
HOUSE BILL 1596

State of Washington

67th Legislature

2022 Regular Session

By Representatives Abbarno, Boehnke, Corry, Chase, Caldier, Eslick, Graham, Klippert, Dye, and Stokesbary

Prefiled 12/06/21.

1 AN ACT Relating to authorizing the availability of benefits from
2 the long-term services and supports trust program for qualified
3 individuals who reside outside of Washington; and amending RCW
4 50B.04.010, 50B.04.020, 50B.04.030, 50B.04.060, 50B.04.070, and
5 50B.04.100.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 50B.04.010 and 2021 c 113 s 1 are each amended to
8 read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

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

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

15 (a) Adult day services;

16 (b) Care transition coordination;

17 (c) Memory care;

18 (d) Adaptive equipment and technology;

19 (e) Environmental modification;

20 (f) Personal emergency response system;

21 (g) Home safety evaluation;

- 1 (h) Respite for family caregivers;
2 (i) Home delivered meals;
3 (j) Transportation;
4 (k) Dementia supports;
5 (l) Education and consultation;
6 (m) Eligible relative care;
7 (n) Professional services;
8 (o) Services that assist paid and unpaid family members caring
9 for eligible individuals, including training for individuals
10 providing care who are not otherwise employed as long-term care
11 workers under RCW 74.39A.074;
12 (p) In-home personal care;
13 (q) Assisted living services;
14 (r) Adult family home services; and
15 (s) Nursing home services.
- 16 (3) "Benefit unit" means up to one hundred dollars paid by the
17 department of social and health services to ((a)):
- 18 (a) A long-term services and supports provider as reimbursement
19 for approved services provided to an eligible beneficiary receiving
20 approved services in Washington on a specific date; or
- 21 (b) An eligible beneficiary residing outside of Washington and
22 receiving approved services in accordance with RCW 50B.04.070. The
23 benefit unit must be adjusted annually at a rate no greater than the
24 Washington state consumer price index, as determined solely by the
25 council. Any changes adopted by the council shall be subject to
26 revision by the legislature.
- 27 (4) "Commission" means the long-term services and supports trust
28 commission established in RCW 50B.04.030.
- 29 (5) "Council" means the long-term services and supports trust
30 council established in RCW 50B.04.040.
- 31 (6) "Eligible beneficiary" means a qualified individual who is
32 age eighteen or older, (~~residing in the state of Washington,~~) has
33 been determined to meet the minimum level of assistance with
34 activities of daily living necessary to receive benefits through the
35 trust program, as established in this chapter, and has not exhausted
36 the lifetime limit of benefit units.
- 37 (7) "Employee" has the meaning provided in RCW 50A.05.010.
38 (8) "Employer" has the meaning provided in RCW 50A.05.010.
39 (9) "Employment" has the meaning provided in RCW 50A.05.010.

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

3 (11) "Long-term services and supports provider" means an entity
4 that meets the qualifications applicable in law to the approved
5 service they provide, including a qualified or certified home care
6 aide, licensed assisted living facility, licensed adult family home,
7 licensed nursing home, licensed in-home services agency, adult day
8 services program, vendor, instructor, qualified family member, or
9 other entities as registered by the department of social and health
10 services.

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

14 (13) "Program" means the long-term services and supports trust
15 program established in this chapter.

16 (14) "Qualified family member" means a relative of an eligible
17 beneficiary qualified to meet requirements established in state law
18 for the approved service they provide that would be required of any
19 other long-term services and supports provider to receive payments
20 from the state.

21 (15) "Qualified individual" means an individual who meets the
22 duration of payment requirements, as established in this chapter.

23 (16) "State actuary" means the office of the state actuary
24 created in RCW 44.44.010.

25 (17) "Wage or wages" means all remuneration paid by an employer
26 to an employee. Remuneration has the meaning provided in RCW
27 50A.05.010. All wages are subject to a premium assessment and not
28 limited by the commissioner of the employment security department, as
29 provided under RCW 50A.10.030(4).

30 **Sec. 2.** RCW 50B.04.020 and 2021 c 113 s 2 are each amended to
31 read as follows:

32 (1) The health care authority, the department of social and
33 health services, the office of the state actuary, and the employment
34 security department each have distinct responsibilities in the
35 implementation and administration of the program. In the performance
36 of their activities, they shall actively collaborate to realize
37 program efficiencies and provide persons served by the program with a
38 well-coordinated experience.

