Washington State Department of Social and Health Services

Transforming Lives

REPORT TO THE LEGISLATURE

Long-Term Services and Supports Trust Commission Recommendations Report

RCW 50B.04.030 (4)

January 1, 2021

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Washington State Department of Social & Health Services

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Long-Term Services and Supports Trust Commission Recommendations Report

Executive Summary

Enacted in 2019, the Long-Term Services and Supports (LTSS) Trust (RCW 50B.04) is a contributory long-term services and supports insurance program with a lifetime maximum benefit of $36,500 (in its first year) for all eligible Washington employees. It is financed by an employee premium of 0.58% of wages. Individuals who have met the Trust's work and contribution requirements of 10 years with no more than a 5 year interruption (or 3 out of the last 6 years) and who need assistance with activities of daily living may claim Trust benefits from approved providers. The LTSS Trust is a cross-agency project administered collaboratively by the Department of Social and Health Services (DSHS), the Employment Security Department (ESD), the Health Care Authority (HCA), and the Office of the State Actuary. It is overseen by the 21-member LTSS Trust Commission (see Exhibit B for a list of Commission Members). On January 1, 2022, ESD will begin collecting premiums from workers, and self-employed individuals can begin opting in. On January 1, 2025, DSHS will begin paying benefits on behalf of eligible beneficiaries.

Per Chapter 50B.04.030 RCW, beginning January 1, 2021, the LTSS Trust Commission shall propose recommendations to the Legislature or the appropriate Executive Agency on specific aspects of the LTSS Trust Program. The Commission's recommendations and decisions are guided by the joint goals of maintaining benefit adequacy and maintaining Trust solvency and sustainability. For this January 1, 2021 report, the following recommendations are included.[1]

1) *Recommendations on whether and how to extend coverage to individuals who became disabled before the age of eighteen, including the impact on the financial status and solvency of the trust;*
2) *The establishment of criteria for determining that an individual has met the requirements to be a qualified individual* under the 'three of the last six years' criteria;
3) *Change to rules or policies to improve the operation of the program;*
    a. Pathways to include tribes (although tribal participation is not an issue directly called out in the statute, we believe it falls under this area of statutory direction)
4) *Advising the legislature on actions necessary to maintain trust solvency;*
    a. Private long-term care insurance opt-out
    b. Self-employed opt-in
    c. Joint Resolution to propose an amendment to the state constitution concerning the investment of LTSS Trust funds

[1] Throughout this report, language that is directly from the statute is italicized, such as the five report components below.

5) *Recommendations from the Office of the State Actuary on actions necessary to achieve trust solvency* (see Exhibit A for the full report from the Office of the State Actuary on LTSS Trust Solvency)

In future reports, the Commission will make recommendations on additional items as required in RCW 50B.04.030.

The ballot initiative Engrossed Senate Joint Resolution 8212 (ESJR 8212) has played a significant role in the premium rate required to fund the LTSS Trust. Because LTSS Trust benefit eligibility is predicated on vesting, in most cases for at least ten years, the Trust has a long-term investment horizon. In the early decades, it will accumulate more premiums than it pays out in benefits, and in later decades it will pay benefits out of accumulated premiums and their investment returns. The greater the investment returns, the lower the premium rate required, all else being equal. ESJR 8212 would have amended the state constitution to allow the Washington State Investment Board to invest Trust assets in stocks or other methods of investment, as it can for the assets of any public pension or retirement fund, industrial insurance trust fund, or fund held in trust for the benefit of persons with developmental disabilities. Actuarial analysis had estimated that a worker premium of 0.55% of wages would likely be sufficient to cover expected program costs over the first 75 years if ESJR 8212 had passed, versus one of 0.66% if ESJR 8212 did not.[2] Since ESJR 8212 did not pass, state law limits the Trust's investment plan to government bonds and corporate notes, certificates of deposit, and cash vehicles. As a result, the premium sufficient to fund expected program costs over a 75-year time horizon is now estimated to be 0.66% of wages, 20% higher than if ESJR 8212 had passed.

RCW 50B.04.80 sets the initial LTSS Trust premium rate at 0.58% of wages, and directs that the Pension Funding Council set the rate biennially from 2024 onward at no greater than 0.58% of wages. This rate was predicated on investment return assumptions for an insurance program targeting returns to fund expenditures over a 75-year time horizon – specifically those in the 2018 Social Security Trustees Report, which reflected the prevailing economic environment at that time.[3] The premium set in statute is now eight basis points below the 0.66% premium rate needed to cover expected expenditures over the long term. This does not create an urgent need for action, as even at the 0.58% premium rate, Trust revenues are projected to exceed benefits for the first few decades of the program. But without the ability to secure higher investment returns, changes to various aspects of program design, such as benefit structure or eligibility, will be needed in the medium term to support the program's long-term solvency.

[2] Milliman, 2020 Long-Term Services and Supports Trust Actuarial Study, December 2020. Once finalized, the study will be published on the Office of the State Actuary website: https://bit.ly/2VBiIRF. In both the ESJR 8212 passes and fails scenarios, the estimated premium required is a plausible estimate within a range of potential outcomes.

[3] Washington DSHS 2018 Feasibility Study of Policy Options to Finance LTSS in the State of Washington," Sept 24, 2018, https://bit.ly/33HpEBu.

