

Concise Explanatory Statement
RCW 34.05.325(6)
**Long Term Services and Supports
Exemptions**
May 2021

REASONS FOR ADOPTING THE RULE

The adopted rules are the first of three phases of rules to implement portions of the Long-Term Services and Supports (LTSS) Trust Program, also called the WA Cares Fund, Title 50B RCW, under the Employment Security Department's authority. RCW 50B.04.085(9) requires ESD to adopt rules necessary to implement and administer exemptions from the program. These rules are necessary to implement that portion of the law and provide guidance to employees and employers regarding exemptions from the LTSS program. The adopted rules are:

WAC 192-905-005 Eligibility requirements for an employee to receive an exemption from the long-term services and supports trust program.

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

WAC 192-905-015 What happens after an employee's exemption application is processed?

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums?

VARIANCE BETWEEN PROPOSED RULE AND FINAL RULE

Language in WAC 192-905-005(1) was restructured to add reference to a relevant section of statute and for ease of readability.

Original proposal:

(1) An employee who has long-term care insurance as defined in RCW 48.83.020 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080.

Adopted rule:

(1) An employee who as long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply for an exemption from the premium assessment under RCW 50B.04.080. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

SUMMARY OF COMMENTS TO PROPOSED RULES AND AGENCY RESPONSE

The following are *summaries* of the comments received during the formal comment period. Some have been consolidated into one comment if the same content was received from more than one person. If the feedback was received as a question, it has been restated as a comment.

Referenced rule	Commenter	Source of comment	Comment	Agency response
WAC 192-905-005	Bob Bentley, Steve Cain, Steve Forman,	Email	It is unclear what long-term care insurance products will qualify for an exemption from the program. ESD needs to provide concrete examples of the	The rule points to an existing definition of long-term care insurance in Washington state law under RCW 48.83.020. To avoid promulgating a rule that

Referenced rule	Commenter	Source of comment	Comment	Agency response
	Karen Morrison		coverage that will qualify for an exemption.	potentially conflicts with an existing statutory definition, the program defers to the existing definition. Additional information about policies that meet the definition of long-term care insurance is provided on the WA Cares Fund website (wacaresfund.wa.gov) developed by ESD and the Department of Social and Health Services.
	Jan Fernandez, Jason Richert, Yuki Cheng, Joanna Mummert	Public hearing		
WAC 192-905-005	Bob Bentley	Email	The proposed rules state that to file for an exemption, an employee must be eighteen years of age or older. There does not appear to be any way for someone to apply for an exemption if they were to reach age eighteen after 12/31/2022 and purchase long-term care insurance. The rules need to address this situation.	Under RCW 50B.04.085, an employee must be at least eighteen years of age at the time they apply for an exemption and exemption applications may only be considered from October 1, 2021 through December 31, 2022. An administrative rule cannot conflict with statute.
WAC 192-905-005	Jan Fernandez	Email	Please amend the language to refer to RCW 48.83.020, for purposes of defining “Long-term care insurance.”	WAC 192-905-005(1) refers to the definition of long-term care insurance under RCW 48.83.020.
WAC 192-905-010	Bob Bentley	Email	The proposed rules do not allow for someone who moves into the state of Washington after 12/31/2022 to apply for the exemption. Therefore, the rules make it imperative for anyone who may consider becoming a Washington resident at any time in the future apply for the exemption prior to 12/31/2022	WAC 192-905-010(1) clearly states “Applications for exemption from the long-term services and supports trust program will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.” An administrative rule cannot conflict with statute.

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			just in case they move to Washington.	
WAC 192-905-010	Steve Cain	Email	The public needs to be able to preview the attestation form prior to launch.	Currently the program does not plan to provide drafts of an attestation form for preview and comment. The application and attestation will be an online attestation and submission. The department must begin accepting exemption applications on October 1, 2021 and development, communication, and planning is underway so that this process can begin on the required date.
	Joanna Mummert, Brent Price, Mark Ingersol	Public Hearing		
WAC 192-905-010	Hien Long, Brent Price, Yuki Cheng	Public Hearing	The rule needs to extend the exemption timeframe and the date that the long-term care policy needs to be in place	Under RCW 50B.04.085, exemption applications may only be considered from October 1, 2021 through December 31, 2022. Substitute House Bill 1323 passed the 2021 legislature and amends RCW 50B.04.085 to require that employees must have purchased long-term care insurance before November 1, 2021 to apply for an exemption from the program. An administrative rule cannot conflict with statute.
WAC 192-905-010	Karen Morrison	Email	The state should extend the time for its Washington citizens to secure private long-term care options through individual plans or group plans and provide a clearer definition of what constitutes an “exempt plan.”	Substitute House Bill 1323 passed the 2021 legislature and amends RCW 50B.04.085 to require that employees must have purchased long-term care insurance before November 1, 2021 to apply for an exemption from the program. An administrative rule cannot conflict with statute.

