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POLICY BRIEF

New state-run program will not fix long-term-care crisis, nor should it offer peace of mind to workers forced to fund it

By Elizabeth Hovde,
Director of WPC's Centers for Health Care and Worker Rights

July 2022

Key Findings

1. Washington state's long-term care law, HB 1087, passed in 2019 but has yet to begin because of many recognized flaws. It created WA Cares, a mandatory social program funded by workers in the state with a payroll tax of 58 cents for every $100 earned.
2. The state-imposed program will not give workers financial security promised. An inadequate lifetime benefit of $36,500 is not enough for most people's care, should they require it. And many workers won't qualify for the benefit, regardless of how much they pay. Telling people this fund brings them "peace of mind" is not only false, it's dangerous.
3. The regressive tax in the law means some low-income workers will be forced to hand over a portion of their income to benefit others with higher incomes and who may not need assistance. This program expands a safety net far too wide.
4. The Legislature placed a constitutional amendment, Engrossed Senate Joint Resolution 8212, on the ballot to create additional funding for the program. It was defeated 54 to 46 percent, impacting program solvency. State Actuary Matt Smith wrote in an analysis that the WA Cares program will face a $15 billion shortfall.
5. There is already legislative discussion that the 58-cent tax will need to increase or the benefit amount of $36,500 decrease to keep the program viable.
6. A program exemption included in HB 1087 (2019), and then limited in HB 1323 (2021), was not well-publicized. It seemed Washingtonians were intentionally kept in the dark. Still, nearly 500,000 people learned of the exemption in time to opt out of the program.
7. The long-term-care insurance market in the state was temporarily shut-down, overwhelmed by people looking for a private plan to avoid the payroll tax and the inadequate, insurance-like product the state was mandating.
8. More voluntary exemptions carved out in 2022 are misleading, as they require action on the part of an "exempt" person. The new exemption categories also increase concern about the fund's solvency.
9. WA Cares will allow some caregivers, including family members, to be paid with taxpayer funds if they have state-required training. Service Employees International Union 775 lobbied for and supports this law.
10. Instead of imposing this program and tax on Washington workers, lawmakers should repeal the law, create awareness, encourage savings, protect Medicaid, cut the tax on insurance products and remove limits on purchasing.

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Background

In 2019, the Legislature passed a law to create a new payroll tax and impose a mandatory long-term-care (LTC) entitlement program on Washington workers. Gov. Jay Inslee signed the bill, HB 1087,[1] on May 13. The program was later designated the WA Cares Fund.

The new payroll tax was initially planned for collection starting Jan. 1, 2022. Public opposition and glaringly unfair details in the long-term-care law, however, caused Inslee to ask the Legislature to delay collecting the tax and make some changes to the law. Lawmakers implemented a delay until July 1, 2023, beyond the 2022 election. They also created a partial benefit for some near-retirees and additional exemption categories. These changes were made in House Bills 1732 and 1733.[2, 3] These pieces of legislation were fast-tracked in the first weeks of the session, and the governor signed the bills into law on Jan. 27, 2022.

Voluntary exemption, voluntary opt-in

The entitlement program created is mandatory for all W-2 employees, representing the vast majority of workers in the state. Original legislation that passed included an opt-out provision if workers could show they had private long-term-care insurance (LTCI) and applied to opt out between October 2021 and December 2022. The rush of exemption applications caused the state website to overload for a time when the opt-out window opened. Insurance brokers were swamped with requests for affordable private coverage, as workers learned about the coming program and payroll tax.

So far, during the months Washingtonians have been able to apply for exemption attesting that they have LTCI, nearly 500,000 people have sought to opt out. The Employment Security Department told me the current number represented about 11 percent of those with recent employment.

Seeing more financial trouble than was already expected on the horizon, the Legislature limited this voluntary opt-out provision with House Bill 1323[4] in 2021.

