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**HOUSE BILL 1596**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Abbarno, Boehnke, Corry, Chase, Caldier, Eslick, Graham, Klippert, Dye, Stokesbary, Chambers, Jacobsen, and Young

AN ACT Relating to authorizing the availability of benefits from the long-term services and supports trust program for qualified individuals who reside outside of Washington; and amending RCW 50B.04.010, 50B.04.020, 50B.04.030, 50B.04.060, 50B.04.070, and 50B.04.100.

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

**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 paid by the department of social and health services to ((~~a~~)):

(a) A long-term services and supports provider as reimbursement for approved services provided to an eligible beneficiary receiving approved services in Washington on a specific date; or

(b) An eligible beneficiary residing outside of Washington and receiving approved services in accordance with RCW 50B.04.070. 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 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 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.

(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 2021 c 113 s 2 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 to eligible beneficiaries in Washington 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 on behalf of eligible beneficiaries residing in Washington to registered long-term services and supports providers under RCW 50B.04.070;

(d) Establish criteria for the payment of benefits to eligible beneficiaries residing outside of Washington and receiving approved services under RCW 50B.04.070;

(e) 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)~~)) (f) 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) Disburse payments to eligible beneficiaries residing outside of Washington and receiving approved services under RCW 50B.04.070;

(g) 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)~~)) (h) Provide customer service and address questions and complaints, including referring individuals to other appropriate agencies;

((~~(h)~~)) (i) Provide administrative and operational support to the commission;

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

((~~(j)~~)) (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;

(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 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; 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 January 1, 2024, 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 January 1, 2022. 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.04.030 and 2021 c 113 s 3 are each amended to read as follows:

(1) The long-term services and supports trust commission is established. The commission's recommendations and decisions must be guided by the joint goals of maintaining benefit adequacy and maintaining fund solvency and sustainability.

(2) The commission includes:

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

(b) Two members 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 the commissioner's designee;

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

(e) The director of the health care authority, or the director's designee, who shall serve as a nonvoting member;

(f) One representative of the organization representing the area agencies on aging;

(g) One representative of a home care association that represents caregivers who provide services to private pay and medicaid clients;

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

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

(j) One representative of an association representing skilled nursing facilities and assisted living providers;

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

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

(m) One member who is a worker who is, or will likely be, paying the premium established in RCW 50B.04.080 and who is not employed by a long-term services and supports provider; and

(n) One representative of an organization of employers whose members collect, or will likely be collecting, the premium established in RCW 50B.04.080.

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

(b) The secretary of the department of social and health services, or the secretary's designee, shall serve as chair of the commission. Meetings of the commission are at the call of the chair. A majority of the voting members of the commission shall constitute a quorum for any votes of the commission. Approval of sixty percent of those voting members of the commission who are in attendance is required for the passage of any vote.

(c) Members of the commission and the subcommittee established in subsection (6) of this section 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, 2021, the commission shall propose recommendations to the appropriate executive agency or the legislature regarding:

(a) The establishment of criteria for determining that an individual has met the requirements to be a qualified individual as established in RCW 50B.04.050 or an eligible beneficiary as established in RCW 50B.04.060;

(b) The establishment of criteria for minimum qualifications for the registration of long-term services and supports providers who provide approved services to eligible beneficiaries;

(c) The establishment of payment maximums for approved services consistent with actuarial soundness which shall not be lower than medicaid payments for comparable services. A service or supply may be limited by dollar amount, duration, or number of visits. The commission shall engage affected stakeholders to develop this recommendation;

(d) The establishment of payment standards to eligible beneficiaries residing outside of Washington and receiving approved services;

(e) Changes to rules or policies to improve the operation of the program;

((~~(e)~~)) (f) Providing a recommendation to the council for the annual adjustment of the benefit unit in accordance with RCW 50B.04.010 and 50B.04.040;

((~~(f)~~)) (g) A refund of premiums for a deceased qualified individual with a dependent who is an individual with a developmental disability who is dependent for support from a qualified individual. The qualified individual must not have been determined to be an eligible beneficiary by the department of social and health services. The refund shall be deposited into an individual trust account within the developmental disabilities endowment trust fund for the benefit of the dependent with a developmental disability. The commission shall consider:

