

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1323**

Chapter 113, Laws of 2021

67th Legislature  
2021 Regular Session

LONG-TERM SERVICES AND SUPPORTS TRUST PROGRAM—VARIOUS PROVISIONS

EFFECTIVE DATE: July 25, 2021

Passed by the House April 14, 2021  
Yeas 58 Nays 39

LAURIE JINKINS

**Speaker of the House of  
Representatives**

Passed by the Senate April 10, 2021  
Yeas 26 Nays 22

DENNY HECK

**President of the Senate**

Approved April 21, 2021 3:14 PM

JAY INSLEE

**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 1323** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

**Chief Clerk**

FILED

April 21, 2021

**Secretary of State  
State of Washington**

---

**SUBSTITUTE HOUSE BILL 1323**

---

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

**State of Washington                      67th Legislature                      2021 Regular Session**

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

READ FIRST TIME 02/12/21.

1            AN ACT Relating to the long-term services and supports trust  
2 program; amending RCW 50B.04.010, 50B.04.020, 50B.04.030, 50B.04.050,  
3 50B.04.085, and 50B.04.090; and adding a new section to chapter  
4 50B.04 RCW.

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

6            **Sec. 1.** RCW 50B.04.010 and 2020 c 98 s 1 are each amended to  
7 read as follows:

8            The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10           (1) "Account" means the long-term services and supports trust  
11 account created in RCW 50B.04.100.

12           (2) "Approved service" means long-term services and supports  
13 including, but not limited to:

- 14           (a) Adult day services;
- 15           (b) Care transition coordination;
- 16           (c) Memory care;
- 17           (d) Adaptive equipment and technology;
- 18           (e) Environmental modification;
- 19           (f) Personal emergency response system;
- 20           (g) Home safety evaluation;
- 21           (h) Respite for family caregivers;

- 1 (i) Home delivered meals;  
2 (j) Transportation;  
3 (k) Dementia supports;  
4 (l) Education and consultation;  
5 (m) Eligible relative care;  
6 (n) Professional services;  
7 (o) Services that assist paid and unpaid family members caring  
8 for eligible individuals, including training for individuals  
9 providing care who are not otherwise employed as long-term care  
10 workers under RCW 74.39A.074;  
11 (p) In-home personal care;  
12 (q) Assisted living services;  
13 (r) Adult family home services; and  
14 (s) Nursing home services.

15 (3) "Benefit unit" means up to one hundred dollars paid by the  
16 department of social and health services to a long-term services and  
17 supports provider as reimbursement for approved services provided to  
18 an eligible beneficiary on a specific date. The benefit unit must be  
19 adjusted annually at a rate no greater than the Washington state  
20 consumer price index, as determined solely by the council. Any  
21 changes adopted by the council shall be subject to revision by the  
22 legislature.

23 (4) "Commission" means the long-term services and supports trust  
24 commission established in RCW 50B.04.030.

25 (5) "Council" means the long-term services and supports trust  
26 council established in RCW 50B.04.040.

27 (6) "Eligible beneficiary" means a qualified individual who is  
28 age eighteen or older, residing in the state of Washington, (~~was not~~  
29 ~~disabled before the age of eighteen,~~) has been determined to meet  
30 the minimum level of assistance with activities of daily living  
31 necessary to receive benefits through the trust program, as  
32 established in this chapter, and (~~who~~) has not exhausted the  
33 lifetime limit of benefit units.

34 (7) "Employee" has the meaning provided in RCW 50A.05.010.

35 (8) "Employer" has the meaning provided in RCW 50A.05.010.

36 (9) "Employment" has the meaning provided in RCW 50A.05.010.

37 (10) "Exempt employee" means a person who has been granted a  
38 premium assessment exemption by the employment security department.

39 (11) "Long-term services and supports provider" means an entity  
40 that meets the qualifications applicable in law to the approved

1 service they provide, including a qualified or certified home care  
2 aide, licensed assisted living facility, licensed adult family home,  
3 licensed nursing home, licensed in-home services agency, adult day  
4 services program, vendor, instructor, qualified family member, or  
5 other entities as registered by the department of social and health  
6 services.

7 ~~((11))~~ (12) "Premium" or "premiums" means the payments required  
8 by RCW 50B.04.080 and paid to the employment security department for  
9 deposit in the account created in RCW 50B.04.100.

10 ~~((12))~~ (13) "Program" means the long-term services and supports  
11 trust program established in this chapter.

12 ~~((13))~~ (14) "Qualified family member" means a relative of an  
13 eligible beneficiary qualified to meet requirements established in  
14 state law for the approved service they provide that would be  
15 required of any other long-term services and supports provider to  
16 receive payments from the state.

