

HB 1011, to repeal the unpopular, long-term service and supports trust program and payroll tax

By Elizabeth Hovde, Director, Center for Health Care and Center for Worker Rights
January 2023

Key Findings

1. House Bill 1011 repeals Washington state's long-term care law, HB 1087, which created WA Cares, a social program to be funded by a payroll tax of 58 cents for every \$100 a worker earns.
2. Washington state voters recommended the repeal of House Bill 1087 in Washington Advisory Vote 20, with a vote of nearly 63 percent.
3. Engrossed Senate Joint Resolution 8212, allowing for investment strategies to provide needed funding for the program, was defeated 54 to 46 percent, impacting program solvency.
4. 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.
5. 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.
6. 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.
7. As seen with other state-imposed programs funded by payroll taxes, tax rates increase over time to keep programs viable.
8. A program exemption included in HB 1087 allowed nearly 500,000 people who learned of the exemption in time to

apply to opt out of the program. More exemptions are expected.

9. 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. House Bill 1011 is an opportunity to start this forward motion.

Introduction

The long-term-care crisis headed states' ways is a real issue. The United States has a graying population, and many people will require assistance with the activities of daily life at some point. Someone turning age 65 today has almost a 70 percent chance of needing some type of long-term services and support in their remaining years.¹ There are also many people using state-federal Medicaid programs for long-term care needs,² and too few people plan and save for the possible life event.

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 state workers. Governor Jay Inslee signed House Bill 1087 on May 13 of that year.³ The program the bill created was named the WA Cares Fund.⁴ The misguided payroll tax for WA Cares was initially planned for collection starting January 1, 2022.

1 U.S. Department of Health and Human Services, site accessed 1/13/23: <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need>

2 Medical Health Parity Act, "A look at the numbers:" <https://www.alookatthenumbers.com/washington/>

3 House Bill 1087, "Concerning long-term services and supports," effective date 7/28/19: <https://app.leg.wa.gov/bills/bills/BillNumber=1087&Initiative=false&Year=2019>

4 WA Cares Fund website: <https://wacaresfund.wa.gov/>

Public opposition and glaringly unfair details of the long-term-care law, however, caused the governor to ask the Legislature to delay the tax collection until after the 2022 election and make some changes to the law.

Lawmakers agreed and implemented an 18-month delay until July 1, 2023, after hundreds of thousands of people sought exemption from WA Cares and the payroll tax created to fund it. The Employment Security Department reports 484,704 people applied for exemption from WA Cares during an exemption window included in the law for people with private long-term-care insurance.⁵ More are expected to do so.⁶ Lawmakers also created a partial benefit for some near-retirees and some additional exemption categories. These changes were made in House Bills 1732⁷ and 1733.⁸ Both pieces of legislation were fast-tracked in the first weeks of the 2022 legislative session, and the governor signed the bills into law on Jan. 27, 2022.

The new payroll tax will shift some of Medicaid's future long-term-care costs onto the backs of today's workers. In July, most workers in the state will start paying 58 cents on every \$100 they earn with hopes that, if someday they need long-term-care services, they might qualify for money that can be used for those services. Service Employees International Union 775,⁹ which represents 45,000 long-term-care workers, lobbied hard for and supports this law, which includes a

training requirement for the use of WA Cares funds for caregivers. Union membership for those workers could be required.¹⁰

The long-term-care law has proved deeply unpopular, and its many shortcomings have been exposed, causing legislators to delay implementation. Responding to the people they represent, some lawmakers have proposed repealing the program.

This Legislative Memo reviews House Bill 1011,¹¹ the latest proposal to repeal HB 1087.

Text of HB 1011

HB 1011 would end the WA Cares program before payroll taxes are collected. This would preserve more of workers' incomes for today's needs and let them keep money that they could put toward long-term-care savings or other life needs.

The bill was filed on December 6, 2022, by Rep. Peter Abbarno and as of January 18, 31 representatives were signed on as sponsors. It was read for the first time on January 9 and referred to the House Health Care and Wellness Committee.¹²

The bill text reads, "The maximum benefits that a person may receive under the long-term services and supports trust program is \$36,500 which will be wholly inadequate to meet the needs of most people needing care under the program. This will lead many people to think all their long-term care needs will be paid for under the program and not plan for costs beyond the maximum \$36,500 benefit."