The recommendations in this report would, on a net basis, either improve or have a neutral effect on the long-term solvency of the LTSS Trust. The first recommendation, on coverage of adults with disabilities that onset prior to age 18, is to extend coverage at some point in the future; hence it would not immediately impact Trust solvency. Upon enactment in the future, it would increase the premium required to cover program costs by one to two basis points (0.01%-0.02%); the second and third recommendations, on qualified individual status and pathways to including tribes, respectively, would each have a negligible effect on Trust solvency; the final two recommendations (under the fourth report component), on private long-term care insurance opt-out and self-employed opt-in, would help keep the required premium lower and mitigate significant risk in the Trust's financial outlook related to non-participation and adverse selection.

January 1, 2021 Commission Report Recommendations

1. For this reporting period, the statute required *recommendations on whether and how to extend coverage to individuals who became disabled before the age of eighteen, including the impact on the financial status and solvency of the trust*, and that the Commission *engage affected stakeholders to develop this recommendation*.

Statutory Framework

Individuals who became disabled before the age of eighteen are excluded from benefit eligibility per RCW 50B.04.010. RCW 50B.04.010 (6) defines "Eligible beneficiary" as *a qualified individual who is age eighteen or older, residing in the state of Washington, was not disabled before the age of eighteen, has been determined to meet the minimum level of assistance with activities of daily living necessary to receive benefits through the trust program, as established in this chapter, and who has not exhausted the lifetime limit of benefit units*. Per RCW 50B.04.010 (14), *"Qualified individual" means an individual who meets the duration of payment requirements, as established in this chapter.* There is no definition provided in RCW 50B.04 for "disabled."

Per RCW 50B.04.060 regarding determination of eligible beneficiaries, *(2) A qualified individual may become an eligible beneficiary by filing an application with the department of social and health services and undergoing an eligibility determination which includes an evaluation that the individual requires assistance with at least three activities of daily living.*

Policy Problem

Adults with disabilities that onset prior to age 18 are required to pay LTSS Trust premiums throughout their working lives, but are not eligible for Trust benefits even if they vest. Furthermore, there is no cost-effective way to determine whether, for example, an older adult applying for Trust benefits had a disability that onset prior to age 18, up to five or more decades in the past. Yet under current statute, DSHS would need to conduct such a determination for every applicant for LTSS Trust benefits to rule out whether they had had a disability that onset prior to age 18. During the 2019 legislative session when Second Substitute House Bill 1087 passed, estimated costs to cover this group had not been explored. The LTSS Trust Commission was tasked with considering whether and how to extend coverage to this population, taking into account the impact on Trust solvency.

Commission Recommendation

The Commission recommends extending LTSS Trust coverage to all adults with a disability that onset prior to age 18 if and when, in the future, the premium projected to cover program costs is sufficiently below the premium set in statute (0.58%) to cover the costs of extending coverage to this population.

Stakeholders from the disability and business community gathered in September 2020 to provide feedback on whether and how to extend coverage to adults with disabilities that onset prior to the age of 18. Stakeholders noted the inequity in adults with disabilities that onset prior to age 18 being required to contribute to the Trust but being statutorily excluded from claiming benefits, even if they meet the vesting thresholds. Eliminating this inequity has a number of benefits including reducing: potential legal liability associated with the existing law; substantial administrative costs associated with review of records to document that a disability onset did not occur before age 18; and the length of time needed to determine eligibility.

Actuarial modeling assumes that only people with intellectual and developmental disabilities that onset prior to age 18 would not have coverage. In order to include this group, it is estimated to cost an additional one to two basis points (0.01%-0.02%).

The ballot initiative Engrossed Senate Joint Resolution 8212 (ESJR 8212) has played a decisive role in choosing to delay extending coverage to adults with disabilities that onset prior to age 18. Since ESJR 8212 did not pass, the premium sufficient to fund program costs over a 75-year time horizon is now estimated to be 0.66% of wages, and there is no longer margin to cover this population and remain under the premium set in statute. If ESJR 8212 had passed, actuarial analysis had estimated that a worker premium of 0.55% of wages would likely be sufficient to cover program costs. This would have allowed sufficient margin to cover this population while still keeping the premium rate under the premium set in statute.[4]

2. *Recommendation on the establishment of criteria for determining that an individual has met the requirements to be a qualified individual as established in RCW 50B.04.050*

Statutory Framework

The LTSS Trust Statute (RCW 50B.04) requires that the Trust Commission *"propose recommendations to the appropriate executive agency or the legislature regarding the establishment of criteria for determining that an individual has met the requirements to be a qualified individual as established in RCW 50B.04.050."*

According to RCW 50B.04.050, *the Employment Security Department shall deem a person to be a qualified individual if the person has paid the LTSS premiums required by RCW 50B.04.080 for the equivalent of either:*

> *(1)(a) A total of ten years without interruption of five or more consecutive years; or*
> *(1)(b) Three years within the last six years.*

[4] Milliman, 2020 Long-Term Services and Supports Trust Actuarial Study, December 2020. In both the ESJR 8212 passes and fails scenarios, the estimated premium required is a plausible estimate within a range of potential outcomes.

