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**HOUSE BILL 2423**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representative Riccelli; by request of Employment Security Department

1 AN ACT Relating to modifying the long-term services and supports  
2 trust program by clarifying the ability for individuals with existing  
3 long-term care insurance to opt-out of the premium assessment and  
4 making technical corrections; amending RCW 50B.04.010, 50B.04.020,  
5 50B.04.050, 50B.04.080, 50B.04.090, and 50B.04.120; and adding a new  
6 section to chapter 50B.04 RCW.

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

8 **Sec. 1.** RCW 50B.04.010 and 2019 c 363 s 2 are each amended to  
9 read as follows:

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

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

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

- 16 (a) Adult day services;
- 17 (b) Care transition coordination;
- 18 (c) Memory care;
- 19 (d) Adaptive equipment and technology;
- 20 (e) Environmental modification;
- 21 (f) Personal emergency response system;

- 1 (g) Home safety evaluation;
- 2 (h) Respite for family caregivers;
- 3 (i) Home delivered meals;
- 4 (j) Transportation;
- 5 (k) Dementia supports;
- 6 (l) Education and consultation;
- 7 (m) Eligible relative care;
- 8 (n) Professional services;
- 9 (o) Services that assist paid and unpaid family members caring  
10 for eligible individuals, including training for individuals  
11 providing care who are not otherwise employed as long-term care  
12 workers under RCW 74.39A.074;
- 13 (p) In-home personal care;
- 14 (q) Assisted living services;
- 15 (r) Adult family home services; and
- 16 (s) Nursing home services.
- 17 (3) "Benefit unit" means up to one hundred dollars paid by the  
18 department of social and health services to a long-term services and  
19 supports provider as reimbursement for approved services provided to  
20 an eligible beneficiary on a specific date. The benefit unit must be  
21 adjusted annually at a rate no greater than the Washington state  
22 consumer price index, as determined solely by the council. Any  
23 changes adopted by the council shall be subject to revision by the  
24 legislature.
- 25 (4) "Commission" means the long-term services and supports trust  
26 commission established in RCW 50B.04.030.
- 27 (5) "Council" means the long-term services and supports trust  
28 council established in RCW 50B.04.040.
- 29 (6) "Eligible beneficiary" means a qualified individual who is  
30 age eighteen or older, residing in the state of Washington, was not  
31 disabled before the age of eighteen, has been determined to meet the  
32 minimum level of assistance with activities of daily living necessary  
33 to receive benefits through the trust program, as established in this  
34 chapter, and who has not exhausted the lifetime limit of benefit  
35 units.
- 36 (7) "Employee" has the meaning provided in RCW (~~50A.04.010~~)  
37 50A.05.010.
- 38 (8) "Employer" has the meaning provided in RCW (~~50A.04.010~~)  
39 50A.05.010.

1 (9) "Employment" has the meaning provided in RCW ((50A.04.010))  
2 50A.05.010.

3 (10) "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 (11) "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 (12) "Program" means the long-term services and supports trust  
15 program established in this chapter.

16 (13) "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 (14) "Qualified individual" means an individual who meets the  
22 duration of payment requirements, as established in this chapter.

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

25 (16) (~~"Wages" has the meaning provided in RCW 50A.04.010, except~~  
26 ~~that all~~) "Wage or wages" means all remuneration paid by an employer  
27 to an employee. Remuneration has the meaning provided in RCW  
28 50A.05.010. All wages are subject to a premium assessment and not  
29 limited by the commissioner of the employment security department, as  
30 provided under RCW ((50A.04.115)) 50A.10.030(4).

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

33 **Sec. 2.** RCW 50B.04.020 and 2019 c 363 s 3 are each amended to  
34 read as follows:

35 (1) The health care authority, the department of social and  
36 health services, the office of the state actuary, and the employment  
37 security department each have distinct responsibilities in the  
38 implementation and administration of the program. In the performance  
39 of their activities, they shall actively collaborate to realize

1 program efficiencies and provide persons served by the program with a  
2 well-coordinated experience.

3 (2) The health care authority shall:

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

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

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

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

18 (e) Adopt rules and procedures necessary to implement and  
19 administer the activities specified in this section related to the  
20 program.