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WAC 192-905-010	Jason Richert	Public Hearing	Recognizing that the exemption period is created in statute under RCW 50B.04.085, the exemption period should be longer than the current 15-month period from October 1, 2021 through December 31, 2022. There will be many people who will want to seek exemptions beyond the December 31, 2022 date. There should be a provision that allows for an application for exemption regardless of date.	Under RCW 50B.04.085, exemption applications may only be considered from October 1, 2021 through December 31, 2022. An administrative rule cannot conflict with statute.
WAC 192-905-010	Jan Fernandez	Public Hearing	Section needs to clarify how often a person needs to apply for an exemption and what consequences exist for a person who no longer holds a policy.	An employee needs to attest once and only once if an exemption is granted by the department. An exempt person is permanently ineligible for program coverage under RCW 50B.04.050. The department may ask for additional information or verify that the person held long-term care insurance at the time of application. Audit functions will be further addressed in future rulemaking.
WAC 192-905-010	Sylvia Hubbard	Public Hearing	According to the current proposed rule, if approved for an exemption, the employee exemption will be effective the quarter immediately following approval. Provided there is a short opt out window, the exemption should be effective the month following approval.	The program determined that exemptions taking effect on the first day of a new quarter will ease the administration of exemptions both for the department and its customers. Employer reporting is done quarterly.

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WAC 192-905-015	Jan Fernandez	Public Hearing	WAC 192-905-015 requires that an employee show their letter of exemption approval to their employer. However, the rule does not require the employee to show proof. If the approval letter is the only substantiation required, an employee could drop whatever private insurance they have and just hold on to the letter, so the rule needs to define what substantiation is required for exemption approval.	The rule requires that an employee provide identification that verifies they are at least eighteen years of age and attest that they hold a long-term care insurance policy as described under RCW 48.83.020 at the time of application. Statute does not require a person to keep the policy for a specified period and does not give the department authority to set such a requirement.
WAC 192-905-015	Valerie Laroque	Public Hearing	If an employee is not working and not able to get the exemption letter from a previous employer, please describe what options they have to prove they are exempt from the program to their next employer. We would like a sample letter to share with employers that will be acceptable to ESD.	Employers are not responsible for issuing exemption letters. The only letter that will qualify an individual for exemption is the letter the department issues to the employee when their exemption is approved. For that reason, a sample letter will not be made available. WAC 192-905-015(1)(a) states that the department will provide the employee with an approval letter stating that they are exempt from the program. WAC 192-905-015(3) states that the employee must provide a <i>copy</i> of the approval letter to any current or future employer. In addition, the department plans to develop an online system where the employee can access their letter should they need it to provide to

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				future employers or for other reasons.
WAC 192-905-015	Joanna Mummert	Public Hearing	Would like to see a master database of exemptions, rather than the issuance of one original copy of the exemption.	The department plans to develop an online system where the employee can access the letter should they need it to provide to future employers or for other reasons.
WAC 192-905-015	Jan Fernandez, Sylvia Hubbard	Public Hearing	The rule should define a period in which an employee must present their exemption letter to their employer. Need clarify if it is the first day of employment, within the first 30 days, etc.	Once the employee exemption takes effect (the quarter following approval), premium deductions should cease once the employee provides their employer with the department-produced approval letter. Per RCW 50B.04.085(7), if an employee fails to notify an employer of an exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification is provided.
WAC 192-905-015	Yuki Cheng	Public Hearing	The rule should provide an option for an employer who provides a group long-term care policy for employees to apply for exemptions on behalf of their employees.	RCW 50B.04.085 states that <i>an employee</i> (emphasis added) may apply for an exemption. RCW 50B.04.010 states that “Employee” has the meaning provided in RCW 50A.05.010, which defines the term as an individual who is in the employment of an employer. An administrative rule cannot conflict with statute. Some individuals may wish to supplement their private insurance by participating in the Long-Term Services and Supports Trust Program.

