

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1323

Chapter 113, Laws of 2021

67th Legislature
2021 Regular Session

LONG-TERM SERVICES AND SUPPORTS TRUST PROGRAM—VARIOUS PROVISIONS

EFFECTIVE DATE: July 25, 2021

Passed by the House April 14, 2021
Yeas 58 Nays 39

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 10, 2021
Yeas 26 Nays 22

DENNY HECK

President of the Senate

Approved April 21, 2021 3:14 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1323** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

April 21, 2021

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1323

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Tharinger, Macri, Simmons, Fitzgibbon, Cody, Hackney, Santos, Ortiz-Self, Lekanoff, and Pollet)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to the long-term services and supports trust
2 program; amending RCW 50B.04.010, 50B.04.020, 50B.04.030, 50B.04.050,
3 50B.04.085, and 50B.04.090; and adding a new section to chapter
4 50B.04 RCW.

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

6 **Sec. 1.** RCW 50B.04.010 and 2020 c 98 s 1 are each amended to
7 read as follows:

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

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

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

- 14 (a) Adult day services;
- 15 (b) Care transition coordination;
- 16 (c) Memory care;
- 17 (d) Adaptive equipment and technology;
- 18 (e) Environmental modification;
- 19 (f) Personal emergency response system;
- 20 (g) Home safety evaluation;
- 21 (h) Respite for family caregivers;

1 (i) Home delivered meals;
2 (j) Transportation;
3 (k) Dementia supports;
4 (l) Education and consultation;
5 (m) Eligible relative care;
6 (n) Professional services;
7 (o) Services that assist paid and unpaid family members caring
8 for eligible individuals, including training for individuals
9 providing care who are not otherwise employed as long-term care
10 workers under RCW 74.39A.074;
11 (p) In-home personal care;
12 (q) Assisted living services;
13 (r) Adult family home services; and
14 (s) Nursing home services.
15 (3) "Benefit unit" means up to one hundred dollars paid by the
16 department of social and health services to a long-term services and
17 supports provider as reimbursement for approved services provided to
18 an eligible beneficiary on a specific date. The benefit unit must be
19 adjusted annually at a rate no greater than the Washington state
20 consumer price index, as determined solely by the council. Any
21 changes adopted by the council shall be subject to revision by the
22 legislature.
23 (4) "Commission" means the long-term services and supports trust
24 commission established in RCW 50B.04.030.
25 (5) "Council" means the long-term services and supports trust
26 council established in RCW 50B.04.040.
27 (6) "Eligible beneficiary" means a qualified individual who is
28 age eighteen or older, residing in the state of Washington, (~~was not~~
29 ~~disabled before the age of eighteen,~~) has been determined to meet
30 the minimum level of assistance with activities of daily living
31 necessary to receive benefits through the trust program, as
32 established in this chapter, and (~~who~~) has not exhausted the
33 lifetime limit of benefit units.
34 (7) "Employee" has the meaning provided in RCW 50A.05.010.
35 (8) "Employer" has the meaning provided in RCW 50A.05.010.
36 (9) "Employment" has the meaning provided in RCW 50A.05.010.
37 (10) "Exempt employee" means a person who has been granted a
38 premium assessment exemption by the employment security department.
39 (11) "Long-term services and supports provider" means an entity
40 that meets the qualifications applicable in law to the approved

1 service they provide, including a qualified or certified home care
2 aide, licensed assisted living facility, licensed adult family home,
3 licensed nursing home, licensed in-home services agency, adult day
4 services program, vendor, instructor, qualified family member, or
5 other entities as registered by the department of social and health
6 services.

7 ~~((11))~~ (12) "Premium" or "premiums" means the payments required
8 by RCW 50B.04.080 and paid to the employment security department for
9 deposit in the account created in RCW 50B.04.100.

10 ~~((12))~~ (13) "Program" means the long-term services and supports
11 trust program established in this chapter.

12 ~~((13))~~ (14) "Qualified family member" means a relative of an
13 eligible beneficiary qualified to meet requirements established in
14 state law for the approved service they provide that would be
15 required of any other long-term services and supports provider to
16 receive payments from the state.

17 ~~((14))~~ (15) "Qualified individual" means an individual who
18 meets the duration of payment requirements, as established in this
19 chapter.

20 ~~((15))~~ (16) "State actuary" means the office of the state
21 actuary created in RCW 44.44.010.

22 ~~((16))~~ (17) "Wage or wages" means all remuneration paid by an
23 employer to an employee. Remuneration has the meaning provided in RCW
24 50A.05.010. All wages are subject to a premium assessment and not
25 limited by the commissioner of the employment security department, as
26 provided under RCW 50A.10.030(4).

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

29 **Sec. 2.** RCW 50B.04.020 and 2020 c 98 s 2 are each amended to
30 read as follows:

31 (1) The health care authority, the department of social and
32 health services, the office of the state actuary, and the employment
33 security department each have distinct responsibilities in the
34 implementation and administration of the program. In the performance
35 of their activities, they shall actively collaborate to realize
36 program efficiencies and provide persons served by the program with a
37 well-coordinated experience.