Policy Problem

It is not clear in RCW 50B.04.050, (1)(b) when the test of three years within the last six years is to be applied. It could mean that if someone has paid Trust premiums three years within any six years, they have permanently achieved qualified individual status. Or, it could mean that at the time of applying for Trust benefits, a person must have paid Trust premiums three out of the last six years in order to be a qualified individual.

Commission Recommendation

The Commission recommends that when assessing whether a person is a qualified individual under RCW 50B.04.050, (1)(b) three years within the last six years, that the test of 'three of the last six years' is applied is at the time when an individual is applying for LTSS Trust benefits. This clarification could be implemented without a statute change. However, the change to RCW 50B.04.050 denoted below would provide greater clarity.

> *Qualified individuals.*
> *(1) The employment security department shall deem a person to be a qualified individual as provided in this chapter if the person has paid the long-term services and supports premiums required by RCW 50B.04.080 for the equivalent of either:*
> *(a) A total of ten years without interruption of five or more consecutive years; or*
> *(b) Three years within the last six years <u>from the date of application for benefits</u>.*

It is the Commission's understanding that this interpretation of RCW 50B.04.050, (1)(b) reflects legislative intent; it also aligns with the interpretation used in the baseline actuarial modeling for the program. This approach would not provide meaningful coverage for near-retirees who need long-term services and supports more than three years after retiring, but would provide coverage for most individuals who have an immediate need for care during their working years or shortly after retiring.

The Commission remains interested in considering other options to cover today's retirees as well as to cover workers nearing retirement today throughout retirement. However, it was determined that the challenges of covering these groups would be too complex to navigate now and the costs would drive up program premium rates significantly. The Commission will request additional actuarial modeling on how to cover these groups and on that basis consider whether to make further recommendations in this regard.

3. *Changes to rules or policies to improve the operation of the program -* Pathways for Tribal Participation in the LTSS Trust

Statutory Framework

Under the current LTSS Trust statute, any tribal member who works for a (non-tribal) Washington employer, or is self-employed and opts in will pay premiums into the Trust like any other worker and be able to receive benefits when needed.

"Employer" under the LTSS Trust statute has the same definition as in the Paid Family and Medical Leave (PFML) statute (RCW 50A) and does not include Tribal governments. In contrast to the PFML statute, however, there is no Tribal employer opt-in option in the

LTSS Trust statute. Tribal employers do not have a pathway to participate under current law. According to the Washington Indian and Gaming Association's report, "The Economic & Community Benefits of Tribes in Washington" there were nearly 31,000 individuals employed by tribal organizations in 2018.

Policy Problem

Individuals working for tribal employers cannot participate in the LTSS Trust. This excludes both tribal members and non-tribal members working for tribal organizations, estimated at approximately 31,000 Washingtonians.

Commission Recommendation

The Commission recommends a statute change that allows Tribes an option to participate in the Trust. Consultation with tribes may be required to pursue solutions that address the unique needs of tribes as sovereign nations, while also taking into account the administrative considerations of a state social insurance program. In order to support timely and cost-effective implementation of the LTSS Trust program, the Commission supports a tribal employer opt-in, which could be implemented without delaying development of the administrative and technology systems required by the Employment Security Department to begin collecting Trust premiums in January 2022. A tribal employer opt-in is projected to have a negligible effect on Trust solvency. The Commission recommends tribal consultation to determine whether there is alignment with the tribes on this approach.

The Commission recommends revising RCW 50B.04 to add a tribal employer opt-in provision that gives tribal employers the option to participate in the Trust. When a tribe opts-in, all of their employees will be covered. In these instances, Tribal employers will withhold 0.58% from wages, and remit these premium payments to the Employment Security Department. If a tribe does not opt-in, its employees will not have coverage. This provides a pathway for tribes to choose whether or not to participate and is straightforward for the Employment Security Department to implement as precedent exists with Paid Family and Medical Leave. This Commission recommendation can be accomplished with the following statute change:

> *NEW SECTION <u>RCW 50B.04.XXX - Elective coverage—Tribes.</u>*
> *<u>A federally recognized tribe may elect coverage under RCW 50B.04.080. The employment security department shall adopt rules to implement this section.</u>*

4. *Advising the legislature on actions necessary to maintain trust solvency*

4(a) Private Long-Term Care Insurance Opt-Out (Exemption)

Statutory Framework

RCW 50B.04.085 allows an employee who has long-term care insurance to apply for an exemption from paying the LTSS Trust premium. *An exempt employee may not become a qualified individual or eligible beneficiary and is permanently ineligible* for the LTSS

Trust benefit. *The Employment Security Department (ESD) must accept applications for exemptions only from October 1, 2021, through December 31, 2022. ESD must adopt rules necessary to implement and administer the activities specified in this section related to the program, including rules on the submission and processing of applications* for exemptions.

Policy Problem

Any time a voluntary aspect to participation in a social insurance program is introduced, adverse selection occurs. This drives up premiums for those who participate and introduces unpredictability that can make rate-setting challenging. According to LTSS Trust actuarial analysis,[5] if the top 5% of all wage earners opt-out, the level of premium assessment required is increased from 0.66% to 0.68%. If the top 45% of all wage earners opt-out, the level of premium assessment required is increased from 0.66% to 0.69%.

