

# SENATE BILL REPORT

## SHB 1323

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As Passed Senate - Amended, April 10, 2021

**Title:** An act relating to the long-term services and supports trust program.

**Brief Description:** Concerning the long-term services and supports trust program.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Tharinger, Macri, Simmons, Fitzgibbon, Cody, Hackney, Santos, Ortiz-Self, Lekanoff and Pollet).

**Brief History:** Passed House: 2/23/21, 57-40.

**Committee Activity:** Health & Long Term Care: 3/22/21, 3/26/21 [DPA, DNP].

**Floor Activity:** Passed Senate - Amended: 4/10/21, 26-22.

### Brief Summary of Amended Bill

- Specifies that employees who apply to opt-out of the Long-Term Services and Supports Trust Program (LTSS Trust Program) must attest to having long-term care insurance prior to November 1, 2021.
- Requires self-employed persons who wish to participate in the LTSS Trust Program, elect to do so by January 1, 2025, or within three years of becoming self-employed for the first time.
- Directs the Department of Social and Health Services and the Employment Security Department to conduct outreach to provide employers with educational materials to ensure employees are aware of the LTSS Trust Program and that the premium assessments will begin on January 1, 2022.
- Allows individuals who were disabled before the age of 18 to be eligible for the LTSS Trust Program.
- Authorizes federally recognized tribes to elect for its employees to participate in the LTSS Trust Program.

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

- Directs the LTSS Trust Commission to work with insurers to develop long-term care insurance products that supplement the LTSS Trust Program's benefit.

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## SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** Do pass as amended.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Conway, Keiser, Randall, Robinson and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Muzzall, Ranking Member; Holy, Padden, Rivers and Wilson, J.

**Staff:** LeighBeth Merrick (786-7445)

**Background:** In 2019, the Legislature established the Long-Term Services and Supports Trust Program (LTSS Trust Program), which provides up to \$36,500 in lifetime benefits for eligible beneficiaries to apply to the cost of their long-term care. The LTSS Trust Program is funded through a 0.58 percent premium assessment on an employee's wages. The premium assessment begins January 1, 2022, and eligible beneficiaries may begin receiving benefits on January 1, 2025. An individual who is a Washington resident, at least 18 years old, not disabled before the age of 18, assessed as needing assistance with at least three activities of daily living, and paid into the program for either three of the last six or years or a total for ten years with no more than a five- year interruption, is eligible to receive benefits.

From October 1, 2021, through December 31, 2022, employees who attest to having long-term care insurance may apply to the Employment Security Department (ESD) for an exemption from the premium assessment. An exempt employee is permanently ineligible from receiving LTSS Trust Program benefits. Self-employed individuals may elect coverage under the LTSS Trust Program and may withdraw from coverage according to time frames established by ESD.

The LTSS Trust Program is administered jointly by the Department of Social and Health Services, the ESD, and the Health Care Authority. Oversight is provided by the Long-Term Services and Supports Trust Commission which includes legislators, agency directors, and representatives from area agencies on aging, stakeholders, and consumers of approved services. In January 2021, the commission released a report to the Legislature with recommendations regarding the LTSS Trust Program's operations and solvency.

**Summary of Amended Bill:** An employee who wishes to opt-out of the LTSS Trust Program must attest to having purchased long-term care insurance before November 1,

2021. The LTSS Trust Commission must work with insurers to develop long-term care insurance products that supplement the LTSS Trust Program's benefit. DSHS and ESD must conduct outreach to provide employers with educational materials to ensure employees are aware of the LTSS Trust Program and that the premium assessments will begin on January 1, 2022. The outreach information must be posted on a public website and made available in English, Spanish, Vietnamese, Cambodian, Laotian and Chinese.

A self-employed person who wishes to elect coverage under the LTSS Trust Program must exercise that option before January 1, 2025, or within three years of becoming self-employed for the first time.

Once a self-employed person has elected coverage under the LTSS Trust Program, the person may not withdraw from coverage. A self-employed person who has elected coverage must continue to pay premiums until retirement or until the person is no longer self-employed. The person must file a notice with ESD upon retirement or no longer being self-employed. In addition to performing investigations to determine compliance with the payment of premiums by employers, ESD must also make such determinations regarding self-employed persons.