38 (2) The health care authority shall:

1 (a) Track the use of lifetime benefit units to verify the
2 individual's status as an eligible beneficiary as determined by the
3 department of social and health services;

4 (b) Ensure approved services are provided through audits or
5 service verification processes within the service provider payment
6 system for registered long-term services and supports providers and
7 recoup any inappropriate payments;

8 (c) Establish criteria for the payment of benefits to registered
9 long-term services and supports providers under RCW 50B.04.070;

10 (d) Establish rules and procedures for benefit coordination when
11 the eligible beneficiary is also funded for medicaid and other long-
12 term services and supports, including medicare, coverage through the
13 department of labor and industries, and private long-term care
14 coverage; and

15 (e) Adopt rules and procedures necessary to implement and
16 administer the activities specified in this section related to the
17 program.

18 (3) The department of social and health services shall:

19 (a) Make determinations regarding an individual's status as an
20 eligible beneficiary under RCW 50B.04.060;

21 (b) Approve long-term services and supports eligible for payment
22 as approved services under the program, as informed by the
23 commission;

24 (c) Register long-term services and supports providers that meet
25 minimum qualifications;

26 (d) Discontinue the registration of long-term services and
27 supports providers that: (i) Fail to meet the minimum qualifications
28 applicable in law to the approved service that they provide; or (ii)
29 violate the operational standards of the program;

30 (e) Disburse payments of benefits to registered long-term
31 services and supports providers, utilizing and leveraging existing
32 payment systems for the provision of approved services to eligible
33 beneficiaries under RCW 50B.04.070;

34 (f) Prepare and distribute written or electronic materials to
35 qualified individuals, eligible beneficiaries, and the public as
36 deemed necessary by the commission to inform them of program design
37 and updates;

38 (g) Provide customer service and address questions and
39 complaints, including referring individuals to other appropriate
40 agencies;

1 (h) Provide administrative and operational support to the
2 commission;

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

5 (j) Adopt rules and procedures necessary to implement and
6 administer the activities specified in this section related to the
7 program.

8 (4) The employment security department shall:

9 (a) Collect and assess employee premiums as provided in RCW
10 50B.04.080;

11 (b) Assist the commission, council, and state actuary in
12 monitoring the solvency and financial status of the program;

13 (c) Perform investigations to determine the compliance of premium
14 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the
15 same activities conducted under the family and medical leave act,
16 Title 50A RCW, to the extent possible;

17 (d) Make determinations regarding an individual's status as a
18 qualified individual under RCW 50B.04.050; and

19 (e) Adopt rules and procedures necessary to implement and
20 administer the activities specified in this section related to the
21 program.

22 (5) The office of the state actuary shall:

23 (a) Beginning January 1, 2024, and biennially thereafter, perform
24 an actuarial audit and valuation of the long-term services and
25 supports trust fund. Additional or more frequent actuarial audits and
26 valuations may be performed at the request of the council;

27 (b) Make recommendations to the council and the legislature on
28 actions necessary to maintain trust solvency. The recommendations
29 must include options to redesign or reduce benefit units, approved
30 services, or both, to prevent or eliminate any unfunded actuarially
31 accrued liability in the trust or to maintain solvency; and

32 (c) Select and contract for such actuarial, research, technical,
33 and other consultants as the actuary deems necessary to perform its
34 duties under chapter 363, Laws of 2019.

35 (6) By October 1, 2021, the employment security department and
36 the department of social and health services shall jointly conduct
37 outreach to provide employers with educational materials to ensure
38 employees are aware of the program and that the premium assessments
39 will begin on January 1, 2022. In conducting the outreach, the
40 employment security department and the department of social and

1 health services shall provide on a public website information that
2 explains the program and premium assessment in an easy to understand
3 format. Outreach information must be available in English and other
4 primary languages as defined in RCW 74.04.025.

5 **Sec. 3.** RCW 50B.04.030 and 2019 c 363 s 4 are each amended to
6 read as follows:

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

11 (2) The commission includes:

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

15 (b) Two members from each of the two largest caucuses of the
16 senate, appointed by the president of the senate;

17 (c) The commissioner of the employment security department, or
18 the commissioner's designee;

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) Members of the commission and the subcommittee established in
21 subsection (6) of this section must be compensated in accordance with
22 RCW 43.03.250 and must be reimbursed for their travel expenses while
23 on official business in accordance with RCW 43.03.050 and 43.03.060.

24 (4) Beginning January 1, 2021, the commission shall propose
25 recommendations to the appropriate executive agency or the
26 legislature regarding:

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

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

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

1 (d) Changes to rules or policies to improve the operation of the
2 program;

3 (e) Providing a recommendation to the council for the annual
4 adjustment of the benefit unit in accordance with RCW 50B.04.010 and
5 50B.04.040;

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

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

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

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

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

36 (i) For the January 1, 2021, report only, the commission shall
37 consult with the office of the state actuary on the development of an
38 actuarial report of the projected solvency and financial status of
39 the program. The office of the state actuary shall provide any

1 recommendations to the commission and the legislature on actions
2 necessary to achieve trust solvency.

