



## **Long-Term Services and Supports Trust (WA Cares Fund) Proposed new and amended rules related to implementation of Engrossed Substitute Senate Bill 5291**

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September 2025

### 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;
- 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.

Engrossed Substitute Senate Bill (ESSB) 5291 passed into law during the 2025 legislative session. The proposed rules implement portions of the bill and include requirements regarding qualifying for benefits, a new voluntary exemption for off-duty civilian employment for active-duty service members, automatic exemptions for non-immigrant work visa holders, voluntary rescission of private long-term care insurance exemptions, qualified individual determinations for a pilot project, and collective bargaining agreement participation requirements. Additional proposed rules include a new chapter regarding due process when additional information is requested by the department.

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.

#### AMENDATORY SECTION

**WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.** (1) An employee who has long-term care insurance as outlined in RCW 50B.04.085 and attests to this, may apply through December 31, 2022, for a permanent exemption from the premium assessment under RCW 50B.04.080. Prior to July 1, 2028, an employee may rescind this exemption and participate in the program as described under WAC 192-905-009. "Long-term care insurance" has the meaning provided in RCW 48.83.020.

(a) Only an employee who is ~~((eighteen))~~ 18 years of age or older on the date of application may apply for an exemption.

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

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

(2) ~~((Beginning January 1, 2023,))~~ An employee who is a veteran of the United States military and has a service-connected disability rating by the United States department of veterans affairs of 70 percent or greater may apply for a permanent exemption from the premium assessment under RCW 50B.04.080.

(a) The employee must provide information sufficient for the department to verify their identity.

(b) The employee must provide documentation of their service-connected disability rating at the time of application.

(c) The department may verify an employee's service-connected disability rating and may request additional information from the employee.

**Explanation of proposed rule:** The proposed amendments add a reference to the option for employees to rescind their previously approved long-term care insurance exemption and participate in the program. Other changes to this section are administrative.

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#### AMENDATORY SECTION

**WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.** (1) An employee may apply for a conditional exemption from the premium assessment under RCW 50B.04.080 if:

(a) The employee is a spouse or registered domestic partner of an active duty service member in the United States armed forces whether or not deployed or stationed within or outside of Washington;

(b) The employee ~~((holds a nonimmigrant visa for temporary workers, as recognized by federal law))~~ is an active duty service member in the United States armed forces, whether or not deployed or stationed within or outside of Washington, who is concurrently engaged in off-duty civilian employment as an employee of an employer; or

(c) The employee maintains a permanent primary residence outside of Washington.

(2) The employee must provide information sufficient for the department to verify their identity.

(3) The employee must provide documentation sufficient to verify or substantiate the exemption under RCW 50B.04.055 at the time of application.

(4) The department may request additional information from the employee at any time.

(5) The employee must notify their employer(s) and the department within 90 days of no longer meeting exemption criteria. Requirements for notification and penalties for failing to provide notification to discontinue the exemption are outlined in WAC 192-905-007.

**Explanation of proposed rule:** The proposed amendments remove language related to an employee who holds a nonimmigrant visa for temporary workers because those individuals will be automatically exempt unless they choose to participate. The amendments also add language regarding a new voluntary conditional exemption type for active-duty service members in the U.S. Armed Forces who are concurrently engaged in off-duty civilian employment.

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**NEW SECTION**

**WAC 192-905-008 Automatic exemption for an employee who holds a nonimmigrant visa for temporary workers.** (1) An employee who holds a nonimmigrant visa for temporary workers, as recognized by federal law, is not subject to the rights and responsibilities of Title 50B RCW, unless the employee notifies their employer(s) in writing that they would like to participate.

(2) The employer(s) must maintain a copy of the written notice of the employee's request to participate in the program.

(3) If an employee notifies their employer(s) that they would like to participate in the program, participation begins and premiums must be assessed:

(a) At employment commencement for new employees; or

(b) The quarter immediately following notification.

(4) If an employee who holds a nonimmigrant visa for temporary workers becomes a permanent resident or citizen employed in Washington, the employee becomes subject to the rights and responsibilities of this chapter beginning the quarter immediately following permanent status and premiums must be assessed.

(5) Wages and hours reported when an employee did not participate in the program do not count toward qualifying for the benefit.

**Explanation of proposed rule:** The proposed new rule describes how nonimmigrant temporary work visa holders, as recognized by federal law, are automatically exempt from the program unless they choose to participate in the program. The rule outlines requirements for the employee to notify their employer(s) if they would like to participate in the program. It also outlines the requirement that once the employee is a permanent resident or citizen, premiums must begin being assessed the quarter immediately following permanent status.

