
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2767 Session of
2020

INTRODUCED BY NEILSON, ZIMMERMAN, SHUSTERMAN, HOHENSTEIN, HILL-
EVANS AND ROEBUCK, AUGUST 7, 2020

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
AUGUST 7, 2020

AN ACT

1 Providing for long-term services and supports, establishing the
2 Long-Term Services and Supports Commission, the Long-Term
3 Services and Supports Council and the Long-Term Services and
4 Supports Trust Fund, imposing duties on the Department of
5 Human Services and the Department of Revenue and imposing a
6 payroll premium.

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6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Long-Term
10 Care Trust Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Approved service." Long-term services and supports,
16 including, but not limited to:

- 17 (1) Adult day services.
- 18 (2) Care transition coordination.
- 19 (3) Memory care.
- 20 (4) Adaptive equipment and technology.
- 21 (5) Environmental modification.
- 22 (6) Personal emergency response system.
- 23 (7) Home safety evaluation.
- 24 (8) Respite for family caregivers.
- 25 (9) Home delivered meals.
- 26 (10) Transportation.
- 27 (11) Dementia supports.
- 28 (12) Education and consultation.
- 29 (13) Eligible relative care.
- 30 (14) Professional services.

1 (15) Assisted living services.

2 (16) Adult family home services.

3 (17) Nursing home services.

4 "Benefit unit." Up to \$100 paid by the department to a long-
5 term services and supports provider as reimbursement for
6 approved services provided to an eligible beneficiary on a
7 specific date.

8 "Commission." The Long-Term Services and Supports Trust
9 Commission established under section 4.

10 "Council." The Long-Term Services and Supports Trust Council
11 established under section 5.

12 "Department." The Department of Human Services of the
13 Commonwealth.

14 "Eligible beneficiary." A qualified individual who is 18
15 years of age or older, resides in this Commonwealth, was not
16 disabled before 18 years of age, has been determined to meet the
17 minimum level of assistance with activities of daily living
18 necessary to receive benefits through the program and who has
19 not exhausted the lifetime limit of benefit units.

20 "Fund." The Long-Term Services and Supports Trust Fund
21 established under section 11.

22 "Long-term services and supports provider." A person that
23 meets the qualifications applicable under law to the approved
24 service that the person provides, including a qualified or
25 certified home care aide, licensed assisted living facility,
26 licensed adult family home, licensed nursing home, licensed in-
27 home services agency, adult day services program, vendor,
28 instructor, qualified family member or other entities as
29 registered by the department.

30 "Premium." The payments required under section 9 and paid to

1 the Department of Revenue for deposit into the fund.

2 "Program." The Long-Term Services and Supports Trust Program
3 established under section 3.

4 "Qualified family member." A relative of an eligible
5 beneficiary qualified to meet the requirements established under
6 law for the approved service the relative provides that would be
7 required of any other long-term services and supports provider
8 to receive payments from the Commonwealth.

9 "Qualified individual." An individual who meets the duration
10 of payment requirements established under this act.

11 Section 3. Long-Term Services and Supports Trust Program.

12 (a) Establishment.--The Long-Term Services and Supports
13 Trust Program is established within the department.

14 (b) Administration.--The department, an actuary contracted
15 by the department and the Department of Revenue shall have the
16 responsibilities of implementing and administering the program
17 as provided under this section.

18 (c) Department of Human Services.--The department shall:

19 (1) Make determinations regarding an individual's status
20 as an eligible beneficiary under section 7.

21 (2) Approve long-term services and supports eligible for
22 payment as approved services under the program, as informed
23 by the commission.

24 (3) Register long-term services and supports providers
25 that meet minimum qualifications.

26 (4) Discontinue the registration of long-term services
27 and supports providers that:

28 (i) fail to meet the minimum qualifications
29 applicable in law to the approved service that the long-
30 term services and supports providers provide; or

1 (ii) violate the operational standards of the
2 program.

