund approved services. If the cost of an approved service is less than the \$100 benefit unit, only the portion of the benefit unit used shall be taken into consideration when calculating the person's remaining lifetime benefits.

Approved Services. The LTSS benefit may be used to pay for the following LTSS approved services: adult day services; care transition coordination; memory care; adaptive equipment and technology; environmental modification; personal emergency response system; home safety evaluation; respite for family caregivers; home delivered meals; transportation; dementia supports; education and consultation; eligible relative care; professional services; services that assist paid and unpaid family members caring for eligible individuals; in-home personal care; assisted living services; adult family home services; and nursing home services.

Long-Term Services and Supports Provider. Approved services must be provided by a LTSS provider that meets the qualification in state law and is registered with DSHS. All benefit payments are paid by DSHS to the LTSS provider. LTSS providers include home care aides, assisted living facilities, adult family homes, nursing homes, in-home services agencies, adult day programs, vendors, instructors, and qualified family members. Qualified family members include spouses or registered domestic partners. Spouses or registered domestic

partners who are LTSS providers must receive fifteen hours of basic training, and at least six hours of additional training based on the care needs of their spouse or partner.

Premiums. Beginning January 1, 2022, ESD will assess a 0.58 percent premium on each individual's wages that is employed. Beginning January 1, 2024, and every two years thereafter, the premium must be set by the pension funding council at the lowest rate possible to maintain financial solvency of the LTSS Trust. The premium must not exceed 0.58 percent. The employer is responsible for collecting the employees' premiums and remitting the amounts collected to ESD. A self-employed person that elects coverage is required to pay the 0.58 percent premium of their wages to ESD beginning January 1, 2022. An employee who demonstrates that they have long-term care insurance is exempt from paying the premium.

ESD must coordinate the premium assessment, collection, and reporting procedures with the same activities conducted for the Family Medical Leave Act. Collective bargaining agreements existing on October 19, 2017, are not required to be reopened or to apply to the trust program requirements until the existing agreement is reopened, renegotiated, or expires. If premiums are increased, the Legislature is required to notify each person that has met the premium payment requirements of the premium increase, describe the reason for increasing the premiums and its plan for restoring the funds so that premiums are returned to the original premium amount.

LTSS Trust. ESD will deposit all of the premiums collected into the LTSS trust and funds will be used to assist covered individuals to pay for LTSS. Benefit payments must only be disbursed by DSHS. Administrative expenses paid by the LTSS trust must be appropriated, while benefit payments made by the LTSS trust do not need to be appropriated. The LTSS trust must reimburse any other sources that are used in the establishment of the LTSS trust. If the Legislature appropriates LTSS trust funds to be used for purposes not related to the LTSS trust program, the Legislature is required to notify each qualified individual by mail that the person's premiums have been appropriated for an alternative use, describe the alternative use, and state its plan for restoring the funds so premiums are not increased and benefits are not reduced.

DSHS is required to establish investment policies and to have the State Investment Board invest the LTSS trust funds. The earnings from the investment are required to retain in the LTSS trust.

Trust Program Administration. HCA, DSHS, ESD, OSA, Pension Funding Council, the LTSS Trust Council (Council), and the LTSS Trust Commission (Commission) all have a role in administering the Trust Program.

HCA will track an individual's benefit use; verify approved services are provided for any payments issued; establish procedures for benefit coordination when an individual also has other coverage for LTSS; and establish payment criteria.

DSHS will determine an individual's eligibility status relating to age, residency, disability, and ADL assistance requirements; determine approved services; register LTSS providers; discontinue registration for LTSS providers that violate trust program standards and fail to

meet state law qualifications; disburse payment of benefits to LTSS providers; issue communication to inform the public about the trust program; provide customer service; provide administrative support to the commission, council, and OSA; and track data identified by the commission to monitor the trust program.

ESD will collect, assess, and track employee premiums; determine whether a person's premium payment history makes them eligible to receive the benefit; assist the commission in monitoring the solvency and financial status of the program; and perform investigations to determine the compliance of premium payments.

OSA will provide actuarial assistance to the LTSS Trust Commission and Council. This includes:

- performing an actuarial audit of the LTSS Trust every two years and making recommendations to the Pension Funding Council for setting the premium rate;
- reviewing any actuarial reports provided by the Commission and providing recommendations to the Commission, Council and the Legislature on actions necessary to maintain trust solvency. The recommendations may include options to redesign or reduce benefit units and/or approved services;
- beginning January 1, 2024, and every two years thereafter, performing actuarial audits and valuation of the LTSS Trust; and
- contracting with necessary consultants.

The Pension Funding Council will set the premium rates.

The commission will propose rules and policies to agencies for administering the LTSS benefit.

The council will determine the annual benefit unit adjustment.

Long-Term Services and Supports Trust Commission. The commission is formed and beginning January 1, 2021, will establish rules and policies for administering the LTSS benefit, including beneficiary eligibility, qualifications for LTSS providers, program improvement, recommendations to the LTSS Council for the benefit unit adjustment, assisting the state actuary with the preparation of actuarial reports, a premium refund for deceased qualified individuals with a dependent who is an individual with a developmental disability, and advise the Legislature on necessary actions to maintain trust solvency, and establish payment maximums for approved services. The January 1, 2021, report must include recommendations on whether or not extend benefit coverage to individuals who became disabled before age eighteen and actions necessary to achieve trust solvency based on an actuarial report of the projected solvency and financial status of the program. The commission is required to monitor agency administrative expenses. Beginning November 15, 2020, the commission must report annually to the Governor and the Legislature on agency administrative expenditures and anticipated administrative expenses. The November 15, 2025, report must include recommendations for a method to calculate future agency administrative expenses.