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**NEW SECTION**

**WAC 192-905-009 Rescission period for an employee who has received a voluntary long-term care insurance exemption.** From January 1, 2026, through June 30, 2028, an employee who has received a permanent exemption under RCW 50B.04.085 may rescind their exemption and participate in the program.

- (1) An employee must notify the department that they would like to rescind their exemption in a format approved by the department.
- (2) The rescission will be effective the quarter immediately following notification.
- (3) The employee must notify any current employer of their rescinded exemption by providing a copy of their rescission letter to the employer.
- (4) The employer that is the employer at the time of rescission must maintain a copy of the rescission letter provided by the employee and begin assessing and collecting premiums on the effective date of the rescission.
- (5) Wages and hours reported when an employee had an approved exemption do not count toward qualifying for the benefit.

**Explanation of proposed rule:** The proposed new rule outlines the dates the long-term care insurance exemption rescission is available and the process an employee must take to rescind their permanent exemption. The rule also requires the employer at the time of rescission to maintain a copy of the rescission letter the employee provides.

#### AMENDATORY SECTION

**WAC 192-905-020 ~~When is an ((exempt))~~ employee entitled to a refund of premiums?**

- (1) If an exempt employee fails to notify an employer of their exemption, the exempt employee is not entitled to a refund of any premium deductions made before notification was provided.
  - (2) Any premium deductions made before notification was provided to the employer remain with the employer.
  - (3) ~~((If an employer deducts premiums after the employee provides notification of the employee's exempt status,))~~ The employer must refund ((the)) deducted premiums to the employee if:
    - (a) The employer deducts premiums after the employee provides notification of the employee's exempt status; or
    - (b) The employee is automatically exempt under WAC 192-905-008 and has not chosen to participate in the program.

**Explanation of proposed rule:** The proposed amendments add language that requires a refund of premiums an employer may have collected from an employee who holds a nonimmigrant visa for temporary workers.

#### AMENDATORY SECTION

**WAC 192-910-015 What are the employer's responsibilities for premium deductions?**

- (1) Employers must deduct premiums for each pay period in which the employee receives wages.
- (2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; ~~((or))~~

(b) The employee has an approved exemption and has provided the required proof of the exemption to the employer; or

(c) The employee holds a nonimmigrant visa for temporary workers, unless the employee participates in the program under WAC 192-905-008.

~~(4) ((Once an employer is notified that an employee no longer qualifies for an exemption, the))~~ An employer must abide by all premium assessment requirements under chapter 50B.04 RCW for ~~((that))~~ an employee who:

(a) Notifies the employer that they no longer qualify for an exemption under WAC 192-905-007;

(b) Becomes a permanent resident or citizen who was previously exempt under WAC 192-905-008; or

(c) Rescinds their exemption under WAC 192-905-009.

**Explanation of proposed rule:** The proposed amendments add the requirement for employers to not deduct premiums for an employee who holds a nonimmigrant visa for temporary workers, unless the employee participates in the program under WAC 192-905-008, and adds references to the requirement for employers to deduct premiums for an employee who no longer qualifies for a conditional exemption, becomes a permanent resident or citizen, or rescinds their long-term care insurance exemption.

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#### AMENDATORY SECTION

**WAC 192-920-005 Parties to collective bargaining agreements.** (1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50B RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50B RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50B RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(4) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50B RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(5) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50B RCW and related rules prior to the expiration, reopening, or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

(6) The provisions described in this section are effective through December 31, 2025.

**Explanation of proposed rule:** The proposed amendment sunsets the collective bargaining non-participation provisions after December 31, 2025. This aligns with the Paid Family and Medical Leave sunset provision that was effective after December 31, 2023.

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#### AMENDATORY 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:

(a) 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))~~;

(b) 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

(c) 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 maximum program benefit amount for each earned year toward becoming a qualified individual.

(2) 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.

(3) An individual may not exceed the maximum ~~((lifetime))~~ program benefit amount under RCW 50B.04.060.

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

**Explanation of proposed rule:** The proposed amendments remove the break of five or more consecutive years from the 10-year qualifying pathway and clarify that benefit percentages and maximums are related to the maximum program benefit amount.

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#### NEW SECTION

**WAC 192-940-011 How is a qualified individual determination made for the pilot project?** (1) Selected individuals may participate in a pilot project established under chapter 50B.04 RCW between January 1, 2026, and June 30, 2026.

