



Long-Term Services and Supports Trust/WA Cares Program Proposed new rule related to elective coverage for federally recognized tribes.

December 2021

Introduction

Title 50B RCW created a Long-Term Services and Supports Trust (referred to as WA Cares) Program 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 will begin on January 1, 2022. Self-employed persons and federally recognized tribes may elect WA Cares coverage beginning January 1, 2022.

Beginning January 1, 2025, employees who have paid into the program for the required number of years, and worked the required number of hours in each of those years, will be able to access their earned benefits if needed.

To qualify for benefits, employees must have worked and contributed to the WA Cares Program for:

- At least ten years without a break in service of five or more consecutive years, or three of the last six years from the date of application; and
- Worked at least 500 hours per year during those years.

Eligible individuals will have access to a lifetime benefit of \$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 Program is administered by four state agencies, each with different program responsibilities. The Employment Security Department (department) will assess and collect premiums, accept and process applications for exemption, determine qualified individual status, and process elective coverage requests from self-employed individuals and interested federally recognized tribes. The Department of Social and Health Services will determine eligible beneficiaries, administer benefits,

and manage providers. The Health Care Authority will process payments, track benefit usage, and coordinate benefits. The Office of the State Actuary will perform actuarial audits on the trust fund.

Rulemaking is required under Section 7 of Substitute House Bill 1323, Chapter 112, Laws of 2021, as codified under RCW 50B.04.095 to implement the elective coverage provisions for federally recognized Washington tribes.

This proposed rule was developed by the department and was 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 192-910-025 Election of coverage for federally recognized tribes. (1) A federally recognized tribe that elects coverage under RCW 50B.04.095 is an employer as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

(2) An employee of a federally recognized tribe that elects coverage under RCW 50B.04.095 is an employee as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

Explanation of proposed rule: Consistent with the elective coverage administrative rule for tribes under the Paid Family and Medical Leave (PFML) Program, the proposed rule states that any tribe that opts in to the program is considered an employer as that term is defined under the law, and that the tribe's employees are considered employees as that term is defined under the law. The proposed rule is necessary to implement portions of the WA Cares Program and provide guidance to federally recognized tribes that may be interested in electing program coverage.

Is a Significant Analysis required for these rules?

The proposed rule does not meet the definition of a significant legislative rule under RCW 34.05.328 and does not require a significant analysis. The rule is explicitly and specifically dictated by statute (RCW 50B.04.080 and RCW 50B.04.095) and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

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 Program 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 \$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.”

RCW 50B.04.095 requires the department to adopt rules to implement WA Cares Program elective coverage for interested federally recognized tribes. In addition, RCW 50B.04.080 requires the department, to the extent feasible, to use the premium assessment, collection, and reporting procedures required for PFML under Title 50A RCW. The rule ensures standards and procedures for tribes to opt in to the program are consistent with rules previously adopted for PFML. The proposed rule provides guidance to federally recognized tribes that may be interested in electing program coverage.

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.

WA Cares statute points to the definitions of “employee” and “employer” under PFML law, RCW 50A.05.010 (5) and (7), respectively. The rule is needed to implement and clarify any federally recognized tribe that elects coverage will be considered an “employer” as that term is defined under RCW 50A.05.010 in PFML statute. Additionally, the rule clarifies that any employee of a federally

recognized tribe that elects program coverage will be considered an “employee” as the term is defined under PFML law, again, consistent with PFML and administrative rules. See WAC 192-510-020. If the rule is not adopted, there will not be clear direction to the public. Adopting the rule will provide enhanced direction to interested federally recognized tribes and the public and will satisfy the department’s rulemaking obligation under RCW 50B.04.095.

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 rule will benefit federally recognized tribes and the public by providing clarity and transparency for WA Cares Program implementation, specifically regarding elective coverage for federally recognized tribes. RCW 50B.04.080 requires the department to use the standards and procedures for premium assessment, collection, and reporting that exist for PFML. The proposed language of this rule aligns with the elective coverage rule for federally recognized tribes for PFML and meets the spirit of the statutory requirement to align WA Cares and PFML program administration to the extent feasible.

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 rule were considered.

Conflicts with Federal or State law

The proposed rule does not conflict with Federal or State law.

Performance impositions on private vs. public sectors

Since WA Cares premiums are required to be assessed for all employees (except employees who have an approved exemption, 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.