1 House Bill 1087: https://app.leg.wa.gov/billsummary?BillNumber=1087&Year=2019

2 House Bill 1732: https://app.leg.wa.gov/billsummary?BillNumber=1732&Initiative=false&Year=2021

3 House Bill 1733: https://app.leg.wa.gov/billsummary?BillNumber=1733&Initiative=false&Year=2021

4 House Bill 1323: https://app.leg.wa.gov/billsummary?BillNumber=1323&Initiative=false&Year=2021

HB 1323 specified that the exemption to the program for employees who had LTCI applied only to those who purchased their coverage prior to Nov. 1, 2021. At this time, many people still did not even know about the payroll tax coming their way.

With the opt-out limiting legislation, lawmakers also made a way for non-W2 workers and tribes to opt into the program, hoping to help the program's finances. Officials at the Employment Security Department have since announced that based on experience with other state programs, they anticipate few, if any, workers will ever join WA Cares voluntarily.

Critics, including Washington Policy Center, pointed out that workers who live out of state and temporary workers would have to pay in but would receive no benefits in the original legislation. Hearing the outcry — and receiving a cease-and-desist letter from Idaho — the Legislature further amended the law[5] in 2022. The Legislature created new categories of exemption that would apply to workers living out of state, non-immigrant visa holders, military spouses and some disabled veterans. Their exemption is not automatic, however. Individuals in these new categories must apply for exemption and be approved by the state.

They can start applying after Jan. 1, 2023. It is not yet clear what will be required in that application process.

Funding of the program

The state intends to finance the program with mandatory payroll deductions for all those unable to opt out. Starting in July 2023, all current and future W-2 workers will be required to pay a tax of 58 cents for every $100 they earn, with no income cap. This new payroll tax is in addition to taxes for Social Security, Medicare, Medicaid, unemployment insurance, workers' compensation, the state's Paid Family and Medical Leave program and the tax on federal income. This combination of taxes represents a significant cut in the take-home pay of all salaried and hourly workers.

For the long-term-care tax alone, and at its starting tax rate (the rate is expected to increase because the fund faces insolvency), a worker earning $25,000 will pay $145 in this payroll tax each year, a worker making $50,000 will pay $290, those making $100,000 will pay $580 and so on.

Program benefit

This program and payroll tax are intended to ease long-term-care costs paid out by Medicaid,[6] saving the state money. State budget writers are clear beneficiaries of the long-term-care law and WA Cares.

5 House Bill 1733: https://app.leg.wa.gov/billsummary?BillNumber=1732&Initiative=false&Year=2021

6 Medicaid savings referenced, see Section 1: https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1087-S2.PL.pdf?q=20210817094453

When it comes to individuals, a program benefit is far less likely. While paying into the program is mandatory, the WA Cares Fund will provide a relatively low level of long-term-care dollars — up to $36,500 — for only some of the workers who are required to contribute and only if they meet certain qualifications. Before receiving the program's lifetime benefit, a person must:[7]

- be 18 or older.
- need assistance with three or more activities of daily living.
- be a current resident of Washington state. The benefit is not portable. No matter how much is paid in, a person who moves out of the state and needs long-term care receives nothing.
- have paid the payroll tax for 10 years, working at least 500 hours per year and without a break of five years or more.[8] A break of five or more years before reaching the 10-year mark restarts your climb to becoming vested.

Workers age 55 and older who do not meet the 10-year payment requirement are now allowed to receive a reduced benefit if they qualify for long-term care, given recent changes to the law. Families of workers who die before needing long-term care will still not receive the benefit in the worker's place. The funds are not transferrable to heirs. This is another difference from many private plans.

For those who do end up needing long-term care at some point in life — and who qualify for the taxpayer-provided benefit — the funds can be used for costs related to caregiving in the home, a wheelchair or other equipment, meal delivery or nursing home fees. Again, the total lifetime benefit is limited to up to $36,500 per person. This amount is enough for about three months of nursing home care at current prices.[9]

Loss of bipartisan support

The WA Cares Fund is the nation's first long-term-care program[10] enacted by a state. It was passed largely along party lines in a Democrat-controlled Legislature. While HB 1087[11] originally had three Republican sponsors alongside 14 Democrats, two of those three Republicans did not end up voting for the final bill.

