

---

SECOND SUBSTITUTE HOUSE BILL 2533

---

State of Washington

65th Legislature

2018 Regular Session

**By** House Appropriations (originally sponsored by Representatives Jinkins, Johnson, Cody, Tharinger, Harris, Slatter, Appleton, Frame, Robinson, Haler, Stonier, Fitzgibbon, Fey, Wylie, Pollet, and Macri)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to long-term care services and supports; and  
2 adding a new chapter to Title 50A RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) Long-term care is not covered by medicare or other health  
6 insurance plans, and private long-term care insurance plans that do  
7 exist are unaffordable for most people; this leaves more than ninety  
8 percent of seniors uninsured for long-term care. The current market  
9 for long-term care insurance is broken: In 2002 there were one  
10 hundred two companies offering long-term care insurance coverage, but  
11 today the number stands at just twelve.

12 (2) The majority of people over sixty-five years of age will need  
13 long-term services and supports within their lifetime. The senior  
14 population has doubled in Washington since 1980, to currently over  
15 one million, and will more than double again by 2040. Without access  
16 to insurance, seniors must rely on family care and spend down their  
17 life savings to poverty levels in order to access long-term care  
18 through medicaid. In Washington, more than eight hundred fifty  
19 thousand unpaid family caregivers provide care valued at eleven  
20 billion dollars in 2015. Furthermore, family caregivers who leave the  
21 workforce to provide unpaid long-term services and supports lose an

1 average of three hundred thousand dollars in their own income, and  
2 health and retirement benefits.

3 (3) Paying out of pocket for long-term care is expensive. In  
4 Washington the average cost for medicaid in-home care is twenty-four  
5 thousand dollars per year and the average cost for nursing home care  
6 is sixty-five thousand dollars per year. These are costs that most  
7 seniors cannot afford.

8 (4) Seniors and the state will not be able to continue their  
9 reliance on family caregivers in the near future. Demographic shifts  
10 mean that fewer potential family caregivers will be available in the  
11 future. Today there are around seven potential caregivers for each  
12 senior, but by 2030 that ratio will decrease to just four to one.

13 (5) Long-term services and supports comprise approximately six  
14 percent of the state operating budget and demand for these services  
15 will double by 2030 to over twelve percent. This would result in an  
16 additional six billion dollars in increased near-general fund costs  
17 for the state by 2030.

18 (6) An alternative funding mechanism for long-term care access in  
19 Washington state could relieve hardship on families and lessen the  
20 burden of medicaid on the state budget. In addition, such a program  
21 could result in positive economic impact to our state through  
22 increased state competition and fewer Washingtonians leaving the  
23 workforce to provide unpaid care.

24 (7) The average aging and long-term supports administration  
25 medicaid consumer utilizes ninety-six hours of care per month. Under  
26 current costs, a one hundred dollars per day benefit for three  
27 hundred sixty-five days would provide complete financial relief for  
28 the average in-home care consumer and substantial relief for the  
29 average facility care consumer for a full year or more.

30 (8) Under current caseload and demographic projections, such an  
31 alternative funding mechanism for long-term care access could save  
32 the state almost one and one-half billion dollars per biennium by  
33 2040 in reduced medicaid costs.

34 (9) As the state pursues an alternative funding mechanism for  
35 long-term care access, the state must continue its commitment to  
36 promoting choice in long-term care settings. Therefore, any program  
37 must assure:

38 (a) That individuals are able to use their benefits in the  
39 setting of their choice, whether that is in the home, a residential  
40 community-based setting, or a skilled nursing facility;

1 (b) That the choice of provider types is the same or greater than  
2 currently available through the medicaid long-term services and  
3 supports program, including both eligible relative care and  
4 professional services;

5 (c) Seamless transitions from private and public funding sources  
6 for consumers; and

7 (d) Collection of long-term care health status data across all  
8 home and community-based settings.

9 (10) That the creation of a long-term care insurance benefit of  
10 an established dollar amount per day, for three hundred sixty-five  
11 days, for all eligible Washington employees, paid through an employee  
12 payroll premium is in the best interest of the state of Washington.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires  
15 otherwise.

16 (1) "Account" means the long-term services and supports trust  
17 account created in section 10 of this act.

18 (2) "Benefit unit" means up to one hundred dollars, increasing at  
19 a three percent index subject to annual commission approval, paid by  
20 the department of social and health services to a long-term services  
21 and supports provider as reimbursement for care provided to an  
22 eligible beneficiary on a specific date.

23 (3) "Commission" means the long-term services and supports trust  
24 commission established in section 4 of this act.

