

SENATE BILL REPORT

ESSB 5291

As Passed Senate, March 11, 2025

Title: An act relating to strengthening the WACares program by implementing the recommendations of the long-term services and supports trust commission.

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 History:

Committee Activity: Labor & Commerce: 1/21/25, 1/31/25 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 3/11/25, 38-11.

Brief Summary of Engrossed First Substitute Bill

- Prohibits out-of-state participants from withdrawing from the Long-Term Services and Supports Trust Program (Program).
- Make the exemption from the Program automatic for active-duty military service members with off-duty civilian work and employees holding a nonimmigrant visa for temporary work.
- Allows an exempt employee who previously attested to having long-term care insurance to rescind the exemption prior to July 1, 2028.
- Allows for a limited pilot program in 2026 to assess the Program's processes and system capacities.
- Creates standards and requirements for supplemental long-term care insurance policies designed for coverage after Program benefits are exhausted.

SENATE COMMITTEE ON LABOR & COMMERCE

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

Majority Report: That Substitute Senate Bill No. 5291 be substituted therefor, and the substitute bill do pass.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; Alvarado, Ramos and Stanford.

Minority Report: Do not pass.

Signed by Senators MacEwen and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Braun.

Staff: Susan Jones (786-7404)

Background: Program—General. In 2019, the Long-Term Services and Supports (LTSS) Trust Program (Program) was enacted. The Program provides long-term care benefits to persons who paid premiums for a specified period of time and have been assessed as needing a certain amount of assistance with activities of daily living (ADLs).

The Program is administered jointly by the Department of Social and Health Services (DSHS), the Employment Security Department (ESD), and the Health Care Authority (HCA). The Office of the State Actuary performs certain audits and other functions. The LTSS Commission, which includes legislators, agency directors, and stakeholders, meets and makes recommendations to the Governor, certain state agencies, and the Legislature. The LTSS Council, which will include legislators, agency directors, and stakeholders, will meet annually to determine any necessary adjustments to the benefit unit to ensure adequacy and solvency of the LTSS Account (Account).

Premiums. The Program is funded by a premium of 0.58 percent assessed on employees' wages, with assessments beginning on July 1, 2023. The premiums are deposited by the Employment Security Department into the Account.

Exemptions. Certain individuals are eligible for voluntary exemptions from the Program, including employees who:

- are U.S. military veterans with a 70 percent service-connected disability rating or higher;
- are spouses or registered domestic partners of active-duty service members;
- have non-immigrant temporary work visas; or
- are employed by a Washington employer, but live outside Washington.

In addition, there is a voluntary exemption for employees who attested by December 31, 2022, that they had long-term care insurance purchased before November 1, 2021.

Elective Coverage. Self-employed persons may elect coverage under the Program before July 1, 2026, or within three years of becoming self-employed for the first time. Self-employed persons who elect coverage must pay premiums and may not withdraw from

coverage. Beginning July 1, 2026, employees or self-employed persons who leave Washington may elect to continue participating in the Program if they were assessed premiums for at least three years in which they worked at least 500 hours in each of those years.

Eligibility for Benefits. A person is deemed a qualified individual if the person has paid the Program premiums for either: (1) a total of ten years without interruption of five or more consecutive years; or (2) three years within the last six years from the date of application for benefits. The person must also have worked at least 500 hours during each of the ten years or three years.

A qualified individual, who is 18 years or older, may become an eligible beneficiary beginning on July 1, 2026, for individuals residing in Washington and beginning on January 1, 2030, for out-of-state individuals. To become an eligible beneficiary, the qualified individual must file an application with DSHS and undergo an eligibility determination, including an evaluation that the individual residing:

- in Washington, requires assistance with at least three ADLs; or
- outside of Washington, either (1) is unable to perform, without substantial assistance from another individual, at least two of the following ADLs for a period of at least 90 days due to a loss of functional capacity: eating, toileting, transferring, bathing, dressing, or continence; or (2) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairments.

