Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Early Learning & Human Services Committee

ESSB 5291

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

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Conway, Saldaña, Cleveland, Frame, Nobles, Stanford, Valdez and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Prohibits persons who have left Washington and elect to continue participation in the Long-Term Services and Supports Trust Program (Trust Program) from withdrawing from the program.
- Allows an employee who received an exemption from the Trust Program to rescind that exemption prior to July 1, 2028, and begin participating in the Trust Program.
- Provides a voluntary exemption from the Trust Program for active duty service members concurrently engaged in off-duty civilian employment, and automatically exempts employees holding a nonimmigrant visa for temporary work.
- Establishes an enforcement structure for the Employment Security Department to collect Trust Program premiums.
- Eliminates the Long-Term Services and Supports Council, including its duties related to the annual adjustment amount of the Trust Program benefit unit, and requires the benefit unit to be adjusted annually for inflation using the Consumer Price Index.
- Removes the condition that there must have been no interruption in service of five or more consecutive years in order to become a qualified

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individual under the Trust Program by paying the premium for a total of 10 years.

- Authorizes a pilot project to assess the Trust Program's capabilities for managing eligibility determinations and distributing payments to long-term services and supports providers.
- Establishes a private market supplemental long-term care insurance option that is designed to provide coverage for persons once their Trust Program benefits are exhausted.

Hearing Date: 3/26/25

Staff: Omeara Harrington (786-7136).

Background:

Long-Term Services and Supports Trust Program.
The Long-Term Services and Supports Trust Program (Trust Program) provides long-term care benefits to persons who have paid into the Trust Program for a specific period of time and have been assessed as needing a certain amount of assistance with activities of daily living.

The Trust Program is administered jointly by the Department of Social and Health Services (DSHS), the Employment Security Department (ESD), and the Health Care Authority (HCA). Trust Program oversight is provided by the Long-Term Services and Supports Trust Commission (Trust Commission) which includes legislators, agency directors, and representatives from Area Agencies on Aging, and stakeholders and consumers of approved services. Beginning December 1, 2028, and annually thereafter, the Trust Commission must report to the Legislature on the Trust Program's participation, adequacy of premiums, balances, benefits paid, savings to Medicaid, and certain demographic information about participants, including geographic distribution by county, legislative district, and employment sector. In addition, there is a Long-Term Services and Supports Council that is responsible for determining adjustments to the benefit unit to assure both benefit adequacy and Trust Program solvency.

Premiums and Eligibility for Benefits.
The Trust Program is funded through a 0.58 percent premium assessment on an employee's wages. An employee in Washington may become a qualified individual under the Trust Program if they have paid the premium assessment for either three of the last six years or a total of 10 years with no more than a five-year interruption. The person must have worked at least 500 hours during each of the three or 10 years. A qualified individual may be eligible to receive benefits if the person is a Washington resident, is at least 18 years old, and has been assessed as needing assistance with at least three activities of daily living.

Eligible beneficiaries may receive benefits in the form of benefit units. Benefit units are up to $100 per day, paid to long-term services and supports providers as reimbursement for approved services. Benefit units must be adjusted annually at a rate no greater than the Washington State Consumer Price Index (CPI), as determined solely by the Long-Term Services and Supports Council. An eligible beneficiary may not receive more than the dollar equivalent of 365 benefit units over the course of the eligible beneficiary's lifetime. The current maximum lifetime benefits are $36,500.

The premium assessment began July 1, 2023, and eligible beneficiaries may begin receiving benefits on July 1, 2026.

Out-of-State Participants.
Beginning July 1, 2026, employees or self-employed persons who have moved out of Washington may elect to continue participation in the Trust Program. This option is available to persons who have been assessed premiums under the Trust Program for at least three years in which they worked at least 500 hours in Washington. A person must notify the ESD of the decision to continue coverage within one year of establishing a primary residence outside of Washington.

Out-of-state participants must report their wages or self-employment earnings and provide documentation to the ESD. After age 67, out-of-state participants are no longer required to provide documentation to the ESD, but if they earn wages or self-employment income, they must submit reports of wages or self-employment earnings and remit premiums. The coverage may be canceled if the out-of-state participant fails to make payments or submit reports.

An out-of-state participant may become eligible to receive benefits under the Trust Program beginning July 1, 2030.

