LTSS Trust Commission Supplemental Private Long-Term Care Insurance Workgroup

Final Report

July 19, 2022

Background

In 2019 the Washington State Legislature established the nation's first public long-term care insurance program, WA Cares Fund. Starting in July 2026, WA Cares will provide qualified Washingtonians who need long-term care up to $36,500 worth of long-term care in their lifetime. WA Cares' modest premium (0.58 percent of wages) and modest but critical benefit leave room for middle class consumers who seek additional coverage to purchase such coverage on the private market. The assumption of the first tranche of risk by WA Cares Fund may allow carriers to offer supplemental coverage at premiums more accessible to the broad middle class. Despite the promise of such a market, there are significant challenges to the emergence of a unique supplemental market in one state that is both attractive to insurers and protective of consumers. In June 2021, the legislature charged the LTSS Trust Commission to work with insurers to support the development of private long-term care insurance products that supplement the WA Cares Fund benefit.[1] In September 2021, the LTSS Trust Commission chartered a Workgroup to focus on these challenges and issue recommendations to the Commission by summer 2022. The Workgroup's charter identified four primary objectives:

- Serve as a forum for clarifying questions, providing information, and solving problems surrounding the relation of supplemental private long-term care insurance plans to the WA Cares Fund benefit;
- Identify and develop recommendations to reduce impediments to the design of attractive, affordable supplemental private insurance plans;
- Identify and develop recommendations to manage coordination of benefits challenges between the WA Cares Fund benefit and supplemental private insurance plans;
- Develop recommendations for consumer protections in supplemental plans that ensure consistency with NAIC model Act consumer protections and to the extent needed, strengthen such protections for these supplemental policies.

This report contains the recommendations of the Supplemental Private Long-Term Care Insurance Workgroup to the LTSS Trust Commission. The Commission will take this report under advisement as it makes determinations about its recommendations to the Legislature at the end of 2022.

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[1] SHB 1323 (2021), available at https://app.leg.wa.gov/billsummary?BillNumber=1323&Initiative=false&Year=2021.

Workgroup Recommendations

Over the course of intensive deliberations from the winter of 2021 to the summer of 2022, the Workgroup reached agreement on a set of principles which the Workgroup believes should guide statutory regulation of the supplemental private long-term care insurance (SPLTCI) market as well as private long-term care industry practice in this market:

- The primary goal of the Workgroup is to support Washington's middle class in gaining access to affordable private long-term care insurance supplementing WA Cares.
- Impediments to carriers offering SPLTCI coverage should be mitigated to facilitate the emergence of a vibrant, competitive market.
- Given the significant long-term financial commitment entailed in a consumer purchasing private long-term care insurance and this market's goal of supplementing a state benefit, the state should be proactive in educating consumers about this complex product so they can make informed decisions.
- To be marketed and sold as WA Cares supplemental coverage, SPLTCI policies should be designed to "extend" WA Cares coverage by avoiding discontinuities in care, particularly in terms of covered care settings and providers.
- Statutory changes to facilitate the emergence of a WA Cares supplemental market should apply only to this new market and not to the rest of the private long-term care insurance market.

Guided by these principles, the Workgroup agreed to a set of statutory changes and industry practices that could facilitate the emergence of a supplemental market**.** In tackling specific challenges, it became clear that the guiding principles were in most cases not absolute and often in tension with one another. Pragmatic compromises were struck to develop recommendations that would structure a market that would be attractive to both insurers and consumers. In most areas, consensus was reached. In the remaining areas, the Workgroup agreed on a higher-level objective while acknowledging logistical challenges.

The Workgroup's recommendations on the structuring of the SPLTCI market focused on six areas: consumer protection, the venue for filing policies, the benefit trigger and elimination period, transition issues for near-retiree cohorts, continuity of covered care settings and providers, and coordination of benefits between WA Cares and SPLTCI policies.

