

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1732

67th Legislature
2022 Regular Session

Passed by the House January 19, 2022
Yeas 91 Nays 6

**Speaker of the House of
Representatives**

Passed by the Senate January 26, 2022
Yeas 46 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1732** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1732

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By House Appropriations (originally sponsored by Representatives Sullivan, Chopp, J. Johnson, Walen, Chapman, Berry, Cody, Dolan, Fey, Macri, Peterson, Ryu, Santos, Senn, Shewmake, Wylie, Simmons, Callan, Slatter, Ramos, Bergquist, Tharinger, Valdez, Thai, Pollet, Morgan, Taylor, Stonier, Ortiz-Self, Gregerson, Davis, Riccelli, Ormsby, Duerr, Orwall, Bateman, Kloba, and Frame)

READ FIRST TIME 01/14/22.

1 AN ACT Relating to delaying the implementation of the long-term
2 services and supports trust program by 18 months to allow for the
3 extension of benefits to persons born before January 1, 1968, by
4 modifying conditions for becoming a qualified individual and eligible
5 beneficiary and allowing for the refunding of prematurely collected
6 premiums; amending RCW 50B.04.020, 50B.04.030, 50B.04.050,
7 50B.04.060, 50B.04.080, 50B.04.090, and 50B.04.140; adding a new
8 section to chapter 50B.04 RCW; and declaring an emergency.

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

10 **Sec. 1.** RCW 50B.04.020 and 2021 c 113 s 2 are each amended to
11 read as follows:

12 (1) The health care authority, the department of social and
13 health services, the office of the state actuary, and the employment
14 security department each have distinct responsibilities in the
15 implementation and administration of the program. In the performance
16 of their activities, they shall actively collaborate to realize
17 program efficiencies and provide persons served by the program with a
18 well-coordinated experience.

19 (2) The health care authority shall:

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

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

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

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

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

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

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

21 (b) Approve long-term services and supports eligible for payment
22 as approved services under the program, as informed by the
23 commission;

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

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

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

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

38 (g) Provide customer service and address questions and
39 complaints, including referring individuals to other appropriate
40 agencies;

1 (h) Provide administrative and operational support to the
2 commission;

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

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

8 (4) The employment security department shall:

9 (a) Collect and assess employee premiums as provided in RCW
10 50B.04.080;

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

13 (c) Perform investigations to determine the compliance of premium
14 payments in RCW 50B.04.080 and 50B.04.090 in coordination with the
15 same activities conducted under the family and medical leave act,
16 Title 50A RCW, to the extent possible;

17 (d) Make determinations regarding an individual's status as a
18 qualified individual under RCW 50B.04.050, including criteria to
19 determine the status of persons receiving partial benefit units under
20 RCW 50B.04.050(2); and

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

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

25 (a) Beginning (~~January 1, 2024~~) July 1, 2025, and biennially
26 thereafter, perform an actuarial audit and valuation of the long-term
27 services and supports trust fund. Additional or more frequent
28 actuarial audits and valuations may be performed at the request of
29 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 (6) By October 1, 2021, the employment security department and
39 the department of social and health services shall jointly conduct
40 outreach to provide employers with educational materials to ensure

1 employees are aware of the program and that the premium assessments
2 will begin on (~~January 1, 2022~~) July 1, 2023. In conducting the
3 outreach, the employment security department and the department of
4 social and health services shall provide on a public website
5 information that explains the program and premium assessment in an
6 easy to understand format. Outreach information must be available in
7 English and other primary languages as defined in RCW 74.04.025.

8 **Sec. 2.** RCW 50B.04.030 and 2021 c 113 s 3 are each amended to
9 read as follows:

10 (1) The long-term services and supports trust commission is
11 established. The commission's recommendations and decisions must be
12 guided by the joint goals of maintaining benefit adequacy and
13 maintaining fund solvency and sustainability.

14 (2) The commission includes:

15 (a) Two members from each of the two largest caucuses of the
16 house of representatives, appointed by the speaker of the house of
17 representatives;

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

20 (c) The commissioner of the employment security department, or
21 the commissioner's designee;

22 (d) The secretary of the department of social and health
23 services, or the secretary's designee;

24 (e) The director of the health care authority, or the director's
25 designee, who shall serve as a nonvoting member;

26 (f) One representative of the organization representing the area
27 agencies on aging;

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

30 (h) One representative of a union representing long-term care
31 workers;

32 (i) One representative of an organization representing retired
33 persons;

34 (j) One representative of an association representing skilled
35 nursing facilities and assisted living providers;

36 (k) One representative of an association representing adult
37 family home providers;

1 (1) Two individuals receiving long-term services and supports, or
2 their designees, or representatives of consumers receiving long-term
3 services and supports under the program;

4 (m) One member who is a worker who is, or will likely be, paying
5 the premium established in RCW 50B.04.080 and who is not employed by
6 a long-term services and supports provider; and

7 (n) One representative of an organization of employers whose
8 members collect, or will likely be collecting, the premium
9 established in RCW 50B.04.080.