17 ~~((14))~~ (15) "Qualified individual" means an individual who  
18 meets the duration of payment requirements, as established in this  
19 chapter.

20 ~~((15))~~ (16) "State actuary" means the office of the state  
21 actuary created in RCW 44.44.010.

22 ~~((16))~~ (17) "Wage or wages" means all remuneration paid by an  
23 employer to an employee. Remuneration has the meaning provided in RCW  
24 50A.05.010. All wages are subject to a premium assessment and not  
25 limited by the commissioner of the employment security department, as  
26 provided under RCW 50A.10.030(4).

27 ~~((17) "Exempt employee" means a person who has been granted a  
28 premium assessment exemption by the employment security department.)~~

29 **Sec. 2.** RCW 50B.04.020 and 2020 c 98 s 2 are each amended to  
30 read as follows:

31 (1) The health care authority, the department of social and  
32 health services, the office of the state actuary, and the employment  
33 security department each have distinct responsibilities in the  
34 implementation and administration of the program. In the performance  
35 of their activities, they shall actively collaborate to realize  
36 program efficiencies and provide persons served by the program with a  
37 well-coordinated experience.

38 (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; and

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

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

23 (a) Beginning January 1, 2024, and biennially thereafter, perform  
24 an actuarial audit and valuation of the long-term services and  
25 supports trust fund. Additional or more frequent actuarial audits and  
26 valuations may be performed at the request of the council;

27 (b) Make recommendations to the council and the legislature on  
28 actions necessary to maintain trust solvency. The recommendations  
29 must include options to redesign or reduce benefit units, approved  
30 services, or both, to prevent or eliminate any unfunded actuarially  
31 accrued liability in the trust or to maintain solvency; and

32 (c) Select and contract for such actuarial, research, technical,  
33 and other consultants as the actuary deems necessary to perform its  
34 duties under chapter 363, Laws of 2019.

35 (6) By October 1, 2021, the employment security department and  
36 the department of social and health services shall jointly conduct  
37 outreach to provide employers with educational materials to ensure  
38 employees are aware of the program and that the premium assessments  
39 will begin on January 1, 2022. In conducting the outreach, the  
40 employment security department and the department of social and

1 health services shall provide on a public website information that  
2 explains the program and premium assessment in an easy to understand  
3 format. Outreach information must be available in English and other  
4 primary languages as defined in RCW 74.04.025.

5 **Sec. 3.** RCW 50B.04.030 and 2019 c 363 s 4 are each amended to  
6 read as follows:

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

11 (2) The commission includes:

12 (a) Two members from each of the two largest caucuses of the  
13 house of representatives, appointed by the speaker of the house of  
14 representatives;

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

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

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

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

23 (f) One representative of the organization representing the area  
24 agencies on aging;

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

27 (h) One representative of a union representing long-term care  
28 workers;

29 (i) One representative of an organization representing retired  
30 persons;

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

33 (k) One representative of an association representing adult  
34 family home providers;

35 (l) Two individuals receiving long-term services and supports, or  
36 their designees, or representatives of consumers receiving long-term  
37 services and supports under the program;

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

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

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

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

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

24 (4) Beginning January 1, 2021, the commission shall propose  
25 recommendations to the appropriate executive agency or the  
26 legislature regarding:

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

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

34 (c) The establishment of payment maximums for approved services  
35 consistent with actuarial soundness which shall not be lower than  
36 medicaid payments for comparable services. A service or supply may be  
37 limited by dollar amount, duration, or number of visits. The  
38 commission shall engage affected stakeholders to develop this  
39 recommendation;

1 (d) Changes to rules or policies to improve the operation of the  
2 program;

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

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

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

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

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

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

36 (i) For the January 1, 2021, report only, the commission shall  
37 consult with the office of the state actuary on the development of an  
38 actuarial report of the projected solvency and financial status of  
39 the program. The office of the state actuary shall provide any

1 recommendations to the commission and the legislature on actions  
2 necessary to achieve trust solvency.

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

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

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

27 **Sec. 4.** RCW 50B.04.050 and 2020 c 98 s 3 are each amended to  
28 read as follows:

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

33 (a) A total of ten years without interruption of five or more  
34 consecutive years; or

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

37 (2) When deeming a person to be a qualified individual, the  
38 employment security department shall require that the person have  
39 worked at least five hundred hours during each of the ten years in

1 subsection (1)(a) of this section or each of the three years in  
2 subsection (1)(b) of this section.