Consumer Protection

- **Workgroup recommendations:**
  - ➢ *Develop a consumer guide for people seeking SPLTCI coverage to help them make informed choices.*
    The SPLTCI market is a new type of long-term care insurance product and consumers will need guidance and support to help them understand what is

and is not covered by SPLTCI policies, what consumers will be required to pay in terms of premiums and out-of-pocket payments, etc.

- *Direct and fund the Office of the Insurance Commissioner to expand the Statewide Health Insurance Benefits Advisors (SHIBA) program to educate SPTLCI consumers, with a focus on the middle-income market.*
  It is within the scope of the national State Health Insurance Assistance Program (SHIP), which funds the SHIBA program, to support information, counseling, and assistance activities related to long-term care insurance. The Workgroup recommends leveraging SHIBA to provide such consumer education.
- *For adequate consumer protection in policies marketed and sold as extending WA Cares, a new section of statute in Title 48 should be created to regulate policies that can be marketed and sold as supplemental to WA Cares. The regulation should apply to SPLTCI products only and not disrupt the current long-term care insurance market. It should, however, be sufficiently detailed and thorough to give consumers adequate information to protect them as they make decisions about purchasing a product that entails a substantial long-term financial commitment. Everything known about SPLTCI policies should be disclosed up front so that consumers are not surprised later. This revised or new statute or section of statute should include the following provisions:*
  - *Disclosures*
    - *Disclosure of potential gaps in coverage or discontinuities of care between WCF and SPLTCI*
    - *Disclosure that premiums may go up over time and under what conditions*
    - *Disclosure that individual circumstances can change over time (like job loss), and what if any options would be available to them if those events occur.*
    - *Disclosure that if rates do go up and the consumer cannot afford the increase, the consumer has options such as a reduction in benefits, non-forfeiture of premiums, etc.*
    - *Disclosure that premiums continue after retirement*
    - *Disclosure of when premiums stop ("waiver of premiums") in a given SPLTCI policy*
    - *Disclosure that this policy (like all private long-term care insurance policies sold after 11/1/21) does not qualify the policyholder to opt out of WA Cares*
    - *The above disclosures should apply both to SPLTCI policy language and to SPLTCI policy marketing.*
  - *Requirements*
    - *If rates do go up and the consumer cannot afford the increase, the consumer has options such as a reduction in benefits, non-forfeiture of premiums, etc.*

- *SPLTCI policies should be governed by the same suitability and affordability requirements currently in statute under [RCW 48.83.140](RCW 48.83.140)*
- *The suitability requirements should include a "best interest" standard, stipulating that an agent or broker shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing their financial interest ahead of the consumer's interest.*
- *Statute should require that Inflation protection for SPLTCI benefit levels be offered at a minimum rate of three percent (and leverage SHIBA to help customers understand inflation protection and suitability) to protect the purchasing power of benefits from being eroded over time.*
- *SPLTCI policies may be designed with or without partnership protection. This should give flexibility to carriers and consumers by giving rise to a broader range of SPLTCI policy designs and price points.*

Venue for Filing SPLTCI Policies

The interstate compact has not developed product standards for SPLTCI policies because this is a new type of product. The compact is unlikely to develop such product standards for SPLTCI policies until multiple states have adopted such uniform standards for public insurance programs that assume significant front-end risk, along the lines of WA Cares. Hence SPLTCI policies would need to be filed in Washington State.

It would reduce barriers to entering the SPLTCI market if carriers could leverage existing compact-approved policies sold nationally and modify them with a rider, for example, only to the extent needed to satisfy the specific SPLTCI statutory requirements. Under current administrative practice (although not prohibited by statute), Washington State does not allow this so-called "mix and match."

The Workgroup agreed that allowing "mix and match" would be critical to supporting the emergence of a SPLTCI market in Washington State by lowering the time and cost required to develop, price, and support new products. This would increase the likelihood that carriers will enter the SPLTCI market in the first place and could also increase the number of carriers that enter it. The more carriers that enter the SPLTCI market, the more competitive and affordable it will be, which will also benefit consumers.

