Washington Research Council

Policy Brief

July 12, 2019 PB 19-13

Long-Term Care and Paid Family and Medical Leave: A Tale of Two Payroll Taxes

Briefly

The Legislature has enacted two major payroll taxes in the last two years. Payroll taxes fund both a new long-term care insurance program that was enacted this year (the first in the nation) and the paid family and medical leave program that was adopted in 2017.

The long-term care insurance premiums will be 0.58 percent of wages beginning Jan. 1, 2022. Benefits will be available beginning Jan. 1, 2025 for eligible Washingtonians who need help with at least three activities of daily living.

Meanwhile, premiums of 0.4 percent of wages (up to the Social Security wage cap) are already being assessed for the paid family and medical leave program. Benefits will be available beginning Jan. 1, 2020 for eligible workers who need time off for a serious health condition or to care for family members.

Protecting the long-term care insurance and paid family and medical leave revenues for their intended uses will be critical for the sustainability and affordability of the programs.

The biggest tax increase adopted by the Legislature this year was a payroll tax to fund a new long-term care insurance benefit (termed the "long-term services and supports trust program" in the bill, 2SHB 1087).

This comes on top of another payroll tax adopted in 2017 to fund paid family and medical leave (SSB 5975, codified as RCW 50A.04). Both programs are intended to help Washingtonians afford care for themselves or family members.

Long-Term Care Insurance Program

Under 2SHB 1087, premiums will be assessed on every employee's wages beginning Jan. 1, 2022, and benefits will be available beginning Jan. 1, 2025. (Employees who can demonstrate that they have long-term care insurance will be exempt from paying premiums, and people who are self-employed may choose to join the program.)

People who have paid the premiums for either a total of 10 years (within which at least five must be consecutive) or three of the most recent six years will be considered "qualified individuals" and will be potentially eligible for benefits. They also must have worked at least 500 hours per year (about 10 hours a week) during the 10- or three-year qualifying periods. Qualified individuals may then apply to become beneficiaries of the program. The application includes an evaluation by the Department of Social and Health Services (DSHS) that the individual needs help with at least three activities of daily living (things like eating, dressing, and bathing).

Benefits will be available for approved services, including (for example) nursing home services, in-home personal care, and transportation. Under the bill, beneficiaries may not receive more than 365 "benefit units" in their lifetimes (the benefit unit will be up to $100), to be paid by DSHS for approved services. (If the benefit unit is $100, a beneficiary could receive up to $36,500 total.) The benefit

unit will be "adjusted annually at a rate no greater than the Washington state consumer price index." (Note that there is not a consumer price index for the state. The U.S. Bureau of Labor Statistics publishes the national consumer price index, regional indexes, and indexes for urban areas, including Seattle.)

The premium rate will initially be 0.58 percent of wages, and all wages will be subject to the premium (except for the wages of those employees who opt out). Beginning Jan. 1, 2024, the Pension Funding Council will adjust the rate. The bill states that the rate must never be more than 0.58 percent and that it must be set "at the lowest amount necessary to maintain the actuarial solvency of the long-term services and supports trust account."

Of course, those two requirements could conceivably be at odds. Recognizing this (and implying that the requirement to maintain solvency supersedes the requirement that the rate never exceed 0.58 percent), the bill later notes,

> *If the premiums established in this section are increased, the legislature shall notify each qualified individual by mail that the person's premiums have been increased, describe the reason for increasing the premiums, and describe the plan for restoring the funds so that premiums are returned to fifty-eight hundredths of one percent of the individual's wages.*

The bill states that employers "must" collect premiums from employees through payroll deductions. All premiums are to be deposited in the new long-term services and supports trust account, "for the individuals who become eligible for the program."

The fiscal note for the bill estimates that it will increase revenues by $1.299 billion in 2021–23 and $2.158 billion in 2023–25. It also estimates that the bill will increase spending from all funds by $16.7 million in 2019–21, $50.4 million in 2021–23, and $69.4 million in 2023–25. Eligible individuals could begin drawing on the account in 2025.

Adequacy of Benefits. How far will $36,500 go? The U.S. Department of Health and Human Services estimates that 69 percent of people need some sort of long-term care, and that the average duration of that care is about three years (20 percent of people need long-term care for more than five years). Long-term care at home is utilized by 65 percent of people, for an average of two years. Long-term care in facilities is needed by 37 percent of people, for an average of one year. (HHS n.d.)

According to Genworth Financial's Cost of Care Survey, the median cost of care in Washington in 2018 was $28 an hour for a home health aide, $169 per day for an assisted living facility, $285 per day for a semi-private nursing home room, and $320 per day for a private nursing home room (Genworth 2019).