One of those Republican sponsors, Rep. Paul Harris,[12] R-Vancouver, provided me this statement to explain his decision to drop his support and vote against HB 1087:

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7 Eligibility requirements: https://wacaresfund.wa.gov/applying-for-benefits/

8 Contribution requirements: https://wacaresfund.wa.gov/earning-your-benefits/

9 Genworth's Cost of Care Survey: https://www.genworth.com/aging-and-you/finances/cost-of-care.html

10 The Intercept, April 26, 2019: https://theintercept.com/2019/04/26/washington-state-long-term-care/

11 House Bill 1087 sponsors: https://app.leg.wa.gov/billsummary?BillNumber=1087&Year=2019

12 Rep. Paul Harris's legislative page: https://paulharris.houserepublicans.wa.gov/

> "I signed onto the bill in an effort to encourage dialogue. With more people living longer, the cost of long-term care has to be addressed, however, being first in the nation to create such a program, it's important we get it right. Although I supported the intent of the bill, I felt that the cost to taxpayers outweighed the benefit and could not get behind the final provisions."

The loss of bipartisan support did not prevent majority Democrats from pressing ahead with the bill, nor did they offer changes that would have made the bill more inclusive to attract broad support among lawmakers. When the law was being discussed again in the 2022 legislative session, Republican amendments were dismissed and largely ignored.

State limits on access to long-term-care insurance

Private long-term-care insurance was available and sold in Washington state before this law, but relatively few people bought it and some people were not eligible. Many people plan to finance their long-term-care needs, should they have them, in other ways and with various investments. Private LTCI plans are taxed and regulated by the state, making them an even less attractive investment to many consumers.

State program adversely impacted the market

The availability of private long-term-care plans halted as the state's mandatory program neared its initial implementation date of Jan. 1, 2022. Even people who wanted the insurance and qualified for it found they were unable to buy it, as insurance sellers bowed out. Some sellers suspected people were buying LTCI only to avoid Washington state's coming payroll tax and would later drop their plans. Other sellers simply could not process the high demand created by the Nov. 1 state deadline required to qualify for exemption from the tax.

Affordable private long-term care coverage was unavailable in Washington state for many months. Now that the state's exemption deadline has passed, some insurers are again offering plans in the state. The state also is encouraging insurers to offer supplemental LTCI that wraps around the state plan, as the state even now acknowledges its long-term-care program will not meet most people's needs.

Policy Analysis

It is clear a lot of people are not planning adequately for long-term care later in life, but a review of its weaknesses shows the WA Cares Fund is not the solution. Following is a summary of the program's main problems.

Inadequate benefit — A review of the average monthly dollar amounts for quality long-term care shows that the state program is clearly inadequate to meet the needs of Washingtonians. This program should not offer peace of mind to Washington state workers, nor does it solve the state's long-term-care woes, despite the state's claims to the contrary.

Eligibility unfairness — Lawmakers will make some people pay into WA Cares throughout their working years but they will end up being eligible for nothing.[13] That is because some people will not need long-term care. They will, no doubt, have other life needs that keeping more of their wages could have helped.

Lawmakers also restrict benefits of the program to residents of Washington state. Workers who live in Washington their entire lives — paying the state's payroll taxes — but retire to another state are not eligible for the WA Cares benefit, even if they need long-term care.

Lawmakers also block benefits for workers who leave employment for five or more years during a 10-year period. These exclusions impose a particular hardship on those who choose to take time away from formal work to raise a family or care for elderly relatives. Those who work less than 500 hours per year are also excluded.

Restrictive requirement related to Activities of Daily Living — The barrier to receiving any benefit under the state program is higher than it is in the private market. Private long-term-care plans start paying out when an elderly person needs help with two daily-life activities. The state program will require a person to need help with at least three Activities of Daily Living before allowing payment of benefit dollars.

