Washington Research Council

*Policy Brief*

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# Should Washington Be in the Long-Term Care Insurance Business?


**Briefly**

*Key dates for Washington's long-term care insurance program—and its accompanying payroll tax—are fast approaching. Beginning Jan. 1, 2022, a payroll tax of 0.58% will be levied on every employee's wages. The tax is expected to generate revenues of more than $1 billion a year. Long-term services and supports trust (LTSST) benefits will then be available beginning Jan. 1, 2025.*

*One purpose for the new program is to reduce Medicaid spending. In 2021–23, the state Legislature appropriated $7.911 billion from all funds for long-term care, of which 42.4% is from state funds. Spending on long-term care is 6.4% of total operating budget spending from all funds; it is 5.1% of total operating budget spending from state funds. Saving state funds is a worthy goal, but the projected long-term Medicaid savings ($3.742 billion through 2052) are miniscule compared to state spending on long-term care and to the payroll taxes that will be collected.*

*The LTSST program will be mandatory for all workers. However, the statute allows people who have purchased private long-term care insurance by Nov. 1, 2021 to opt out of the state plan. The approaching deadline to opt out of the state program and permanently avoid the payroll tax has caused a rush to the private market this year. Final numbers will not be available until the state Employment Security Department processes all applications. If the number of people who opt out is higher than anticipated when setting the initial premium rate, it could have a detrimental effect on the actuarial solvency of the LTSST.*

*As it is, the LTSST is currently projected to be fully funded only through 2075. This is within the 75-year window that is typically used to evaluate trust fund solvency. The negative projected reserve could be eliminated by reducing benefits by 9.5% in 2025 or increasing premiums to 0.64% in 2022. These projections assume that the LTSST funds cannot be invested in stocks and bonds, pursuant to the state constitution. If a constitutional amendment eventually passes to allow such investment, the program would be solvent throughout the 75-year window with the 0.58% rate.*

*The overall cost of the program may be too high for the level of benefits provided, it excludes vested individuals who move away, and the fund is already expected to be insolvent within 75 years.*

*Given all this, it's not clear the state should stay in this business. But if it does, the Legislature and voters should approve a constitutional amendment allowing the LTSST funds to be invested in stocks. This would have a major positive impact on solvency and would help prevent future tax increases.*


Key dates for Washington's long-term care insurance program—and its accompanying payroll tax—are fast approaching. The program was enacted in 2019; since then, the Legislature has made changes to it, including adding a deadline for the ability to permanently opt out.

In November 2020, voters rejected a constitutional amendment that would have allowed long-term care trust funds to be invested in the stock market. The inability to do so means that the trust is not expected to remain solvent after 2075.

This policy brief draws from our previous writing on the long-term care program and discusses new information. In statute, the program is referred to as the long-term services and supports trust (LTSST) program.

## Program Basics

Beginning Jan. 1, 2022, a payroll tax of 0.58% will be levied on every employee's wages (RCW 50B.04.080). There is no cap to the wages subject to the tax. The tax will serve as premiums for the new LTSST benefit. (For reference, in 2021, the Social Security tax rate is 6.2% on earnings up to $142,800 and the Medicare rate is 1.45% on all earnings (SSA 2021). Premiums for Washington's paid family and medical leave program in 2021 are 0.4% of wages up to the Social Security cap.)

LTSST benefits will be available beginning Jan. 1, 2025. Individuals will be eligible for benefits if they have paid the premiums for either 10 years or three of the most recent six years from the date applying for benefits and if they have worked at least 500 hours per year (about 10 hours a week) during the qualifying periods. To receive benefits, individuals must need help with at least three activities of daily living (e.g., eating, dressing, and bathing) and they must be Washington residents. Benefits will be available for approved services (e.g., nursing home services, in-home personal care, and transportation) and the maximum lifetime benefit will be $36,500 (this maximum will be adjusted for inflation). (Our 2019 policy brief discusses the adequacy of these benefits; in short, this is a minimal benefit that would cover less than a year in a nursing home.)

Beginning Jan. 1, 2024, the Pension Funding Council will set the payroll tax rate (the Pension Funding Council is made up of the chairs and ranking members of the Senate Ways & Means and House Appropriations committees, the Department of Retirement Systems, and the Office of Financial Management). The statute specifies both that the rate must never be higher than 0.58% and that the Council must set the rate "at the lowest amount necessary to maintain the actuarial solvency of the long-term services and supports trust account" (RCW 50B.04.080). As we noted in 2019, these two requirements could be at odds; recent events (discussed below) suggest that the premium (the payroll tax) may indeed need to rise to maintain solvency. The statute also notes that if the premiums are increased, the Legislature must notify taxpayers and describe the plan for returning the premium to 0.58% (RCW 50B.04.080(7)). The premiums must be deposited in the LTSST account, "for the individuals who become eligible for the program" (RCW 50B.04.080).