(2) The department will make qualified individual determinations in accordance with provisions outlined under this chapter.

**Explanation of proposed rule:** The proposed new rule outlines how qualified individual determinations will be made for the pilot project that selected individuals may participate in between January 1, 2026, and June 30, 2026.

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## NEW CHAPTER 192-950 WAC DETERMINATIONS

### NEW SECTION

**WAC 192-950-005 What happens if there is a question regarding an individual's application?** (1) The department will send interested parties a notice when the department needs more information to make a determination. The notice will include:

(a) The information the department needs to make a determination; and  
(b) The date by which the interested parties must respond. This date will be no earlier than 10 calendar days from the date the notice is sent. Reasonable mailing time will be added when the notice is sent via postal service.

(2) The individual and interested parties have a right to respond to the department regarding questions on exemption, qualified individual, and out-of-state coverage applications.

**Explanation of proposed rule:** The proposed new rule outlines what actions the department will take if additional information is needed regarding applications for exemptions, qualified individuals, and out-of-state coverage.

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### NEW SECTION

**WAC 192-950-010 What happens if an interested party does not respond to the department's request for information?** (1) If an interested party fails to respond by the due date on the notice provided under WAC 192-950-005, the department will make a determination based on available information.

(2) Subject to RCW 50B.04.120, if an application is denied because the interested party did not respond to a request for information, the denial will remain in effect until sufficient information is provided that results in an approved determination.

**Explanation of proposed rule:** The proposed new rule outlines the actions the department will take to make a determination when there is no response regarding a request for information.

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### NEW SECTION

**WAC 192-950-015 How will determinations be made?** (1) When the department has issued a notice under WAC 192-950-005, the department will not make a determination on an

individual's application until all interested parties have had an opportunity to provide information by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, it will inform all interested parties of the outcome.

(4) If the department receives new and relevant information after a determination is made:

(a) The information will be considered by the department;

(b) Interested parties will be given an opportunity to respond, if necessary; and

(c) The department may make a new determination based on the newly provided information.

**Explanation of proposed rule:** The proposed new rule outlines the process the department will use to make determinations, consider information received, and give interested parties an opportunity to respond.

## 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:

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is <u>exempt</u>. Provide RCW to support this exemption.</b>
1.	WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
2.	WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
3.	WAC 192-905-008 Automatic exemption for an employee who holds a nonimmigrant visa for temporary workers.	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).

4.	WAC 192-905-009 Rescission period for an employee who has received a voluntary long-term care insurance exemption.	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
5.	WAC 192-905-020 When is an employee entitled to a refund of premiums?	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
6.	WAC 192-910-015 What are the employer’s responsibilities for premium deductions?	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
7.	WAC 192-920-005 Parties to collective bargaining agreements.	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
8.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
9.	WAC 192-940-011 How is a qualified individual determination made for the pilot project?	RCW 34.05.310(4)(e) – The rule is dictated by statute (ESSB 5291, Chapter 380, Laws of 2025).
10.	WAC 192-950-005 What happens if there is a question regarding an individual’s application?	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.
11.	WAC 192-950-010 What happens if an interested party does not respond to the department’s request for information?	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.
12.	WAC 192-950-015 How will determinations be made?	RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits, exemptions, or out-of-state coverage.

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.”

Engrossed Substitute Senate Bill (ESSB) 5291 passed into law during the 2025 legislative session. The proposed rules implement portions of the bill and include requirements regarding qualifying for benefits, a new voluntary exemption for off-duty civilian employment for active-duty service members, automatic exemptions for non-immigrant work visa holders, voluntary rescission of private long-term care insurance exemptions, qualified individual determinations for a pilot project, and collective bargaining agreement participation requirements. Additional proposed rules include a new chapter regarding due process when additional information is requested by the department. The proposed rules provide guidance to employers and 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 2025 legislative session. The rules clarify requirements for nonimmigrant temporary work visa holders, exemptions and rescinding exemptions, qualified individual determinations, collective bargaining agreement participation requirements, and outline how determinations will be made when the department requests additional information. 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 for exemptions and program benefits, or wish to rescind their private long-term care insurance exemption, will have clear guidance. In addition, employers will have clear guidance on the date the collective bargaining non-participation provision sunsets, and requirements for nonimmigrant temporary work visa holder automatic exemption and voluntary participation. The rules will also provide guidance and outline due process requirements when the department needs more information in order to make determinations.

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, nonimmigrant temporary work visa holders who have not chosen to participate in the program, 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.