5 Elizabeth Hovde, Washington Policy Center, "The number is in: 484,7014 apply to get out of payroll tax headed workers' way, meeting deadline," Jan. 18, 2023: <https://www.washingtonpolicy.org/publications/detail/the-number-is-in-484704-apply-to-get-out-of-payroll-tax-headed-workers-way-meeting-deadline>

6 Elizabeth Hovde, Clark County Today, "People are still getting out of a coming payroll tax for long-term-care program," Nov. 22, 2022: <https://www.clarkcountytoday.com/opinion/people-are-still-getting-out-of-a-coming-payroll-tax-for-long-term-care-program/>

7 House Bill 1732, "Delaying the implementation of the long-term services and supports trust program by 18 months," effective date 1/27/22: <https://app.leg.wa.gov/billsummary?BillNumber=1732&Initiative=false&Year=2021>

8 House Bill 1733, "Establishing voluntary exemption to the long-term to the long-term services and supports program for certain populations," effective date 1/27/22: <https://app.leg.wa.gov/billsummary?BillNumber=1733&Initiative=false&Year=2021>

9 Service Employees International Union: <https://seiu775.org/>

10 Although the U.S. Supreme Court's Janus decision and other court cases mandate that government workers be protected from compulsory unionism and dues-paying, workaround strategies are used by unions to continue their ability to seize dues: <https://www.freedomfoundation.com/wp-content/uploads/2016/05/SEIU-775-opt-out-window-letter.pdf>; and <https://www.freedomfoundation.com/labor/seiu-775-to-pay-back-millions-of-dollars-in-dues-taken-illegally-from-home-care-workers/>.

11 House Bill 1011, "Repealing the long-term services and supports trust program": <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/1011.pdf?q=20230114125154>

12 House Health Care and Wellness Committee: <https://leg.wa.gov/House/Committees/HCW/Pages/default.aspx>

HB 1011 notes that a majority of Washington state voters recommended the repeal of House Bill 1087 in Washington Advisory Vote 20 on November 5, 2019, with a vote of nearly 63 percent.¹³ Also, fund solvency was based on an actuarial model that assumed over five percent investment returns. The state's constitution only permits treasury investments, however, which typically yield returns between two and three percent.

Voters rejected a November 3, 2020, constitutional amendment that would have allowed investment of the program's funds in vehicles besides treasuries, including stocks and bonds.¹⁴ The bill's text states that "investment returns that the program is based on are unattainable under current law and the program has an unfunded liability projected at \$15,000,000,000 in net present value. Benefit cuts or further premium increases will be necessary to address the program's solvency."¹⁵

Policy analysis

HB 1011 accurately summarizes the long-term-care law's shortcomings, its unpopularity, its mistreatment of low-income individuals and its shaky financial foundation. It also points out that the greatest benefit of this law's enactment has been to get people thinking about the possibility of needing to finance long-term-care needs. Rep Abbarno writes that increased numbers of Washingtonians have purchased long-term care insurance policies than did in the past, and others are considering alternative ways to meet long-term-care needs.

A recent actuarial report suggests insolvency predictions might not be as bleak as thought in previous years, as the financial situation was helped by the law's delay and better investment projections are now determined.¹⁶ Other state-imposed programs funded by payroll taxes have shown increased tax rates over time to keep programs viable. The tax rate implemented to fund WA Cares is unlikely to stay at \$0.58 per \$100. This makes WA Cares an even worse deal for many of the workers the state is making false promises to.

HB 1011 offers a clean repeal. It highlights the long-term-care program's demonstrated unpopularity, its lack of usefulness for workers forced to pay into it, harm to workers, shaky solvency and the need to address LTC concerns in a different way.

Taking money from low-income workers today and giving it to people who do not need taxpayer help with long-term care penalizes these workers and is fiscally unwise. Taking money from any worker and forcing him or her to have a savings account for just one life need that he or she may or may not have, when other life needs are sure to appear, doesn't help any of these workers. Low-income workers in need of long-term care one day will still be able to benefit from the state's other safety net programs.

The social program will not offer "peace of mind," as the marketing arm for WA Cares suggests.¹⁷ Telling people who might need assistance with the activities of daily life someday that a payroll tax they paid for years is going to cover their long-term-care bills — with a lifetime benefit of \$36,500 — is dangerous. Not only is the amount inadequate for long-term care, many people will never receive any benefit.

