

HOUSE BILL REPORT

HB 2533

As Reported by House Committee On:
Health Care & Wellness
Appropriations

Title: An act relating to long-term care services and supports.

Brief Description: Concerning long-term care services and supports.

Sponsors: Representatives Jinkins, Johnson, Cody, Tharinger, Harris, Slatter, Appleton, Frame, Robinson, Haler, Stonier, Fitzgibbon, Fey, Wylie, Pollet and Macri.

Brief History:

Committee Activity:

Health Care & Wellness: 1/24/18, 1/31/18 [DPS];

Appropriations: 2/5/18, 2/6/18 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Establishes the Long-Term Services and Supports Trust Program (Trust Program) to provide benefits for long-term services and supports to qualified individuals who need assistance with at least three activities of daily living.
- Establishes eligibility requirements for the Trust Program for persons who pay a premium of 0.49 percent of a person's wages for a specific amount of time.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Macri, Vice Chair; Caldier, Clibborn, DeBolt, Harris, Jinkins, MacEwen, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Maycumber.

Staff: Chris Blake (786-7392).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Persons who need assistance with activities of daily living such as bathing, dressing, medication administration, personal hygiene, or other health-related tasks may access assistance through several types of care providers in different settings. Many of these settings also provide skilled nursing and therapists, activities, rehabilitation, and coordinated care. Providers of long-term services and supports include unpaid family caregivers, nursing homes, assisted living facilities, adult family homes, home health services, and individual and agency providers. Sources of funding for long-term services and supports include personal resources, private long-term care insurance, and Medicaid.

The 2015-17 Operating Budget funded the Department of Social and Health Services to contract for an independent feasibility study and actuarial modeling of two options to provide financial assistance to persons with preparations for long-term services and supports needs. The first option was to review a public long-term care benefit for workers funded through a payroll tax deduction. The second option was to review a public-private reinsurance model to provide a stable source of reimbursement for insurers for a portion of catastrophic long-term services and supports losses. The study was released in January 2017.

Summary of Substitute Bill:

The Long-Term Services and Supports Trust Program (Trust Program) is established 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.

Beginning January 1, 2022, employees in Washington shall be assessed a premium of 0.49 percent of their wages. Washington residents receive "qualified individual" status if they are at least 18 years old and have paid the premium for either: (1) three years within the last six years, or (2) for a total of 10 years, with at least five of those years paid without interruption. Beginning January 1, 2025, a qualified individual may become an "eligible beneficiary" if he or she is not currently using Medicare-paid rehabilitation services and has been determined by the Department of Social and Health Services (DSHS) as requiring assistance with at least three activities of daily living.

Upon becoming an eligible beneficiary, a person may receive long-term services and supports in the form of benefit units. A benefit unit is the equivalent of up to \$100, adjusted by an annual 3 percent index, that the DSHS pays to a long-term services and supports provider for providing care to an eligible beneficiary on a specific date. The benefits do not begin until 30 days after the person becomes an eligible beneficiary. An eligible beneficiary may receive up to 365 benefit units over the course of his or her lifetime. Partial benefit units may be retained by the eligible beneficiary if a day of care costs less than the value of the benefit unit.

The Trust Program is administered jointly by the DSHS, the Employment Security Department (ESD), and the Health Care Authority (HCA). Each agency has the following responsibilities:

- The DSHS is responsible for making determinations regarding eligible beneficiary status, registering long-term services and supports providers that meet minimum qualifications, discontinuing the registration of long-term services and supports providers that fail to meet minimum qualifications or that violate Trust Program operating standards, dispersing benefits to long-term services and supports providers, performing assessments to determine functional eligibility for benefits, preparing informational materials, providing support to the Long-Term Services and Supports Trust Commission (Commission), and establishing rules and procedures for benefit coordination.
- The ESD shall collect and assess employee premiums, assist the Commission in monitoring the solvency and financial status of the Trust Program, and perform investigations to determine compliance with premium payments.
- The HCA shall make determinations regarding the status of a person as a qualified individual, and assure that services are provided.

The Commission is established and is comprised of:

- eight legislators;
- the Commissioner of the ESD;
- the Secretary of the DSHS;
- the Director of the HCA;
- a representative of a union representing long-term care workers;
- a representative of an association representing retired persons;
- a representative of an association representing the majority of skilled and assisted living providers;
- a representative of an organization representing the managers of in-home long-term care;
- a representative of an association representing adult family home providers; and
- two individuals receiving long-term services and supports, or their designees, or representatives of consumers receiving long-term services and supports under the Trust Program.