High administrative costs — Lawmakers say the new program will save the state $1.9 billion in Medicaid spending between 2022-2053.[14] However, given estimated program costs of $675 million over the same period, workers will pay more than $30 billion for the state to realize net savings of just over $1.2 billion.

Even this level of savings, however, is unlikely. The administrative costs involved in overseeing a long-term-care entitlement, marketing the program, collecting payroll taxes and processing exemptions from workers have likely been underestimated. There are ongoing requests for more money for WA Cares, increasing the costs assumed and expected in 2019. This further decreases the amount of money in claimed savings.

Financial insolvency — The state's long-term-care program is not expected to be able to pay for itself. It was declared insolvent before it even began.

Seeking the ability to invest long-term-care trust fund dollars in private stocks to help with program solvency, the Legislature placed a constitutional amendment, Engrossed Senate Joint Resolution 8212,[15] on the ballot. It was defeated 54 to 46 percent.[16]

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13 WACares Fund eligibility: https://wacaresfund.wa.gov/applying-for-benefits/

14 Washington Policy Center analysis, April 2019: https://www.washingtonpolicy.org/library/doclib/Shannon-HB-1087-to-impose-1billion-annual-payroll-tax-increase-on-workers.pdf

15 ESJR 8212: https://voter.votewa.gov/genericvoterguide.aspx?e=866&c=99#/measure/4738

16 ESJR 8212 Election Results: https://results.vote.wa.gov/results/20201103/engrossed-senate-joint-resolution-no-8212.html

State Actuary Matt Smith has reported the program will face a $15 billion shortfall.[17] There is concern that the tax of 58 cents per $100 will need to increase, or the benefit amount of $36,500 decrease, to keep the program viable in future years.

At several meetings of the Long-Term Services and Supports Trust Commission, including one in May 2021,[18] members acknowledge the problem of financial insolvency and express concern about the projected shortfall and what that would mean for tax rates and benefit cuts in the future. The commission's membership consists of legislators, administering agencies and other stakeholder representatives. That means state officials who helped create, and who support, the WA Cares Fund already know it is not expected to work financially for the long term.

False assurances, misinformation - Spokespeople and the informational website[19] for WA Cares say the program meets people's long-term-care needs, allows people to keep their savings, minimizes the burden on family and that it offers individuals peace of mind as they age. These claims are not true.

The inadequate benefit should not provide peace of mind and won't handle all long-term-care needs. In most cases, people will still need to spend their savings and utilize family assistance when it exists. Further, the program does nothing for elderly people who need help with fewer than three daily life activities or who move out of state.

By spreading misinformation to gain support for WA Cares, a false sense of security could discourage many people from buying private insurance or saving effectively for long-term-care expenses.

To hide the socialist nature of the program, lawmakers refer to the payroll taxes as "premiums" and to the program as "insurance," which it is not. Attaching these private-sector terms to WA Cares does not reflect the coercive nature of the program and is clearly designed to mislead the public.

Hurting the private market — The Legislature's decision to enter the long-term-care insurance market and require all W2 workers to pay into WA Cares hurt the sale of affordable, private long-term-care coverage. Private insurance became even further out of reach for many Washington residents. Yet state lawmakers give the high cost of private insurance as their main reason for creating an involuntary state-run program.

As the public learned about the approaching implementation date of January 2022, the misleading tactics state agencies and some lawmakers employed clearly didn't work. Residents rushed to the private market while policies were still available and, as noted, nearly 500,000 have opted out so far.

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17 KUOW, Dec. 3, 2020: https://www.kuow.org/stories/wa-voters-said-no-now-there-s-a-15-billion-problem

18 Long-Term Services and Supports (LTSS) Trust: https://app.leg.wa.gov/RCW/default.aspx?cite=48.83&full=true

19 WA Cares marketing: https://wacaresfund.wa.gov/

The 18-month delay passed by the Legislature in 2022 brought more disruption to the private insurance market. It brought confusion for many people trying to plan for retirement, and it promoted feelings of betrayal and distrust of state government. Workers who played by the state's rules found they were punished financially.

