



Long-Term Services and Supports Trust (WA Cares Fund) Proposed new and amended rules related to implementation of Substitute House Bill 2467, qualified individuals, and definitions

December 2024

Introduction

Title 50B RCW created a Long-Term Services and Supports Trust Program (WA Cares Fund) to provide long-term care benefits for eligible Washington residents. The program is funded through employee premium deductions of 0.58 percent (\$0.58 per \$100) of earnings. Premium deductions began on July 1, 2023. Self-employed persons and federally recognized tribes may elect WA Cares Fund coverage, and individuals who relocate outside of Washington may elect to continue their coverage beginning July 1, 2026.

Beginning July 1, 2026, employees who reside in Washington who have paid into the program for the required number of years, and worked the required number of reportable hours in each of those years, will be able to access the benefit if needed. Beginning July 1, 2030, individuals who relocate outside of Washington and elect to continue coverage, including working the required number of years and reportable hours, will be able to access the benefit if needed.

To qualify for the full benefit amount, individuals must have worked and contributed to the WA Cares Fund under one of the following pathways:

- At least ten years without a break in service of five or more consecutive years;
- Three of the last six years from the date of application; or
- For individuals born prior to January 1, 1968, 1/10 of the benefit for each year of contributions.
- For each of the above pathways, individuals must have worked at least 500 reportable hours per year during each of the qualifying years.

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

- Professional care at home or in licensed residential or nursing facilities
- Home safety evaluations
- Home-delivered meals
- Training, pay, and support for family members who provide care
- Transportation

- Adaptive equipment and technology (wheelchair ramps or medication reminder devices, for example)
- Memory care

The WA Cares Fund is administered by four state agencies, each with different program responsibilities. The Employment Security Department (department) is responsible for assessing and collecting premiums, processing exemption applications, determining qualified individual status, and processing elective coverage requests from self-employed individuals, federally recognized tribes, and individuals who relocate outside of Washington. The Department of Social and Health Services is responsible for determining eligible beneficiaries, administering benefits, and managing providers. The Health Care Authority is responsible for processing payments, tracking benefit usage, and coordinating benefits. The Office of the State Actuary is responsible for performing actuarial audits on the trust fund.

Substitute House Bill (SHB) 2467 passed into law during the 2024 legislative session. The proposed rules implement a portion of the bill that was codified in RCW 50B.04.180 by defining “out-of-state participant.” The proposed rules also add additional program definitions, outline qualified individual requirements and determinations, and further align the WA Cares Fund and Paid Family and Medical Leave appeals processes.

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 SECTION

WAC 192-900-040 Out-of-state participant. An individual who has elected coverage under RCW 50B.04.180 is considered an "out-of-state participant."

NEW SECTION

WAC 192-900-045 Qualified individual. A "qualified individual" is an individual who has met the requirements outlined in RCW 50B.04.050 and chapter 192-940 WAC.

NEW SECTION

WAC 192-900-050 Year. A "year" for the purpose of qualified in- dividual determinations made by the department under RCW 50B.04.050 means a calendar year, beginning on January 1 and ending on December 31.

Explanation of proposed rules: The proposed new rules add program definitions to implement a portion of SHB 2467 (RCW 50B.04.180) by defining “out-of-state participant” and add additional program definitions. The proposed rules are necessary to provide clarity regarding program operations.

AMENDATORY SECTION

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. Per RCW 50B.04.120, appeal procedures under Title 50B RCW must align with the appeal procedures under Title 50A RCW. The following general procedural rules for appeal under the paid family and medical leave program apply to the long-term services and supports trust program:

- (a) WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?
- (b) WAC 192-800-045 Can an appeal be withdrawn?
- (c) WAC 192-800-050 What happens after an appeal is submitted?
- (d) WAC 192-800-055 Who will be notified if an appeal is filed and what will it include?
- (e) WAC 192-800-060 What happens if an appeal or a petition has been filed and one of the parties has a change of contact information?
- (f) WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review?
- (g) WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing?
- (h) WAC 192-800-075 Who can request a postponement of a hearing?
- (i) WAC 192-800-080 Will depositions and written discovery be permitted?
- (j) WAC 192-800-085 When will administrative law judges hear consolidated cases?
- (k) WAC 192-800-090 What is included in decisions issued by the office of administrative hearings?
- (l) WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?
- (m) WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?
- (n) WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?
- (o) WAC 192-800-110 What options are available for an aggrieved party who received an order of default?
- (p) WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office?
- (q) WAC 192-800-120 When would the commissioner not issue declaratory orders?
- (r) WAC 192-800-125 When is a petition for review considered delivered to the department?
- (s) WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?