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

16 (b) The secretary of the department of social and health
17 services, or the secretary's designee, shall serve as chair of the
18 commission. Meetings of the commission are at the call of the chair.
19 A majority of the voting members of the commission shall constitute a
20 quorum for any votes of the commission. Approval of sixty percent of
21 those voting members of the commission who are in attendance is
22 required for the passage of any vote.

23 (c) Members of the commission and the subcommittee established in
24 subsection (6) of this section must be compensated in accordance with
25 RCW 43.03.250 and must be reimbursed for their travel expenses while
26 on official business in accordance with RCW 43.03.050 and 43.03.060.

27 (4) Beginning January 1, 2021, the commission shall propose
28 recommendations to the appropriate executive agency or the
29 legislature regarding:

30 (a) The establishment of criteria for determining that an
31 individual has met the requirements to be a qualified individual as
32 established in RCW 50B.04.050 or an eligible beneficiary as
33 established in RCW 50B.04.060;

34 (b) The establishment of criteria for minimum qualifications for
35 the registration of long-term services and supports providers who
36 provide approved services to eligible beneficiaries;

37 (c) The establishment of payment maximums for approved services
38 consistent with actuarial soundness which shall not be lower than
39 medicaid payments for comparable services. A service or supply may be
40 limited by dollar amount, duration, or number of visits. The

1 commission shall engage affected stakeholders to develop this
2 recommendation;

3 (d) Changes to rules or policies to improve the operation of the
4 program;

5 (e) Providing a recommendation to the council for the annual
6 adjustment of the benefit unit in accordance with RCW 50B.04.010 and
7 50B.04.040;

8 (f) A refund of premiums for a deceased qualified individual with
9 a dependent who is an individual with a developmental disability who
10 is dependent for support from a qualified individual. The qualified
11 individual must not have been determined to be an eligible
12 beneficiary by the department of social and health services. The
13 refund shall be deposited into an individual trust account within the
14 developmental disabilities endowment trust fund for the benefit of
15 the dependent with a developmental disability. The commission shall
16 consider:

17 (i) The value of the refund to be one hundred percent of the
18 current value of the qualified individual's lifetime premium payments
19 at the time that certification of death of the qualified individual
20 is submitted, less any administrative process fees; and

21 (ii) The criteria for determining whether the individual is
22 developmentally disabled. The determination shall not be based on
23 whether or not the individual with a developmental disability is
24 receiving services under Title 71A RCW, or another state or local
25 program;

26 (g) Assisting the state actuary with the preparation of regular
27 actuarial reports on the solvency and financial status of the program
28 and advising the legislature on actions necessary to maintain trust
29 solvency. The commission shall provide the office of the state
30 actuary with all actuarial reports for review. The office of the
31 state actuary shall provide any recommendations to the commission and
32 the legislature on actions necessary to maintain trust solvency;

33 (h) For the January 1, 2021, report only, recommendations on
34 whether and how to extend coverage to individuals who became disabled
35 before the age of eighteen, including the impact on the financial
36 status and solvency of the trust. The commission shall engage
37 affected stakeholders to develop this recommendation; and

38 (i) For the January 1, 2021, report only, the commission shall
39 consult with the office of the state actuary on the development of an
40 actuarial report of the projected solvency and financial status of

1 the program. The office of the state actuary shall provide any
2 recommendations to the commission and the legislature on actions
3 necessary to achieve trust solvency.

4 (5) The commission shall monitor agency administrative expenses
5 over time. Beginning November 15, 2020, the commission must annually
6 report to the governor and the fiscal committees of the legislature
7 on agency spending for administrative expenses and anticipated
8 administrative expenses as the program shifts into different phases
9 of implementation and operation. The November 15, ~~((2025))~~ 2027,
10 report must include recommendations for a method of calculating
11 future agency administrative expenses to limit administrative
12 expenses while providing sufficient funds to adequately operate the
13 program. The agency heads identified in subsection (2) of this
14 section may advise the commission on the reports prepared under this
15 subsection, but must recuse themselves from the commission's process
16 for review, approval, and submission to the legislature.

