



EQUITABLE

Washington state Long-Term Care Trust Act

Does your client have alternatives?

Washington is the first state to address the looming problem of long-term care (LTC) in older and impaired individuals, and the toll LTC needs takes on a family and their finances. It looks to address, or reduce, the sting of LTC costs via a state sponsored LTC benefit, paid from a newly created Washington state Long-Term Care (LTC) Trust Act.

The law creating this trust, H.B. 1087, was enacted in 2019 and fine-tuned with an amendment in 2020. In large part, the law was initiated because the state spent (according to H.B. 1087) \$24,000/year for in-home care for each Medicaid recipient and \$65,000/year for nursing home care. The state also recognized the physical, emotional and financial toll long-term care takes on families, and the bill projected that the pool of family caregivers may be cut in half by 2030.

This trust is likely to attract more attention by Washington state clients as we move through 2021. There is a statewide employer education program through 2021. The first deductions are scheduled to begin January 1, 2022. Additionally, this trust will garner more attention over 2021 as individuals will be able to “opt-out,” starting October 1, 2021 with proof of other LTC coverage.

Although this was first of its kind legislation, at least one major CPA firm noted several other states are considering similar plans. Depending on the source these include Minnesota, Illinois, Michigan and California, have weighed in on similar legislation or initiatives.

What is the Washington State LTC Trust Act?

The Washington State LTC Trust Act is scheduled to provide an LTC benefit to all qualified individuals of up to \$36,500 starting on January 1, 2025 (or \$100/day) and indexed for inflation. To qualify, individuals must be vested by way of trust contributions and meet certain LTC impairments.

To fund this trust, Washington state will begin collecting a payroll tax of \$0.58 per \$100 of wages on all salaried employees beginning in 2022. Self-employed individuals (sole proprietors, independent contractors, partners, etc., as described in H.R. 1087) can opt into the state pool. Self-employed individuals are not required to opt into the trust.

To receive benefits, which begins in 2025, an individual:

- Must vest into the benefits by contributing to the payroll tax into the Washington State LTC Trust Act for at least 10 years (without a break of 5 consecutive years); or have paid for 3 of the last 6 years.
 - This requires a minimum of 500 hours of compensated hours for each year in the calculation.
- To qualify, an individual must be unable to perform a minimum of three out of 10 activities of daily living (ADLs) or suffer a cognitive impairment.
 - These are very similar to the ADLs typically found in LTC or LTC riders, although they are broken out slightly differently.

Funds can be spent on nursing home, adult living or assisted living types of settings, or home healthcare. Home healthcare can include reimbursements for structural enhancements, Meals on Wheels or ride services. Family members may qualify for reimbursements after receiving Washington state approved formal training.

The original bill was amended in February 2020 by Substitute Senate Bill 6267. It allows for individuals to opt out of participation in this trust. As reiterated elsewhere in this eNotice, there may be good reasons for an individual to opt out of participation. This is an item they should discuss with their financial professionals, because once they opt out, they will not be able to reenter the trust.

This benefit will not be available to everyone

It's important to note this benefit will not be available to all Washington state residents. For that reason, many individuals will want to consider alternatives, such as a personally owned life insurance policy with an LTC rider, such as Equitable's LTC SR.