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

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

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

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

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

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

37 (f) Prepare and distribute written or electronic materials to  
38 qualified individuals, eligible beneficiaries, and the public as  
39 deemed necessary by the commission to inform them of program design  
40 and updates;

1 (g) Provide customer service and address questions and  
2 complaints, including referring individuals to other appropriate  
3 agencies;

4 (h) Provide administrative and operational support to the  
5 commission;

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

8 (j) Adopt rules and procedures necessary to implement and  
9 administer the activities specified in this section related to the  
10 program.

11 (4) The employment security department shall:

12 (a) Collect and assess employee premiums as provided in RCW  
13 50B.04.080;

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

16 (c) Perform investigations to determine the compliance of premium  
17 payments in RCW 50B.04.080 in coordination with the same activities  
18 conducted under the family and medical leave act, (~~chapter 50A.04~~)  
19 Title 50A RCW, to the extent possible;

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

22 (e) Adopt rules and procedures necessary to implement and  
23 administer the activities specified in this section related to the  
24 program.

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

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

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

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

38 **Sec. 3.** RCW 50B.04.050 and 2019 c 363 s 6 are each amended to  
39 read as follows:

1 (1) The employment security department shall deem a person to be  
2 a qualified individual as provided in this chapter if the person has  
3 paid the long-term services and supports premiums required by RCW  
4 50B.04.080 for the equivalent of either:

5 (a) A total of ten years without interruption of five or more  
6 consecutive years; or

7 (b) Three years within the last six years.

8 (2) When deeming a person to be a qualified individual, the  
9 employment security department shall require that the person have  
10 worked at least five hundred hours during each of the ten years in  
11 subsection (1)(a) of this section (~~and~~) or each of the three years  
12 in subsection (1)(b) of this section.

13 (3) An exempt employee may never be deemed to be a qualified  
14 individual.

15 **Sec. 4.** RCW 50B.04.080 and 2019 c 363 s 9 are each amended to  
16 read as follows:

17 (1) Beginning January 1, 2022, the employment security department  
18 shall assess for each individual in employment with an employer a  
19 premium based on the amount of the individual's wages. The initial  
20 premium rate is fifty-eight hundredths of one percent of the  
21 individual's wages. Beginning January 1, 2024, and biennially  
22 thereafter, the premium rate shall be set by the pension funding  
23 council at a rate no greater than fifty-eight hundredths of one  
24 percent. In addition, the pension funding council must set the  
25 premium rate at the lowest amount necessary to maintain the actuarial  
26 solvency of the long-term services and supports trust account created  
27 in RCW 50B.04.100 in accordance with recognized insurance principles  
28 and designed to attempt to limit fluctuations in the premium rate. To  
29 facilitate the premium rate setting the office of the state actuary  
30 must perform a biennial actuarial audit and valuation of the fund and  
31 make recommendations to the pension funding council.

32 (2)(a) The employer must collect from the employees the premiums  
33 provided under this section through payroll deductions and remit the  
34 amounts collected to the employment security department.

35 (b) In collecting employee premiums through payroll deductions,  
36 the employer shall act as the agent of the employees and shall remit  
37 the amounts to the employment security department as required by this  
38 chapter.

1 (3) Nothing in this chapter requires any party to a collective  
2 bargaining agreement in existence on October 19, 2017, to reopen  
3 negotiations of the agreement or to apply any of the responsibilities  
4 under this chapter unless and until the existing agreement is  
5 reopened or renegotiated by the parties or expires.

6 (4)(a) Premiums shall be collected in the manner and at such  
7 intervals as provided in this chapter and directed by the employment  
8 security department.

9 (b) To the extent feasible, the employment security department  
10 shall use the premium assessment, collection, and reporting  
11 procedures in (~~chapter 50A.04~~) Title 50A RCW.

12 (5) The employment security department shall deposit all premiums  
13 collected in this section in the long-term services and supports  
14 trust account created in RCW 50B.04.100.

15 (6) Premiums collected in this section are placed in the trust  
16 account for the individuals who become eligible for the program.

17 (7) If the premiums established in this section are increased,  
18 the legislature shall notify each qualified individual by mail that  
19 the person's premiums have been increased, describe the reason for  
20 increasing the premiums, and describe the plan for restoring the  
21 funds so that premiums are returned to fifty-eight hundredths of one  
22 percent of the individual's wages.