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

5 **Sec. 5.** RCW 50B.04.085 and 2020 c 98 s 7 are each amended to  
6 read as follows:

7 (1) An employee who attests that the employee has long-term care  
8 insurance purchased before November 1, 2021, may apply for an  
9 exemption from the premium assessment under RCW 50B.04.080. An exempt  
10 employee may not become a qualified individual or eligible  
11 beneficiary and is permanently ineligible for coverage under this  
12 title.

13 (2)(a) The employment security department must accept  
14 applications for exemptions only from October 1, 2021, through  
15 December 31, 2022.

16 (b) Only employees who are eighteen years of age or older may  
17 apply for an exemption.

18 (3) The employment security department is not required to verify  
19 the attestation of an employee that the employee has long-term care  
20 insurance.

21 (4) Approved exemptions will take effect on the first day of the  
22 quarter immediately following the approval of the exemption.

23 (5) Exempt employees are not entitled to a refund of any premium  
24 deductions made before the effective date of an approved exemption.

25 (6) An exempt employee must provide written notification to all  
26 current and future employers of an approved exemption.

27 (7) If an exempt employee fails to notify an employer of an  
28 exemption, the exempt employee is not entitled to a refund of any  
29 premium deductions made before notification is provided.

30 (8) Employers must not deduct premiums after being notified by an  
31 employee of an approved exemption.

32 (a) Employers must retain written notifications of exemptions  
33 received from employees.

34 (b) An employer who deducts premiums after being notified by the  
35 employee of an exemption is solely responsible for refunding to the  
36 employee any premiums deducted after the notification.

37 (c) The employer is not entitled to a refund from the employment  
38 security department for any premiums remitted to the employment  
39 security department that were deducted from exempt employees.

1 (9) The department must adopt rules necessary to implement and  
2 administer the activities specified in this section related to the  
3 program, including rules on the submission and processing of  
4 applications under this section.

5 **Sec. 6.** RCW 50B.04.090 and 2020 c 98 s 5 are each amended to  
6 read as follows:

7 (1) Beginning January 1, 2022, any self-employed person,  
8 including a sole proprietor, independent contractor, partner, or  
9 joint venturer, may elect coverage under this chapter. Coverage must  
10 be elected before January 1, 2025, or within three years of becoming  
11 self-employed for the first time. Those electing coverage under this  
12 subsection are responsible for payment of one hundred percent of all  
13 premiums assessed to an employee under RCW 50B.04.080. The self-  
14 employed person must file a notice of election in writing with the  
15 employment security department, in the manner required by the  
16 employment security department in rule. The self-employed person is  
17 eligible for benefits after paying the long-term services and  
18 supports premium for the time required under RCW 50B.04.050.

19 (2) A self-employed person who has elected coverage may not  
20 withdraw from coverage(~~(, at such times as the employment security~~  
21 ~~department may adopt by rule, by filing a notice of withdrawal in~~  
22 ~~writing with the employment security department, with the withdrawal~~  
23 ~~to take effect not sooner than thirty days after filing the notice~~  
24 ~~with the employment security department)).~~

25 (3) A self-employed person who elects coverage must continue to  
26 pay premiums until such time that the individual retires from the  
27 workforce or is no longer self-employed. To cease premium assessment  
28 and collection, the self-employed person must file a notice with the  
29 employment security department if the individual retires from the  
30 workforce or is no longer self-employed.

31 (4) The employment security department may cancel elective  
32 coverage if the self-employed person fails to make required payments  
33 or file reports. The employment security department may collect due  
34 and unpaid premiums and may levy an additional premium for the  
35 remainder of the period of coverage. The cancellation must be  
36 effective no later than thirty days from the date of the notice in  
37 writing advising the self-employed person of the cancellation.

38 ((4)) (5) Those electing coverage are considered employers or  
39 employees where the context so dictates.

1       (~~(5)~~) (6) For the purposes of this section, "independent  
2 contractor" means an individual excluded from the definition of  
3 "employment" in RCW 50B.04.010.

4       (~~(6)~~) (7) The employment security department shall adopt rules  
5 for determining the hours worked and the wages of individuals who  
6 elect coverage under this section and rules for enforcement of this  
7 section.

8       NEW SECTION.   **Sec. 7.** A new section is added to chapter 50B.04  
9 RCW to read as follows:

10       A federally recognized tribe may elect coverage under RCW  
11 50B.04.080. If a federally recognized tribe has elected coverage  
12 under this section, it must also have the option to opt out at any  
13 time for any reason it deems necessary. The employment security  
14 department shall adopt rules to implement this section.

Passed by the House April 14, 2021.  
Passed by the Senate April 10, 2021.  
Approved by the Governor April 21, 2021.  
Filed in Office of Secretary of State April 21, 2021.

--- END ---