Self-employed individuals	These individuals and owners of pass-through entities receiving income through K-1s do not automatically participate. Only wage income from traditional employees receiving W-2 income is the default into funding the Washington State LTC Trust. These other individuals can opt into the trust but, as discussed below, there may be reasons why they would choose not to participate.
Older individuals	Including those near retirement, will not qualify for a benefit. As noted elsewhere in this eNotice, there are 6- and 10-year participation tests. This will exclude retired individuals and older individuals nearing retirement. <ul style="list-style-type: none">- For example: If we assume a normal retirement age of 65, it is possible a client age 62 or older might not ever receive a benefit from Washington state, but may need to pay into the trust during their last few years of work. Thus, if they are healthy, they will want to explore other options and opt out of participation.
Clients subject to collective bargaining agreement	The enabling legislation will not require existing collective bargaining agreements to be amended to collect this tax; it appears until such time as the agreement is next renegotiated, persons subject to a collectively bargained agreement will not participate in the trust.
Stay-at-home parents and family caregivers	Those persons who are out of the traditional workforce, such as stay-at-home spouses or family caregivers will not be contributing to the trust and, therefore, will not be eligible. These individuals may need to seek other alternatives for their LTC protection.
Businesses will not have protection for their key employees	Many businesses may be hurt by the loss of a key individual or owner. They often buy life insurance protection against an unexpected death, but an LTC impairment can be equally devastating and may not always occur once someone is retired.

All these individuals or businesses may want to seek alternative options, such as an Equitable life insurance policy with the LTCSR. Additionally, as discussed below, some of those who are eligible may want to consider opting out of the state's LTC trust participation.

Why would your client want to opt out of the state LTC pool?

Although a benefit from the state to cover LTC costs might seem attractive, there may be many reasons why a client would want to opt out of participating in the pool.

Costs

The charge against salary is steep for the benefit received. Depending on a client's age and health, the client may be able to purchase a different, underwritten benefit, such as an Equitable policy with the LTCSR attached. One service noted approximately 45% of state residents could receive comparable coverage on the private market for the same or lower cost.

The benefit amount is small

As the law was passed, the total benefit to each Washington state resident would be \$36,500, if they qualify. This is a baseline benefit compared to the overall cost of LTC. Although that amount is scheduled to be indexed for inflation, it is only a small portion of what 1 year of a private nursing home might cost. According to one LTC carrier, the current amount is about \$119,000/year for Washington state, with an average length of 3 years. Given this, the Washington state pool, if available, might cover only a third to half a year of necessary benefits.

The pool will cost high-income clients disproportionately more

Unlike a program such as Social Security, there is no cap on the LTC pool assessment against a client's salary. Because of this, high-income clients may pay far more into the Washington state LTC pool than they will receive by way of the \$36,500 benefit.

- For example, a high-income person earning \$400,000/year would contribute approximately \$2,320 per year into the trust. Over 20 years, and assuming no compensation increases, they would contribute \$46,400 for a benefit that is currently \$36,500.

Individuals may be paying into a pool they will not benefit from

According to one LTC carrier, approximately a third of individuals will never need LTC, while 20% may need a benefit lasting more than 5 years. By contrast, buying a life insurance LTC rider on a policy offers a "use it, don't lose it" approach. To the extent a death benefit isn't accelerated for LTC needs, that death benefit will be paid to your client's designated beneficiaries.

Your client must vest in the benefit

As mentioned about, a client must be vested in the benefits pay by contributing at least 3 out of 6 years, if not longer. As such, and as discussed in more detail in the section above, many individuals will be excluded from the benefits.

The benefit isn't portable

In order to qualify for the benefit, your client must be vested and a resident of Washington state at the time of a claim. If a client were to pay into the state pool and then relocate outside of Washington state, they cannot claim the benefit. There are only limited means to obtain a refund of their prior contributions.

It's unclear if the trust fund will remain financially viable

This is a stand-alone trust. This helps so lawmakers cannot dip into this trust for other benefits. However, the state is also barred from using outside (non-trust) funds to pay the benefits. If that's the case, either the tax must be raised, or benefits may need to be cut. Although not directly related, at least one lobbying group, admittedly against this approach, indicated Washington state will pay out \$4 billion/year on Medicaid-funded LTC by 2030, which the trust is only projected to save \$12.5 million.

How to opt out of the LTC trust

Under RCW 50B.04.085, individual employees can opt out of the Washington state trust, and the payroll tax, if they can demonstrate ownership of an LTC policy with their employer. The window to opt out begins October 1, 2021 and will run through December 31, 2022. To file an exemption, the employee must be 18 years or older.