The Commission has authority to establish rules and policies, including criteria for qualified individuals and eligible beneficiaries, minimum qualifications for the registration of long-term services and supports providers, criteria for paying benefits, operational standards for registered long-term services and supports providers. In addition, the Commission must make annual adjustments of the value of the benefit unit and prepare actuarial reports on the solvency and financial status of the Trust Program. Beginning December 1, 2023, the Commission must submit an annual report to the Legislature on the Trust Program. The report must include information about projected and actual program participation, the adequacy of premium rates, fund balances, benefits paid, demographic information on program participants, and the extent to which the program has resulted in savings to the Medicaid program through cost avoidance.

Monies collected from the premium must be deposited in the Long-Term Services and Supports Trust Account (Trust Account). The Trust Account may only be used for supporting the Trust Program. If funds in the Trust Account are appropriated for any other purpose, the Legislature must notify qualified individuals by mail that the person's premiums have been

appropriated for an alternate use, describe the alternate use, and state its plan for restoring funds so that premiums are not increased and benefits are not reduced.

Beginning January 1, 2023, self-employed persons may elect coverage under the Trust Program. Those who elect such coverage may voluntarily withdraw from participation. The ESD may cancel elective coverage if the self-employed person fails to make the required payments or file reports.

Legislative findings are made related to the difficulty in obtaining coverage for long-term care, the need for long-term care, the cost of long-term care, the inability of seniors to rely on family caregivers, the cost to the state of providing long-term services and supports, the need for an alternative funding mechanism for long-term services and supports, and the need for the state to continue to promote consumer choice in selecting long-term care settings.

Substitute Bill Compared to Original Bill:

The substitute bill adds a finding that the choice of provider type must be at least the same or greater than currently available through Medicaid long-term services and supports.

The substitute bill changes the definition of wages to the remuneration paid by one employer during any calendar year to an individual in its employment. The requirement that a qualifying individual not be eligible for long-term services and supports in order to receive benefits is changed to require that the person not be currently using rehabilitation services paid for by Medicare.

The substitute bill adds members to the Long-Term Services and Supports Trust Commission, including two additional members of the House of Representatives, two additional members of the Senate, and one representative of an organization representing the managers of in-home long-term care.

The substitute bill requires that the funds in the Long-Term Services and Supports Trust Account (Trust Account) remain in the Trust Account until expended for the purposes of the Long-Term Services and Supports Trust Program. If funds in the Trust Account are appropriated for any other purpose, the Legislature must notify qualified individuals by mail that the person's premiums have been appropriated for an alternate use, describe the alternate use, and state its plan for restoring funds so that premiums are not increased and benefits are not reduced.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 2, 2018.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is an unprecedented elder boom and families are struggling to meet the care needs of their loved ones. People who thought they had saved enough money find out that it will not meet their needs. Most people are going to need long-term care and cannot afford the care that they need. Some people have spent their entire life savings on long-term care. The feeling of need and loss at times when additional care is needed is exacerbated when people realize that their long-term care financing is not covered by their health insurance or Medicare. This bill will create a new choice for a resource to support people in a time of need and allow them to look for the best fit for them. This bill supports Washington's long-standing policy to allow people the choice of their long-term care setting. Area agencies on aging frequently hear from people that they have run out of the resources of time and funds and the usual result is that the person is placed on Medicaid. A bill like this would make an additional resource available to people and would help with planning to meet people's needs.

In Washington Medicaid spends about \$2.1 billion on long-term supports and services, which is expected to increase 91 percent by 2040 because of the age wave. This program is expected to save Medicaid \$19 million in the first year. This bill is fiscally responsible. This bill will not cost the state, but if nothing is done now, the state could face bankruptcy. This bill will ensure that Medicaid dollars continue to be targeted toward those individuals who truly need such assistance. The longevity boom is here and the future costs are a given and, unless there is some action like this bill, the costs are going to fall to the state.

In Washington there are over 830,000 family caregivers showing that elder care is needed more than ever before. The number of family caregivers will grow as the baby boomers age. Many caregivers are caring for family members with mental conditions and are older adults who are physically unable to care for their relative, but are forced to due to the finances and the need. Families are getting smaller and there will be less help from families, who keep people from having to apply for Medicaid. Some employers are approving as much leave for elder care as for child care.

