



Long-Term Services and Supports Trust/WA Cares Fund Proposed new and amended rules related to implementation of Substitute House Bill 1732, Engrossed Substitute House Bill 1733, and Phase 3.

August 2022

Introduction

Title 50B RCW created a Long-Term Services and Supports Trust Program (WA Cares Fund) to provide long-term care benefits for eligible Washington residents. The program is funded through employee premium deductions of 0.58 percent (\$0.58 per \$100) of earnings. Premium deductions will begin on July 1, 2023. Self-employed persons and federally recognized tribes may elect WA Cares Fund coverage beginning July 1, 2023.

Beginning July 1, 2026, employees who have paid into the program for the required number of years, and worked the required number of hours in each of those years, will be able to access their earned benefits if needed.

To qualify for the full benefit amount, employees must have worked and contributed to the WA Cares Fund for:

- At least ten years without a break in service of five or more consecutive years, or three of the last six years from the date of application; and
- Worked at least 500 hours per year during those years.

Employees born prior to January 1, 1968, and who are not able to qualify for the full benefit amount may earn partial benefits (10% of the benefit amount) for each year they worked at least 500 hours and contributed to the WA Cares Fund.

Eligible individuals will have access to a lifetime benefit of up to \$36,500, to be adjusted at the rate of inflation, that can be used for a wide range of services and supports, including, but not limited to:

- Professional care at home or in licensed residential or nursing facilities
- Home safety evaluations
- Home-delivered meals
- Training, pay, and support for family members who provide care
- Transportation
- Adaptive equipment and technology (wheelchair ramps or medication reminder devices, for example)
- Memory care

The WA Cares Fund is administered by four state agencies, each with different program responsibilities. The Employment Security Department (department) will assess and collect premiums, accept and process applications for exemption, determine qualified individual status, and process elective coverage requests from self-employed individuals and interested federally recognized tribes. The Department of Social and Health Services will determine eligible beneficiaries, administer benefits, and manage providers. The Health Care Authority will process payments, track benefit usage, and coordinate benefits. The Office of the State Actuary will perform actuarial audits on the trust fund.

Substitute House Bill (SHB) 1732 and Engrossed Substitute House Bill (ESHB) 1733 passed into law during the 2022 legislative session. The proposed rules implement provisions of the bill that were codified in RCW 50B.04.055, RCW 50B.04.080, and RCW 50B.04.090. In addition, the proposed rules implement the third phase of the department's initial WA Cares Fund implementation related to employer audits.

These proposed rules were developed by the department and were filed in accordance with chapter 34.05 RCW. The department completed this analysis in accordance with RCW 34.05.328(1).

Describe the proposed rules, including a brief history of the issue, and explain why the proposed rules are needed.

AMENDATORY SECTION

WAC 192-905-005 Eligibility requirements for an employee to receive ~~((a))~~ a permanent exemption from the long-term services and supports trust program. (1) An employee who has long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply through December 31, 2022, for ~~((a))~~ a permanent exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

~~((2))~~ (a) Only an employee who is eighteen years of age or older on the date of application may apply for an exemption.

~~((3))~~ (b) The employee must provide identification that verifies their age at the time of application.

~~((4))~~ (c) The department may verify an employee's long-term care insurance coverage and may request additional information from the employee.

(2) Beginning January 1, 2023, an employee who is a veteran of the United States military and has a service-connected disability rating by the United States department of veterans affairs of 70 percent or greater may apply for a permanent exemption from the premium assessment under RCW 50B.04.080.

(a) The employee must provide information sufficient for the department to verify their identity.

(b) The employee must provide documentation of their service-connected disability rating at the time of application.

(c) The department may verify an employee's service-connected disability rating and may request additional information from the employee.

Explanation of proposed rule: The proposed amendments add the voluntary exemption for veterans under RCW 50B.04.055 and clarify that the two exemption types outlined in the rule are permanent. The

proposed amendments are necessary to implement ESHB 1733, which passed into law during the 2022 legislative session.

NEW SECTION

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program. (1) An employee may apply for a conditional exemption from the premium assessment under RCW 50B.04.080 if:

(a) The employee is a spouse or registered domestic partner of an active duty service member in the United States armed forces whether or not deployed or stationed within or outside of Washington;

(b) The employee holds a nonimmigrant visa for temporary workers, as recognized by federal law; or

(c) The employee maintains a permanent primary residence outside of Washington.

(2) The employee must provide information sufficient for the department to verify their identity.

(3) The employee must provide documentation sufficient to verify or substantiate the exemption under RCW 50B.04.055 at the time of application.

(4) The department may request additional information from the employee at any time.

(5) The employee must notify their employer(s) and the department within 90 days of no longer meeting exemption criteria. Requirements for notification and penalties for failing to provide notification to discontinue the exemption are outlined in WAC 192-905-007.

Explanation of proposed rule: The proposed new rule adds three voluntary exemptions that must be discontinued when the employee no longer meets exemption criteria under RCW 50B.04.055. The rule also references notification requirements and penalties for failure to provide the required notifications. The proposed rule is necessary to implement ESHB 1733, which passed into law during the 2022 legislative session.