25 (4)(a) "Employee" means an individual who is in the employment of  
26 an employer.

27 (b) "Employee" does not include employees of the United States of  
28 America.

29 (5)(a) "Employer" means: (i) Any individual or type of  
30 organization, including any partnership, association, trust, estate,  
31 joint stock company, insurance company, limited liability company, or  
32 corporation, whether domestic or foreign, or the receiver, trustee in  
33 bankruptcy, trustee, or the legal representative of a deceased  
34 person, having any person in employment or, having become an  
35 employer, has not ceased to be an employer as provided in this  
36 chapter; (ii) the state, state institutions, and state agencies; and  
37 (iii) any unit of local government including, but not limited to, a  
38 county, city, town, municipal corporation, quasi-municipal  
39 corporation, or political subdivision.

1 (b) "Employer" does not include the United States of America.

2 (6)(a) "Employment" means personal service, of whatever nature,  
3 unlimited by the relationship of master and servant as known to the  
4 common law or any other legal relationship performed for wages or  
5 under any contract calling for the performance of personal services,  
6 written or oral, express or implied. The term "employment" includes  
7 an individual's entire service performed within or without or both  
8 within and without this state, if:

9 (i) The service is localized in this state; or

10 (ii) The service is not localized in any state, but some of the  
11 service is performed in this state; and

12 (A) The base of operations of the employee is in the state, or if  
13 there is no base of operations, then the place from which such  
14 service is directed or controlled is in this state; or

15 (B) The base of operations or place from which such service is  
16 directed or controlled is not in any state in which some part of the  
17 service is performed, but the individual's residence is in this  
18 state.

19 (b) "Employment" does not include:

20 (i) Services for remuneration when it is shown to the  
21 satisfaction of the commissioner that:

22 (A)(I) Such individual has been and will continue to be free from  
23 control or direction over the performance of such service, both under  
24 his or her contract of service and in fact;

25 (II) Such service is either outside the usual course of business  
26 for which such service is performed, or that such service is  
27 performed outside of all the places of business of the enterprises  
28 for which such service is performed; and

29 (III) Such individual is customarily engaged in an independently  
30 established trade, occupation, profession, or business, of the same  
31 nature as that involved in the contract of service; or

32 (B) As a separate alternative:

33 (I) Such individual has been and will continue to be free from  
34 control or direction over the performance of such service, both under  
35 his or her contract of service and in fact;

36 (II) Such service is either outside the usual course of business  
37 for which such service is performed, or that such service is  
38 performed outside of all the places of business of the enterprises  
39 for which such service is performed, or the individual is

1 responsible, both under the contract and in fact, for the costs of  
2 the principal place of business from which the service is performed;

3 (III) Such individual is customarily engaged in an independently  
4 established trade, occupation, profession, or business, of the same  
5 nature as that involved in the contract of service, or such  
6 individual has a principal place of business for the work the  
7 individual is conducting that is eligible for a business deduction  
8 for federal income tax purposes;

9 (IV) On the effective date of the contract of service, such  
10 individual is responsible for filing at the next applicable filing  
11 period, both under the contract of service and in fact, a schedule of  
12 expenses with the internal revenue service for the type of business  
13 the individual is conducting;

14 (V) On the effective date of the contract of service, or within a  
15 reasonable period after the effective date of the contract, such  
16 individual has established an account with the department of revenue,  
17 and other state agencies as required by the particular case, for the  
18 business the individual is conducting for the payment of all state  
19 taxes normally paid by employers and businesses and has registered  
20 for and received a unified business identifier number from the state  
21 of Washington; and

22 (VI) On the effective date of the contract of service, such  
23 individual is maintaining a separate set of books or records that  
24 reflect all items of income and expenses of the business which the  
25 individual is conducting; or

26 (ii) Services that require registration under chapter 18.27 RCW  
27 or licensing under chapter 19.28 RCW rendered by an individual when:

28 (A) The individual has been and will continue to be free from  
29 control or direction over the performance of the service, both under  
30 the contract of service and in fact;

31 (B) The service is either outside the usual course of business  
32 for which the service is performed, or the service is performed  
33 outside of all the places of business of the enterprise for which the  
34 service is performed, or the individual is responsible, both under  
35 the contract and in fact, for the costs of the principal place of  
36 business from which the service is performed;

37 (C) The individual is customarily engaged in an independently  
38 established trade, occupation, profession, or business, of the same  
39 nature as that involved in the contract of service, or the individual  
40 has a principal place of business for the business the individual is