Exemptions.
Employees who attested to having purchased long-term care insurance before November 1, 2021, were authorized to apply to the ESD by December 31, 2022, for an exemption from the premium assessment. An exempt employee is permanently ineligible for coverage under the Trust Program.

In addition, employees in four categories may apply to the ESD for a voluntary exemption from the Trust Program:
- Employees who are veterans of the United States military who have been rated by the United States Department of Veterans Affairs as having a service-connected disability of at least 70 percent.
- Employees who are the spouse or registered domestic partner of an active duty service member of the United States Armed Forces. This exemption must be discontinued within 90 days of either the employee's spouse or registered domestic partner being discharged or separated from military service, or the dissolution of the employee's marriage or registered domestic partnership.

- Employees holding a nonimmigrant visa for temporary workers who are employed by an employer in Washington. This exemption must be discontinued within 90 days of an employee's nonimmigrant visa for temporary workers status being terminated and the employee becoming a permanent resident or citizen employed in Washington.
- Employees who are employed in Washington, but maintain a permanent residence outside of Washington as their primary location of residence. This exemption must be terminated within 90 days of the employee establishing a permanent address within Washington as the employee's primary location of residence.

Unless a specified condition for termination of the exemption occurs, employees who are approved for an exemption are not required to pay the premium assessment, may not become a qualified individual or eligible beneficiary, and are permanently ineligible for the Trust Program.

Exempt employees are not entitled to refunds of premiums paid prior to being granted exempt status. Exempt employees are responsible for notifying current and future employers of their exempt status. If an exempt employee fails to notify an employer of an exemption, the employee is not entitled to a refund of premiums deducted prior to the notification. Employers must not deduct premiums once an employee has notified them of the employee's exempt status. If an exempt employee fails to begin paying premiums within 90 days of a condition that discontinues the exemption, the employee must pay any unpaid premiums, with interest, from the date on which the premiums should have begun.

<u>Long Term Services and Supports Trust Account</u>.
All Trust Program premiums must be deposited into the Long-Term Services and Supports Trust Account (Trust Account). Expenditures from the Trust Account may be used for the administrative activities of the DSHS, the HCA, and the ESD. Benefits are disbursed from the Trust Account by the DSHS.

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

Summary of Bill:

<u>Eligibility and Benefits</u>.

A person may become a qualified individual under the Long-Term Services and Supports Trust Program (Trust Program) after 10 years of premium assessments, regardless of an interruption in service of any duration.

In assessing a qualified individual who has applied for benefits, the eligibility criteria of requiring assistance with at least three activities of daily living is as defined by the Department of Social and Health Services (DSHS) for long-term services and supports programs and must be expected to last for at least 90 days.

Benefit units are adjusted annually for inflation by the Consumer Price Index, rather than as determined by the Long-Term Services and Supports Council (Council).

Out-of-State Participants.
An out out-of-state participant who has elected to continue participation in the Trust Program may not withdraw from coverage under the Trust Program. The Employment Security Department (ESD) must cancel out-of-state elective coverage if the out-of-state participant fails to make required payments or submit reports.

Exemptions.
An employee who received an exemption from the Trust Program by attesting to having purchased long term care insurance may rescind that exemption prior to July 1, 2028, and begin participating in the Trust Program. The employee is not responsible for premiums that would have been assessed prior to the recission, but years the employee spent in exempt status do not count toward the requirements for becoming a qualified individual.

An employee who holds a nonimmigrant visa for temporary workers, as recognized by federal law, is automatically exempt from the Trust Program unless the employee notifies their employer that they would like to participate. If the employee later becomes a permanent resident or citizen employed in Washington, the employee becomes subject to the Trust Program.

Beginning January 1, 2026, a voluntary exemption from the Trust Program is available to active duty service members in the United States armed forces, whether or not deployed or stationed in Washington, who are concurrently engaged in off-duty civilian employment. The exemption must be discontinued within 90 days of discharge or separation from military service.

Program Administration.
The Health Care Authority (HCA) must assist the DSHS with leveraging existing payment systems for the provision of approved services to beneficiaries. The DSHS may contract with a third party to administer payments to long-term services and supports providers providing services to eligible beneficiaries both in and outside of Washington. The DSHS must also establish payment methods and procedures that are most appropriate and efficient for the different categories of service providers, including collaboration with other agencies and contracting with third parties, as necessary.