Allowing any prospective opt out is contrary to social insurance best practice, poses risks to the Trust's long-term solvency, and increases administrative costs to process exemption requests, conduct additional outreach to encourage participation, and cope with cases where workers either forget to tell their new employer that they have opted out or the employer erroneously withholds premiums on behalf of workers who have opted out.

Commission Recommendation

The Commission recommends limiting opt-out to those who had private long-term care insurance prior to the enactment of the Trust. This Commission recommendation can be accomplished with the following statute change:

> *RCW 50B.04.085*
> *Premium assessment—Exemptions.*
>
> *(1) An employee who attests that the employee has long-term care insurance* <u>*purchased before July 28, 2019*</u> *may apply for an exemption from the premium assessment under RCW 50B.04.080. An exempt employee may not become a qualified individual or eligible beneficiary and is permanently ineligible for coverage under this title.*

This approach supports the intent of the original legislation, keeps premiums low, and promotes consumer protection and public support of the program. Washingtonians who had long-term care insurance prior to enactment of the Trust will not have to contribute to the Trust unless they desire the additional coverage, the new program will be protected from the significant risk of non-participation and adverse selection inherent in a prospective opt-out, and workers without private policies will not be encouraged to purchase inadequate coverage that in many cases becomes unaffordable as they age in order to opt-out. The premium required to cover program costs will likely be lower, and more stable and predictable, as a result of this recommendation.

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[5] Milliman, 2020 Long-Term Services and Supports Trust Actuarial Study, December 2020.

4(b) Self-Employed Opt-In

Statutory Framework

RCW 50B.04.090 allows self-employed individuals to elect LTSS Trust coverage. Those electing coverage are responsible for paying premiums. Self-employed individuals *must file a notice of election in writing with the Employment Security Department (ESD), in the manner required by ESD in rule.* Self-employed individuals are eligible for Trust coverage after paying premiums and becoming vested. Self-employed *individuals may withdraw from coverage, at such times as ESD adopts by rule, by filing a notice of withdrawal in writing.* ESD must adopt rules for determining the hours worked and the earnings of self-employed individuals who elect coverage and rules for enforcement of this section.

Policy Problem

Any time a voluntary aspect to participation in a social insurance program is introduced, unpredictability related to adverse selection can make rate-setting challenging. For a social insurance program like the Trust (or Medicare, for example), allowing individuals to opt in and opt out at will incentivizes participating only long enough to become vested and/or only participating in years when one's earnings are low. The baseline assumption of LTSS Trust actuarial analysis is that premiums are collected on only 10% of earnings by the self-employed, but that virtually all of the self-employed become qualified individuals. In addition, unhealthy individuals are more likely to opt-in, causing adverse selection, driving up program costs, and making either benefit cuts or premium increases necessary down the road. Finally, without any method of verifying self-employed earnings, there is a high risk of underreporting of earnings by the self-employed. Nationally the self-employed are estimated to report only about half of their income. This is far less consequential in the PFML program, where the benefit replaces a percentage of prior earnings, than it is in a program with a uniform benefit not based on the amount of prior earnings, like the LTSS Trust.

Commission Recommendation

To mitigate these risks to LTSS Trust solvency, the Commission recommends a statute change that retains the voluntary nature of Trust participation by the self-employed but establishes two fundamental ground rules around participation. The first is a three-year window for self-employed individuals to opt in once premium collection begins in 2022 (or going forward once an individual becomes self-employed). Second, once an individual has opted in, the opt-in is permanent. The Employment Security Department will make rules that align with their administrative processes to effectively implement this policy. This Commission recommendation can be accomplished with the following statute change:

> *RCW 50B.04.090*
> *Election of coverage—Self-employed persons.*
> *(1) Beginning January 1, 2022, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter. <u>Coverage must be elected before January 1, 2025 or within three years of becoming self-employed for the first time</u>. Those electing coverage*

under this subsection are responsible for payment of one hundred percent of all premiums assessed to an employee under RCW 50B.04.080. The self-employed person must file a notice of election in writing with the employment security department, in the manner required by the employment security department in rule. The self-employed person is eligible for benefits after paying the long-term services and supports premium for the time required under RCW 50B.04.050.

(2) A self-employed person who has elected coverage may <u>not</u> withdraw from coverage~~, at such times as the employment security department may adopt by rule, by filing a notice of withdrawal in writing with the employment security department, with the withdrawal to take effect not sooner than thirty days after filing the notice with the employment security department~~.

<u>(3) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the work force or is no longer self-employed. To cease premium assessment and collection, the self-employed person must file a notice with the employment security department if the individual retires from the work force or is no longer self-employed.</u>

~~(3)~~(4) The employment security department may cancel elective coverage if the self-employed person fails to make required payments or file reports. The employment security department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation must be effective no later than thirty days from the date of the notice in writing advising the self-employed person of the cancellation.

~~(4)~~(5) Those electing coverage are considered employers or employees where the context so dictates.

~~(5)~~(6) For the purposes of this section, "independent contractor" means an individual excluded from the definition of "employment" in RCW 50B.04.010.

~~(6)~~(7) The employment security department shall adopt rules for determining the hours worked and the wages of individuals who elect coverage under this section and rules for enforcement of this section.

