

HOUSE BILL REPORT

ESB 6072

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to addressing recommendations of the long-term services and supports trust commission.

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

Sponsors: Senators Keiser, Conway, Dhingra, Kuderer, Lias, Salomon, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity:

Health Care & Wellness: 2/20/24, 2/21/24 [DP].

Brief Summary of Engrossed Bill

- Allows persons who have left Washington to elect to continue participation in the Long-Term Services and Supports Trust Program (Trust Program) if they have been assessed the premium for at least three years in which they worked the minimum number of qualifying hours in Washington.
- 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.
- Establishes an enforcement structure for the Employment Security Department to collect premiums.
- Increases the minimum number of annual qualifying hours from 500 to 1,000.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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: Do pass. Signed by 10 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Orwall, Simmons, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Graham, Maycumber and Mosbrucker.

Minority Report: Without recommendation. Signed by 2 members: Representatives Caldier and Harris.

Staff: Chris Blake (786-7392).

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 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 ten years with no more than a five-year interruption. 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 that the Department of Social and Health Services pays to long-term services and support providers. The premium assessment began July 1, 2023, and eligible beneficiaries may begin receiving benefits on July 1, 2026.

The Trust Program is administered jointly by the Department of Social and Health Services, the Employment Security Department, and the Health Care Authority. 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. In addition, a separate Long-Term Services and Supports Council is responsible for determining adjustments to the benefit unit to assure both benefit adequacy and Trust Program solvency.

Long-Term Care Insurance.

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:

Out-of-State Participation in the Long-Term Services and Supports Trust Program.

Beginning July 1, 2026, employees or self-employed persons who have left Washington may elect to continue participation in the Long-Term Services and Supports Trust Program (Trust Program). The 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 1,000 hours in Washington. A person must notify the Employment Security Department (ESD) of the decision to continue coverage within one year of establishing a primary residence outside of Washington.

An out-of-state participant may become eligible to receive benefits under the Trust Program beginning January 1, 2030. To become an eligible beneficiary, an out-of-state qualified individual must apply to the Department of Social and Health Services (DSHS) and undergo an eligibility determination. The eligibility determination must evaluate whether the individual:

- is unable to perform without substantial assistance at least two of the following activities of daily living for at least 90 days: eating, toileting, transferring, bathing, dressing, or continence; or
- requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairments.

Entities that provide services to out-of-state participants must meet care provision and program administration standards established by the DSHS and be appropriately credentialed in the jurisdiction in which the services are being provided. The DSHS may contract with a third party to administer payments to out-of-state long-term services and supports providers.

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.

The ESD must adopt standards for reporting and document submission for out-of-state

participants, collect premiums from out-of-state participants, and verify the wages or self-employment earnings reported by out-of-state participants.

Program Standards and Operations.

To become a qualified individual, an employee must pay the Trust Program premium for a total of 10 years while working the minimum number of qualifying hours, rather than paying the premium for 10 years without an interruption of five or more consecutive years. The option to become a qualified individual by having paid the premium assessment for three of the last six years prior to the date of application for benefits remains unchanged.

The minimum number of hours that a person must work in a year in order for the year to count toward becoming a qualified individual is raised from 500 hours to 1,000 hours.

For a person seeking to become an eligible beneficiary in Washington, the standard that requires the person to need assistance with at least three activities of daily living is clarified to require that the need for assistance must be expected to last for at least 90 days.

The Long-Term Services and Supports Council is eliminated, including its duties related to the annual adjustment amount of the benefit unit. The benefit unit must be adjusted annually for inflation using the Consumer Price Index for the Seattle, Washington area for urban wage earners and clerical workers.

An employee who holds a nonimmigrant visa for temporary workers is not subject to the Trust Program unless the employee elects coverage.

The DSHS, the ESD, and the Health Care Authority may design and conduct a pilot project to assess the Trust Program's capabilities for managing eligibility determinations and distributing payments to long-term services and supports providers. The pilot project may include up to 500 participants and may only occur between January 1, 2026, and June 30, 2026. The agencies must provide regular updates on the pilot project to the Long-Term Services and Supports Trust Commission and provide a summary upon its completion.

Employment Security Department Enforcement Authority.

Employers are required to make reports, provide information, and collect and remit premiums related to the Trust Program, as directed by the ESD. If a payment due to the ESD becomes delinquent, the ESD may issue an order and notice of assessment, and interest of one percent per month is assessed. If the employer does not pay the amounts due within 10 days of receipt of the notice, the ESD may collect the amounts due through the seizure and sale of the property of the employer.

Monetary penalties are established for employers who willfully fail to make required reports or willfully fail to remit the full amount of the premiums when they are due.

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 with differences related to deductibles, the initiation of payments, disclosures, continuity of care, and benefit coordination.

"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 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 health care 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.

In addition to any other inflation protections, supplemental insurance issuers must offer enrollees the option to purchase a policy that provides for benefit levels to increase by at least 3 percent annually.

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; and
 - when premium payments are no longer required under the policy.

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

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2024.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony:

(In support) It is important to plan for future long-term support needs and the Long-Term Services and Supports Trust Program (Trust Program) will help working Washingtonians do that. The Trust Program will give 3 million working Washingtonians access to support and assistance with their long-term care needs and 70 percent of people will need some type of long-term care in the future. The Long-Term Services and Supports Trust Commission made several recommendations to improve the Trust Program, including the establishment of supplemental long-term care insurance to provide coverage once the Trust Program benefits are exhausted. This bill makes important policy improvements to benefit working Washingtonians, including portability and continued coverage with supplemental long-term care insurance for coverage once their Trust Program benefits are exhausted.

(Opposed) The supplemental long-term care insurance regulation is unnecessary, and insurers could write supplemental coverage in a simpler manner if they were able to coordinate with the 12-month benefit within the Trust Program. Long-term care insurance coverage could be expanded through an employer incentive and an incentive to maintain existing private coverage.

(Other) A few of the changes make sense, including the provisions that make automatic exemptions for persons with nonimmigrant work visas and changing investment criteria that could hurt caregivers in the long run. The portability provision will create unequal treatment of vested individuals. Repealing the Trust Program would make more sense than having the state administer a possibly much thinner Trust Program with more complications like portability. Managing several different kinds of vesting schedules and timelines,

administering out-of-state payroll taxes, and adding nonresidents to the Trust Program with a different eligibility standard is troublesome and will be more costly.

Persons Testifying: (In support) Cathy Knight, Washington Association of Area Agencies on Aging; and Marguerite Ro, AARP.

(Opposed) John Mangan, American Council of Life Insurers.

(Other) Elizabeth Hovde, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: None.