

SHB 1323 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AND ENGROSSED 04/10/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

- 11 (a) Adult day services;
- 12 (b) Care transition coordination;
- 13 (c) Memory care;
- 14 (d) Adaptive equipment and technology;
- 15 (e) Environmental modification;
- 16 (f) Personal emergency response system;
- 17 (g) Home safety evaluation;
- 18 (h) Respite for family caregivers;
- 19 (i) Home delivered meals;
- 20 (j) Transportation;
- 21 (k) Dementia supports;
- 22 (l) Education and consultation;
- 23 (m) Eligible relative care;
- 24 (n) Professional services;
- 25 (o) Services that assist paid and unpaid family members caring
26 for eligible individuals, including training for individuals
27 providing care who are not otherwise employed as long-term care
28 workers under RCW 74.39A.074;
- 29 (p) In-home personal care;
- 30 (q) Assisted living services;
- 31 (r) Adult family home services; and
- 32 (s) Nursing home services.

1 (3) "Benefit unit" means up to one hundred dollars paid by the
2 department of social and health services to a long-term services and
3 supports provider as reimbursement for approved services provided to
4 an eligible beneficiary on a specific date. The benefit unit must be
5 adjusted annually at a rate no greater than the Washington state
6 consumer price index, as determined solely by the council. Any
7 changes adopted by the council shall be subject to revision by the
8 legislature.

9 (4) "Commission" means the long-term services and supports trust
10 commission established in RCW 50B.04.030.

11 (5) "Council" means the long-term services and supports trust
12 council established in RCW 50B.04.040.

13 (6) "Eligible beneficiary" means a qualified individual who is
14 age eighteen or older, residing in the state of Washington, (~~was not~~
15 ~~disabled before the age of eighteen,~~) has been determined to meet
16 the minimum level of assistance with activities of daily living
17 necessary to receive benefits through the trust program, as
18 established in this chapter, and (~~who~~) has not exhausted the
19 lifetime limit of benefit units.

20 (7) "Employee" has the meaning provided in RCW 50A.05.010.

21 (8) "Employer" has the meaning provided in RCW 50A.05.010.

22 (9) "Employment" has the meaning provided in RCW 50A.05.010.

23 (10) "Exempt employee" means a person who has been granted a
24 premium assessment exemption by the employment security department.

25 (11) "Long-term services and supports provider" means an entity
26 that meets the qualifications applicable in law to the approved
27 service they provide, including a qualified or certified home care
28 aide, licensed assisted living facility, licensed adult family home,
29 licensed nursing home, licensed in-home services agency, adult day
30 services program, vendor, instructor, qualified family member, or
31 other entities as registered by the department of social and health
32 services.

33 (~~(11)~~) (12) "Premium" or "premiums" means the payments required
34 by RCW 50B.04.080 and paid to the employment security department for
35 deposit in the account created in RCW 50B.04.100.

36 (~~(12)~~) (13) "Program" means the long-term services and supports
37 trust program established in this chapter.

38 (~~(13)~~) (14) "Qualified family member" means a relative of an
39 eligible beneficiary qualified to meet requirements established in
40 state law for the approved service they provide that would be

1 required of any other long-term services and supports provider to
2 receive payments from the state.

3 ~~((14))~~ (15) "Qualified individual" means an individual who
4 meets the duration of payment requirements, as established in this
5 chapter.

6 ~~((15))~~ (16) "State actuary" means the office of the state
7 actuary created in RCW 44.44.010.

8 ~~((16))~~ (17) "Wage or wages" means all remuneration paid by an
9 employer to an employee. Remuneration has the meaning provided in RCW
10 50A.05.010. All wages are subject to a premium assessment and not
11 limited by the commissioner of the employment security department, as
12 provided under RCW 50A.10.030(4).

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

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

17 (1) The health care authority, the department of social and
18 health services, the office of the state actuary, and the employment
19 security department each have distinct responsibilities in the
20 implementation and administration of the program. In the performance
21 of their activities, they shall actively collaborate to realize
22 program efficiencies and provide persons served by the program with a
23 well-coordinated experience.

24 (2) The health care authority shall:

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

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

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

34 (d) Establish rules and procedures for benefit coordination when
35 the eligible beneficiary is also funded for medicaid and other long-
36 term services and supports, including medicare, coverage through the
37 department of labor and industries, and private long-term care
38 coverage; and

1 (e) Adopt rules and procedures necessary to implement and
2 administer the activities specified in this section related to the
3 program.

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

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

7 (b) Approve long-term services and supports eligible for payment
8 as approved services under the program, as informed by the
9 commission;

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

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

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

20 (f) Prepare and distribute written or electronic materials to
21 qualified individuals, eligible beneficiaries, and the public as
22 deemed necessary by the commission to inform them of program design
23 and updates;

24 (g) Provide customer service and address questions and
25 complaints, including referring individuals to other appropriate
26 agencies;

27 (h) Provide administrative and operational support to the
28 commission;

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

31 (j) Adopt rules and procedures necessary to implement and
32 administer the activities specified in this section related to the
33 program.