## Fiscal Impacts

The findings section of the bill enacting the program (codified as RCW 50B.04.900) states, "An alternative funding mechanism for long-term care access in Washington state could relieve hardship on families and lessen the burden of medicaid on the state budget."

In 2021–23, the state Legislature appropriated $7.911 billion from all funds for long-term care (within the Department of Social and Health Services). According to the LTSST enacting legislation (2SHB 1087), total Medicaid savings resulting from the program are only expected to be $898 million in 2051–53.

Of the $7.911 billion that is currently appropriated for long-term care, 57.1% is from federal funds and 42.4% is from state funds. Spending on long-term care is 6.4% of total operating budget spending from all funds; it is 5.1% of total operating budget spending from state funds. Spending on long-term care has outpaced growth of the total operating budget: From 2007–09 to 2021–23, state spending on

Chart 1: State Spending on Long-Term Care (Dollars in Billions)

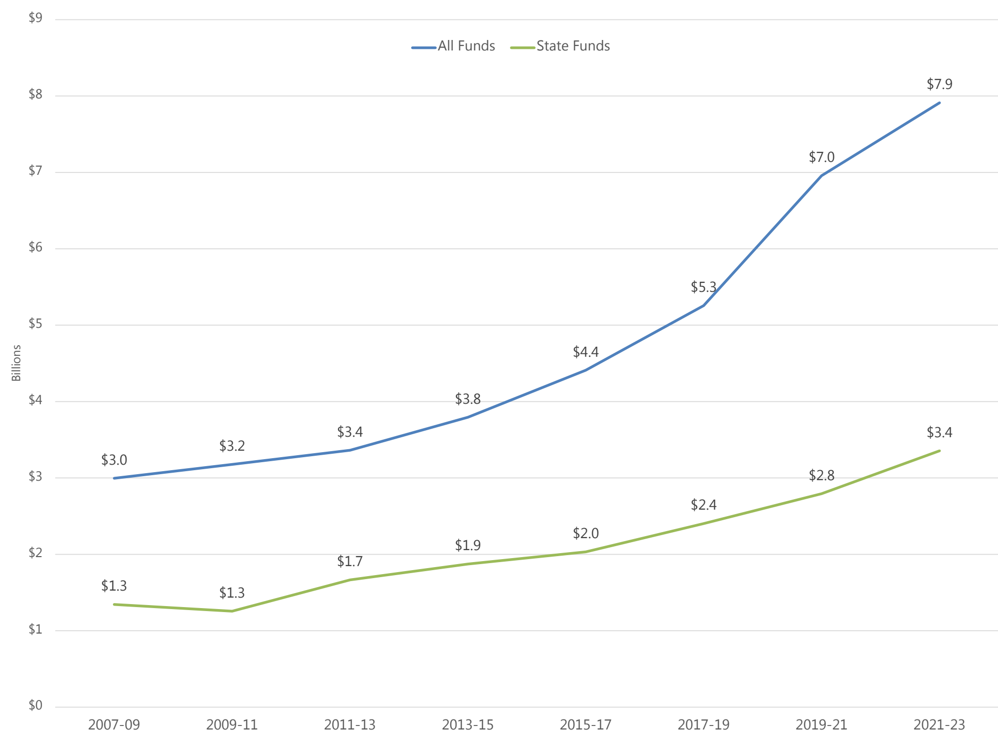
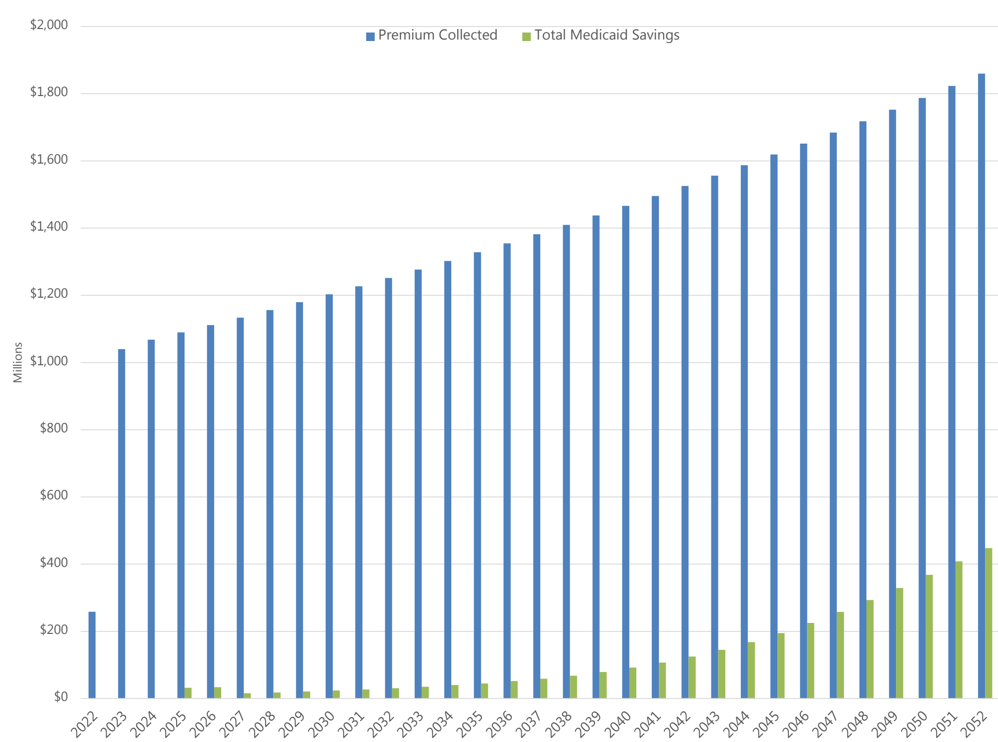



