

SENATE BILL REPORT

SHB 2467

As Passed Senate, February 28, 2024

Title: An act relating to increasing access to the long-term services and supports trust program by allowing participants who move out-of-state the option of maintaining benefit eligibility or opting out, and by prohibiting discrimination including based upon race, gender, age, or preexisting condition.

Brief Description: Increasing access to the long-term services and supports trust.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Macri, Chopp, Thai, Bateman and Pollet).

Brief History: Passed House: 2/12/24, 58-39.

Committee Activity: Labor & Commerce: 2/19/24, 2/20/24 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 2/28/24, 27-21.

Brief Summary of 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.
- Prohibits discrimination against persons based upon race, gender, age, or preexisting condition under the Trust Program.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

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.

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: In 2019 the Long-Term Services and Supports (LTSS) Trust Program (Trust Program) was enacted to provide long-term services and supports benefits to persons who have paid into the Trust Program for a specific amount of time and who have been assessed as needing a certain amount of assistance with activities of daily living (ADL).

Beginning July 1, 2023, a premium of 0.58 percent began being assessed on the wages of all employees in Washington who have worked at least 500 hours during the year. A Washington resident who is at least 18 years old and who has paid the premium 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 is deemed qualified individual status.

A qualified individual may become an eligible beneficiary upon having been assessed as requiring assistance with at least three ADLs. Eligible beneficiaries must be at least 18 years old, must be a Washington resident, and may not have been disabled before the age of 18. Beginning July 1, 2026, (1) a qualified individual may become an eligible beneficiary by filing an application with the Department of Social and Health Services (DSHS) and undergoing an eligibility determination; and (2) approved services must be available and benefits payable to a registered long-term services and supports provider on behalf of an eligible beneficiary.

Benefit units are currently \$100 and may be adjusted by the LTSS Council at a rate no greater than the adjustment to the consumer price index (CPI). An eligible beneficiary may not receive more than the dollar equivalent of 365 benefit units over the course of the eligible beneficiary's lifetime or \$36,500—\$100 benefit units x 365 days.

Persons who are self-insured may elect coverage under the Trust Program and may withdraw from coverage according to time frames established by the Employment Security Department (ESD). Certain individuals were eligible for a voluntary exemption from the Trust Program.

The Trust Program is administered jointly by DSHS, ESD, and the Health Care Authority. Trust Program oversight is provided by the LTSS Commission (Commission) which includes legislators, agency directors, and representatives from area agencies on aging, stakeholders, and consumers of approved services. The Commission has provided reports to the Legislature with recommendations in 2021, 2022, 2023, and 2024.

Summary of Bill: Out-of-State Participation in Long Term Services and Support Program—Portability. Beginning July 1, 2026, an employee or self-employed person who has left Washington may elect to continue participating in the Trust Program if they:

- have been assessed the premium for at least three years in which they worked at least 500 hours in each of those years; and
- notify ESD within one year of leaving Washington.

Out-of-state participants must report and document their wages or earnings to ESD and pay premiums. Once an out-of-state participant reaches age 67, they are no longer required to document earnings but must submit reports and remit premiums. ESD may cancel coverage if a participant fails to make payments or submit reports with 30 days' notice. ESD must adopt standards for the manner and timing of 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. The act provides that extending the premium base to out-of-state participants will increase the state's investment in long-term care services.

An employee or self-employed person who relocates outside of Washington may elect to opt out of coverage by no longer reporting wages to ESD, rather than become an out-of-state participant in the program.

Benefits for Out-of-State Participants. For out-of-state participants, benefits are available beginning July 1, 2030. For an out-of-state qualified individual to become an eligible beneficiary beginning July 1, 2030, the individual 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.

Entities that provide services to out-of-state participants must meet care provision and program administration standards established by DSHS and be appropriately credentialed in the jurisdiction in which the services are being provided. DSHS must develop criteria to deem a family member as qualified when providing services outside of Washington.

Prohibition on Discrimination. Discrimination against persons based upon race, gender, age, or preexisting condition is prohibited under the Trust Program. DSHS must adopt rules to prohibit discrimination in the Trust Program to apply to all state agencies, persons, and entities implementing the chapter. These prohibitions apply to both in-state and out-of-state participants as well as entities providing services to eligible beneficiaries outside Washington. The prohibitions are additional and supplemental to existing protections against discrimination under federal, state, and local laws.

The act's purpose is provided.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: This creates very good improvements to the program. Roughly 3 million will be able to access the WA Cares benefits. 70 percent of people will need the care. Portability was always an issue. Washington is the only state with this benefit so being able to move with this benefit is important.

The WA Cares program will help working Washingtonians access long-term care and ADLs. The recommendations are designed to make the program work better. The bill makes it explicit that it is for all Washingtonians without discrimination.

OTHER: There is a concern that this bill would be designated as a ballot alternative to I-2124. Repealing the LTC law would make more sense than an alternative with the state administering a much thinner program. This bill is premature since the benefits don't pay out until 2026, there is time to make change after voters weigh in on changes with I-2124. Another concern is changing the hours to allow for portability. Out of state providers may not meet provisions required by our state. Administrative burdens will be high for portability. WA Cares already has solvency concerns. The bill put an administrative burden and later benefits for out-of-state participants. The bill creates unequal treatment of in- and out-of-state participants.

Persons Testifying: PRO: Cathy MacCaul, AARP Washington State; Cathy Knight, WA Association of Area Agencies on Aging (W4A).

OTHER: Elizabeth Hovde, Washington Policy Center.

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