



Long-Term Services and Supports Trust Program Proposed New Rules Related to Exemptions

March 2021

Introduction

Title 50B RCW created a Long-Term Services and Supports (LTSS) Trust Program 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 January 1, 2022.

Beginning January 1, 2025, 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 benefits, employees must have worked and contributed to the LTSS Trust for:

- At least ten years without a break in service of five or more years, or
- Three of the last six years
- And worked at least 500 hours per year during those years.

Eligible individuals will have access to a lifetime benefit of \$36,500 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 LTSS Trust Program 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, and determine qualified individual status. 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.

Rulemaking to administer the portions of the program under the department's authority is being done in three phases. These proposed rules are Phase One of rulemaking and address exemptions from the LTSS Trust Program. Exemptions from the program are addressed during Phase One because RCW 50B.04.085 requires the department to begin accepting applications for exemption on October 21, 2021.

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.

NEW CHAPTER

Chapter 192-905 WAC

NEW SECTION

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

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

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

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

Explanation of proposed rule: The proposed rule outlines eligibility requirements for an employee to receive an exemption from the premium assessment of the Long-Term Services and Supports Program, clarifies that the applicant must provide identification to verify their age, and clarifies that the department may verify an applicant's long-term care insurance coverage to include a request for additional information from the applicant.

NEW 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 will be accepted by the department only from October 1, 2021, through December 31, 2022, per RCW 50B.04.085.

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

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

Explanation of proposed rule: The proposed rule outlines the timeframe in which the department will accept exemption applications, when an approved exemption will be effective, and how an employee can apply for an exemption.

NEW SECTION

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

(1) After an employee's exemption application is processed, the department will send the employee either:

- (a) An approval letter stating the employee is exempt from the program; or
- (b) A denial letter stating the reason for the denial.

(2) A determination made by the department may be appealed in accordance with RCW 50B.04.120(2).

(3) An employee who is approved for an exemption must notify any current or future employer of their exempt status by providing a copy of their approval letter to the employer.

(4) The employer must maintain a copy of the approval letter provided by the employee.

Explanation of proposed rule: The proposed rule outlines the department's actions after an employee applies for an exemption, references appeal rights for determinations made by the department, outlines employee responsibilities for notification of exempt status to employers, and references an employer's requirement to maintain a copy of the employee's approval letter.

NEW SECTION

WAC 192-905-020 Is an exempt employee entitled to a refund of premiums? (1) If an exempt employee fails to notify an employer of their exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification was provided.

(2) Any premium deductions made before notification was provided to the employer remain with the employer.

(3) If an employer deducts premiums after the employee provides notification of the employee's exempt status, the employer must refund the deducted premiums to the employee.

Explanation of proposed rule: The proposed rule addresses the circumstances in which an employee is entitled to a refund of premium deductions from the employer.

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 an exemption from the long-term services and supports trust program.	The rule is explicitly and specifically dictated by statute (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 (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.04.085) 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 (c)(i)(C)
WAC 192-905-015	What happens after an employee's exemption application is processed?	The rule is explicitly and specifically dictated by statute (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 (c)(i)(C)
WAC 192-905-020	Is an exempt employee entitled to a refund of premiums?	The rule is explicitly and specifically dictated by statute (RCW 50B.04.085).	RCW 34.05.328(5)(b)(v)

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

The goals and objectives of the LTSS Trust Program 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 \$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 (4) requires the department to adopt rules to administer portions of the program. RCW 50B.04.085 (9) requires the department to adopt rules necessary to implement and administer exemption requirements. These rules implement the “exemptions” portion of the program. RCW 50B.04.085 allows individuals who have private long-term care insurance to apply for an exemption to the program, which includes an exemption from premium assessment and collection and an exemption from utilizing services of the program. Under RCW 50B.04.050, an exempt employee may never qualify for program benefits.

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 provisions of RCW 50B.04.085 regarding premium exemptions from the LTSS Trust Program. If the rules are not adopted, there will not be clear direction to the public regarding qualifications for exemption, the application process, requirements for application, and notification requirements to employers of an employee’s exempt status. Adopting the rules will provide enhanced direction to the public and will satisfy the department’s requirement under RCW 50B.04.085 (9) to adopt rules to implement and administer exemption provisions.

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 and transparency for LTSS Trust Program implementation. The directive of RCW 50B.04.085 is to allow employees who have private long-term care insurance to apply for an exemption to the program. The rules provide guidance for employees to apply for an exemption and for employers to have information about employee exemptions. The benefits of this clarity outweigh any minimal costs. The public will clearly understand what is required regarding applications for exemptions, notification requirements to employers, and that employers should not collect and remit premiums for employees who have provided verification of their exempt status.

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.

WAC 192-905-005:

- The department considered rule language that did not reference the definition of long-term care insurance in RCW 48.83.020. Based on a comment the department received during a stakeholder meeting, emailed questions from stakeholders, and discussions regarding clarification of long-term care insurance requirements, the reference to the definition of long-term care insurance was added to provide clear direction.
- The department considered rule language that required the employee to provide information sufficient to verify age at the time of application. To clarify the requirement that employees be at least eighteen years of age for exemption from the program, rule language was changed to require identification that verifies age.
- The department considered rule language stating that the department may verify an employee's coverage with the long-term care insurance provider. The rule language was changed to allow the department to verify long-term care insurance coverage and request additional information from the employee.

WAC 192-905-015:

- The department considered rule language that required "written notification" of exemption to all current and future employers. The department added the requirement that an exempt

employee must provide a copy of their approved exemption letter to all current and future employers as notification of the employee's exempt status. This requirement was added in order to prevent an employee from falsely claiming they are exempt and to ensure an exempt employee provides reliable documentation to employers.

- The department considered rule language that did not reference the employer's requirement to maintain a copy of the employee's approval letter. The department added the requirement to maintain consistency with RCW 50B.04.085 and other rule language, and ensure employers have reliable documentation regarding employee exemptions.
- The department considered rule language stating that a denial may be appealed. The rule language was changed to state that a determination may be appealed in order to maintain consistency with RCW 50B.04.120.

The rules were drafted as the least burdensome alternative to those required to comply with them. The rules implement provisions of RCW 50B.04.085. Adoption of the rules will achieve the general goals and objectives of implementing and administering the LTSS program and will provide clarification to the public.

Conflicts with Federal or State law

None of the rules conflict with Federal or State law.

Performance impositions on private vs. public sectors

Private and public sector employees who have private long-term care insurance can apply for an exemption to the program.

Since LTSS Trust Program premiums are required to be assessed for all employees (except employees who have an approved exemption, and federal government or tribal employees), 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

None of the rules conflict with any applicable Federal or State regulatory requirements.

Coordination with Federal, State, or local laws

None of the rules require coordination with federal, state, or local laws.