(i) The value of the refund to be one hundred percent of the current value of the qualified individual's lifetime premium payments at the time that certification of death of the qualified individual is submitted, less any administrative process fees; and

(ii) The criteria for determining whether the individual is developmentally disabled. The determination shall not be based on whether or not the individual with a developmental disability is receiving services under Title 71A RCW, or another state or local program;

((~~(g)~~)) (h) Assisting the state actuary with the preparation of regular actuarial reports on the solvency and financial status of the program and advising the legislature on actions necessary to maintain trust solvency. The commission shall provide the office of the state actuary with all actuarial reports for review. The office of the state actuary shall provide any recommendations to the commission and the legislature on actions necessary to maintain trust solvency;

((~~(h)~~)) (i) For the January 1, 2021, report only, recommendations on whether and how to extend coverage to individuals who became disabled before the age of eighteen, including the impact on the financial status and solvency of the trust. The commission shall engage affected stakeholders to develop this recommendation; and

((~~(i)~~)) (j) For the January 1, 2021, report only, the commission shall consult with the office of the state actuary on the development of an actuarial report of the projected solvency and financial status of the program. The office of the state actuary shall provide any recommendations to the commission and the legislature on actions necessary to achieve trust solvency.

(5) The commission shall monitor agency administrative expenses over time. Beginning November 15, 2020, the commission must annually report to the governor and the fiscal committees of the legislature on agency spending for administrative expenses and anticipated administrative expenses as the program shifts into different phases of implementation and operation. The November 15, 2025, report must include recommendations for a method of calculating future agency administrative expenses to limit administrative expenses while providing sufficient funds to adequately operate the program. The agency heads identified in subsection (2) of this section may advise the commission on the reports prepared under this subsection, but must recuse themselves from the commission's process for review, approval, and submission to the legislature.

(6) The commission shall establish an investment strategy subcommittee consisting of the members identified in subsection (2)(a) through (d) of this section as voting members of the subcommittee. In addition, four members appointed by the governor who are considered experienced and qualified in the field of investment shall serve as nonvoting members. The subcommittee shall provide guidance and advice to the state investment board on investment strategies for the account, including seeking counsel and advice on the types of investments that are constitutionally permitted.

(7) The commission shall work with insurers to develop long-term care insurance products that supplement the program's benefit.

**Sec.**  RCW 50B.04.060 and 2019 c 363 s 7 are each amended to read as follows:

(1) Beginning January 1, 2025((~~, approved~~)):

(a) Approved services must be available and benefits payable to a registered long-term services and supports provider on behalf of an eligible beneficiary residing and receiving approved services in Washington under this section; and

(b) Benefits must be payable to an eligible beneficiary residing outside of Washington and receiving approved services.

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

(3)(a) An eligible beneficiary may ((~~receive~~)):

(i) Receive approved services in Washington and benefits through the program in the form of a benefit unit payable to a registered long-term services and supports provider; or

(ii) Receive benefits through the program in the form of a benefit unit payable directly to the eligible beneficiary if the eligible beneficiary resides outside of Washington and receives approved services.

(b) 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, whether the benefit units are paid to a registered long-term services and supports provider under (a)(i) of this subsection or paid directly to an eligible beneficiary under (a)(ii) of this subsection.

(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 in Washington 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 in Washington 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.

(iii) Eligible beneficiaries residing outside of Washington and receiving approved services may receive the full amount of the benefit unit per day as long as the total number of lifetime benefit units has not been exceeded. An eligible beneficiary residing outside of Washington may not receive less than the daily benefit unit amount and may not combine benefit units. The department of social and health services may require periodic eligibility redeterminations for eligible beneficiaries residing outside of Washington and verification that approved services are being provided to the eligible beneficiary. The provider of approved services to an eligible beneficiary residing outside of Washington is not required to be registered with the department of social and health services.

**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 providing approved services to eligible beneficiaries in Washington.

(2) Qualified family members providing approved services to eligible beneficiaries in Washington 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.

(3) Eligible beneficiaries residing outside of Washington and receiving approved services shall be paid periodically and promptly. The department of social and health services may develop a schedule for disbursing payments to eligible beneficiaries residing outside of Washington that balances administrative efficiency and fairness to the eligible beneficiary.

**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 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.

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