Benefits. Benefits are available beginning on July 1, 2026, for eligible beneficiaries in Washington and beginning on July 1, 2030, for out-of-state eligible beneficiaries. The maximum lifetime benefits are currently \$36,500—\$100 benefit units x 365. The benefit unit must be adjusted annually at a rate no greater than the Washington State Consumer Price Index (CPI), as determined solely by the LTSS Council.

Other Provisions. Discrimination against persons based upon race, gender, age, or preexisting condition is prohibited under the Program. There are special rules for persons born before January 1, 1968.

Long-Term Care Insurance. Long-term care (LTC) insurance pays for care generally not covered by regular health insurance or Medicare. LTC 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 0 to 180 days. LTC policies do not guarantee coverage unless the policyholder satisfy certain requirements. These are called benefit triggers, which vary by policy. LTC 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 so on. 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 LTC insurance policies and their sale in Washington.

Summary of Engrossed First Substitute Bill: Out-of-state Participants. An out-of-state participant who has elected coverage may not withdraw from the Program after electing coverage. ESD must cancel the out-of-state elective coverage if the participant fails to make the required payments or submit the required reports.

Qualified Individuals. The requirement that an individual may be deemed a qualified individual by paying premiums for ten years is modified to remove the requirement they be paid without interruption of five or more consecutive years. The additional option to qualify by paying the premiums for three years within the last six years from the date of the application is still available. An out-of-state participant whose coverage was cancelled may not be a qualified individual.

Exemptions. An active-duty service member who is concurrently working off duty civilian employment automatically exempt from the Program. An employee who holds a nonimmigrant visa for temporary workers, as recognized by federal law, is automatically exempt from the Program, unless the employee notifies the employee's employer that the employee would like to participate. If an employee who holds a nonimmigrant visa for temporary workers becomes a permanent resident or citizen employed in Washington, the exemption no longer applies. Exemptions will be discontinued when an exempt individual who resided outside of Washington and moves to Washington or who was in the military and is discharged or separates from service. An exempt employee who previously attested to having LTC insurance may rescind the exemption prior to July 1, 2028.

Benefits. The ADLs required to become an eligible beneficiary residing in Washington State are those ADLs defined by DSHS and they must be expected to last for at least 90 days.

Definitions. Certain definitions are modified, including eligible beneficiary and qualified family member. The term benefits units is modified to include an automatic adjustment for inflation by the CPI, rather than the CPI as determined by the LTSS Council. The bill repeals the provisions related to the LTSS Council and transfers the limited duties to the LTSS Commission. A consumer directed employer and an entity contracted by DSHS as a financial agency who serves only clients of in-home LTC workers who are qualified family members are added to the list of exceptions to regulation under the In-home Services Agencies laws.

Administration. HCA must assist DSHS with leveraging existing payment systems for paying of approved services. DSHS may contract with a third party to administer payments to providers. DSHS must establish appropriate and efficient payment methods and procedures. The provisions that CBAs existing on October 19, 2017, do not need to be reopened or apply the program responsibilities until reopened is removed. Delinquent

premiums, penalties, interest, Medicare or Medicaid waiver savings must be deposited into the Account. A process regarding delinquent payments is provided. Employer must provide certain reports and keep specified records. Penalties for willfully failing to provide the required reports and pay premiums are provided.

Employment sector is removed from the list of demographic information required in the annual Commission report to the Legislature.

If a federal waiver for Medicare or Medicaid results in shared savings, it must be deposited in the Account.

Pilot Program. DSHS, ESD, and HCA may conduct a pilot program from January 1, 2026, to June 30, 2026, with no more than 500 participants to assess the processes and system capacities to manage eligibility and payment distribution to providers.