At the same time, the Workgroup acknowledges that while "mix and match" is technically allowed under current statute, there are logistical challenges to the Office of the Insurance Commissioner being able to support it. It would not only require additional staff capacity, but also new expertise in the interstate compact regulations. If the legislature were to allow "mix and match," the Workgroup recommends limiting this to the SPLTCI market.

- **Workgroup recommendation:**
  - ➢ *The Workgroup recommends that the state endeavor to work through the logistical challenges for allowing "mix and match" to reach the agreed-upon goal of facilitating the development of a vibrant and competitive SPLTCI market.*

Benefit Trigger and Elimination Period

A core goal of the SPLTCI market is that these policies should be designed to "extend" WA Cares coverage by avoiding discontinuities in care. The workgroup identified two potential "donut holes" in the transition from WA Cares to SPLTCI benefits: the first relates to the benefit trigger, and the second to the elimination period.

The threshold of long-term care need required for a covered individual to be eligible for benefits ("benefit trigger") is generally lower in WA Cares compared to private tax-qualified long-term care insurance (by far the most prevalent type of long-term care insurance). This means that some SPLTCI policyholders will be determined eligible for – and ultimately exhaust – their WA Cares benefits before they are eligible for private supplemental benefits. The Workgroup discussed this issue in-depth and determined that this potential benefit-trigger related gap in coverage is largely unavoidable. Private insurers and consumers both value tax-qualified insurance, and hence the Workgroup felt that non-tax-qualified insurance – which could avoid this gap in coverage by using a benefit trigger akin to that in WA Cares – is unlikely to become prevalent. Meanwhile, if the WA Cares trigger were to become as strict as that in private long-term care insurance, many workers who earn WA Cares benefits would end up being eligible for Medicaid long-term care *before* they would be eligible for WA Cares. That would be contrary to the intent of WA Cares, which is to give middle class Washingtonian access to long-term care such that they either do not need to – or can delay – spending down their life savings to qualify for Medicaid. The Workgroup concluded that the market would determine what types of private long-term care insurance coverage is marketed and purchased but expected that tax-qualified coverage would continue to be most prevalent. That said, workers particularly concerned with avoiding a gap in coverage may choose to purchase non-tax-qualified coverage, albeit with a risk of premiums not being tax-deductible and benefits potentially being to some extent taxable.

Another potential gap in coverage issue discussed by the Workgroup is the "elimination period" in SPLTCI policies, a period of time which has to transpire before benefits kick in. An elimination period can be measured either in days (e.g., calendar days, service days, etc.) or as a period of time until a consumer has purchased long-term care up to a specified dollar amount (also termed a deductible), or a combination of the two. A core rationale for the development of a

WA Cares supplemental market is that the existence of WA Cares should make it possible for carriers to market and sell a new, more affordable type of long-term care insurance policy: one that takes WA Cares benefits as the deductible. For SPLTCI policies to truly "extend" WA Cares benefits, it is critical that the monetary component of the SPLTCI elimination period (deductible) be identical to, or closely align with, the WA Cares lifetime benefit. If not, a gap in coverage (donut hole) emerges.

