

2021 LTSS Trust Legislative Session Impacts

Prepared by the Department of Social and Health Services

Substitute House Bill 1323 passed the legislature and enacts many of the recommendations included in the LTSS Trust Commission Recommendations Report to the Legislature submitted January 1 2021. The following policy areas were addressed:

1. **Coverage for adults with disabilities:** Removes the exclusion from coverage of adults who became disabled prior to the age of 18.
2. **“Vesting” lookback:** Clarifies that becoming a qualified individual (vesting) under the “three years within the last six years” requirement is determined from the date of application for benefits.
3. **Supplemental Private LTC Insurance Workgroup:** Adds a requirement that the LTSS Trust Commission work with insurers to develop long-term care insurance products that supplement the program's benefits.
4. **Lifetime Opt-Out:** Clarifies that private long-term care insurance policy holders must purchase insurance prior to November 1, 2021 to apply for an exemption from premium payments.
5. **Self-Employed Ground Rules:** Adds a three-year window for self-employed individuals to opt-in and removes the option to withdraw from coverage at will after they've opted in. Also adds the ability for the Employment Security Department to verify premium payment compliance for self-employed individuals.
6. **Election of Coverage for Tribes:** Allows federally recognized tribes to elect coverage so that tribal employees are covered by the LTSS Trust. Adds the ability for Tribes that have opted into coverage to opt out at any time.
7. **Employer Outreach:** Adds a requirement that ESD will conduct employer outreach in partnership with DSHS by October 1, 2021.

Senate Joint Resolution 8200 was introduced in the Senate Ways and Means Committee and no action was taken. This would have allowed the LTSS Trust Fund to be invested by the Washington State Investment Board in a full range of investments to help ensure that the fund can pay benefits to eligible Washingtonians over the long-term and keep worker premiums low.

SHB 1323 Legislative impacts are clarified below.

1. **Coverage for adults with disabilities:** Allowing individuals who became disabled prior to the age of 18 to become eligible beneficiaries eliminates the inequity and reduces the potential legal liability caused by requiring individuals who became disabled prior to the age of 18 to pay in, yet excluding them from being eligible for benefits. It also reduces the administrative burden on DSHS to determine whether all individuals who apply for Trust benefits, including in older age, had a disability that onset prior to age 18 in order to exclude them. According to actuarial analysis, extending coverage to this population could add .01% - .02% (one to two basis points) to the premium needed to fund benefits over a 75 year period.
2. **“Vesting” lookback:** Clarifies that the secondary pathway to vested (“qualified individual”) status, by means of a worker contributing “three years within the last six years” (RCW 50B.04.050(1)(b)), does not imply that a worker can contribute three years within any six-year period and thereby become vested for life. Rather, “the last six years” refers to the six years immediately prior to the date of application for LTSS Trust

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benefits. This interpretation aligns with the baseline actuarial modeling for the program conducted in 2018.

- 3. Supplemental Private LTC Insurance Workgroup:** Adds a requirement for the LTSS Trust Commission to work with insurers on the design of private long-term care insurance products that supplement the program's benefits. The workgroup will also consider whether to recommend adjustments and fine tuning of the administrative design of the LTSS Trust benefit. Any such recommendations will require actuarial modeling to determine the impact of various options on the premium rate required to fund LTSS Trust program costs.
- 4. Lifetime Opt-Out:** Allows individuals to purchase private long-term care coverage through **November 1, 2021**, in order to qualify for an exemption from LTSS Trust coverage, extending the grandfathered time limit previously recommended. This change extends the date for the private insurance industry to use marketing opt-out as a strategy to encourage (primarily) high income workers to purchase private coverage and opt-out of the Trust, increasing the risk of non-participation and adverse selection in the Trust program. There is also a consumer protection risk here: Some workers may permanently opt out of public coverage due to having short-term employer coverage or purchasing individual coverage which may be inexpensive now, but later become unaffordable, leaving more workers unprotected and potentially ultimately on Medicaid.
- 5. Self-Employed Ground Rules:** Retains the voluntary nature of Trust participation by the self-employed but establishes two fundamental ground rules to mitigate risks to LTSS Trust solvency: 1) establishes a three-year window for self-employed individuals to opt-in when premium collection begins January 1, 2022, or when a person first becomes self-employed, and 2) once an individual has opted in, the opt-in is permanent. According to LTSS Trust actuarial analysis, if these ground rules are even moderately effective at reducing adverse selection, they would reduce the risk that premiums would need to be increased (or benefits cut) down the road due to adverse selection. This bill also adds authority for the Employment Security Department to verify income reporting and compliance with premium payments by the self-employed.
- 6. Election of Coverage for Tribes:** Adds a new section to include a pathway for tribes to voluntarily opt-in so that the 31,000 Washingtonians employed by tribal businesses are not excluded from coverage. If a tribe opts in, all of their employees will be covered. This change will make the LTSS Trust consistent with provisions in the Paid Family Medical Leave Act. LTSS Trust actuarial analysis shows that this change will have a negligible effect on Trust solvency. This amendment also adds the ability for tribes that have elected coverage to opt-out of coverage at any time for any reason. This supports tribal sovereignty and protects tribes against future changes to the program with which a tribe may not agree.
- 7. Employer Outreach:** Adds a requirement for the Employment Security Department to conduct outreach to employers in collaboration with DSHS to ensure employees are aware of the program and that the premium assessments will begin on January 1, 2022. It also requires information to be posted publicly online and provide outreach information in English and primary languages other than English.