The DSHS secretary is the chair of the commission. The commission is comprised of:

- eight members of the Legislature;

- the commissioner of the ESD;
- the DSHS secretary;
- the HCA director who is a non-voting member;
- one representative of the organization representing the area agencies on aging;
- one representative of a home care association that represents caregivers who provide services to private pay and Medicaid clients;
- one representative from a union representing long-term care workers;
- one representative from an organization representing retired people;
- one representative from an association representing nursing homes and assisted living;
- one representative from an association representing adult family homes;
- two individuals receiving LTSS;
- one worker who is, or will likely be, paying the LTSS premium; and
- one representative of an organization of employers whose members collect, or will likely be collecting, the premium.

A majority of the voting members of the commission constitutes a quorum for any commission votes, and approval of 60 percent of those voting members of the commission who are in attendance is required for the passage of any vote.

The commission is required to establish an investment strategy subcommittee. The subcommittee consists of the legislative members, ESD representative, and DSHS representative that are members of the commission, as well as four additional members that are appointed by the Governor.

By December 1, 2032, the State Auditor must evaluate the LTSS Trust program and report its conclusion and recommendations for improvement to the Legislature. This includes recommendations for improvements to program operations, financial solvency, value of the benefit, and overall efficacy of the program.

Long-Term Services and Supports Council. The council is formed to determine the annual benefit unit adjustment. The council is comprised of certain members of the commission which includes the eight Legislators and agency heads. The Director of the Office of Financial Management (OFM) is also a member of the council and is required to serve as the council Chair.

When determining the annual benefit unit adjustment, the council must consider OSA's actuarial audit and valuation of the LTSS Trust, recommendations for the OSA and commission, relevant economic indicators, and program costs when determining the annual benefit unit adjustment. The Legislature may revise the council's benefit adjustment.

Demonstration Waiver. DSHS must apply for a Center for Medicare and Medicaid Services demonstration waiver to allow the state to share in the savings generated in the federal match for Medicaid LTSS and Medicare as a result of the trust program. By December 1, 2022, DSHS must submit a report of the waiver's status to the Office of Financial Management and the appropriate legislative committees

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: The Joint Legislative Executive Committee on Aging and Disability has been looking at a long-term care benefit for a number of years. In our research, we found that it would be more expensive to try and stabilize the long-term care insurance market than it would be to create a public benefit. Additionally, some people think that this public benefit would help stabilize the private long-term care insurance market as a supplemental option. Seventy percent of people are going to need long-term care and ninety percent of people do not have a plan for how they are going to pay for their long-term care. This program would help people from having to impoverish themselves into Medicaid, provide relief for the over 600,000 unpaid caregivers, and save the state millions of dollars. In polling, seven out of ten Washington voters said they support this program. The actuarial report expects the program to be solvent for at least 75 years. There has been a significant amount of coordination between the administrative agencies on how to effectively and efficiently administer the program. This program would similar to other programs such as worker's compensation and paid family and medical leave.

OTHER: The bill would require some investment constraints that typically aren't required within the risk return profile that SIB typically provides.

Persons Testifying (Health & Long Term Care): PRO: Representative Laurie Jinkins, Prime Sponsor; Cathy MacCaul, AARP Washington, Advocacy Director; Dan Murphy, Executive Director, North West Regional Council; Ruth Egger, Family Caregiver and Puget Sound Advocates for Retirement Action; Brenda Orffer, CAE Executive Vice President Washington Health Care Association; Bob Le Roy, Executive Director, Alzheimer's Association, Washington State Chapter; Bea Rector, Director, Home and Community Services Division, ALTA DSHS.

OTHER: Theresa Whitmarsh, Executive Director, Washington State Investment Board.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on Bill as Amended by Health & Long Term Care (Ways & Means): PRO: Right now, we rely on a system of family caregivers. There are approximately 880,000 caregivers in the state. On average, they will spend about 20 percent of their income helping care for a loved one. We have engaged the talents and expertise of policy leaders in the area of long-term care and family caregiving to analyze this bill. We know the Long Term Care Act will alleviate the growing stress on Washington's Medicaid budget and the burden taxpayers will feel when they come to pay for the Medicaid budget.

We have been working to develop and perfect this policy for almost six years. It is actuarially sound for 75 years. We have done our research on the financial aspect of this

program in three iterations starting in 2016. We have a commission that is going to be responsible, including legislators, state agencies, stakeholders, and representatives of the public, to make sure this program remains fiscally sound. They have many levers they can use to assure that this program stays within its means and continues to provide a meaningful benefit to families.

Statistics indicate that 90 percent of Americans rely on public funds like Medicaid to cover their long-term care services. Seven out of ten people will need long-term care after turning sixty-five. To access adequate long-term care support and services, many spend down to poverty levels to qualify for Medicaid. The commission will continue to research, develop, and recommend modifications and provide oversight to monitor this program to ensure sustainability and success.

Persons Testifying (Ways & Means): PRO: Brenda Orffer, Washington Health Care Association; Cathy MacCaul, Advocacy Director, AARP Washington; Kate White Tudor, Washington Association of Area Agencies on Aging.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.