No one wants elderly people to be without the means to pay for help with the activities of daily life, should they need them. Medicaid is a federal-state safety net set up for people in

13 Ballotpedia, Washington Advisory Vote 20, "Nonbinding question on tax to fund long-term health care services," Nov. 5, 2019: [https://ballotpedia.org/Washington_Advisory_Vote_20_Nonbinding_Question_on_Tax_to_Fund_Long-Term_Healthcare_Services_\(2019\)](https://ballotpedia.org/Washington_Advisory_Vote_20_Nonbinding_Question_on_Tax_to_Fund_Long-Term_Healthcare_Services_(2019))

14 Washington Senate Joint Resolution 8212, "Authorize fund investment of long-term services and supports trust account amendment," Nov. 3, 2020: [https://ballotpedia.org/Washington_Senate_Joint_Resolution_8212_Authorize_Fund_Investment_of_Long-Term_Services_and_Supports_Trust_Account_Amendment_\(2020\)](https://ballotpedia.org/Washington_Senate_Joint_Resolution_8212_Authorize_Fund_Investment_of_Long-Term_Services_and_Supports_Trust_Account_Amendment_(2020))

15 Text of House Bill 1011: <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/House%20Bills/1011.pdf?q=20230114125154>

16 Milliman's 2022 WA Cares Fund Actuarial Study: https://leg.wa.gov/osa/additionalservices/Documents/Report01-2022WACaresFundActuarialStudy.pdf?utm_medium=email&utm_source=govdelivery

17 WA Cares website: <https://wacaresfund.wa.gov/>

need. Safety net programs are appropriate and supported for people in true need.

WA Cares' shortcomings and unfairness have become clear. Not only did the Legislature delay the tax collection for the fund in January 2022 because of the law's many shortcomings, it tried to make the future brighter for near-retirees and others who would not benefit from WA Cares, despite their contributions. This session, a commission is recommending even more "fixes" to try and make the program work.¹⁸

The trouble with past and currently suggested "fixes" — including portability of the benefit and the state investing in administration of recertification for the hundreds of thousands of people who were granted exemption — is that the law is irreparably broken. That's because the idea behind WA Cares is broken. Rep. Abbarno's repeal bill could stop this misguided payroll tax before it begins and would protect working families across the state.

Conclusion

The state has a role in informing the public about the great need for long-term care in an aging population, and it should urge savings and purchases of private, long-term-care insurance or other investments to help with long-term-care needs. It should strengthen Medicaid eligibility¹⁹ to curb abuse of the program. It should also cut insurance taxes and remove limits on purchasing insurance products.²⁰ Instead, the state has created a mandatory, one-size-fits-all program for people in need and people not in need — one that requires high administration and marketing costs.

WA Cares makes false promises that could leave people unprepared for their possible

long-term-care costs, and it suppresses offerings in the private marketplace.²¹ The long-term-care payroll tax harms low-income workers, who will be forced to give their earnings to people who are not in need. They also, along with workers of all income levels, might never receive any long-term-care services at all, or receive any benefit from WA Cares.

HB 1011 offers repeal of the state's misguided long-term-care law and is sound public policy that will benefit the public interest.

Elizabeth Hovde is the Director, for the Center for Health Care and the Center for Worker Rights at Washington Policy Center.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

*Published by
Washington Policy Center
© 2023*

*Visit washingtonpolicy.org
to learn more.*

18 LTSS Trust Commission Recommendations Report, Jan. 1, 2023: https://www.dshs.wa.gov/sites/default/files/ALTSA/ltss/documents/2022-12-9%20LTSS%20Trust%20Commission_Commission%20Recommendations%20Report%20%283%29.pdf

19 Washington state Health Care Authority: <https://www.hca.wa.gov/free-or-low-cost-health-care/i-need-medical-dental-or-vision-care/eligibility-overview>

20 Department of Revenue: <https://dor.wa.gov/education/industry-guides/insurance-industry-guide>

21 House Bill 1087, "Concerning long-term services and supports:" <https://app.leg.wa.gov/billsummary?BillNumber=1087&Initiative=false&Year=2019>