Chart 2: Estimated LTSST Premiums Collected Compared to Savings to the Medicaid Program (Dollars in Millions)




Sources: ALTSA 2018, Employment Security Department, WRC calculations

long-term care grew by 149.6%, federal spending on long-term care in Washington grew by 176.1%, and all funds spending on the overall operating budget grew by 101.7%.

In 2018, Milliman estimated that a long-term care insurance program similar to the version that was enacted would reduce Medicaid spending in Washington by a total of $3.742 billion through 2052 (ALTSA 2018). Typically about half of those savings would accrue to Washington and half would go to the federal government (although the federal government could grant a waiver allowing the state to keep the full amount of the savings).

The fiscal note for the 2019 bill estimated that the LTSST premiums would total $1.299 billion in 2021–23 and $2.158 billion in 2023–25. The amount of premiums paid will be a major determinant of the trust's solvency (as discussed later). Chart 2 compares the estimated amount of premiums collected and Medicaid savings (the total, not just the state share) for each year.

Saving state funds is a worthy goal, but the projected long-term Medicaid savings are miniscule compared to state spending on long-term care and to the payroll taxes that will be collected.

## Opt-Out Clause

The LTSST program will be mandatory for all workers. However, the statute allows people who have private long-term care insurance to opt out of the state plan. The parameters of this op-out clause have changed over time.

As originally enacted in 2019, 2SHB 1087 specified, simply, "An employee who demonstrates that the employee has long-term care insurance is exempt from the premium assessment." According to the National Academy of Social Insurance (NASI), "only about 7 percent of adults 50 or older . . . have private long-term care insurance" (NASI 2019).

In the fiscal note for the bill, the Employment Security Department (ESD) stated that it could not determine what the impact of opt outs might be on the amount of payroll taxes collected because "It is not known how many people have long-term care insurance nor do we know the amount of wages that would no longer be subject to premiums." However, in estimating spending costs to ESD from the bill, it assumed that there would be 311,000 exemption requests.

In 2020, the Legislature enacted SSB 6267. This bill limited the exemption to individuals "granted a premium assessment exemption" by ESD. The bill also specified that exempt employees would be permanently ineligible from receiving any LTSST benefit. It required ESD to accept applications for exemptions from Oct. 1, 2021 through Dec. 31, 2022.

In 2021, the Legislature enacted SHB 1323. This bill further limited the exemption from the program to employees who purchase private long-term care insurance before Nov. 1, 2021. In the fiscal note for SHB 1323, ESD estimated that 248,000 people would be eligible to opt out of the program.