Given these costs, Washington's long-term care insurance would not cover a full year in an assisted living facility or nursing home. It could cover two years of care at home, if a home health aide was hired for less than two hours a day. 2SHB 1087 states that the average Medicaid client in Washington uses 96 hours of care per month and suggests that $100 a day for 365 days "would provide complete financial relief for the average in-home care consumer and substantial relief for the average facility care consumer for a full year or more."

Effects on Medicaid and Private Insurance. As the National Academy of Social Insurance (NASI) points out, long-term services and supports are expensive, but "only about 7 percent of adults 50 or older . . . have private long-term care insurance" (NASI 2019). Instead, most people rely on savings, family, and Medicaid (NASI 2019).

The estimated revenues from the bill won't affect funds subject to the outlook. However, the program is expected to reduce Medicaid spending, which would

have a positive impact on the state operating budget. A 2018 report by Milliman for DSHS estimated that a similar version of the long-term care insurance program would reduce state and federal Medicaid spending in Washington by $34 million in calendar year 2025, growing to $470 million in 2052 (ALTSA 2018). As the federal government covers half of the costs of Medicaid, only half of those savings would accrue to the state.

But Washington could potentially reap more than half of the savings. The bill requires DSHS to apply for a federal demonstration waiver "to allow for the state to share in the savings generated in the federal match for medicaid long-term services and supports and medicare due to the operation of the program." NASI notes that such a waiver could be requested "on the grounds that the new program promotes the objectives of Medicaid and would be budget-neutral for the federal government" (NASI 2019). (Massachusetts has successfully won this type of waiver.)

As for the private insurance market, the fact that there is no cap on the amount of wages on which premiums will be assessed means that some individuals may find it more cost effective to opt out of the state program and purchase private insurance instead. Further, NASI suggests that benefit caps in public long-term care insurance programs could actually "create a market for a supplemental private benefit similar to Medigap insurance" (NASI 2019). There could also be growth in the private market as "tastes for and awareness of the need for insurance would likely change" (NASI 2019).

Paid Family and Medical Leave

Paid family and medical leave premiums have been collected on employee wages since Jan. 1, 2019, and benefits will be available beginning Jan. 1, 2020. (Self-employed people and tribes may elect coverage. Employers may apply for a waiver to use voluntary plans for family or medical leave benefits.)

Employees may take paid leave for either family or medical purposes. Family leave is defined as leave taken to provide care for family members with serious health conditions or to bond with a new child. Medical leave is leave taken for the employee's own serious health condition.

To be eligible for benefits, employees must work at least 820 hours during the qualifying period (the first four of the last five completed calendar quarters or the last four completed quarters before applying for leave).

The maximum weekly benefit will be $1,000 for calendar year 2020. (Thereafter, the maximum benefit will be adjusted annually so that it is 90 percent of the state average weekly wage.) For an eligible individual, the weekly benefit will be 90 percent of his or her average weekly wage, up to half of the state average weekly wage (which was $1,255 in 2018). For any portion of the employee's wage that is more than half of the state average wage, the benefit will cover 50 percent (until the benefit reaches the $1,000 maximum).

Employees must take a minimum of eight consecutive hours of leave. They may take up to 12 times their typical workweek hours for either family or medical leave during a period of 52 consecutive weeks. (If they need both family and medical leave, they can't take more than 16 times their typical workweek hours. But, for a serious health condition related to pregnancy, leave may be extended an additional two times their typical workweek hours.) Employees who take family or medical leave are entitled to return to their jobs or an equivalent position, with some exceptions. (For example, there is no job entitlement if the employer has fewer than 50 employees.)

For CY 2019 and 2020, the total premium rate is 0.4 percent of wages up to the Social Security cap ($132,900 in 2019). Of the premium rate, one-third is for family leave benefits and two-thirds are for medical leave benefits. Employers must collect the premiums through payroll

deductions and remit them to the Employment Security Department (ESD). Employers *may* deduct from employee wages the full amount of family leave premiums and up to 45 percent of medical leave premiums. Effectively, then, employers are statutorily responsible for 36.67 percent of the premium, but may choose to pay the full amount (ESD n.d.). However, only employers with 50 or more employees in Washington must pay the employer portion of the premium. (Thus, premiums are not fully paid on the wages of employees of small employers.) Premiums are deposited in the family and medical leave insurance (FMLI) account.

Beginning in CY 2021, the total premium rate will be adjusted, based on the balance ratio of the FMLI account. (This is the balance of the FMLI account divided by total covered wages.) Higher account balances will trigger lower premiums, to range from 0.1 percent to 0.6 percent. If the ratio is below 0.05 percent, a solvency surcharge must be assessed, of at least 0.1 percent up to 0.6 percent on top of the total premium rate.