39 (2) The health care authority shall:

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

4 (b) Ensure approved services are provided to eligible
5 beneficiaries in Washington through audits or service verification
6 processes within the service provider payment system for registered
7 long-term services and supports providers and recoup any
8 inappropriate payments;

9 (c) Establish criteria for the payment of benefits on behalf of
10 eligible beneficiaries residing in Washington to registered long-term
11 services and supports providers under RCW 50B.04.070;

12 (d) Establish criteria for the payment of benefits to eligible
13 beneficiaries residing outside of Washington and receiving approved
14 services under RCW 50B.04.070;

15 (e) Establish rules and procedures for benefit coordination when
16 the eligible beneficiary is also funded for medicaid and other long-
17 term services and supports, including medicare, coverage through the
18 department of labor and industries, and private long-term care
19 coverage; and

20 (~~(e)~~) (f) Adopt rules and procedures necessary to implement and
21 administer the activities specified in this section related to the
22 program.

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

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

26 (b) Approve long-term services and supports eligible for payment
27 as approved services under the program, as informed by the
28 commission;

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

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

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

39 (f) Disburse payments to eligible beneficiaries residing outside
40 of Washington and receiving approved services under RCW 50B.04.070;

1 (g) Prepare and distribute written or electronic materials to
2 qualified individuals, eligible beneficiaries, and the public as
3 deemed necessary by the commission to inform them of program design
4 and updates;

5 ~~((g))~~ (h) Provide customer service and address questions and
6 complaints, including referring individuals to other appropriate
7 agencies;

8 ~~((h))~~ (i) Provide administrative and operational support to the
9 commission;

10 ~~((i))~~ (j) Track data useful in monitoring and informing the
11 program, as identified by the commission; and

12 ~~((j))~~ (k) Adopt rules and procedures necessary to implement and
13 administer the activities specified in this section related to the
14 program.

15 (4) The employment security department shall:

16 (a) Collect and assess employee premiums as provided in RCW
17 50B.04.080;

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

20 (c) Perform investigations to determine the compliance of premium
21 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the
22 same activities conducted under the family and medical leave act,
23 Title 50A RCW, to the extent possible;

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

26 (e) Adopt rules and procedures necessary to implement and
27 administer the activities specified in this section related to the
28 program.

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

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

34 (b) Make recommendations to the council and the legislature on
35 actions necessary to maintain trust solvency. The recommendations
36 must include options to redesign or reduce benefit units, approved
37 services, or both, to prevent or eliminate any unfunded actuarially
38 accrued liability in the trust or to maintain solvency; and

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

4 (6) By October 1, 2021, the employment security department and
5 the department of social and health services shall jointly conduct
6 outreach to provide employers with educational materials to ensure
7 employees are aware of the program and that the premium assessments
8 will begin on January 1, 2022. In conducting the outreach, the
9 employment security department and the department of social and
10 health services shall provide on a public website information that
11 explains the program and premium assessment in an easy to understand
12 format. Outreach information must be available in English and other
13 primary languages as defined in RCW 74.04.025.

14 **Sec. 3.** RCW 50B.04.030 and 2021 c 113 s 3 are each amended to
15 read as follows:

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

20 (2) The commission includes:

21 (a) Two members from each of the two largest caucuses of the
22 house of representatives, appointed by the speaker of the house of
23 representatives;

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

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

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

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

32 (f) One representative of the organization representing the area
33 agencies on aging;

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

36 (h) One representative of a union representing long-term care
37 workers;

38 (i) One representative of an organization representing retired
39 persons;

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

3 (k) One representative of an association representing adult
4 family home providers;

5 (l) Two individuals receiving long-term services and supports, or
6 their designees, or representatives of consumers receiving long-term
7 services and supports under the program;

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

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

14 (3) (a) Other than the legislators and agency heads identified in
15 subsection (2) of this section, members of the commission are
16 appointed by the governor for terms of two years, except that the
17 governor shall appoint the initial members identified in subsection
18 (2) (f) through (n) of this section to staggered terms not to exceed
19 four years.

20 (b) The secretary of the department of social and health
21 services, or the secretary's designee, shall serve as chair of the
22 commission. Meetings of the commission are at the call of the chair.
23 A majority of the voting members of the commission shall constitute a
24 quorum for any votes of the commission. Approval of sixty percent of
25 those voting members of the commission who are in attendance is
26 required for the passage of any vote.