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WAC 192-905-020	Yuki Cheng	Public Hearing	When is an exemption final? Is it the date that the employee files for the exemption or is it final when the employee receives their exemption approval letter from ESD?	Under WAC 192-905-010, the exemption is effective the quarter following approval from the department.
WAC 192-905-020	Bob Bentley	Email	Proposed new section WAC 192-905-020 states “Any premium deductions made before notification was provided to the employer remain with the employer.” It makes sense for the funds not to be refunded to the employee if they had not provided the exemption letter, but the rules need to go further to clarify that those funds will be sent to ESD during the next regularly scheduled premium payment.	The department does not expect to require an employer, who was acting in good faith, to remit premiums taken from employees prior to being provided an exemption approval from the employee. RCW 50B.04.085 does not require that those funds be remitted to the department.
WAC 192-905-020	Sylvia Hubbard	Public Hearing	Proposed WAC 192-905-020(2) says that any premium deductions made before notification was provided to the employer remain with the employer. There is question as to whether premiums with the specific purpose of funding the LTSS trust program can be retained by the employer. It would be an undue burden to employers to determine who has informed the employer after the fact [receiving an approved exemption], and then retain those premiums, rather than remitting them to the state with	The department does not expect to require an employer, who was acting in good faith, to remit premiums taken from employees prior to being provided an exemption approval from the employee back to the department. RCW 50B.04.085 does not require that those funds be remitted to the department. The employer may choose to refund those premiums to the employee.

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			the other premiums they are withholding in that quarter.	
General Comment	Robert Branscomb	Email	I would like for the rules to include a home care plan that would qualify for exemption and would provide an opportunity for individuals that find it challenging to be approved for traditional long-term care plans due to health or financial reasons. In addition, the ability to remain in the comfort of their home for a longer period of time.	The rule points to an existing definition of long-term care insurance in Washington state law under RCW 48.83.020. To avoid promulgating a rule that potentially conflicts with an existing statutory definition, the program defers to the existing definition. Additional information about policies that meet the definition of long-term care insurance is provided on the WA Cares Fund website (wacaresfund.wa.gov) developed by ESD and the Department of Social and Health Services.
General Comment	Steve Cain, Steve Forman	Email	Rule should clarify how long a policy holder must own/renew their policy, and how often they must attest, in order to be eligible for an exemption.	An employee needs to attest once and only once if an exemption is granted by the department. An exempt person is permanently ineligible for program coverage under RCW 50B.04.050. The department may ask for additional information or verify that the person held long-term care insurance at the time of application. Audit functions will be further addressed in future rulemaking.
General Comment	Steve Cain, Steve Forman	Email	Clarify when a policy is considered purchased.	The department considers a policy purchased at the time the purchaser and insurer agree to terms on a policy and a transaction occurs. The program did not consider it necessary to

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				put this clarification in administrative rule.
General Comment	Steve Cain, Steve Forman	Email	Clarify how residents are treated who work and live in non-resident states.	RCW 50B.04.010(6) says that “Eligible beneficiary” means a qualified individual who is eighteen or older, <i>residing in Washington</i> (emphasis added) ... Per statute, a person must reside in Washington to receive the benefit. An administrative rule cannot conflict with statute.
General Comment	Steve Cain, Steve Forman	Email	Clarify what documentation is required to demonstrate policy ownership, and how will it be kept private.	WAC 192-905-050 requires a person to attest that they hold long-term care insurance and provide documentation that they are eighteen years of age or older. Proof of insurance coverage will not be required unless requested by the department, as provided under (4) of the section. If proof of a policy is requested, the department will comply with all applicable privacy laws.
General Comment	Brent Price	Public Hearing	Rule needs to define more clearly what documentation is required to prove that a person has long-term care insurance, where it’s presented, and how it’s presented, i.e. whether it will be submitted in person or online.	The program determined not to put that level of specificity into administrative rule. WAC 192-905-005 describes what an employee needs to provide to the department when applying for an exemption. Communication via our website and internal operations policies and procedures will further detail processes not explicitly described in administrative rule.