1 conducting that is eligible for a business deduction for federal  
2 income tax purposes, other than that furnished by the employer for  
3 which the business has contracted to furnish services;

4 (D) On the effective date of the contract of service, the  
5 individual is responsible for filing at the next applicable filing  
6 period, both under the contract of service and in fact, a schedule of  
7 expenses with the internal revenue service for the type of business  
8 the individual is conducting;

9 (E) On the effective date of the contract of service, or within a  
10 reasonable period after the effective date of the contract, the  
11 individual has an active and valid certificate of registration with  
12 the department of revenue, and an active and valid account with any  
13 other state agencies as required by the particular case, for the  
14 business the individual is conducting for the payment of all state  
15 taxes normally paid by employers and businesses and has registered  
16 for and received a unified business identifier number from the state  
17 of Washington;

18 (F) On the effective date of the contract of service, the  
19 individual is maintaining a separate set of books or records that  
20 reflect all items of income and expenses of the business that the  
21 individual is conducting; and

22 (G) On the effective date of the contract of service, the  
23 individual has a valid contractor registration pursuant to chapter  
24 18.27 RCW or an electrical contractor license pursuant to chapter  
25 19.28 RCW.

26 (7) "Long-term services and supports provider" means a qualified  
27 or certified home care aide, licensed assisted living facility,  
28 licensed adult family home, licensed nursing home, licensed in-home  
29 services agency, adult day health program, or other entities as  
30 approved by the commission pursuant to recommendations by the  
31 department of social and health services.

32 (8) "Premium" or "premiums" means the payments required by  
33 section 8 of this act and paid to the employment security department  
34 for deposit in the account under section 10 of this act.

35 (9) "Program" means the long-term services and supports trust  
36 program established in this chapter.

37 (10) "Wages" has the same meaning as "wages" under RCW  
38 50A.04.010, except that all wages are subject to a premium assessment  
39 and not limited by the commissioner of the employment security  
40 department, as provided under RCW 50A.04.115.

1        NEW SECTION.    **Sec. 3.**    The health care authority, the department  
2 of social and health services, and the employment security department  
3 each have distinct responsibilities in the implementation and  
4 administration of the program. In the performance of their  
5 activities, they shall actively collaborate to realize program  
6 efficiencies and provide persons served by the program with a well-  
7 coordinated experience.

8        (1) The health care authority shall:

9        (a) Make determinations regarding an individual's status as a  
10 qualified individual under section 5 of this act;

11        (b) Assure services are provided through audits or service  
12 verification processes within the service provider payment system for  
13 registered long-term services and supports providers and recoup any  
14 inappropriate payments; and

15        (c) Adopt rules and procedures necessary to implement and  
16 administer the activities specified in this section related to the  
17 program.

18        (2) The department of social and health services shall:

19        (a) Make determinations regarding an individual's status as an  
20 eligible beneficiary under section 6 of this act;

21        (b) Register long-term services and supports providers that meet  
22 minimum qualifications, as established by the commission, and  
23 discontinue the registration of long-term services and supports  
24 providers that fail to meet the minimum qualifications of the program  
25 or violate the operational standards of the program;

26        (c) Disburse payments of benefits to registered long-term  
27 services and supports providers, utilizing and leveraging existing  
28 payment systems for the provision of services to eligible  
29 beneficiaries under section 7 of this act;

30        (d) Perform assessments to determine a qualified individual's  
31 functional eligibility for the program;

32        (e) Prepare and distribute written or electronic materials to  
33 qualified individuals and eligible beneficiaries as deemed necessary  
34 by the commission to inform them of program design and updates;

35        (f) Provide administrative and operational support to the  
36 commission;

37        (g) Track data useful in monitoring and informing the program, as  
38 identified by the commission;

1 (h) Establish rules and procedures for benefit coordination when  
2 the beneficiary is eligible for medicaid funded long-term services  
3 and supports; and

4 (i) Adopt rules and procedures necessary to implement and  
5 administer the activities specified in this section related to the  
6 program.

7 (3) The employment security department shall:

8 (a) Collect and assess employee premiums as provided under  
9 section 8 of this act;

10 (b) Assist the commission in monitoring the solvency and  
11 financial status of the program;

12 (c) Perform investigations to determine the compliance of premium  
13 payments under section 8 of this act; and

14 (d) Adopt rules and procedures necessary to implement and  
15 administer the activities specified in this section related to the  
16 program.