Furthermore, the Commission acknowledges the need to verify self-employed income reporting and recommends a statute change that provides authority for the Employment Security Department to do so. This Commission recommendation can be accomplished with the following statute change:

RCW 50B.04.020
Duties—Health care authority, department of social and health services, office of the state actuary, employment security department:
(4) The employment security department shall:

(c) Perform investigations to determine the compliance of premium payments in RCW 50B.04.080 <u>and RCW 50B.04.090</u> in coordination with the same activities conducted under the family and medical leave act, Title 50A RCW, to the extent possible;

4(c) Joint Resolution to propose an amendment to the state constitution concerning the investment of LTSS Trust funds

Statutory Framework

Article VII of the Washington Constitution generally prohibits investing public money in the stock of private companies. This means that state and local governments are limited to investing public funds in fixed-income securities, such as government and corporate bonds and certificates of deposit. The Constitution currently exempts several funds from this restriction. This exemption applies to any public pension or retirement fund, the industrial insurance trust fund, and money held in trust for the benefit of people with developmental disabilities. The exemption allows state and local governments to invest money held in those funds as authorized by law, including by investing in stock as authorized by the Legislature. Under current law, money held in the LTSS Trust Account could not be invested in stocks. A constitutional amendment proposed by the legislature and approved by Washington voters could exempt the LTSS Trust from this restriction.

Policy Problem

The ballot initiative Engrossed Senate Joint Resolution 8212 (ESJR 8212) has played a significant role in the premium rate required to fund the LTSS Trust. Because LTSS Trust benefit eligibility is predicated on vesting, in most cases for at least ten years, the Trust has a long-term investment horizon. In the early decades, it will accumulate more premiums than it pays out in benefits, and in later decades it will pay benefits out of accumulated premiums and their investment returns. The greater the investment returns, the lower the premium rate required, all else being equal.

ESJR 8212 would have amended the state constitution to allow the Washington State Investment Board to invest Trust assets in stocks or other methods of investment, as it can for the assets of any public pension or retirement fund, industrial insurance trust fund, or fund held in trust for the benefit of persons with developmental disabilities. Actuarial analysis had estimated that a worker premium of 0.55% of wages would likely be sufficient to cover expected program costs over the first 75 years if ESJR 8212 had passed, versus one of 0.66% if ESJR 8212 did not. Since ESJR 8212 did not pass, state law limits the Trust's investment plan to government bonds and corporate notes, certificates of deposit, and cash vehicles. As a result, the premium sufficient to fund expected program costs over a 75-year time horizon is now estimated to be 0.66% of wages, 20% higher than if ESJR 8212 had passed.

RCW 50B.04.80 sets the initial LTSS Trust premium rate at 0.58% of wages, and directs that the Pension Funding Council set the rate biennially from 2024 onward at no greater than 0.58% of wages. This rate was predicated on investment return assumptions for an insurance program targeting returns to fund expenditures over a 75-year time horizon – specifically those in the 2018 Social Security Trustees Report, which reflected the prevailing economic environment at that time. The premium set in statute is now eight basis points below the 0.66% premium rate needed to cover expected expenditures over the long term. This does not create an urgent need for action, as even at the 0.58% premium rate, Trust revenues are projected to exceed benefits for the first few decades of the program. But without the ability to secure higher investment returns, changes to various aspects of program design, such as benefit structure or eligibility, will be needed in the medium term to support the program's long-term solvency.

Commission Recommendation

To allow the LTSS Trust Fund to be invested by the Washington State Investment Board in a full range of investments that helps ensure that the fund can pay benefits to eligible Washingtonians over the long-term and keep worker premiums low, the Commission recommends that the legislature propose a joint resolution for an amendment to the state constitution for consideration by voters in the 2021 general election.

5. *The Commission shall consult with the Office of the State Actuary on the development of an actuarial report of the projected solvency and financial status of the program. The Office of the State Actuary shall provide any recommendations to the Commission and the Legislature on actions necessary to achieve trust solvency.*

The Office of the State Actuary consulted with the Commission and developed the OSA Report on LTSS Trust Solvency found in Exhibit A.

The Office of the State Actuary recommends the following actions to support the projected solvency of the LTSS Trust Program:

- Clarify key program parameters. The provisions that Milliman estimates to have the most impact on solvency include the private insurance opt-out, self-employed opt-in, benefit eligibility trigger, and the elimination period.
  - This will improve the actuarial modeling to better define expected costs and revenue.
- Clarify the investment policy through work with the Washington State Investment Board.
  - This will improve the actuarial modeling to better estimate anticipated investment income.