NEW SECTION

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions. (1) The employee must notify their employer(s) and the department within 90 days of no longer qualifying for an exemption outlined in WAC 192-905-006.

(2) A discontinued exemption will take effect the quarter immediately following notification and premiums will be assessed.

(3) Employees who fail to provide notifications as described in this section and have premiums assessed will owe any unpaid premiums to the department. Unpaid premiums will be assessed interest of one percent, compounded monthly, until payment is made in full.

Explanation of proposed rule: The proposed new rule outlines notification requirements and penalties for failure to provide notifications as required under RCW 50B.04.055, and clarifies the timeline for when an exemption is discontinued following notification. The proposed rule is necessary to implement ESHB 1733, which passed into law during the 2022 legislative session.

AMENDATORY SECTION

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program? (1) Applications for exemption from the long-term services and supports trust program for individuals who have long-term care insurance purchased before November 1, 2021, will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

(2) Applications for exemption from the long-term services and supports trust program for veterans who are 70 percent disabled and individuals who apply under WAC 192-905-006 will be accepted beginning January 1, 2023, and will be ongoing.

(3) If approved by the department, an employee's exemption will be effective the quarter immediately following approval.

~~((3))~~ (4) Applications for exemption will be available ~~((on the department's website))~~ online or in another format approved by the department.

Explanation of proposed rule: The proposed amendments clarify the dates individuals may apply for the different types of voluntary exemptions. The proposed amendments are necessary to implement ESHB 1733, which passed into law during the 2022 legislative session.

AMENDATORY SECTION

WAC 192-910-015 What are the employer's responsibilities for premium deductions? (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; or

(b) The employee has an approved exemption ~~((under RCW 50B.04.085))~~ and has provided the required proof of the exemption to the employer.

(4) Once an employer is notified that an employee no longer qualifies for an exemption, the employer must abide by all premium assessment requirements under chapter 50B.04 RCW for that employee.

Explanation of proposed rule: The proposed amendments clarify employer responsibilities for exempt employees and for employees who provide notification they are no longer exempt. The amendments are necessary to implement ESHB 1733, which passed into law during the 2022 legislative session.

AMENDATORY SECTION

WAC 192-915-005 Election of coverage for self-employed persons. (1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning ~~((January 1, 2022))~~ July 1, 2023, and before ~~((January 1, 2025))~~ July 1, 2026, or within three years of becoming self-employed for the first time.

(3) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(4) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

Explanation of proposed rule: The proposed amendments delay the date self-employed individuals may elect program coverage. The amendments are necessary to implement SHB 1732, which passed into law during the 2022 legislative session.

AMENDATORY SECTION

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? The department will determine the wages earned and hours worked for self-employed individuals as described in WAC 192-510-030 (1), (2), and (4).

Explanation of proposed rule: The proposed amendments clarify a portion of RCW 50B.04.090 that requires the department to adopt rules for determining the hours worked and the wages of individuals who elect program coverage. The amendments are necessary to provide clarity for the differences in WA Cares Fund requirements and Paid Family and Medical Leave requirements for self-employed elective coverage.

NEW CHAPTER

Chapter 192-930 WAC AUDITS

NEW SECTION

WAC 192-930-005 Audit procedures. (1) The department may inspect and audit employer files and records as needed to ensure compliance with Title 50B RCW. Audits may take place at the discretion of the department.

(2) Employers must provide all requested information to the department within 10 business days or a time frame agreed to by the department.

(3) If the department discovers violations for the time frame being audited, the department may expand the audit to include prior and subsequent quarters, up to the most recently completed calendar quarter.

Explanation of proposed rule: The proposed new rule outlines employer audit procedures to ensure that standards and procedures for employer audits are coordinated with the same activities conducted under Title 50A RCW. The proposed rule is necessary to comply with the requirements of RCW 50B.04.020 (4)(c).

NEW SECTION

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit? Employers must provide all requested documentation as it pertains to the long-term services and supports trust program under Title 50B RCW. If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may determine payroll and wage information for the purposes of premium assessment based on information otherwise available to the department. This may include information from the same employer, similar employers, labor market information, information provided to other state or local agencies, or the best information otherwise available to the department.

Explanation of proposed rule: The proposed new rule outlines employer audit procedures to ensure that standards and procedures for employer audits are coordinated with the same activities conducted under Title 50A RCW. The proposed rule is necessary to comply with the requirements of RCW 50B.04.020 (4)(c).

Is a Significant Analysis required for these rules?