The new deadline to opt out of the state program and permanently avoid the payroll tax caused a rush to the private market this year. According to Crosscut,

> *That opt-out deadline has spurred a flood of applications for new plans, overwhelming the system and causing most insurance companies — if not all — to stop accepting new applications, said Steve Valandra, a spokesperson for the state Office of the Insurance Commissioner.*
>
> *"They can't meet the demand right now," Valandra said of insurance companies. He said some carriers also are worried that people are buying plans now only to drop them later after the deadline passes for opting out of the state program.* (Santos 2021)

As an example, Valandra told Crosscut that one company received 8,000 applications in 2020 and 66,000 applications in just two months this summer. Valandra also said that about 153,000 Washingtonians previously had LTC insurance. (Santos 2021)

## Program Solvency

With social insurance trust funds (like the LTSST) that are meant to be fully funded (as opposed to pay-as-you-go), long-term solvency is important because "current contributions are invested to pay for future needs" (NASI 2019). The resources must be available to pay for the promised benefit. Actuaries typically use a 75-year window in calculating solvency.

Some factors in the solvency of the LTSST are the premium rate, level of benefits, expected investment returns, and population in the program. Assuming the premium rate remains 0.58%, the Office of the State Actuary (OSA) estimates that annual premiums will exceed annual expenditures only until 2052. From 2052 to 2075 the LTSST would be able to pay 100% of promised benefits by drawing down assets. However, by 2076 the trust would be depleted, and without additional funding the amounts of benefits paid out would be limited to the amounts of premiums paid in. Incoming premiums would be sufficient to pay just 71% of promised benefits in 2076, 77% in 2086, and 85% in 2096. (OSA 2021) These estimates, based on a 2020 analysis by Milliman, assume that LTSST investments will be limited to lower risk investments, as under current law. They also assume that individuals would be able to opt out if they purchase private insurance by the end of calendar year 2022 (as was the law when Milliman made the estimates). More specifically, the estimates assume that 20% of the top decile of wage earners and 10% of the second decile will opt out of the state program. (Milliman 2020)

Given these assumptions, the negative imbalance could be eliminated by reducing benefits by 9.5% in 2025 or increasing premiums to 0.64% in 2022 (OSA 2021). The longer the state takes to adjust the premium rates, the more rates will have to increase. For example, given current investment strategies, Milliman estimates that the premium needed would be 0.66% if the state immediately increases it next year. However, if the state keeps the 0.58% rate for 50 years, the rate would have to increase to 0.79% for the remaining years. (Milliman 2020)

Also, to the extent that the number (and income level) of people opting out is considerably higher than previously anticipated, that could negatively impact solvency. In its 2020 report, Milliman ran the numbers for a few additional opt-out scenarios. First, as noted above, Milliman assumed that 20% of the top decile of wages earners and 10% of the second decile (or 3% of wage earners overall) opt out, representing 10% of wages in 2022. Second, Milliman assumed that 5% of all wage earners opt out (25% of wages). Third, Milliman assumed that 45% of all wage earners opt out (75% of wages). All these scenarios assume that the deadline for buying private insurance would be the end of CY 2022.

Assuming current law investment strategy, Milliman estimates that the premium rate required to cover expenditures through 2096 under the opt-out scenarios would be between 0.66% and 0.71% (Milliman 2020). (Milliman also estimated that if the deadline was instead July 28, 2019, the necessary premium rate would be the same as in the scenario in which 3% of wages earners opt out.) We don't yet know how many people will opt out before the Nov. 1, 2021 deadline, nor do we know their income levels. The Milliman numbers provide a range of possibilities. In the first quarter of 2021, about 3.2 million

Table: Premium Rate Required to Cover Expenditures Through 2096 (Assuming Private Plans Could be Purchased Through 12/31/22)

| | **If Only Invest in Treasuries** | **If Able to Invest in Stocks/Bonds** |
|---|---|---|
| Opt-Out Scenarios | | |
| 20% of the top decile of wage earners and 10% of the second decile (about 10% of wages in 2022) | 0.66% | 0.55% |
| 5% of all wage earners (about 25% of wages in 2022) | 0.68% | 0.58% |
| 45% of all wage earners (about 75% of wages in 2022) | 0.69% | 0.64% |

Source: Milliman 2020

Washingtonians were employed (ESD 2021). If 3% opt out, that would be about 96,000 people; 5% would be about 160,000 people; and 45% would be about 1.4 million people. As noted above, the fiscal notes for the program estimated about 300,000 opt outs.

Further, according to Milliman, "Investment strategy plays a significant role in the level of funding needed" (Milliman 2020). Indeed, they estimate that under current law (not assuming the opt-out scenarios) the necessary premium ranges from 0.61% to 0.71%. If the LTSST is allowed to invest in stocks and bonds, however, the necessary premium would range from 0.51% to 0.67%. (The table on page 5 shows how estimates of the necessary premium change depending on opt-out scenario and investment strategy.)