Importantly, the bill includes a preemption clause: No other jurisdiction in Washington may enact "a paid family or medical leave insurance program that alters or amends the requirements of this chapter for any private employer," provides for local enforcement of the state law, or requires "private employers to supplement duration of leave or amount of wage replacement benefits provided" in the state law.

The fiscal note for SSB 5975 estimated premium revenues would total $133.4 million in 2017–19 (six months of premium collections), $1.166 billion in 2019–21, and $1.265 billion in 2021–23.

Use of the Dedicated Accounts

Given the significant revenues that are expected to be collected under both programs, the accounts dedicated to them will likely be flush (especially before benefits are payable). We know

Table: Program Comparison

	Long-Term Services and Supports	**Paid Family and Medical Leave**
Effective Dates	Premiums assessed beginning 1/1/22 Benefits available beginning 1/1/25	Premiums assessed beginning 1/1/19 Benefits available beginning 1/1/20
Premium Rate	0.58% (Beginning in 2024, must be set at lowest amount needed to maintain account solvency)	0.4% (Beginning in 2021, it will be based on account balance)
Wages Subject to Tax	No cap	Social Security cap ($132,900 in 2019)
Statutory Incidence	100% from employees	63.3% from employees (but employers may choose to pay the full amount)
Revenue Estimate	$1.299 billion in 2019-21 $2.158 billion in 2021-23	$133.4 million in 2017-19 $1.166 billion in 2019-21 $1.265 billion in 2021-23
Benefit Amount	A "benefit unit" = $100 (adjusted annually)	Based on employee's wages, state average wage
Benefit Maximum	365 benefit units lifetime	$1,000 a week (adjusted annually) for up to 12-18 times the typical workweek hours in a year (depending on the situation)
Benefit Eligibility	Must pay premiums for 10 years or three of last six years, and must have worked at least 500 hours a year	Must work at least 820 hours in four quarters

from experience that rich funds—even dedicated trust funds—can be targets of the Legislature when trying to balance the operating budget. For example, just this year, the Legislature used $3.6 million from the state's workers' compensation accident and medical aid accounts for new information technology and health care apprenticeship programs (ESHB 1109, section 219(3) and (4)).

A constitutional amendment was proposed in the Legislature this year but not passed that would have prohibited the use of these funds for other purposes. The bipartisan SJR 8211 would have specified that

> *revenues from premiums, contributions, or other charges imposed on wages for the purpose of creating an actuarially sound system for the provision of future benefits or services only to payers must be deposited into a special fund in the state treasury to be used exclusively for the purposes for which it was imposed.*

Had the amendment passed, it would have constitutionally protected the long-term care insurance, paid family and medical leave, and workers' compensation funds. Instead, the long-term care insurance bill relies on statutory language to make it politically less palatable to raid the fund:

> *If moneys are appropriated for any purpose other than supporting the long-term services and supports program, the legislature shall notify each qualified individual by mail that the person's premiums have been appropriated for an alternate use, describe the alternate use, and state its plan for restoring the funds so that premiums are not increased and benefits are not reduced.*

Of course, in the absence of a constitutional amendment, no Legislature can bind another. This language could be repealed in the future.

Comment

According to NASI, Washington's new long-term care insurance program is the nation's first, and just seven other states and the District of Columbia have enacted paid leave policies (NASI 2019).

Both programs were enacted with business support. Although both programs increase taxes for Washingtonians, they are not expected to incur significant costs for the state (aside from their administration). Indeed, the long-term care program could save funds in the state general fund going forward.

Protecting the long-term care insurance and paid family and medical leave revenues for their intended uses will be critical for the sustainability and affordability of the programs. It will also be critical to watch the tax rates that will be needed to pay out the promised benefits. As these are new programs that have minimal or no track records in other states, there is a reasonable chance of unexpected costs and outcomes.

References

Aging and Long-Term Support Administration (ALTSA). 2018. "2018 Feasibility Study of Policy Options to Finance Long-Term Services and Supports in the State of Washington: Update to Original Study." Report to the Legislature. Department of Social and Health Services. Oct. 1.

Employment Security Department (ESD). No date. "Premiums." Washington Paid Family & Medical Leave. Accessed June 28, 2019.

Genworth Financial. 2019. "Cost of Care Survey 2018." May 16.

National Academy of Social Insurance (NASI). 2019. "Designing Universal Family Care: State-Based Social Insurance Programs for Early Child Care and Education, Paid Family and Medical Leave, and Long-Term Services and Supports." June.

U.S. Department of Health and Human Services (HHS). No date. "How Much Care Will You Need?" Accessed July 12, 2019.

Washington Research Council
(206) 467-7088
researchcouncil.org