- Perform an updated baseline analysis reflecting input from the prior bullets.
  - Incorporating updated costs and revenue will likely change the premium rate required to cover expected future costs so it is important to re-assess the program solvency once these key decisions are made.
  - If the program is permanently prohibited from investing in equity-like investments and the updated baseline analysis projects an insolvent program, OSA recommends the program develop a strategy to return the program to a position of projected solvency as soon as possible.
- Establish a risk management framework consistent with the program's financial goals.
  - For example, a goal of ensuring the program has sufficient assets to pay benefits when due and, to the extent feasible, premiums paid by future beneficiaries remain an equitable share in relation to the benefits they receive.
  - Components of a risk management framework may include:
    - Identification of risks.
    - Measurement and assessment.
    - Mitigation of risks.
    - Reporting and monitoring.
    - Coordination of risk management roles/responsibilities.
- Establish a funding policy consistent with the above.
  - For example, if the approach is to retain a sufficient "margin" below the 0.58% maximum premium rate in current law, OSA would evaluate future program costs relative to that target.
  - On the other hand, if the approach is to retain the 0.58% premium rate (a "fixed rate" plan) and adjust future benefit levels or other program parameters that affect benefit spending, OSA would evaluate future program costs relative to that target.
  - In practice, the working funding policy will likely fall between these two approaches and where that point lands could vary over time depending on future circumstances. However, there may be preferences for one approach over the other.

Future Recommendations

In future reports, the LTSS Trust Commission will propose recommendations to the Legislature or the appropriate Executive Agency regarding the remaining items outlined in RCW 50B.04.030:

1) *The establishment of criteria for determining that an individual has met the requirements to be an eligible beneficiary;*
2) *The establishment of criteria for minimum qualifications for the registration of long-term services and supports providers who provide approved services to eligible beneficiaries;*
3) *The establishment of payment maximums for approved services consistent with actuarial soundness which shall not be lower than Medicaid payments for comparable services. A service or supply may be limited by dollar amount, duration, or number of visits. The Commission shall engage affected stakeholders to develop this recommendation;*
4) *Changes to rules or policies to improve the operation of the program;*
5) *A refund of premiums for a deceased qualified individual with a dependent who is an individual with a developmental disability who is dependent for support from a qualified individual. The qualified individual must not have been determined to be an eligible beneficiary by the department of social and health services. The refund shall be deposited into an individual trust account within the developmental disabilities endowment trust fund for the benefit of the dependent with a developmental disability*
6) *Assisting the State Actuary with the preparation of regular actuarial reports on the solvency and financial status of the program and advising the Legislature on actions necessary to maintain trust solvency. The Office of the State Actuary shall provide any recommendations to the Commission and the Legislature on actions necessary to maintain trust solvency.*

Exhibit A: Office of the State Actuary Report on LTSS Trust Solvency

Office of the State Actuary

"Supporting financial security for generations."

OSA REPORT ON LTSS TRUST SOLVENCY

December 2020

Executive Summary

Per Chapter 50B.04.030 Revised Code of Washington (RCW), the Office of the State Actuary (OSA) is responsible for providing recommendations to the Long-Term Services and Supports (LTSS) Trust Commission (the Commission) and the Legislature on actions necessary to achieve and maintain trust solvency.

OSA is currently working with the consultants at Milliman who performed earlier feasibility studies informing the legislation that ultimately created the LTSS Trust Program. OSA contracted with Milliman to perform updated actuarial analysis based on enacted law.

Due in part to the emerging details and benefit definitions of the program, Milliman provided a range of results informed by scenarios. Their analysis therefore sometimes compares the initial statutory premium rate of 0.58 percent with the minimum premium rate necessary to cover all expected future costs over the next 75 years. In some scenarios 0.58 percent is projected to be sufficient to cover future expected costs, however in other scenarios, a premium rate of 0.58 percent is projected to be insufficient to cover future expected costs.

The November 2020 election included a vote on *Engrossed Senate Joint Resolution 8212* which impacts how the premium revenue can be invested. It did not pass, which means current law restricts LTSS Trust investments to low-risk options.

Based on the most recent actuarial analysis and reflecting the outcome of the vote, the program is projected to require a premium rate greater than 0.58 percent to cover future expected costs. 0.58 percent is the maximum premium rate allowed to support the program under current law.

Please note, there are benefit provisions that still need clarification and a yet to be determined investment policy. Both will impact modeling plan costs and revenue. Updated actuarial analysis is needed as these components are more clearly defined to re-assess plan solvency and determine an updated baseline analysis for future reporting and decision making.

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Please refer to Milliman's report[1] for their complete actuarial analysis including a summary of the LTSS Trust Program benefit provisions being modeled.

In addition to performing updated actuarial analysis after some key decisions are made, OSA also recommends working towards documenting a risk management framework and funding policy. Having these will guide future decisions, inform actuarial modeling, and mitigate risks, all of which will improve plan solvency.

OSA must provide biennial actuarial reports starting January 1, 2024, and these reports will include key metrics to track program progress as well as future recommendations to maintain program solvency.

Who Makes LTSS Trust Program Decisions Informed by Actuarial Analysis?

In addition to providing recommendations on trust solvency, OSA is responsible for providing actuarial analysis to support LTSS Trust Program decision making. This includes, but is not limited to, benefit policy, investment policy, and premium rate levels.

The groups with statutory responsibilities that will rely on actuarial analysis are summarized in the following table.