17 NEW SECTION. **Sec. 4.** (1) The long-term services and supports  
18 trust commission is established.

19 (2) The commission includes:

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

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

25 (c) The commissioner of the employment security department, or  
26 his or her designee;

27 (d) The secretary of the department of social and health  
28 services, or his or her designee;

29 (e) The director of the health care authority, or his or her  
30 designee;

31 (f) One representative of an organization representing the  
32 managers of in-home long-term care;

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

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

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



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

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

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 (3)(a) Other than the agency heads identified in subsection (2)  
9 of this section, members of the commission are appointed for terms of  
10 two years, except that the governor shall appoint the initial members  
11 identified in subsection (2)(f) through (k) of this section to  
12 staggered terms not to exceed four years.

13 (b) The secretary of the department of social and health  
14 services, or his or her designee, shall serve as chair of the  
15 commission. Meetings of the commission are at the call of the chair.

16 (c) Members of the commission must be compensated in accordance  
17 with RCW 43.03.250 and must be reimbursed for their travel expenses  
18 while on official business in accordance with RCW 43.03.050 and  
19 43.03.060.

20 (4) Beginning January 1, 2019, the commission shall establish  
21 rules and policies regarding:

22 (a) The establishment of criteria for determining that an  
23 individual has met the requirements to be a qualified individual as  
24 established in section 5 of this act or an eligible beneficiary as  
25 established in section 6 of this act;

26 (b) The establishment of minimum qualifications for the  
27 registration of long-term services and supports providers who provide  
28 services to eligible beneficiaries. The minimum qualifications must  
29 be based upon the eligibility criteria for long-term services and  
30 supports providers to become qualified, certified, or licensed under  
31 medicaid long-term services and supports;

32 (c) The establishment of criteria for the payment of benefits to  
33 registered long-term services and supports providers under section 7  
34 of this act;

35 (d) The establishment of operational standards for the program  
36 that must be met by registered long-term services and supports  
37 providers and penalties for the violation of the operational  
38 standards;

39 (e) The annual adjustment of the benefit unit in accordance with  
40 the formula established in section 2 of this act; and

1 (f) The preparation of regular actuarial reports on the solvency  
2 and financial status of the program.

3 NEW SECTION. **Sec. 5.** The health care authority shall deem a  
4 person to be a qualified individual as provided in this chapter if  
5 the person:

6 (1) Is at least eighteen years old;

7 (2) Is a Washington resident; and

8 (3) Has paid the long-term services and supports premiums  
9 required by section 8 of this act for the equivalent of either:

10 (a) A total of ten years without interruption of five or more  
11 consecutive years; or

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

13 NEW SECTION. **Sec. 6.** (1) Beginning January 1, 2025, long-term  
14 services and supports are available and benefits are payable to a  
15 registered long-term services and supports provider on behalf of a  
16 qualified individual under this section.

17 (2) A qualified individual may receive long-term services and  
18 supports and benefits that are payable to a registered long-term  
19 services and supports provider on behalf of a qualified individual  
20 under this section if he or she:

21 (a) Is not currently utilizing medicare-paid rehabilitation  
22 services; and

23 (b) Has been determined by the department of social and health  
24 services to require assistance with at least three activities of  
25 daily living.

26 (3)(a) An eligible beneficiary may receive benefits through the  
27 program in the form of a benefit unit payable to a registered long-  
28 term services and supports provider.

29 (b) The eligible beneficiary may not receive benefits until  
30 thirty days following the determination by the department of social  
31 and health services that the qualified individual meets the  
32 functional eligibility standards of an eligible beneficiary.

33 (c) An eligible beneficiary may not receive more than the dollar  
34 equivalent of three hundred sixty-five benefit units over the course  
35 of the eligible beneficiary's lifetime. If the department of social  
36 and health services reimburses a long-term services and supports  
37 provider for care provided to an eligible beneficiary and the payment  
38 is less than the benefit unit, the department of social and health

1 services shall credit the unused portion of the benefit unit to the  
2 eligible beneficiary for future use.

3 (d) An eligible beneficiary who is also receiving medicaid funded  
4 long-term services and supports is subject to federal medicaid third-  
5 party liability requirements.

6 NEW SECTION. **Sec. 7.** Benefits provided under this chapter shall  
7 be paid periodically and promptly to registered long-term services  
8 and supports providers.

9 NEW SECTION. **Sec. 8.** (1) Beginning January 1, 2022, the  
10 employment security department shall assess for each individual in  
11 employment with an employer a premium based on the amount of the  
12 individual's wages. The premium is forty-nine hundredths of one  
13 percent of the individual's wages.

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

17 (b) In collecting employee premiums through payroll deductions,  
18 the employer shall act as the agent of the employees and shall remit  
19 the amounts to the employment security department as required by this  
20 chapter.