Through informal email correspondence with individuals at the Washington State Employment Security Department and State Department of Social and Health Services, Equitable Advanced Markets has learned:

- The form will not be available before October 1, 2021 and reiterated the last day to opt out would be December 31, 2022.
- As this eNotice goes to print, Washington state noted it's going through its rule-making process, which include draft rules currently on the state website. They are moving to proposed rules with a target date of February 17, 2021. That will be followed by a public hearing on March 23, 2021, expected to be conducted via conference call due to Covid-19. After that date, the state webpage is expected to be updated.

Any qualified exemption would take place on the first day of the following quarter once the exemption is approved. Once someone has exempted out of the trust, they are considered permanently ineligible for coverage and these individuals must also notify any future employers.

Additionally, clients are not eligible for a refund of any trust contributions previously paid to the state, so early planning is critical. The state of Washington maintains a website that houses the forms for opting in (elective contributions bypass-through entity owners) or out (those with qualifying coverage). That form is not expected to be available until shortly before the "opt out" period begins.

Next steps

Discuss the Washington state LTC pool with your clients. For many, this may be a viable option or one they will want to participate in along with a personally owned LTC benefit. Although the Washington state law does not clearly meet the definition of LTC coverage, the widespread nature of hybrid and LTC riders available with life insurance may allow a client to opt out. You may wish to discuss with your client whether a personally owned life insurance policy with an LTC rider might offer them more flexibility and benefit.

What qualifies as LTC coverage?

Nothing in H.R. 1087 or the 2020 amendment (Substitute Senate Bill 6267, which introduced RCW 50B.04.085) defines LTC coverage for purposes of this trust. However, many people have turned to the Washington state definition of LTC insurance under the state's insurance code, RWC 48.83.020. Code Section §48.83.020 (5) defines LTC insurance as any "insurance policy, contract or rider that is advertised, marketed, offered or designed to provide coverage for at least 12 consecutive months." This would appear to include Equitable's LTCSR, allowing employees to attest they have coverage.

Equitable's LTCSR would be attractive, regardless of the circumstances, because it has the possibility of offering a greater benefit than that offered by Washington state. Additionally, in the event an individual doesn't qualify for an LTC benefit, their family would receive a benefit in the form of death proceeds. This is the "if you don't use it, you don't lose it" safety net offered by the rider.

During December 2020, through informal email correspondence with individuals at the Washington State Employment Security Department and State Department of Social and Health Services, Equitable Advanced Markets learned Washington state expects the future rules to add a reference to the LTC definition contained in RWC 48.8.020. This has not yet been enacted but should offer some assurance.

Equitable resources

Equitable offers a robust LTC rider on its permanent cash value life insurance products. Learn more about our LTCSR by visiting www.equitableLIFT.com/LTC-resources.

We recently recorded a podcast as part of our Life with inSight series. Listen in as we interview Dr. Sandra Timmermann, Doctor of Education and nationally recognized gerontologist, who focuses on aging and its relation to business. Dr. Timmermann discusses how to identify the long-term care challenges clients may be facing and how we can help them navigate through the treacherous waters of the various funding sources available to pay for long-term care costs.

[Podcast for financial professionals](#)

Curious how our LTC rider offers more flexibility without the typical trade-offs? Check out the following:

[Top reasons to choose our LTCSR flyer](#)

[How we stack up flyer](#)

Conclusion

Equitable applauds Washington state for recognizing the effect of LTC needs on its residents and their families. That said, the benefit offered by the Washington State LTC Trust Act may not meet every client's needs.

For that reason, it's important to speak with clients about whether it makes sense to participate in this program, to opt out or to supplement the benefit offered with other LTC coverage. Work with your clients, Equitable's Advanced Markets and other local financial advisors to help determine which approach might be best for your client.

**If you have any questions, contact
Advanced Markets.**

[1 Long-term care associates](#)

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