Group	RCW	How They Will Use Actuarial Analysis
The Commission	**50B.04.020** **50B.04.030**	The Commission receives actuarial reports, including OSA's recommendations on trust solvency. The Commission may request additional actuarial analysis to inform their decisions or recommendations.
LTSS Trust Council (the Council)	**50B.04.040**	The Council determines adjustments to the benefit unit to assure benefit adequacy and solvency of the program. The Council must review OSA's analysis and recommendations.
Pension Funding Council (PFC)	**50B.04.080**	The PFC sets the premium rate. The initial premium rate is 0.58 percent of an individual's wages and current law prohibits the rate from increasing above 0.58 percent. OSA also makes recommendations to the PFC regarding program solvency.
Washington State Investment Board (WSIB)	**50B.04.110**	The WSIB is responsible for determining how to invest the contributions collected for the LTSS Trust Program and will rely on the actuarial analysis to assess liquidity needs as part of an asset allocation study to inform the overall investment policy.

What Actuarial Analysis Has Been Performed and What Does It Show?

OSA does not have in-house long-term care expertise so we currently rely on the consultants at Milliman to perform actuarial studies necessary to inform decision making. Milliman prepared the feasibility study analysis that informed the legislation creating the LTSS Trust Program.

[1]*Once finalized, Milliman's 2020 Long-Term Services and Supports Trust Actuarial Study will be published to OSA's website.*

We contracted with Milliman to update the prior feasibility analysis. Milliman's updated analysis reflects the enacted law as well as additional "what-if" scenarios. The additional scenarios incorporate how sensitive the minimum premium rate is to key assumptions and cost considerations for expanding or modifying benefit provisions. There are portions of the enacted law that require further clarification on certain eligibility and benefit provisions. Milliman's report is expected to inform those decisions.

Based on our read of Milliman's report, we think it is important to highlight the following key take-aways:

- Milliman performed their analysis prior to the public vote on ESJR 8212 so results were prepared assuming either outcome of the resolution. Based on the current terms of the program, the public vote outcome, and assumptions made in their work, Milliman estimates a required premium rate between 0.64 percent and 0.71 percent to cover all future program benefits and expenses over the next 75 years. Had the resolution passed, Milliman estimates the required premium rate would be approximately 0.10 percentage points lower.
- Key program parameters that still need to be defined include, but not limited to, the investment policy, private insurance opt-out, self-employed opt-in, benefit eligibility trigger, and the elimination period.
- In reviewing key assumptions and how changing the assumptions impacted the premium rate calculation, the required premium rate ranged from 0.40 percent to 1.14 percent. See Milliman's report for additional context.
- When reviewing anticipated program costs and revenue, it's important to consider an appropriate margin for experience emerging differently than expected.

What Are Relevant Considerations When Looking to Achieve and Maintain Trust Solvency?

Viewing it simply, a solvent plan has the money to pay all benefits and expenses when due. This outcome can be achieved in multiple ways. When considering if a program is projected to be solvent, some initial questions to ask include:

- Is the program expected to collect and earn enough money to cover all future benefits and expenses?
- What options are there to manage future costs and revenue if expected costs are greater than expected revenue?

With regards to the first question, per RCW 50B.04.080 initial premiums will be based on a 0.58 percent premium rate. Therefore, the initial enacted program must have a calculated premium rate equal to or less than 0.58 percent for the plan to be projected to be solvent. Milliman's analysis calculates premium rates under various scenarios that represent the expected minimum rate necessary to pay all future benefits and expenses during the next 75 years. These calculations rely on many assumptions to estimate future costs and revenue and the calculated premium rate can vary significantly when certain assumptions are changed. These assumptions will be monitored and may change in future analyses.

When expected costs are greater than expected revenue, changes would be required in order to maintain projected solvency. These changes, or management strategies, fall into two primary categories, either:

- Reduce future benefit levels or other program parameters that affect benefit spending, or
- Increase the premium rate.

Both strategies have their challenges and may be met with resistance. As Milliman points out in their report, "If levers such as adjusting program benefits or the premium rate aren't available, a larger amount of margin is likely appropriate to handle adverse events." Margin, or cushion, represents the amount of additional funds that are expected to be collected to protect against actual experience being more expensive than assumed. For example, a margin of 0.05 percentage points would mean a program with assumed costs reflecting a premium rate of 0.53 percent, or 0.05 percentage points below the statutory rate of 0.58 percent.

OSA and Milliman presented at the October 20 LTSS Trust Commission meeting on solvency and risk management considerations. Based on that discussion, we expect these topics will be part of future Commission meeting agenda items in 2021.

Recommendations

OSA recommends the following actions to support the projected solvency of the LTSS Trust Program:

- **Clarify key program parameters.** The provisions that Milliman estimates to have the most impact on solvency include the private insurance opt-out, self-employed opt-in, benefit eligibility trigger, and the elimination period.
  - This will improve the actuarial modeling to better define expected costs and revenue.
- **Clarify the investment policy through work with the WSIB.**
  - This will improve the actuarial modeling to better estimate anticipated investment income.
- **Perform an updated baseline analysis reflecting input from the prior bullets.**
  - Incorporating updated costs and revenue will likely change the premium rate required to cover expected future costs so it is important to re-assess the program solvency once these key decisions are made.