The proposed rules do not meet the definition of significant legislative rules under RCW 34.05.328 and do not require a significant analysis. Each rule and the reason for the exemption is listed below:

PROPOSED NEW SECTIONS			
WAC Section	Section Title	Exempting reason	Exempting statute
WAC 192-905-005	Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.	The rule is explicitly and specifically dictated by statute (RCW 50B.04.055 and RCW 50B.04.085) and is a procedural rule related to internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C)
WAC 192-905-006	Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.	The rule is explicitly and specifically dictated by statute (RCW 50B.04.055) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)

WAC 192-905-007	Notification requirements and penalties for discontinuing conditional exemptions.	The rule is explicitly and specifically dictated by statute (RCW 50B.04.055) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)
WAC 192-905-010	How and when can an employee apply for an exemption from the long-term services and supports trust program?	The rule is explicitly and specifically dictated by statute (RCW 50B.04.055 and RCW 50B.04.085) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)
WAC 192-910-015	What are the employer's responsibilities for premium deductions?	The rule is explicitly and specifically dictated by statute (RCW 50B.04.080) and is a procedural rule related to internal operations of the department and agency hearings.	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)
WAC 192-915-005	Election of coverage for self-employed persons.	The rule is explicitly and specifically dictated by statute (RCW 50B.04.090) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)
WAC 192-915-015	How will the department determine the wages earned and hours worked for self-employed persons electing coverage?	The rule is explicitly and specifically dictated by statute (RCW 50B.04.090) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)

		are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	
WAC 192-930-005	Audit procedures.	The rule is explicitly and specifically dictated by statute (RCW 50B.04.020 (c)) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)
WAC 192-930-010	What happens if an employer fails to provide requested information to the department for an audit?	The rule is explicitly and specifically dictated by statute (RCW 50B.04.020 (c)) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).	RCW 34.05.328 (5)(b)(v) and (5) (c)(i)(C)

Clearly state in detail the general goals and specific objectives of the statute that the rules implement.

The goals and objectives of the WA Cares Fund are to provide long-term care services to individuals who demonstrate a need and have paid into the program through employment for the required period of time. Qualified individuals will have access to a lifetime benefit of up to \$36,500 that will be adjusted annually for inflation.

According to RCW 50B.04.900, an alternative funding mechanism for long-term care access could save the Medicaid program eight hundred ninety-eight million dollars in the 2051-2053 biennium. The statute also states in part:

“The majority of people over sixty-five years of age will need long-term services and supports within their lifetimes. The senior population has doubled in Washington since 1980, to currently over one million, and will more than double again by 2040. Without access to insurance, seniors must rely on family care and spend their life savings down to poverty levels in order to access long-term care through Medicaid. Middle class families are at the greatest risk because most have not saved enough to cover long-term care costs. When seniors reach the point of needing assistance with eating, dressing, and

personal care, they must spend down to their last remaining two thousand dollars before they qualify for state assistance, leaving family members in jeopardy for their own future care needs. In Washington, more than eight hundred fifty thousand unpaid family caregivers provided care valued at eleven billion dollars in 2015. Furthermore, family caregivers who leave the workforce to provide unpaid long-term services and supports lose an average of three hundred thousand dollars in their own income and health and retirement benefits.”

RCW 50B.04.020 (c) requires the department to determine the compliance of premium payments (employer audits) in coordination with the same activities conducted under Title 50A RCW. RCW 50B.04.055 adds four voluntary exemptions and requires the department to adopt criteria, procedures, and rules to implement this provision. RCW 50B.04.080 requires premium assessment for employees unless the employee is exempt. RCW 50B.04.090 outlines the date self-employed individuals may elect program coverage and requires the department to adopt rules to determine the hours worked and wages of self-employed individuals who elect program coverage. The proposed rules provide guidance to employees, employers, self-employed individuals, and the general public regarding implementation of program requirements.

Explain how the department determined that the rules are needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rules.

The rules are needed to implement and clarify changes to Title 50B RCW that passed during the 2022 legislative session. In addition, the rules are needed to ensure provisions for the WA Cares Fund align with provisions for the Paid Family and Medical Leave Program under Title 50A RCW where required by law. The rules clarify qualifications and application requirements for voluntary exemptions, audit procedures for employer audits, and the delay of the program.

Explain how the department determined that the probable benefits of the rules are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The proposed rules will benefit the public by providing clarity, guidance, and transparency for WA Cares Fund implementation and administration. Employees who apply for voluntary exemptions will have clear guidance on how to apply, timelines for applications, requirements for notifications, and requirements to discontinue exemptions. Employers will have clear guidance on requirements for premium assessment and audits, and self-employed individuals will have clear guidance on when they may elect program coverage. The proposed language of the rules aligns with the requirements of Title

50B RCW, and aligns with rules, policies, and procedures already in place for the Paid Family and Medical Leave program where required.

Identify alternative versions of the rule that were considered and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated previously.

No alternative versions of the rules were considered.

Conflicts with Federal or State law

The proposed rules do not conflict with Federal or State law.

Performance impositions on private vs. public sectors

Since WA Cares premiums are required to be assessed for all employees (except employees who have approved exemptions, federal government employees, employees who are subject to a collective bargaining agreement in place on October 17, 2019 that has not been reopened, renegotiated or expired, or tribes and self-employed individuals who have not elected coverage), regardless of public or private sector employment status, there is no evidence to suggest that any proposed rule will have a measurably different impact between the two sectors.

Conflicts with Federal or State regulatory bodies

The rule does not conflict with any applicable Federal or State regulatory requirements.

Coordination with Federal, State, or local laws

The rule does not require coordination with federal, state, or local laws.