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

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

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

27 **Sec. 4.** RCW 50B.04.050 and 2020 c 98 s 3 are each amended to
28 read as follows:

29 (1) The employment security department shall deem a person to be
30 a qualified individual as provided in this chapter if the person has
31 paid the long-term services and supports premiums required by RCW
32 50B.04.080 for the equivalent of either:

33 (a) A total of ten years without interruption of five or more
34 consecutive years; or

35 (b) Three years within the last six years from the date of
36 application for benefits.

37 (2) When deeming a person to be a qualified individual, the
38 employment security department shall require that the person have
39 worked at least five hundred hours during each of the ten years in

1 subsection (1)(a) of this section or each of the three years in
2 subsection (1)(b) of this section.

3 (3) An exempt employee may never be deemed to be a qualified
4 individual.

5 **Sec. 5.** RCW 50B.04.085 and 2020 c 98 s 7 are each amended to
6 read as follows:

7 (1) An employee who attests that the employee has long-term care
8 insurance purchased before November 1, 2021, may apply for an
9 exemption from the premium assessment under RCW 50B.04.080. An exempt
10 employee may not become a qualified individual or eligible
11 beneficiary and is permanently ineligible for coverage under this
12 title.

13 (2)(a) The employment security department must accept
14 applications for exemptions only from October 1, 2021, through
15 December 31, 2022.

16 (b) Only employees who are eighteen years of age or older may
17 apply for an exemption.

18 (3) The employment security department is not required to verify
19 the attestation of an employee that the employee has long-term care
20 insurance.

21 (4) Approved exemptions will take effect on the first day of the
22 quarter immediately following the approval of the exemption.

23 (5) Exempt employees are not entitled to a refund of any premium
24 deductions made before the effective date of an approved exemption.

25 (6) An exempt employee must provide written notification to all
26 current and future employers of an approved exemption.

27 (7) If an exempt employee fails to notify an employer of an
28 exemption, the exempt employee is not entitled to a refund of any
29 premium deductions made before notification is provided.

30 (8) Employers must not deduct premiums after being notified by an
31 employee of an approved exemption.

32 (a) Employers must retain written notifications of exemptions
33 received from employees.

34 (b) An employer who deducts premiums after being notified by the
35 employee of an exemption is solely responsible for refunding to the
36 employee any premiums deducted after the notification.

37 (c) The employer is not entitled to a refund from the employment
38 security department for any premiums remitted to the employment
39 security department that were deducted from exempt employees.

1 (9) The department must adopt rules necessary to implement and
2 administer the activities specified in this section related to the
3 program, including rules on the submission and processing of
4 applications under this section.

5 **Sec. 6.** RCW 50B.04.090 and 2020 c 98 s 5 are each amended to
6 read as follows:

7 (1) Beginning January 1, 2022, any self-employed person,
8 including a sole proprietor, independent contractor, partner, or
9 joint venturer, may elect coverage under this chapter. Coverage must
10 be elected before January 1, 2025, or within three years of becoming
11 self-employed for the first time. Those electing coverage under this
12 subsection are responsible for payment of one hundred percent of all
13 premiums assessed to an employee under RCW 50B.04.080. The self-
14 employed person must file a notice of election in writing with the
15 employment security department, in the manner required by the
16 employment security department in rule. The self-employed person is
17 eligible for benefits after paying the long-term services and
18 supports premium for the time required under RCW 50B.04.050.

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

25 (3) A self-employed person who elects coverage must continue to
26 pay premiums until such time that the individual retires from the
27 workforce or is no longer self-employed. To cease premium assessment
28 and collection, the self-employed person must file a notice with the
29 employment security department if the individual retires from the
30 workforce or is no longer self-employed.

31 (4) The employment security department may cancel elective
32 coverage if the self-employed person fails to make required payments
33 or file reports. The employment security department may collect due
34 and unpaid premiums and may levy an additional premium for the
35 remainder of the period of coverage. The cancellation must be
36 effective no later than thirty days from the date of the notice in
37 writing advising the self-employed person of the cancellation.

38 ((+4)) (5) Those electing coverage are considered employers or
39 employees where the context so dictates.

1 (~~(5)~~) (6) For the purposes of this section, "independent
2 contractor" means an individual excluded from the definition of
3 "employment" in RCW 50B.04.010.

4 (~~(6)~~) (7) The employment security department shall adopt rules
5 for determining the hours worked and the wages of individuals who
6 elect coverage under this section and rules for enforcement of this
7 section.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 50B.04
9 RCW to read as follows:

10 A federally recognized tribe may elect coverage under RCW
11 50B.04.080. If a federally recognized tribe has elected coverage
12 under this section, it must also have the option to opt out at any
13 time for any reason it deems necessary. The employment security
14 department shall adopt rules to implement this section.

Passed by the House April 14, 2021.
Passed by the Senate April 10, 2021.
Approved by the Governor April 21, 2021.
Filed in Office of Secretary of State April 21, 2021.

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