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

31 (4) Beginning January 1, 2021, the commission shall propose
32 recommendations to the appropriate executive agency or the
33 legislature regarding:

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

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

1 (c) The establishment of payment maximums for approved services
2 consistent with actuarial soundness which shall not be lower than
3 medicaid payments for comparable services. A service or supply may be
4 limited by dollar amount, duration, or number of visits. The
5 commission shall engage affected stakeholders to develop this
6 recommendation;

7 (d) The establishment of payment standards to eligible
8 beneficiaries residing outside of Washington and receiving approved
9 services;

10 (e) Changes to rules or policies to improve the operation of the
11 program;

12 (~~(e)~~) (f) Providing a recommendation to the council for the
13 annual adjustment of the benefit unit in accordance with RCW
14 50B.04.010 and 50B.04.040;

15 (~~(f)~~) (g) A refund of premiums for a deceased qualified
16 individual with a dependent who is an individual with a developmental
17 disability who is dependent for support from a qualified individual.
18 The qualified individual must not have been determined to be an
19 eligible beneficiary by the department of social and health services.
20 The refund shall be deposited into an individual trust account within
21 the developmental disabilities endowment trust fund for the benefit
22 of the dependent with a developmental disability. The commission
23 shall consider:

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

28 (ii) The criteria for determining whether the individual is
29 developmentally disabled. The determination shall not be based on
30 whether or not the individual with a developmental disability is
31 receiving services under Title 71A RCW, or another state or local
32 program;

33 (~~(g)~~) (h) Assisting the state actuary with the preparation of
34 regular actuarial reports on the solvency and financial status of the
35 program and advising the legislature on actions necessary to maintain
36 trust solvency. The commission shall provide the office of the state
37 actuary with all actuarial reports for review. The office of the
38 state actuary shall provide any recommendations to the commission and
39 the legislature on actions necessary to maintain trust solvency;

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

6 ~~((i))~~ (j) For the January 1, 2021, report only, the commission
7 shall consult with the office of the state actuary on the development
8 of an actuarial report of the projected solvency and financial status
9 of the program. The office of the state actuary shall provide any
10 recommendations to the commission and the legislature on actions
11 necessary to achieve trust solvency.

12 (5) The commission shall monitor agency administrative expenses
13 over time. Beginning November 15, 2020, the commission must annually
14 report to the governor and the fiscal committees of the legislature
15 on agency spending for administrative expenses and anticipated
16 administrative expenses as the program shifts into different phases
17 of implementation and operation. The November 15, 2025, report must
18 include recommendations for a method of calculating future agency
19 administrative expenses to limit administrative expenses while
20 providing sufficient funds to adequately operate the program. The
21 agency heads identified in subsection (2) of this section may advise
22 the commission on the reports prepared under this subsection, but
23 must recuse themselves from the commission's process for review,
24 approval, and submission to the legislature.

25 (6) The commission shall establish an investment strategy
26 subcommittee consisting of the members identified in subsection
27 (2)(a) through (d) of this section as voting members of the
28 subcommittee. In addition, four members appointed by the governor who
29 are considered experienced and qualified in the field of investment
30 shall serve as nonvoting members. The subcommittee shall provide
31 guidance and advice to the state investment board on investment
32 strategies for the account, including seeking counsel and advice on
33 the types of investments that are constitutionally permitted.

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

36 **Sec. 4.** RCW 50B.04.060 and 2019 c 363 s 7 are each amended to
37 read as follows:

38 (1) Beginning January 1, 2025 ~~((, approved))~~ :

1 (a) Approved services must be available and benefits payable to a
2 registered long-term services and supports provider on behalf of an
3 eligible beneficiary residing and receiving approved services in
4 Washington under this section; and

5 (b) Benefits must be payable to an eligible beneficiary residing
6 outside of Washington and receiving approved services.

7 (2) A qualified individual may become an eligible beneficiary by
8 filing an application with the department of social and health
9 services and undergoing an eligibility determination which includes
10 an evaluation that the individual requires assistance with at least
11 three activities of daily living. The department of social and health
12 services must engage sufficient qualified assessor capacity , within
13 Washington and outside of Washington, including via contract, so that
14 the determination may be made within forty-five days from receipt of
15 a request by a beneficiary to use a benefit.