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Explanation of proposed rule: The proposed amendment ensures the WA Cares Fund appeals procedures are aligned with those in place for PFML, as required under RCW 50B.04.120. The proposed amendment is necessary to comply with the requirement to adopt standards and procedures that align between programs.

Chapter 192-940 WAC QUALIFIED INDIVIDUALS

NEW SECTION

WAC 192-940-005 Earning years to become a qualified individual. (1) The department will determine years earned toward qualified individual status under RCW 50B.04.050 based on wages earned and hours worked in employment as reported under chapter 192-910 WAC or in covered self-employment under chapter 192-915 WAC.

(2) Only hours worked in reportable employment or covered self-employment will be considered when determining whether an individual has worked at least 500 hours each year.

(3) A year toward qualified individual status may be earned once an individual has accrued 500 hours in employment as reported under chapter 192-910 WAC or in covered self-employment as reported under chapter 192-915 WAC.

(4) Wages and hours reported when an individual had an approved exemption do not count toward qualifying for the benefit.

NEW SECTION

WAC 192-940-010 How will the department determine if someone is a qualified individual? (1) Qualified individual status under RCW 50B.04.050 is determined as follows:

An individual who has earned 10 years toward becoming a qualified individual without a break of five or more consecutive years in that 10 years will be eligible for the full benefit amount. Years with less than 500 hours reported will count toward the break of five or more consecutive years;

An individual who, from the date of application for benefits, has earned three of the last six years toward becoming a qualified individual will qualify for the full benefit amount; or

An individual born before January 1, 1968, who does not qualify under (a) or (b) of this subsection will qualify for one-tenth of the benefit amount for each earned year toward becoming a qualified individual.

An individual who continues to work in employment or in covered self-employment after qualifying for subsection (1) (b) or (c) of this section, or both, may be eligible to earn additional years toward becoming a qualified individual.

An individual may not exceed the maximum lifetime benefit amount under RCW 50B.04.060.

An individual who has an approved exemption cannot become a qualified individual.

Explanation of proposed rules: The proposed new rules outline qualified individual requirements and clarify how the department will determine if someone is a qualified individual. The proposed rules are necessary to clarify requirements and provide additional guidance regarding program operations.

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 WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-900-040 Out-of-state participant	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals choosing to participate in the program.
2.	WAC 192-900-045 Qualified individual.	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party.

		RCW 34.05.310(4)(e) – Portions of the rule are dictated by RCW 50B.04.050. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.
3.	WAC 192-900-050 Year	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.
4.	WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.	RCW 34.05.310(4)(g) – The rule outlines a procedure, practice, or requirement relating to agency hearings. RCW 34.05.310(4)(e) – The rule and alignment of appeals processes is dictated by RCW 50B.04.120.
5.	WAC 192-940-005 Earning years to become a qualified individual.	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.
6.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits. RCW 34.05.310(4)(e) – Portions of the rule are dictated by RCW 50B.04.050.

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

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

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

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

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

Substitute House Bill (SHB) 2467 passed into law during the 2024 legislative session. The proposed rules implement a portion of the bill that was codified in RCW 50B.04.180 by defining “out-of-state participant.” RCW 50B.04.050 outlines requirements for individuals to become eligible to receive program benefits. The department’s responsibility for administration of this portion of the program is related to determining if someone is a qualified individual. In addition, RCW 50B.04.120 requires that the department align standards and procedures relating to appeals between the WA Cares Fund program and the PFML program. The proposed rules add program definitions, outline qualified individual requirements and determinations, and further align the WA Cares Fund and PFML appeals processes. The proposed rules provide guidance to the general public regarding implementation and administration of program requirements.

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

The rules are needed to implement and clarify changes to Title 50B RCW that passed during the 2024 legislative session. In addition, the rules are needed to ensure provisions for the WA Cares Fund align with provisions for the PFML program under Title 50A RCW where required by law. The rules clarify qualifications and application requirements for qualified individual requirements and how the department will determine if someone is a qualified individual. There are no alternatives to rulemaking that would provide this type of guidance.

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

The proposed rules will benefit the public by providing clarity, guidance, and transparency for WA Cares Fund implementation and administration. Individuals who apply to program benefits will have clear guidance on requirements in order to be a qualified individual. The proposed language of the rules aligns

with the requirements of Title 50B RCW, and aligns with rules, policies, and procedures already in place for the PFML program where required.

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

No alternative versions of the rules were considered.

Conflicts with Federal or State law

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

Performance impositions on private vs. public sectors

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

Conflicts with Federal or State regulatory bodies

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

Coordination with Federal, State, or local laws

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