- **Workgroup recommendations:**
    - *The SPLTCI deductible (the monetary component of the SPLTCI elimination period) should be equal to the WA Cares full maximum lifetime benefit (starting at $36,500) and automatically adjusted for inflation. And the WA Cares annual benefit inflation adjustment should be automatic, rather than an annual discretionary determination by the LTSS Trust Council.* Together, these measures will prevent emergence of an elimination-period related donut hole between exhaustion of WA Cares benefits and beginning of SPLTCI benefits. If the WA Cares lifetime benefit is not automatically indexed for inflation, it will be impossible for carriers to ensure that over time their SPLTCI deductible is equal to the WA Cares full lifetime benefit amount which, in turn, is key to SPLTCI policies truly "extending" WA Cares benefits. In other words, without automatic indexation of WA Cares benefits, carriers will have to guess what WA Cares benefit indexation rates will be (as these must be assumed in order to price a policy and must be specified in the insurance contract at time of sale); if WA Cares inflation adjustments turn out to be lower in practice, this will create a gap in coverage (donut hole) for consumers that could become sizable over time.
    - *Carriers may not require that a client undergo a functional assessment or satisfy a benefit trigger in order to determine that a SPLTCI elimination period has begun or ended. (A carrier may, of course, conduct a functional assessment and apply a benefit trigger for purposes of approving the SPLTCI claim and authorizing SPLTCI benefits.) SPLTCI policies must accept exhaustion of maximum WA Cares benefits (currently $36,500) by a SPLTCI policyholder – or for WA Cares beneficiaries with partial benefits, exhaustion of WA Cares benefits and utilization of paid care which together total the proposed statutory SPLTCI deductible (currently $36,500) – as sufficient to satisfy the monetary component (deductible) of the SPLTCI elimination period.* (Note: This recommendation assumes the above two recommendations are also adopted, which ensure that the maximum WA Cares lifetime benefit is equal to the monetary component [deductible] of SPLTCI policies. If not, then SPLTCI policies must accept exhaustion of WA Cares benefits by a SPLTCI policyholder as sufficient to satisfy the portion of the SPLTCI elimination period equal to the dollar amount of the person's lifetime benefit.)
    - *For proof of exhaustion of WA Cares benefits, it will suffice that WA Cares Fund informs the carrier when a client's WA Cares benefits are exhausted.*

- *SPLTCI policies' elimination period may include, in addition to the monetary component (deductible), a time component such as 3, 6, 9, or 12 months, but not to exceed 12 months. For policies that include both the monetary and time component, a policyholder would satisfy the SPLTCI elimination period after the later of two events: exhausting WA Cares benefits and being on their WA Cares claim for the time period specified in the policy.* Allowing a time component in SPLTCI elimination periods serves two goals. First, it provides more actuarial predictability to carriers as they design and price their SPLTCI policies, increasing their willingness to enter a market that requires them to accept a policyholder exhausting WA Cares benefits as satisfying the monetary component of an SPLTCI elimination period (key to SPLTCI policies truly extending WA Cares benefits). Second, allowing a time component in SPLTCI elimination periods makes it possible for carriers to offer more affordable SPLTCI policy variants because they will be able to rule out that a beneficiary will need to go on claim earlier than the policy's specified time period, reducing the carrier's risk exposure. If carriers can price their SPLTCI policies lower, this will make SPLTCI policies more affordable for middle-income consumers. In sum, allowing a time component in SPLTCI elimination periods will make the emerging SPLTCI market more viable.

  In exchange for a lower premium, consumers who choose to purchase a SPLTCI with a time component in the elimination period run the risk of exhausting their WA Cares benefits prior to this time period (after going on WA Cares claim) being reached. If that risk transpires, the SPLTCI policyholder will have to pay out of pocket (donut hole) until their SPLTCI policy begins paying. Consumers will make choices in the context of this tradeoff between elimination period duration, premium rate, and donut hole risk.
- *The new SPLTCI consumer guide, SHIBA counseling, and disclosures should support consumers in assessing the tradeoffs between various elimination period options and price points and educate consumers about the importance of budgeting their WA Cares benefits carefully to reduce the likelihood and size of a potential donut hole.*

Transition Issues for Near Retiree Cohorts

The Workgroup noted an issue that uniquely affects the near-retiree transition cohorts (those born prior to 1968). If a worker nearing retirement contributes to WA Cares, for example, for only two years and thereby earns a lifetime benefit of $7,300 (subject to inflation adjustment over time), and that worker has purchased a SPLTCI policy, the SPLTCI policy will have an elimination period (deductible) of $36,500. Near-retirees, such as the worker in this example, who choose to purchase an SPLTCI policy will need to pay out of pocket for their long-term care up to an amount equal to the difference between their earned WA Cares benefit and their

SPLTCI policy's $36,500 elimination period (in this example, the worker will need to pay $29,200 out of pocket).