A federally recognized tribe may elect for its employees to participate in the LTSS Trust Program and may opt out of the program at any time for any reason it deems necessary.

Persons who were disabled before the age of 18 may qualify to receive benefits under the LTSS Trust Program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Many working adults do not have enough savings to cover the costs of long-term care and Medicare does not cover it. The Trust Program, which is actuarial based, was created to address this need. The recommendations in this bill come out of the program's policy advisory committee. The typical earner will pay far less than what they will gain from the program. The program benefits help people age in place and will save the state hundreds of millions of dollars in Medicaid funds. This bill broadens the base by expanding the pool of individuals that can participate. Under the current program, the Health Care Authority is already required to develop procedures to coordinate benefits with other payers like long-term care insurance. There is potential for the long-term care insurance market to compliment this program, but for many people private long-term care insurance is not a realistic replacement

due to the high premiums. Section 4 of this bill is critical to closing the loop on the long-term care insurance opt-out. Many out-of-state long-term care insurance companies are targeting individuals with products as a means to opt-out of this program. The intent of the opt-out was to not burden people who have already paid into an existing program for years not to provide a tax avoidance strategy for the wealthiest. The long-term care insurance market is broken leaving far too many people uncovered for many years. There is no evidence the long-term care insurance products have improved. The costs continue to increase and provide limited coverage. The program premiums are cheaper than long-term care insurance for 99 percent of the people. Additionally, people stop paying into the program when they retire. We are pleased to see the addition of workers with disabilities acquired before the age of 18 and expanding the program to tribal members.

CON: The bill places unreasonable restrictions on long-term care insurers. The exemption and opt-out window is too narrow. Not allowing people the choice between long-term care insurance and this program creates unnecessary expenses and duplication of payments and benefits. We support an amendment that would extend the opt-out period to a definitive date, clarify the definition of long-term care insurance, and study greater coordination between long-term care insurance and the program. It is possible for long-term care insurance to provide wrap around coverage to the program. This program's vesting schedule is not fair to people who have less than nine years to retirement. Individuals that purchase long-term care insurance will still help the program achieve its goal by reducing reliance on Medicaid and ensuring more people have long-term care coverage. Some employer's offer long-term care insurance plans with pricing that is lower than what employee's will pay for this program. The narrow opt-out window does not give the employer enough time to communicate their offerings to their employees. Long-term care insurance has evolved and is now offering middle-market options that would allow the programs to mesh. It is important to provide people with the choice to decide what is best for them. Less than 1 percent of people drop their long-term care insurance so it is a fallacy to think people will purchase long-term care insurance just so they can opt-out and then drop coverage. It was not the intent of the original legislation for people that would not benefit from the program to pay into it. More stakeholdering needs to be done before changing the opt-out. The program requires a tax that provides a limited benefit and is 200 percent higher than paid family medical leave without a ceiling, and it lacks portability when people move.

**Persons Testifying:** PRO: Representative Steve Tharinger, Prime Sponsor; Adrienne Stuart, Washington State Developmental Disabilities Council; Ben Veghte, Department of Social and Health Services, Aging and Long-Term Support Administration; Madeleine Foutch, SEIU 775 Long-Term Caregivers Union; Kate White Tudor, Washington Association of Area Agencies on Aging; Laura Cepoi, Olympic Area Agency on Aging; Pamela Lux, Puget Sound Advocates for Retirement Action; Dan Murphy, North West Regional Council; Cathy MacCaul, AARP; Lauri St Ours, Washington Health Care Association; Alyssa Odegaard, LeadingAge Washington.

CON: Greg Seifert, Biggs Insurance Services; Mark Ingersoll, Washington Brokerage; Frank Lusk, National Association of Insurance and Financial Advisors/Washington Long Term Care, LLC; Christine McCullugh, LTC Solutions Inc; John Mangan, American Council of Life Insurers; Chris Bor, National Association of Insurance and Financial Advisors Washington; Stephanie Berry, America's Health Insurance Plans; Danielle Huston, WAHU; Sylvia Hubbard, Central Washington Public Utilities Unified Insurance Program Trust; Rose Gundersen, Washington Retail Association; Amy Anderson, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** No one.