Supplemental Long Term Care Insurance. A new chapter is provided for standards and requirements for supplemental LTC insurance policies delivered after January 1, 2026, designed for coverage after LTSS benefits are exhausted. The provision includes current requirements for LTC insurance with the following additional requirements:

- prohibits issuing a policy and using rates unless they are filed with the LTSS Commissioner;
- prohibits providing a deductible greater than the Program maximum dollar equivalent benefit;
- requires the issuer to accept notice from DSHS that the policyholder has exhausted benefits under the Program as evidence of satisfying the deductible;
- prohibits providing an elimination period of greater than 12 months;
- prohibits requiring a policyholder to undergo a functional assessment to satisfy a benefit trigger for the elimination period. The issuer may require the policyholder to undergo a functional assessment and apply a benefit trigger for purposes of approving a claim and authorizing benefits;
- requires the outline of coverage to include additional disclosures of how the policy interacts with Program benefits, about premium increases and options, that premiums continue after retirement, and that the policy does not exempt the policyholder from Program premiums;
- mandates the policy allow for continuity of care settings and providers, including family providers with limited appealable exceptions;
- requires DSHS to ask qualified individual when applying for WA Cares benefit whether they have supplemental LTC insurance and request written consent to share information with the policy issuer; and if consent is provided, to notify the policy issuer that the individual has applied for benefits and may share information;
- requires the issuer to request written consent from the policyholder to share limited information with DSHS for care coordination when a policyholder purchases a supplemental LTC policy; and
- requires the issuer to comply with rules establishing minimum standards for inflation

protection features.

The Office of the Insurance Commissioner must develop a consumer education guide and the expand existing consumer educations programs for supplemental LTC insurance. The guide and counseling should provide additional information for consumers born before 1968.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill implements the Commission's recommendations where there is need for a legal change. This is a work in progress. The dialogue should be continued. The bill strengthens access to WA Care. This supports employees. In the 1960s and 1970s there were well-funded social support networks for all people. This is no longer the case. No one knows when a catastrophic incident will happen. WA Care will be there to help people stay in their homes; make home modifications, if needed; and get home care support. The state has shown through their votes that they understand the importance of WA Cares.

The bill allows people who previously opted out to opt back it. The bill simplifies the best periods that employees can continue to build benefits when they are in and out of the workforce.

The bill makes supplemental long-term care insurance affordable. WA Cares is an important first step in helping families with LTC costs, but the benefit is limited. The execution of the supplemental insurance program will help. The program is complicated and may have challenges, but the benefits outweigh the risks. The new private supplemental LTC products allowed under the bill, which will be regulated by OIC, help address challenges in the market and provide strong consumer protection. OIC asks for an effective date of May 1, 2026 to implement the bill and conduct complex rulemaking.

OTHER: People should be able to opt back in if they elected out because they had LTC insurance. They should be allowed to opt back in at any time. This would reduce the burden on Medicaid. There have been more than 6500 inquiries from customers seeking to rescind their private insurance exemptions where premiums have increases; and because partial benefits are available for near retirees, and benefits can be used outside of Washington.

Currently, most workers pay for WA Cares as a payroll tax for at least ten years without a break of five or more years to qualify. The rule excludes people that take an extended break. The bill gets rid of the restriction. Workers putting in fewer than 500 hours should be reimbursed for nonqualifying tax payments. The bill should allow spouses to share earned benefits.

Another good recommendation is the automatic exemption for active-duty military members with off-duty civilian work. The 2024 and 2025 Commission reports recommended providing the automatic exemption for nonimmigrant visa holders. Most of these people will never be eligible to use the benefits. The voluntary exemption for them is an administrative burden for them, their employers, and the ESD. There were almost 10,000 applicants last year that were manually processed.

The bill allows for a program to pilot the systems and process to be able to identify issues before the program is fully implemented.

The bill provides a statutory framework for supplemental insurance. A working group of five insurance carriers and consumer protection advocates were unanimous in the recommendation.

Persons Testifying: PRO: Senator Steve Conway, Prime Sponsor; Mark Stensager; Laura Cepoi, Olympic Area Agency on Aging; Victoria Bickford, SEIU 775; Alyssa Odegaard, LeadingAge Washington; Rory Paine-Donovan, Office of the Insurance Commissioner; Tyler Langford, Office of the Insurance Commissioner.

OTHER: Elizabeth New, Washington Policy Center; Josh Dye, Employment Security Department; Ben Veghte, Dept. of Social and Health Services Aging and Long-Term Supports Administration (DSHS ALTSA).

Persons Signed In To Testify But Not Testifying: No one.