17 (6) The commission shall establish an investment strategy
18 subcommittee consisting of the members identified in subsection
19 (2)(a) through (d) of this section as voting members of the
20 subcommittee. In addition, four members appointed by the governor who
21 are considered experienced and qualified in the field of investment
22 shall serve as nonvoting members. The subcommittee shall provide
23 guidance and advice to the state investment board on investment
24 strategies for the account, including seeking counsel and advice on
25 the types of investments that are constitutionally permitted.

26 (7) The commission shall work with insurers to develop long-term
27 care insurance products that supplement the program's benefit.

28 **Sec. 3.** RCW 50B.04.050 and 2021 c 113 s 4 are each amended to
29 read as follows:

30 (1) ~~((The))~~ Except as provided in subsection (2) of this section,
31 the employment security department shall deem a person to be a
32 qualified individual as provided in this chapter if the person has
33 paid the long-term services and supports premiums required by RCW
34 50B.04.080 for the equivalent of either:

35 (a) A total of ten years without interruption of five or more
36 consecutive years; or

37 (b) Three years within the last six years from the date of
38 application for benefits.

1 (2) A person born before January 1, 1968, who has not met the
2 duration requirements under subsection (1)(a) of this section may
3 become a qualified individual with fewer than the number of years
4 identified in subsection (1)(a) of this section if the person has
5 paid the long-term services and supports premiums required by RCW
6 50B.04.080 for at least one year. A person becoming a qualified
7 individual pursuant to this subsection (2) may receive one-tenth of
8 the maximum number of benefit units available under RCW
9 50B.04.060(3)(b) for each year of premium payments. In accordance
10 with RCW 50B.04.060, benefits will not be available until July 1,
11 2026, and nothing in this section requires the department of social
12 and health services to accept applications for determining an
13 individual's status as an eligible beneficiary prior to July 1, 2026.
14 Nothing in this subsection (2) prohibits a person born before January
15 1, 1968, who meets the conditions of subsection (1)(b) of this
16 section from receiving the maximum number of benefit units available
17 under RCW 50B.04.060(3)(b).

18 (3) When deeming a person to be a qualified individual, the
19 employment security department shall require that the person have
20 worked at least five hundred hours during each of the ten years in
21 subsection (1)(a) of this section (~~(or)~~), each of the three years in
22 subsection (1)(b) of this section, or each of the years identified in
23 subsection (2) of this section.

24 (~~(3)~~) (4) An exempt employee may never be deemed to be a
25 qualified individual.

26 **Sec. 4.** RCW 50B.04.060 and 2019 c 363 s 7 are each amended to
27 read as follows:

28 (1) Beginning (~~(January 1, 2025)~~) July 1, 2026, approved services
29 must be available and benefits payable to a registered long-term
30 services and supports provider on behalf of an eligible beneficiary
31 under this section.

32 (2) (~~(A)~~) Beginning July 1, 2026, a qualified individual may
33 become an eligible beneficiary by filing an application with the
34 department of social and health services and undergoing an
35 eligibility determination which includes an evaluation that the
36 individual requires assistance with at least three activities of
37 daily living. The department of social and health services must
38 engage sufficient qualified assessor capacity, including via

1 contract, so that the determination may be made within (~~forty-five~~)
2 45 days from receipt of a request by a beneficiary to use a benefit.

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

6 (b) (~~An~~) Except as limited in RCW 50B.04.050(2), an eligible
7 beneficiary may not receive more than the dollar equivalent of
8 (~~three hundred sixty-five~~) 365 benefit units over the course of the
9 eligible beneficiary's lifetime.

10 (i) If the department of social and health services reimburses a
11 long-term services and supports provider for approved services
12 provided to an eligible beneficiary and the payment is less than the
13 benefit unit, only the portion of the benefit unit that is used shall
14 be taken into consideration when calculating the person's remaining
15 lifetime limit on receipt of benefits.

16 (ii) Eligible beneficiaries may combine benefit units to receive
17 more approved services per day as long as the total number of
18 lifetime benefit units has not been exceeded.