3 (5) Disburse payments of benefits to registered long-
4 term services and supports providers, utilizing and
5 leveraging existing payment systems for the provision of
6 approved services to eligible beneficiaries under section 8.

7 (6) Prepare and distribute written or electronic
8 materials to qualified individuals, eligible beneficiaries
9 and the public as deemed necessary by the commission to
10 inform the public of program design and updates.

11 (7) Provide customer service and address questions and
12 complaints, including referring individuals to other
13 appropriate agencies.

14 (8) Provide administrative and operational support to
15 the commission.

16 (9) Track data useful in monitoring and informing the
17 program, as identified by the commission.

18 (10) Track the use of lifetime benefit units to verify
19 the individual's status as an eligible beneficiary.

20 (11) Ensure approved services are provided through
21 audits or service verification processes within the service
22 provider payment system for registered long-term services and
23 supports providers and recoup any inappropriate payments.

24 (12) Establish criteria for the payment of benefits to
25 registered long-term services and supports providers under
26 section 8.

27 (13) Establish rules and procedures for benefit
28 coordination when the eligible beneficiary is also funded for
29 Medicaid and other long-term services and supports, including
30 Medicare, coverage through the Department of Labor and

1 Industry and private long-term care coverage.

2 (14) Promulgate rules and regulations necessary to
3 implement and administer the activities specified under this
4 section related to the program.

5 (d) Department of Revenue.--The Department of Revenue shall:

6 (1) Collect and assess employee premiums as provided in
7 section 9.

8 (2) Assist the commission, council and State actuary in
9 monitoring the solvency and financial status of the program.

10 (3) Make determinations regarding an individual's status
11 as a qualified individual under section 6.

12 (4) Promulgate rules and regulations necessary to
13 implement and administer the activities specified under this
14 section.

15 (e) Actuary.--The department shall contract with an actuary
16 and the contract shall include that the actuary do the
17 following:

18 (1) Beginning January 1, 2024, and biennially
19 thereafter, perform an actuarial audit and valuation of the
20 fund. Additional or more frequent actuarial audits and
21 valuations may be performed at the request of the council.

22 (2) Make recommendations to the council and the General
23 Assembly on actions necessary to maintain fund solvency. The
24 recommendations shall include options to redesign or reduce
25 benefit units, approved services, or both, to prevent or
26 eliminate any unfunded actuarially accrued liability in the
27 trust or to maintain solvency.

28 (3) Select and contract for actuarial, research,
29 technical and other consultants as the actuary deems
30 necessary to perform the actuary's duties under this act.

1 Section 4. Long-Term Services and Supports Trust Commission.

2 (a) Establishment.--The Long-Term Services and Supports
3 Trust Commission is established. The commission's
4 recommendations and decisions shall be guided by the joint goals
5 of maintaining benefit adequacy and maintaining fund solvency
6 and sustainability.

7 (b) Membership.--The commission shall include:

8 (1) The Secretary of Human Services or a designee.

9 (2) The Secretary of Revenue or a designee.

10 (3) Two members of the Senate, appointed by the
11 President pro tempore of the Senate.

12 (4) Two members of the House of Representatives,
13 appointed by the Speaker of the House of Representatives.

14 (5) One representative of an organization representing
15 the area agencies on aging.

16 (6) One representative of a home care association that
17 represents caregivers who provide services to private pay and
18 Medicaid clients.

19 (7) One representative of a union representing long-term
20 care workers.

21 (8) One representative of an organization representing
22 retired individuals.

23 (9) One representative of an association representing
24 skilled nursing facilities and assisted living providers.

25 (10) One representative of an association representing
26 adult family home providers.

27 (11) Two individuals receiving long-term services and
28 supports, or their designees, or representatives of consumers
29 receiving long-term services and supports under the program.

30 (12) One member who is a worker who is, or will likely

1 be, paying the premium established under section 9 and who is
2 not employed by a long-term services and supports provider.