21 (3)(a) Premiums shall be collected in the manner and at such  
22 intervals as provided in this chapter and directed by the employment  
23 security department.

24 (b) To the extent feasible, the employment security department  
25 shall use existing premium assessment, collection, and reporting  
26 procedures as under this title.

27 (4) The employment security department shall deposit all premiums  
28 collected under this section in the long-term services and supports  
29 trust account created in section 10 of this act.

30 (5) Premiums collected under this section are placed in trust for  
31 the individuals that the program is intended to assist.

32 NEW SECTION. **Sec. 9.** (1) Beginning January 1, 2023, any self-  
33 employed person, including a sole proprietor, independent contractor,  
34 partner, or joint venturer, may elect coverage under this chapter.  
35 Those electing coverage under this subsection are responsible for  
36 payment of one hundred percent of all premiums assessed to an  
37 employee under section 8 of this act. The self-employed person must

1 file a notice of election in writing with the employment security  
2 department, in a manner as required by the employment security  
3 department in rule. The self-employed person is eligible for benefits  
4 after paying the long-term services and supports premium for the time  
5 required under section 5 of this act.

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

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

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

21 (5) For the purposes of this section, "independent contractor"  
22 means an individual excluded from employment under section 2(6)(b) of  
23 this act.

24 (6) The employment security department shall adopt rules for  
25 determining the hours worked and the wages of individuals who elect  
26 coverage under this section and rules for enforcement of this  
27 section.

28 NEW SECTION. **Sec. 10.** (1) The long-term services and supports  
29 trust account is created in the state treasury. All receipts from  
30 employers under section 8 of this act must be deposited in the  
31 account. Expenditures from the account may be used for the  
32 administrative activities and payment of benefits associated with the  
33 program. Only the secretary of the department of social and health  
34 services or the secretary's designee may authorize disbursement of  
35 benefit payments from the account. The account is subject to the  
36 allotment procedures under chapter 43.88 RCW. An appropriation is  
37 required for administrative expenses, but not for benefit payments.  
38 The account must provide reimbursement of any amounts from other

1 sources that may have been used for the initial establishment of the  
2 program.

3 (2) The moneys deposited in the account must remain in the  
4 account until expended in accordance with the requirements of this  
5 chapter. If moneys are appropriated for any purpose other than  
6 supporting the long-term services and supports program, the  
7 legislature shall notify each qualified individual by mail that the  
8 person's premiums have been appropriated for an alternate use,  
9 describe the alternate use, and state its plan for restoring the  
10 moneys so that premiums are not increased and benefits are not  
11 reduced.

12 NEW SECTION. **Sec. 11.** (1) Determinations made by the health  
13 care authority or the department of social and health services under  
14 this chapter, including determinations regarding functional  
15 eligibility or related to registration of long-term services and  
16 supports providers, are subject to appeal in accordance with chapter  
17 34.05 RCW. In addition, the standards and procedures adopted for  
18 these appeals must address the following:

- 19 (a) Timelines;
- 20 (b) Eligibility and benefit determination;
- 21 (c) Judicial review; and
- 22 (d) Fees.

23 (2) Determinations made by the employment security department  
24 under this chapter are subject to appeal in accordance with the  
25 appeal procedures under chapter 50A.04 RCW. The employment security  
26 department shall adopt standards and procedures for appeals for  
27 persons aggrieved by any determination or redetermination made by the  
28 department. The standards and procedures must be consistent with  
29 those adopted for the family and medical leave program under chapter  
30 50A.04 RCW and must address topics including:

- 31 (a) Premium liability;
- 32 (b) Premium collection;
- 33 (c) Judicial review; and
- 34 (d) Fees.

35 NEW SECTION. **Sec. 12.** Beginning in December 1, 2023, and  
36 annually thereafter, the long-term services and supports trust  
37 commission shall report to the legislature on the program, including:

- 38 (1) Projected and actual program participation;

- 1 (2) Adequacy of premium rates;  
2 (3) Fund balances;  
3 (4) Benefits paid;  
4 (5) Demographic information on program participants, including  
5 age, gender, race, ethnicity, geographic distribution by county,  
6 legislative district, and employment sector; and  
7 (6) The extent to which the operation of the program has resulted  
8 in savings to the medicaid program by avoiding costs that would have  
9 otherwise been the responsibility of the state.

10 NEW SECTION. **Sec. 13.** Any benefits used by an individual under  
11 this chapter are not income for any determinations of eligibility for  
12 any other state program or benefit.

13 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
14 constitute a new chapter in Title 50A RCW.

--- END ---