19 **Sec. 5.** RCW 50B.04.080 and 2020 c 98 s 4 are each amended to
20 read as follows:

21 (1) Beginning (~~January 1, 2022~~) July 1, 2023, the employment
22 security department shall assess for each individual in employment
23 with an employer a premium based on the amount of the individual's
24 wages. The initial premium rate is (~~fifty-eight hundredths of~~
25 ~~one~~) .58 percent of the individual's wages. Beginning January 1,
26 (~~2024~~) 2026, and biennially thereafter, the premium rate shall be
27 set by the pension funding council at a rate no greater than (~~fifty-~~
28 ~~eight hundredths of one~~) .58 percent. In addition, the pension
29 funding council must set the premium rate at the lowest amount
30 necessary to maintain the actuarial solvency of the long-term
31 services and supports trust account created in RCW 50B.04.100 in
32 accordance with recognized insurance principles and designed to
33 attempt to limit fluctuations in the premium rate. To facilitate the
34 premium rate setting the office of the state actuary must perform a
35 biennial actuarial audit and valuation of the fund and make
36 recommendations to the pension funding council.

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

1 (b) In collecting employee premiums through payroll deductions,
2 the employer shall act as the agent of the employees and shall remit
3 the amounts to the employment security department as required by this
4 chapter.

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

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

13 (b) To the extent feasible, the employment security department
14 shall use the premium assessment, collection, and reporting
15 procedures in Title 50A RCW.

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

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

21 (7) If the premiums established in this section are increased,
22 the legislature shall notify each qualified individual by mail that
23 the person's premiums have been increased, describe the reason for
24 increasing the premiums, and describe the plan for restoring the
25 funds so that premiums are returned to (~~fifty-eight hundredths of~~
26 ~~one~~) .58 percent of the individual's wages.

27 **Sec. 6.** RCW 50B.04.090 and 2021 c 113 s 6 are each amended to
28 read as follows:

29 (1) Beginning (~~(January 1, 2022)~~) July 1, 2023, any self-employed
30 person, including a sole proprietor, independent contractor, partner,
31 or joint venturer, may elect coverage under this chapter. Coverage
32 must be elected before (~~(January 1, 2025)~~) July 1, 2026, or within
33 three years of becoming self-employed for the first time. Those
34 electing coverage under this subsection are responsible for payment
35 of (~~(one hundred)~~) 100 percent of all premiums assessed to an
36 employee under RCW 50B.04.080. The self-employed person must file a
37 notice of election in writing with the employment security
38 department, in the manner required by the employment security
39 department in rule. The self-employed person is eligible for benefits

1 after paying the long-term services and supports premium for the time
2 required under RCW 50B.04.050.

3 (2) A self-employed person who has elected coverage may not
4 withdraw from coverage.

5 (3) A self-employed person who elects coverage must continue to
6 pay premiums until such time that the individual retires from the
7 workforce or is no longer self-employed. To cease premium assessment
8 and collection, the self-employed person must file a notice with the
9 employment security department if the individual retires from the
10 workforce or is no longer self-employed.

11 (4) The employment security department may cancel elective
12 coverage if the self-employed person fails to make required payments
13 or file reports. The employment security department may collect due
14 and unpaid premiums and may levy an additional premium for the
15 remainder of the period of coverage. The cancellation must be
16 effective no later than (~~thirty~~) 30 days from the date of the
17 notice in writing advising the self-employed person of the
18 cancellation.

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

21 (6) For the purposes of this section, "independent contractor"
22 means an individual excluded from the definition of "employment" in
23 RCW 50B.04.010.

24 (7) 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 **Sec. 7.** RCW 50B.04.140 and 2019 c 363 s 15 are each amended to
29 read as follows:

30 Beginning December 1, (~~2026~~) 2028, and annually thereafter, and
31 in compliance with RCW 43.01.036, the commission must report to the
32 legislature on the program, including:

33 (1) Projected and actual program participation;

34 (2) Adequacy of premium rates;

35 (3) Fund balances;

36 (4) Benefits paid;

37 (5) Demographic information on program participants, including
38 age, gender, race, ethnicity, geographic distribution by county,
39 legislative district, and employment sector; and

1 (6) The extent to which the operation of the program has resulted
2 in savings to the medicaid program by avoiding costs that would have
3 otherwise been the responsibility of the state.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 50B.04
5 RCW to read as follows:

6 Any premiums collected from the employee prior to July 1, 2023,
7 shall be refunded to the employee within 120 days of the collection
8 of the premiums. If the premiums were collected but not yet remitted
9 to the employment security department, the employer shall refund the
10 collected premiums to the employee. If the collected premiums were
11 remitted to the employment security department, the employment
12 security department shall refund the premiums to the employer within
13 120 days of the collection of the premiums, who shall then return any
14 premiums collected from the employee.

15 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and takes
18 effect immediately.

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