16 (3) (a) An eligible beneficiary may (~~receive~~):

17 (i) Receive approved services in Washington and benefits through
18 the program in the form of a benefit unit payable to a registered
19 long-term services and supports provider; or

20 (ii) Receive benefits through the program in the form of a
21 benefit unit payable directly to the eligible beneficiary if the
22 eligible beneficiary resides outside of Washington and receives
23 approved services.

24 (b) An eligible beneficiary may not receive more than the dollar
25 equivalent of three hundred sixty-five benefit units over the course
26 of the eligible beneficiary's lifetime, whether the benefit units are
27 paid to a registered long-term services and supports provider under
28 (a) (i) of this subsection or paid directly to an eligible beneficiary
29 under (a) (ii) of this subsection.

30 (i) If the department of social and health services reimburses a
31 long-term services and supports provider for approved services
32 provided to an eligible beneficiary in Washington and the payment is
33 less than the benefit unit, only the portion of the benefit unit that
34 is used shall be taken into consideration when calculating the
35 person's remaining lifetime limit on receipt of benefits.

36 (ii) Eligible beneficiaries in Washington may combine benefit
37 units to receive more approved services per day as long as the total
38 number of lifetime benefit units has not been exceeded.

39 (iii) Eligible beneficiaries residing outside of Washington and
40 receiving approved services may receive the full amount of the

1 benefit unit per day as long as the total number of lifetime benefit
2 units has not been exceeded. An eligible beneficiary residing outside
3 of Washington may not receive less than the daily benefit unit amount
4 and may not combine benefit units. The department of social and
5 health services may require periodic eligibility redeterminations for
6 eligible beneficiaries residing outside of Washington and
7 verification that approved services are being provided to the
8 eligible beneficiary. The provider of approved services to an
9 eligible beneficiary residing outside of Washington is not required
10 to be registered with the department of social and health services.

11 **Sec. 5.** RCW 50B.04.070 and 2019 c 363 s 8 are each amended to
12 read as follows:

13 (1) Benefits provided under this chapter shall be paid
14 periodically and promptly to registered long-term services and
15 supports providers providing approved services to eligible
16 beneficiaries in Washington.

17 (2) Qualified family members providing approved services to
18 eligible beneficiaries in Washington may be paid for approved
19 personal care services in the same way as individual providers,
20 through a licensed home care agency, or through a third option if
21 recommended by the commission and adopted by the department of social
22 and health services.

23 (3) Eligible beneficiaries residing outside of Washington and
24 receiving approved services shall be paid periodically and promptly.
25 The department of social and health services may develop a schedule
26 for disbursing payments to eligible beneficiaries residing outside of
27 Washington that balances administrative efficiency and fairness to
28 the eligible beneficiary.

29 **Sec. 6.** RCW 50B.04.100 and 2019 c 363 s 11 are each amended to
30 read as follows:

31 (1) The long-term services and supports trust account is created
32 in the custody of the state treasurer. All receipts from employers
33 under RCW 50B.04.080 must be deposited in the account. Expenditures
34 from the account may be used for the administrative activities of the
35 department of social and health services, the health care authority,
36 and the employment security department. Benefits associated with the
37 program must be disbursed from the account by the department of
38 social and health services. Only the secretary of the department of

1 social and health services or the secretary's designee may authorize
2 disbursements from the account. The account is subject to the
3 allotment procedures under chapter 43.88 RCW. An appropriation is
4 required for administrative expenses, but not for benefit payments.
5 The account must provide reimbursement of any amounts from other
6 sources that may have been used for the initial establishment of the
7 program.

8 (2) The revenue generated pursuant to this chapter shall be
9 utilized to expand long-term care (~~in the state~~). These funds may
10 not be used either in whole or in part to supplant existing state or
11 county funds for programs that meet the definition of approved
12 services.

13 (3) The moneys deposited in the account must remain in the
14 account until expended in accordance with the requirements of this
15 chapter. If moneys are appropriated for any purpose other than
16 supporting the long-term services and supports program, the
17 legislature shall notify each qualified individual by mail that the
18 person's premiums have been appropriated for an alternate use,
19 describe the alternate use, and state its plan for restoring the
20 funds so that premiums are not increased and benefits are not
21 reduced.

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