Special favor for a union — HB 1087, the bill that created WA Cares, contains a provision that requires mandatory training for people working as long-term-care providers if they are to receive any program dollars from eligible recipients. The provision[20] states, "Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section."

It is likely officials at the Employment Security Department will grant a monopoly to Service Employees International Union 775[21] to provide that required training, and family caregivers could be required to pay dues to this union. SEIU 775 is one of the largest campaign donors in the state and represents more than 45,000 long-term-care workers. In 2019, the union lobbied for passage of the bill.

The training requirement could naturally increase the cost of care and home services for the elderly. It could also bring a substantial financial windfall to SEIU 775.

Policy recommendations

Instead of imposing new taxes and forcing participation in a socialized state program, state lawmakers should repeal the unpopular long-term-care law and adopt messaging that encourages people to prioritize planning for end-of-life needs. The Legislature can also implement reforms that protect state safety nets and make high-quality, private, long-term-care coverage more accessible to everyone. Messaging and reform would include the following actions:

1. Inform the public about the need to plan for long-term care and other expenses in life, whether that is through insurance or other investments.

2. Reform and protect Medicaid. The Medicaid program is meant for people living in poverty. It is a safety net. And is not intended to be used as long-term-care insurance for everyone. However, it is often turned to so people can pass down life savings and assets to heirs. Rather than pay for the high cost of long-term care, some choose to instead rely on taxpayers for their long-term-care funding. Abuse of Medicaid is even encouraged. Current messaging suggests that people should not have to use their life savings for their long-term-care needs. The state should change its messaging and close paths that allow abuse of the system.

3. Cut insurance taxes and repeal regulations that make private long-term-care insurance sold in our state more expensive. Lawmakers should encourage more private-sector competition so workers can access the best coverage at the best price. Instead, the state limits what can be sold in our

20 House Bill 1087: https://app.leg.wa.gov/billsummary?BillNumber=1087&Year=2019

21 SEIU 775: https://seiu775.org/

state.[22] Washington residents deserve access to a wider range of policy choices and prices, allowing them to gain the best coverage to meet their individual needs.

Conclusion

The state's long-term-care law is glaringly unfair in its eligibility requirements, and WA Cares' inadequate (and maybe-only) benefit offers a false sense of security. Many Washingtonians are angry and frustrated about the coming decrease in their wages for an investment they might not ever benefit from but are forced to make, and rightly so.

The state's interference in the private market has driven up costs and limited consumer choices, making long-term-care insurance less affordable. Lawmakers then use the harmful effects of their own policies to make a political case for trying to impose a state monopoly program.

Independent analysis shows this law is deeply flawed and does not solve Washington's long-term-care crisis. The law should be repealed.

Instead of requiring compulsory membership in an inadequate entitlement program, lawmakers should change their messaging, end Medicaid abuse and repeal taxes and regulations that make private coverage more expensive.

22 Office of the Insurance Commissioner approved plans: https://www.insurance.wa.gov/long-term-care-insurance-companies-approved-sell-washington-state

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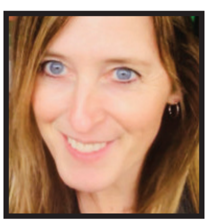

Elizabeth Hovde grew up in Seattle's Ballard neighborhood and graduated with a Bachelor of Arts degree in journalism and political science from Western Washington University. That's where her newspaper career began, writing political opinion columns for The Bellingham Herald.

After graduation, Elizabeth became the communications director for the Washington Family Council, crafting legislative testimony, press releases and articles for various council publications. She was recruited away by The Columbian newspaper in Southwest Washington and spent the next decade as an editorial board member and columnist, winning several Society of Professional Journalists awards. Elizabeth enjoyed another 10 years as a political columnist for The Oregonian.

Elizabeth also has taught journalism, as an adjunct professor at Washington State University Vancouver.

Over the years, her volunteerism has included prison outreach, helping in public schools, writing for her neighborhood association and participating in area cleanups. She shares her Vancouver home with two teenage sons.