When people buy long-term care insurance, they cannot continue the payments on the premiums once they reach retirement with a limited income. Of people who have had long-term care insurance for six years, in the lower 80 percent of the income distribution, 80 percent of them fail to carry it on to the eighth year. People cannot plan that far out when it is a commitment of what they feel are limited expendable funds.

This recommendation came out of the Aging and Disabilities Committee. Several years ago, Milliman conducted a study of options to make long-term care more accessible and affordable which found that this was a preferable option to a reinsurance program. Other states are looking at options as well. The premium will lead to greater awareness of long-term care financing needs which will result in better communication and planning.

(Opposed) None.

(Other) The number of people 65 and older will double over the next 20 years. It is estimated that the 70 percent of individuals over 65 years old will need assistance with activities of daily living. Long-term services and supports are not covered under Medicare, so Medicaid become the default coverage. Many people have to spend down assets to become eligible for

services. Sustainability is the biggest challenge for the long-term services and supports system and this bill will help that. The state spends \$4 billion dollars per biennium on long-term care and this will double in the next couple of decades and outpace revenue growth. The actuarial report indicates savings to the Medicaid program and the Department of Social and Health Services would engage with the federal government for a shared savings program.

Seniors are having a difficult time paying for long-term care and this is a great way to save the state money. Ninety percent of seniors wish to remain in their home, which is the least expensive venue with better clinical outcomes yet home care agencies are not on the Long-Term Services and Supports Trust Commission and they should be included.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Representative Johnson; Robin Dale, Washington Health Care Association; Sarita Gupta, Caring Across Generations; Lawrence Nitz, University of Hawaii at Monoa; Dan Murphy, Northwest Regional Council; John Ficker, Adult Family Home Council; Ruth Eggers and Norma Kelsey, Puget Sound Advocates for Retirement Action; Dave Rogers, Seattle King County Aging and Disability Services; Barbara Kaelberer; Eileen McKenzie Sullivan; Norma Kelsey; and Eve Taylor.

(Other) Bill Moss, Aging and Long-Term Care Administration; and Leslie Emerick, Washington Home Care Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 21 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Condotta, Graves, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: Mary Mulholland (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The definition of "wages" is modified to align with the definition used in the state Family Medical Leave Act, except that there is no limit on the amount of wages subject to a premium assessment.

A member is added to the Long-Term Services and Supports Trust Commission (Commission) who represents an association that represents caregivers who serve both

private pay and Medicaid clients. This member, and the representative of managers of in-home long-term care, are among the Commission members subject to initial staggered terms.

The Long-Term Services and Supports Trust Account requires an appropriation for funds used for the Long-Term Services and Supports Trust Program's administrative activities but that no appropriation is required for benefit payments. Funding for benefit payments must only be disbursed at the authorization of the DSHS Secretary or the Secretary's designee.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The proposal will help individuals regain a sense of control as they age and need long-term care, and will delay or defer the need for Medicaid services. Financing for long-term care needs to be shared so that people do not need to spend down their assets to Medicaid financial eligibility in order to receive care. The average lifetime cost of long-term care services is \$260,000, yet the median retirement savings is \$148,000.

A couple of years ago, the Joint Legislative Executive Committee on Aging and Disability (JLEC) tasked an actuarial firm to examine two options to make long-term care services more accessible to people. The study examined two options: a public benefit trust, and a public-private option to stabilize the private long-term care insurance market. The study found that a public benefit could have a significant and broad impact on family and state budgets, and that the private long-term care insurance market would not be feasible in the state. In the first year of operations, the plan is expected to save \$19 million in state and federal Medicaid spending. It is important to take the long-term view on financial issues.

Washington is a leader in long-term care and services but Medicaid rates lag behind, and some providers have begun limiting access to Medicaid clients. Decisions are being made based on financials and access rather than finding the best fit for the individual.

Area Agencies on Aging get panicked calls from families who need long-term care and do not have sufficient savings. Employers may find themselves approving more elder care leave than child care leave.

(Opposed) None.

Persons Testifying: Representative Jinkins, prime sponsor; Dan Murphy, Northwest Regional Council; and John Ficker, Adult Family Home Council and Washingtonians for a Responsible Future.

Persons Signed In To Testify But Not Testifying: None.