In 2020, the Legislature put a constitutional amendment proposal (ESJR 8212) to voters that would have allowed the state to invest the LTSST funds in stocks (WRC 2020). This would have improved long-run investment returns and reduced the need for higher tax rates. Voters rejected the amendment (45.64% to 54.36%). Legislators re-introduced the constitutional amendment this year (SJR 8200), but it was not passed by either house.

If the constitutional amendment eventually passes, the OSA notes, "it would eliminate the negative projected actuarial reserve if all assumptions are realized" (OSA 2021). Milliman estimates that if the LTSST is allowed to invest in stocks, the program would be solvent throughout the 75-year window with the 0.58% rate (Milliman 2020).

## Potential Changes to the Program

According to the LTSST Commission,

> *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.* (LTSSTC 2021a)

In September, the LTSST Commission discussed options for possible changes to the program, including:

- Allowing individuals who retire before they vest in the program to elect continuing coverage;
- Excluding individuals from the tax if they work in Washington but live elsewhere; and
- Allowing people in Washington on non-immigrant visas to opt out.

The LTSST Commission will make recommendations in November. Additionally, the LTSST Commission considered ways to provide benefits to people who vest in the program but leave the state. As noted above, only Washington residents can receive the benefit. This is contrary to other social insurance programs, in which the people who pay in receive the benefit. But the LTSST Commission determined that the cost of covering this group would be too high. They noted, "Other states are exploring similar programs, which if implemented, could increase the feasibility of a multi-state benefit" (LTSSTC 2021b).

Others are proposing significant changes now. A group of employers, business groups, labor organizations, and local governments asked Gov. Inslee to "convene bipartisan legislative leadership to discuss and consider pausing the implementation of collection of the payroll tax beginning Jan. 1, 2022" (AWB et al. 2021). Their concerns include: no clear definition of what products qualify for the opt-out, the possibility that opt-out requests won't be approved in time to avoid the payroll tax, and the fact that some people will pay into the program but never receive the benefit (for example, those who plan to retire within 10 years). The letter also notes that many people may have wanted to purchase private insurance but could not because of the "collapse in the long-term care market" (AWB et al. 2021), which was induced by the short opt-out window and the fact that the law does not require individuals to prove annually that they are maintaining their private insurance (this could incentivize some to get an exemption and immediately cancel their private insurance).

At the end of August, Senate Ways & Means Committee chair Christine Rolfes talked to Crosscut about the program:

> *If many more people opt out than lawmakers expected, the Legislature may have to make adjustments to keep the program financially stable, said Rolfes, the Senate's lead budget writer.*
>
> *She said it might make sense for lawmakers to convene in a special session to postpone the program or make changes before the new payroll tax kicks in Jan. 1.* (Santos 2021)

In the same story, ranking member of the House Appropriations Committee Drew Stokesbary said, "It's just not a line of business the state belongs in" (Santos 2021).

Additionally, a bipartisan group of state senators asked Gov. Inslee to use his emergency powers to suspend both the deadline to opt out of the program and the payroll tax itself. They argue that this "would provide temporary relief to employees who face a major new tax and give time for the Legislature to work on a solution" (Rivers et al. 2021).

Finally, Initiative 1436 has been filed as an initiative to the Legislature. It would require employees to elect to keep their coverage in the LTSST, and they would always have the option to opt out. If the initiative is certified, it will be submitted to the Legislature in January.

## Comment

This is the nation's first universal long-term care insurance program. As we wrote in 2019, by going first, Washington stood to experience "a reasonable chance of unexpected costs and outcomes" (WRC 2019). Indeed, as the business and labor letter to Gov. Inslee notes, "Changes to the establishing legislation over the last two legislative sessions have created a program that is unclear, insolvent, and does not address the actual long-term care needs of all Washington state residents" (AWB et al. 2021).

To be sure, the recent heightened level of interest in private long-term care plans indicates that many individuals are doing the math and finding that it is more cost effective for them to purchase private plans than to stay in the state program. It certainly doesn't follow that private insurance would be a better deal for everyone. However, it raises questions about the broad functionality of the program.

The overall cost of the program may be too high for the level of benefits provided, it excludes vested individuals who move away, and the fund is already expected to be insolvent within 75 years.

Given all this, it's not clear the state should stay in the long-term care insurance business. But if it does, more work should be done to make the program fairer for participants and the Legislature should pass another constitutional amendment allowing the LTSST funds to be invested in stocks. Voters should approve such an amendment, as it would have a major positive impact on solvency and would help to prevent future tax increases.

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