23 (~~(8) An employee who demonstrates that the employee has long-~~  
24 ~~term care insurance is exempt from the premium assessment in this~~  
25 ~~section.))~~

26 **Sec. 5.** RCW 50B.04.090 and 2019 c 363 s 10 are each amended to  
27 read as follows:

28 (1) Beginning January 1, 2022, any self-employed person,  
29 including a sole proprietor, independent contractor, partner, or  
30 joint venturer, may elect coverage under this chapter. Those electing  
31 coverage under this subsection are responsible for payment of one  
32 hundred percent of all premiums assessed to an employee under RCW  
33 50B.04.080. The self-employed person must file a notice of election  
34 in writing with the employment security department, in the manner  
35 required by the employment security department in rule. The self-  
36 employed person is eligible for benefits after paying the long-term  
37 services and supports premium for the time required under RCW  
38 50B.04.050.

1 (2) A self-employed person who has elected coverage may withdraw  
2 from coverage, at such times as the employment security department  
3 may adopt by rule, by filing a notice of withdrawal in writing with  
4 the employment security department, with the withdrawal to take  
5 effect not sooner than thirty days after filing the notice with the  
6 employment security department.

7 (3) The employment security department may cancel elective  
8 coverage if the self-employed person fails to make required payments  
9 or file reports. The employment security department may collect due  
10 and unpaid premiums and may levy an additional premium for the  
11 remainder of the period of coverage. The cancellation must be  
12 effective no later than thirty days from the date of the notice in  
13 writing advising the self-employed person of the cancellation.

14 (4) Those electing coverage are considered employers or employees  
15 where the context so dictates.

16 (5) For the purposes of this section, "independent contractor"  
17 means an individual excluded from the definition of "employment" in  
18 RCW 50B.04.010(~~(+8)~~).

19 (6) The employment security department shall adopt rules for  
20 determining the hours worked and the wages of individuals who elect  
21 coverage under this section and rules for enforcement of this  
22 section.

23 **Sec. 6.** RCW 50B.04.120 and 2019 c 363 s 13 are each amended to  
24 read as follows:

25 (1) Determinations made by the health care authority or the  
26 department of social and health services under this chapter,  
27 including determinations regarding functional eligibility or related  
28 to registration of long-term services and supports providers, are  
29 subject to appeal in accordance with chapter 34.05 RCW. In addition,  
30 the standards and procedures adopted for these appeals must address  
31 the following:

- 32 (a) Timelines;
- 33 (b) Eligibility and benefit determination;
- 34 (c) Judicial review; and
- 35 (d) Fees.

36 (2) Determinations made by the employment security department  
37 under this chapter are subject to appeal in accordance with the  
38 appeal procedures under (~~chapter 50A.04~~) Title 50A RCW. The  
39 employment security department shall adopt standards and procedures



1 for appeals for persons aggrieved by any determination or  
2 redetermination made by the department. The standards and procedures  
3 must be consistent with those adopted for the family and medical  
4 leave program under (~~chapter 50A.04~~) Title 50A RCW and must address  
5 topics including:

- 6 (a) Premium liability;
- 7 (b) Premium collection;
- 8 (c) Judicial review; and
- 9 (d) Fees.

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

12 (1) An employee who attests that the employee has long-term care  
13 insurance may apply for an exemption from the premium assessment  
14 under RCW 50B.04.080. An exempt employee may not become a qualified  
15 individual or eligible beneficiary and is permanently ineligible for  
16 coverage under this title.

17 (2) (a) The employment security department must accept  
18 applications for exemptions only from July 1, 2021, through December  
19 31, 2022.

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

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

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

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

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

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

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

36 (a) Employers must retain written notifications of exemptions  
37 received from employees.

1           (b) An employer who deducts premiums after being notified by the  
2 employee of an exemption is solely responsible for refunding to the  
3 employee any premiums deducted after the notification.  
4           (c) The employer is not entitled to a refund from the employment  
5 security department for any premiums remitted to the employment  
6 security department that were deducted from exempt employees.  
7           (9) The department must adopt rules necessary to implement and  
8 administer the activities specified in this section related to the  
9 program, including rules on the submission and processing of  
10 applications under this section.

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