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General Comment	Steve Cain, Steve Forman	Email	Clarify which types of life insurance riders will qualify for the exemption.	The rule points to an existing definition of long-term care insurance in Washington state law under RCW 48.83.020. Riders are addressed in that definition. To avoid promulgating a rule that potentially conflicts with an existing statutory definition, the program defers to the existing definition. Additional information about policies that meet the definition of long-term care insurance is provided on the WA Cares Fund website (wacaresfund.wa.gov) developed by ESD and the Department of Social and Health Services.
	Valerie Laroque	Public Hearing		
General Comment	Jeannette Harvey	Email	Federal employees should be exempted from the LTSS program because they have access to the Federal Long-Term Care Insurance Program which provides long-term care insurance, is affordable, and is portable for when the employee transfers to another state or country because of their work within the federal government.	RCW 50B.04.010 states that “Employee” has the meaning provided in RCW 50A.05.010, which states that employee does not include employees of the United States of America. Thus, federal employees are not subject to the rights and responsibilities of Title 50B RCW.
General Comment	Karen Morrison	Email	There needs to be more time allowed to expand the definitions of the language of long-term care, define what the level of care the benefits must be to be exempt and to fully communicate this information to the public so they can decide what route is best for them, and	The rule intentionally avoids being overly specific so that a variety of long-term care insurance policies will meet exemption requirements for employees not wanting to participate in the program. The department is currently developing cross-agency

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			so insurance brokers can best assist if needed.	communications strategies to inform employers and employees of the existence of and features of the program.
General Comment	Karen Morrison	Email	The rule needs to clarify whether a chronic illness rider would qualify a person for the exemption.	The rule points to an existing definition of long-term care insurance in Washington state law under RCW 48.83.020. Riders are addressed in that definition. To avoid promulgating a rule that potentially conflicts with an existing statutory definition, the program defers to the existing definition. Additional information about policies that meet the definition of long-term care insurance is provided on the WA Cares Fund website (wacaresfund.wa.gov) developed by ESD and the Department of Social and Health Services.
	Mark Ingersol	Public Hearing		
General Comment	Joanna Mummert	Public Hearing	The rules as they are written now are very difficult for the common person and common consumer to understand. There will be continued confusion in this entire process as to what a person needs to do to be exempt from the program.	Administrative rules must set standards and requirements because they carry the force of law. Rules must also allow the agency to implement the requirements of the program and not conflict with Title 50B RCW. The department is currently developing cross-agency communications strategies to inform consumers, employers, and employees of the existence of and features of the program. In addition, there will be a program website available soon that will

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				assist with procedural requirements of the program.
General Comment	Mark Ingersol	Public Hearing	The public needs ample time to review the forms and what is required before the opt-out period begins.	Currently the program does not plan to provide drafts of an attestation form for preview and comment. The application and attestation will be an online attestation and submission. The department must begin accepting exemption applications on October 1, 2021 and development, communication, and planning is underway so that this process can begin on the required date.
General Comment	Joanna Mummert	Public Hearing	Need clarity in what is going to be done with the information provided by exemption applicants. Clarification regarding to what extent will it be verified, and whether there will be communication between ESD and the State Office of the Insurance Commissioner. There could be concerns related to privacy. Please provide clarification if there's going to be conversations and communication between state agencies regarding coverage verification.	Currently, the program does not plan to address this issue in rule. If proof of a policy or other personal and potentially sensitive document is requested, the department will comply with all applicable privacy laws.
General Comment	Mark Ingersol	Public Hearing	The rule should clearly define what would prevent an exemption from being approved.	Defining exactly what <i>would not</i> meet exemption criteria would be difficult to fully capture in a rule. The department is developing communication resources, including FAQs, to address

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				commonly asked questions or concerns.
General Comment	Salomon Reeves	Public Hearing	Need clarification on the state’s 30 day or less elimination period. A lot of insurance products have a 90-day elimination but higher and more comprehensive coverage than the state plan. A lot of products have a 90-day elimination and provide more benefit than the \$36,500 lifetime benefit provided by the state.	There is no elimination period in either Title 50B RCW or the administrative rules. The \$36,500 lifetime benefit is set under RCW 50B.04.060.