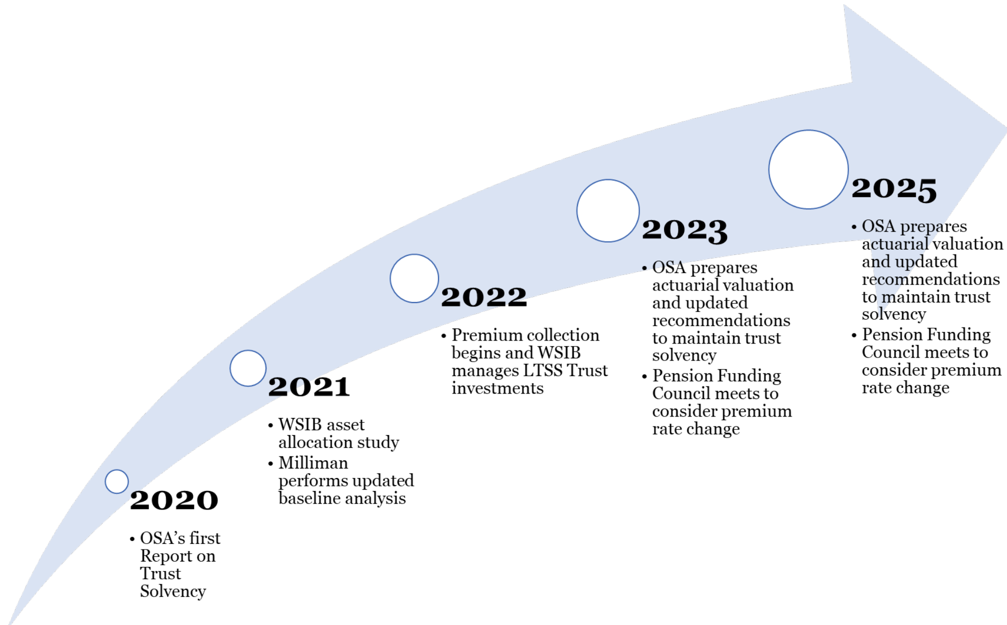
  - If the program is permanently prohibited from investing in equity-like investments and the updated baseline analysis projects an insolvent program, we recommend the program develop a strategy to return the program to a position of projected solvency as soon as possible.

- **Establish a risk management framework consistent with the program's financial goals.**
  - For example, a goal of ensuring the program has sufficient assets to pay benefits when due and, to the extent feasible, premiums paid by future beneficiaries remain an equitable share in relation to the benefits they receive.
  - Components of a risk management framework may include:
    - Identification of risks.
    - Measurement and assessment.
    - Mitigation of risks.
    - Reporting and monitoring.
    - Coordination of risk management roles/responsibilities.

- **Establish a funding policy consistent with the above.**
  - For example, if the approach is to retain a sufficient "margin" below the 0.58 percent maximum premium rate in current law, OSA would evaluate future program costs relative to that target.
  - On the other hand, if the approach is to retain the 0.58 percent premium rate (a "fixed rate" plan) and adjust future benefit levels or other program parameters that affect benefit spending, OSA would evaluate future program costs relative to that target.
  - In practice, the working funding policy will likely fall between these two approaches and where that point lands could vary over time depending on future circumstances. However, there may be preferences for one approach over the other.

What Will Future Actuarial Reports Look Like?

Per RCW 50B.04.020, OSA is required to provide actuarial reports biennially starting January 1, 2024. As noted below, OSA expects to publish an updated actuarial valuation and trust solvency recommendations in the fall of odd years to support the PFC's biennial requirement to set the premium rate. Additional actuarial reports or analysis may be performed at the request of the Council. The Council is expected to meet annually and has the authority to determine adjustments to the benefit unit. Eligible beneficiaries may begin receiving LTSS benefits on January 1, 2025. OSA also provides actuarial support to the Commission on an as needed basis.



Key metrics to monitor solvency and program progress that may be included in future actuarial reports include:

- Financial status of program.
- Updated premium rate calculations.
- Updated projections of expected program revenue, benefit, and expenses by year.
- Track actual experience to assumed experience for:
  - Revenue.
  - Benefits.
  - Investment income.
  - Administrative expenses.
- Experience studies to review and potentially revise assumptions.

OSA prepared the above report and recommendations, however, please refer to Milliman's report for all actuarial analysis. We encourage you to submit any questions you might have concerning this report to our e-mail address at state.actuary@leg.wa.gov.

Sincerely,

Matt Smith, State Actuary

Luke Masselink, Senior Actuary

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Exhibit B: Long-Term Services and Supports Trust Commission Members

Name
Senator Karen Keiser (D)
Representative Paul Harris (R)
Senator Judy Warnick (R)
Representative Frank Chopp (D)
Representative Nicole Macri (D)
Senator Steve Conway (D)
Senator Curtis King (R)
Representative Drew MacEwen (R)
Assistant Secretary Bill Moss Department of Social and Health Services
Commissioner Suzi LeVine Employment Security Department
Taylor Linke Health Care Authority
Madeleine Foutch Representative of a union representing long-term care workers
Ruth Egger Individual receiving LTSS (or designee or representative of consumers receiving LTSS)
Andrew Nicholas Worker who is paying the premium (or will likely be paying the premium)
Sarai Childs Representative of an organization of employers whose members collect the premium (or will likely be collecting)
John Ficker Adult Family Home providers representative
Dan Murphy Area Agencies on Aging representative
Peter Nazzal Home Care Association representative
Michael Tucker Representative of an organization representing retired persons
Lauri St. Ours Representative of an association representing skilled nursing facilities and assisted living providers