The DSHS must establish, by rule, the scope of long-term services and supports that may be an approved service and identify the types of goods and services that are and are not covered under each approved service to maximize usage of all available public and private benefits for eligible beneficiaries.

The Council is repealed and its duties are transferred to the Long-Term Services and Supports Trust Commission (Trust Commission). The Trust Commission's requirement to provide the employment sector of participants in the demographic information portion of its annual report is removed.

Employers must make reports, furnish information, and collect and remit Trust Program premiums to the ESD. Records of employment must be retained and available to the ESD for six years. Monetary penalties are established for an employer's willful failure to make required reports or remit premiums. If payments to the ESD have become delinquent, the ESD may issue an order and assessment for the amount due, bearing one percent per month interest. If unpaid within 10 days, the ESD is authorized to collect through seizure and sale of the property of the delinquent employer. In addition to its current law funding sources, the Long-Term Services and Supports Trust Account (Trust Account) receives deposits of delinquent premiums, penalties, and interest.

Any funds attributable to savings derived through a federal waiver through the Centers for Medicare and Medicaid services must be deposited into the Trust Account.

Pilot Project.
The DSHS, the HCA, and the ESD are authorized to design and conduct a pilot project to assess the administrative processes and system capabilities for managing eligibility determinations for qualified individuals and distributing payments to long-term services and supports providers. The pilot project may not exceed 500 participants and may only operate between January 1, 2026, and June 30, 2026. The agencies must provide regular updates to and consider recommendations from the Trust Commission, and provide a summary to the Trust Commission on its completion.

Supplemental Long-Term Care Insurance.
A regulatory structure for supplemental long-term care insurance (supplemental insurance) is established similar to the existing regulatory structure for long-term care insurance. "Supplemental insurance" is defined as an insurance policy, contract, or rider that is designed to provide at least 12 months of coverage after benefits under the Trust Program have been exhausted. The policies provide coverage for necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in settings other than an acute care unit of a hospital.

When a person purchases a supplemental insurance policy, the issuer of the policy must request the enrollee's consent to share information with the DSHS. If the enrollee grants consent, the issuer must inform the DSHS of the enrollee's purchase of a supplemental insurance policy and share basic demographic data with the DSHS for potential care coordination purposes. The issuer may not share healthcare information or claims data with the DSHS. Similarly, when a qualified individual applies for benefits under the Trust Program, the DSHS must ask if the person has supplemental insurance and request consent to share information with the policy issuer for potential care coordination.

Deductibles under a supplemental insurance policy may not be more than the maximum dollar equivalent of benefit units available under the Trust Program. The issuer must accept a notice from the DSHS that the enrollee has exhausted their benefits under the Trust Program as evidence of satisfying the deductible.

The length of time between the start of coverage and the start of payments may not be greater than 12 months and must consider any time that the enrollee was considered an eligible beneficiary under the Trust Program. An enrollee may not be required to undergo a functional assessment to determine that an elimination period has begun, but they may require it to approve a claim and authorize benefits.

Supplemental insurance policies must allow for continuity of coverage for care settings and providers, including family members who are able to meet the enrollee's needs, that the enrollee was engaged with under the Trust Program. The issuer may require a change of setting or provider if there is substantial clinical or other information showing that the current care setting or provider is not able to meet the enrollee's care and safety needs.

The Insurance Commissioner must establish minimum standards for inflation protection features for supplemental insurance policies, which issuers must comply with.

Outlines of coverage for applicants for a supplemental insurance policy must include a disclosure with specific information. The disclosure information must explain:

- the interaction between the supplemental insurance policy and the benefits under the Trust Program;
- that premiums may increase over time;
- the options available to an enrollee if the enrollee's circumstances change or premiums increase and the enrollee does not pay;
- that premiums must continue to be paid after retirement;
- when premium payments are no longer required under the policy; and
- that purchase of the policy does not qualify the policyholder to be exempt from premium assessments under the Trust Program.

The Insurance Commissioner must develop a consumer education guide to help consumers make informed decisions about the purchase of supplemental insurance. The Insurance Commissioner must also expand consumer education programs regarding supplemental insurance with a focus on the middle-income market.

Any supplemental insurance policy, contract, rider, or certificate form or application form must be filed with and approved by the Insurance Commissioner, as must rates, or modification of rates, for supplemental insurance policies.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 18, 2025.

Effective Date: The bill contains multiple effective dates. Please see the bill.