- **Workgroup recommendations:**
  - *The SPLTCI consumer guide and SHIBA counseling will work to educate near-retirees on the cost and benefits of purchasing SPLTCI policies. A particular focus of materials and counseling aimed at near-retirees will be the potential for a large deductible before the SPLTCI policy begins paying claims, its implications, and strategies for managing this.*
  - *For SPLTCI policies marketed and sold to workers born prior to 1968 ("near-retirees"), the dollar component of the elimination period (deductible) may be $36,500 or less.* This will reduce the size of a potential donut hole between exhaustion of partial "near-retiree" WA Cares benefits and commencement of SPLTCI benefits.

Continuity of Covered Care Settings and Providers

The Workgroup agreed that a core goal of the SPLTCI market is to ensure that a person who is transitioning from WA Cares to SPLTCI benefits and is receiving care in a given care setting can continue to receive care in that setting. For example, if a person is in an adult family home, that person should not be forced to move into a different, more expensive care setting due to limitation of care settings in SPLTCI coverage. The biggest continuity of care challenge identified was for care by family providers. The Workgroup agreed that it could be destabilizing for a person receiving paid care from their adult child, for example, to have to "fire" them and hire a professional caregiver simply because they were transitioning from WA Cares to SPLTCI benefits. Not only could such disruptions in continuity of care potentially worsen the health and long-term care trajectory of the person receiving care, but they could also oblige the beneficiary to exhaust their insurance benefits more quickly than would otherwise be the case, resulting in them having to spend down their savings and potentially rely on Medicaid sooner than might have otherwise been necessary (or it might not have become necessary at all). Furthermore, some WA Cares beneficiaries might be reluctant to make use of certain care settings or providers approved in WA Cares if there is lack of clarity around whether their SPLTCI policy will allow them to continue to receive care in that care setting or from that provider.

- **Workgroup recommendations:**
  - *Unless there is good-faith reason to believe that a care setting or provider is not suited to meeting the care and safety needs of a beneficiary, SPLTCI policies must allow continuity from WA Cares to SPLTCI coverage of care setting and provider, including family providers, so that SPLTCI "extends" WA Cares benefits without disrupting care. In other words, unless there is good-faith reason to believe that a care setting or provider is not suited to meeting*

the care and safety needs of a beneficiary, a SPLTCI policy cannot require a policyholder to change the care setting or provider (including family providers) of the care they were receiving under WA Cares. Carriers may audit for fraud, however, i.e. to determine whether care being billed is actually being provided.

- *If a carrier determines that a care setting or provider is not suited to meeting the care and safety needs of a beneficiary the carrier may, effective 90 days after the transition from WA Cares to SPLTCI benefits, require a change in care setting or provider. The beneficiary will have a right to appeal this decision through a third-party independent review tracked by the Office of the Insurance Commissioner.*
- *In their covered care settings and providers, SPLTCI policies must generally include coverage of family providers.*

Collaboration in Benefit Administration between WA Cares and SPLTCI Policies

- **Workgroup agreements:**
  - *To support a seamless transition from WA Cares to SPLTCI, a process of reciprocal administrative notification should be developed:*
    - *When a WA Cares Fund qualified individual applies for WA Cares benefits, WA Cares Fund asks whether the individual has SPLTCI coverage and if yes, requests written consent from the applicant to share this information with the SPLTCI carrier for the purpose of triggering the SPLTCI policy's elimination period as well as any potential care coordination.*
    - *When a Washingtonian purchases a SPLTCI policy, the carrier requests written consent from policyholder to share this information directly with WA Cares Fund and if this consent is granted, shares that information with WA Cares Fund.*
  - *Only basic demographic information that would allow a person to be identified in each system would be shared, no health information or data on claims would be shared.*

In conclusion, as the LTSS Trust Commission considers recommendations on other policy questions related to WA Cares Fund, the SPLTCI workgroup recommends the Commission consider any potential impact of those policy changes on the SPLTCI and existing private markets.