# ISSUE BRIEF

## Long-Term Care (LTC) Trust Act/Public LTC Benefit

### Key facts

- On January 1st, 2022, a 0.58% payroll tax on all wages and remuneration will be instituted.
- To opt out, one must have purchased long-term care insurance before November 1st, 2021.
- Employees who are vested in the program will earn a lifetime maximum of $36,500 in long-term care benefits.

## The debate

Beginning January 2022, Washington workers will pay $0.58 per $100 of their earnings to fund the Long-Term Care Trust Act (LTCTA). Washington employees aged 18 years or older have a **small window of time to permanently opt-out of the Long-Term Care Trust Program** and its career-spanning payroll tax. To opt out, employees must have purchased long-term care insurance before November 1st, 2021. Once a plan is purchased, employees must apply for an exemption from the program to the Employment Security Department (ESD) between October 1, 2021, and December 31, 2022. If ESD accepts the application, the individual is permanently exempt from the payroll tax and ineligible for future coverage from the Long-Term Care Trust Program. Once approved, employees must provide all current and future employers with notice of the exemption to maintain exemption from payroll tax.

## Background

In 2019, the Legislature enacted HB 1087, the Long-Term Care Trust Act, on a party-line vote. This act, also known as the WA Cares Fund and the WA Long Term Services & Supports Trust Program (LTSS), was touted as a response to the weak private long-term care insurance market at the time and the state's high expenditures on long-term care through Medicaid.

In the 2021 session, the Legislature passed HB 1323 relating to the LTSS Trust Program. This legislation enacted a package of recommendations forwarded to the Legislature by the Trust Commission and moved up timelines for employees to opt out, set timelines for a self-employed individual to opt in, and allowed tribes and individuals who were disabled before the age of 18 to qualify for the program.

## FAQs

**How long do employees have to pay into the program to receive benefits?**

Those that pay into the program are eligible for a lifetime maximum benefit of $36,500 (adjusted annually by no more than the Consumer Price Index (CPI) once they vest. Vesting occurs when an individual who works a minimum of 500 hours per year pays premiums for at least ten years (without a break of five consecutive years) or for three of the previous six years from the date of application for benefits. Those who pay for ten years are permanently vested, while those who paid for three of the last six years from the date of application for benefits vest on a temporary basis and can un-vest if they no longer meet qualifications.

**When can a vested individual use the benefits?**

To utilize the benefits (paid in $100 stackable units), vested individuals must reside in Washington and need assistance with a minimum of three of ten Activities of Daily Living (ADLs): medication management, personal hygiene, eating, toileting, transferring, body care, bathing, ambulation/mobility, dressing, and cognitive impairment. Individuals who meet these requirements may begin applying for benefits in January 2025.

**What services qualify for use by these funds?**

The funds can only be utilized with providers who are on a Department of Social and Health Services approved list for services. Funds can be spent on nursing facilities, residential settings like assisted living and adult family homes, professional caregiving like home health care, wheelchair ramps, emergency alert devices, medication reminders, Meals on Wheels, rides to doctor appointments, dementia education, caregiver support, and care coordination. Family members may qualify to receive funds upon receiving 21 to 35 hours of formal training to care for beneficiaries.

**What are the requirements to opt out for an employee?**

An individual may opt out if they are at least 18 years of age, have purchased a qualifying long-term care insurance before November 1, 2021, and apply to ESD during the designated opt out window between Oct. 1, 2021 and Dec. 31, 2022. A qualifying long term care insurance plan must meet the definition of long-term care insurance in RCW 48.83.020, however, there is no minimum amount required. A qualifying plan can be for $5,000 or $500,000 so long as it meets other policy requirements.

**How does the tax impact self-employed individuals?**

A self-employed person can choose to opt into the program between January 2022 and January 1st, 2025, or within three years of first becoming self-employed for the first time. Self-employed opt-ins are irrevocable and the payroll tax will apply as long as they are self-employed (and if they are later employed by a qualifying employer).

**Does the tax impact current retirees?**

The LTSS payroll tax is levied on an "individual in employment with an employer" as outlined in RCW 50B.04.080. Therefore, current retirees who have no income from an employer would not be subject to either the tax or the benefits. However, if a current retiree earns any income from an employer, they would pay the payroll tax on earnings and could potentially qualify for benefits in future years if they meet eligibility criteria.

**How does this impact individuals who live and work in different states?**

Individuals who live in the state but do not work in the state will not be eligible for the benefits nor will they have to pay for this tax. Those who live in another state, but work in Washington will have to pay the payroll tax but will not be eligible to receive the benefits of the program unless they later move into the state.

The LTCTA specifies that "employer" has the same definition as RCW 50A.05.010 and includes these elements:

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

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

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

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

## Additional information

- ESD webpage - http://wacaresfund.wa.gov/
- ESD Rulemaking updates - https://esd.wa.gov/newsroom/rulemaking/ltss
- Washington State Information Technology Fiscal updates - https://wacioportal.force.com/s/project-dashboard?Project+Selector=ESD+Long+Term+Services+and+Supports+%28LTSS%29+Premiums