34 (4) The employment security department shall:

35 (a) Collect and assess employee premiums as provided in RCW
36 50B.04.080;

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

39 (c) Perform investigations to determine the compliance of premium
40 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the

1 same activities conducted under the family and medical leave act,
2 Title 50A RCW, to the extent possible;

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

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

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

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

13 (b) Make recommendations to the council and the legislature on
14 actions necessary to maintain trust solvency. The recommendations
15 must include options to redesign or reduce benefit units, approved
16 services, or both, to prevent or eliminate any unfunded actuarially
17 accrued liability in the trust or to maintain solvency; and

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

21 (6) By October 1, 2021, the employment security department and
22 the department of social and health services shall jointly conduct
23 outreach to provide employers with educational materials to ensure
24 employees are aware of the program and that the premium assessments
25 will begin on January 1, 2022. In conducting the outreach, the
26 employment security department and the department of social and
27 health services shall provide on a public website information that
28 explains the program and premium assessment in an easy to understand
29 format. Outreach information must be available in English and other
30 primary languages as defined in RCW 74.04.025.

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

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

37 (2) The commission includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) The secretary of the department of social and health
40 services, or the secretary's designee, shall serve as chair of the

1 commission. Meetings of the commission are at the call of the chair.
2 A majority of the voting members of the commission shall constitute a
3 quorum for any votes of the commission. Approval of sixty percent of
4 those voting members of the commission who are in attendance is
5 required for the passage of any vote.

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

10 (4) Beginning January 1, 2021, the commission shall propose
11 recommendations to the appropriate executive agency or the
12 legislature regarding:

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

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

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

26 (d) Changes to rules or policies to improve the operation of the
27 program;

28 (e) Providing a recommendation to the council for the annual
29 adjustment of the benefit unit in accordance with RCW 50B.04.010 and
30 50B.04.040;

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

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

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

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

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

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

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

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

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

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

14 (1) The employment security department shall deem a person to be
15 a qualified individual as provided in this chapter if the person has
16 paid the long-term services and supports premiums required by RCW
17 50B.04.080 for the equivalent of either:

18 (a) A total of ten years without interruption of five or more
19 consecutive years; or

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

22 (2) When deeming a person to be a qualified individual, the
23 employment security department shall require that the person have
24 worked at least five hundred hours during each of the ten years in
25 subsection (1)(a) of this section or each of the three years in
26 subsection (1)(b) of this section.

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

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

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

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

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

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

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

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

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

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

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

20 (a) Employers must retain written notifications of exemptions
21 received from employees.

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

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

28 (9) The department must adopt rules necessary to implement and
29 administer the activities specified in this section related to the
30 program, including rules on the submission and processing of
31 applications under this section.

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

34 (1) Beginning January 1, 2022, any self-employed person,
35 including a sole proprietor, independent contractor, partner, or
36 joint venturer, may elect coverage under this chapter. Coverage must
37 be elected before January 1, 2025, or within three years of becoming
38 self-employed for the first time. Those electing coverage under this
39 subsection are responsible for payment of one hundred percent of all

1 premiums assessed to an employee under RCW 50B.04.080. The self-
2 employed person must file a notice of election in writing with the
3 employment security department, in the manner required by the
4 employment security department in rule. The self-employed person is
5 eligible for benefits after paying the long-term services and
6 supports premium for the time required under RCW 50B.04.050.

7 (2) A self-employed person who has elected coverage may not
8 withdraw from coverage (~~(, at such times as the employment security~~
9 ~~department may adopt by rule, by filing a notice of withdrawal in~~
10 ~~writing with the employment security department, with the withdrawal~~
11 ~~to take effect not sooner than thirty days after filing the notice~~
12 ~~with the employment security department)).~~

13 (3) A self-employed person who elects coverage must continue to
14 pay premiums until such time that the individual retires from the
15 workforce or is no longer self-employed. To cease premium assessment
16 and collection, the self-employed person must file a notice with the
17 employment security department if the individual retires from the
18 workforce or is no longer self-employed.

19 (4) The employment security department may cancel elective
20 coverage if the self-employed person fails to make required payments
21 or file reports. The employment security department may collect due
22 and unpaid premiums and may levy an additional premium for the
23 remainder of the period of coverage. The cancellation must be
24 effective no later than thirty days from the date of the notice in
25 writing advising the self-employed person of the cancellation.

26 ((+4)) (5) Those electing coverage are considered employers or
27 employees where the context so dictates.

28 ((+5)) (6) For the purposes of this section, "independent
29 contractor" means an individual excluded from the definition of
30 "employment" in RCW 50B.04.010.

31 ((+6)) (7) The employment security department shall adopt rules
32 for determining the hours worked and the wages of individuals who
33 elect coverage under this section and rules for enforcement of this
34 section.

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

37 A federally recognized tribe may elect coverage under RCW
38 50B.04.080. If a federally recognized tribe has elected coverage
39 under this section, it must also have the option to opt out at any

1 time for any reason it deems necessary. The employment security
2 department shall adopt rules to implement this section."

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3 On page 1, line 2 of the title, after "program;" strike the
4 remainder of the title and insert "amending RCW 50B.04.010,
5 50B.04.020, 50B.04.030, 50B.04.050, 50B.04.085, and 50B.04.090; and
6 adding a new section to chapter 50B.04 RCW."

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