3 (13) One representative of an organization of employers
4 whose members collect, or will likely be collecting, the
5 premium established under section 9.

6 (c) Terms.--Expect for the members under subsection (b) (1),
7 (2), (3) and (4), members of the commission shall be appointed
8 by the Governor for terms of two years, except that the Governor
9 shall appoint the initial members to staggered terms not to
10 exceed four years.

11 (d) Chair.--The secretary of the department, or the
12 secretary's designee, shall serve as chair of the commission.

13 (e) Meetings and quorum.--Meetings of the commission shall
14 be at the call of the chair. A majority of the voting members of
15 the commission shall constitute a quorum for any votes of the
16 commission. Approval of 60% of those voting members of the
17 commission who are in attendance is required for the passage of
18 any vote.

19 (f) Recommendations.--Beginning January 1, 2021, the
20 commission shall propose recommendations to the department
21 regarding:

22 (1) The establishment of criteria for determining that
23 an individual has met the requirements to be a qualified
24 individual as established under section 6 or an eligible
25 beneficiary as established under section 7.

26 (2) The establishment of criteria for minimum
27 qualifications for the registration of long-term services and
28 supports providers who provide approved services to eligible
29 beneficiaries.

30 (3) The establishment of payment maximums for approved

1 services consistent with actuarial soundness which may not be
2 lower than Medicaid payments for comparable services. A
3 service or supply may be limited by dollar amount, duration
4 or number of visits. The commission shall engage affected
5 stakeholders to develop this recommendation.

6 (4) Changes to rules or policies to improve the
7 operation of the program.

8 (5) Providing a recommendation to the council for the
9 annual adjustment of the benefit unit as provided under this
10 act.

11 (6) Assisting the actuary contracted by the department
12 with the preparation of regular actuarial reports on the
13 solvency and financial status of the program and advising the
14 General Assembly on actions necessary to maintain trust
15 solvency. The commission shall provide the actuary with all
16 actuarial reports for review. The actuary shall provide any
17 recommendations to the commission and the General Assembly on
18 actions necessary to maintain trust solvency.

19 (7) Whether and how to extend coverage to individuals
20 who became disabled before 18 years of age, including the
21 impact on the financial status and solvency of the trust. The
22 commission shall engage affected stakeholders to develop this
23 recommendation.

24 (8) Consultation with the actuary contracted by the
25 department on the development of an actuarial report of the
26 projected solvency and financial status of the program. The
27 actuary shall provide any recommendations to the commission
28 and the General Assembly on actions necessary to achieve
29 trust solvency.

30 (g) Expenses.--The commission shall monitor department

1 administrative expenses over time. Beginning November 15, 2020,
2 the commission shall annually report to the Governor, the
3 chairperson and minority chairperson of the Finance Committee of
4 the Senate and the chairperson and minority chairperson of the
5 Finance Committee of the House of Representatives on department
6 spending for administrative expenses and anticipated
7 administrative expenses as the program shifts into different
8 phases of implementation and operation. The November 15, 2025,
9 report shall include recommendations for a method of calculating
10 future department administrative expenses to limit
11 administrative expenses while providing sufficient funds to
12 adequately operate the program. The members under subsection (b)
13 (1), (2), (3) and (4) may advise the commission on the reports
14 prepared under this subsection but must recuse themselves from
15 the commission's process for review, approval and submission to
16 the General Assembly.

17 (h) Investment strategy subcommittee.--The commission shall
18 establish an investment strategy subcommittee consisting of the
19 members under subsection (b)(1), (2), (3) and (4) as voting
20 members of the subcommittee. In addition, four members appointed
21 by the Governor who are considered experienced and qualified in
22 the field of investment shall serve as nonvoting members. The
23 subcommittee shall provide guidance and advice to the State
24 Treasury on investment strategies for the fund, including
25 seeking counsel and advice on the types of investments that are
26 constitutionally permitted.

27 Section 5. Long-Term Services and Supports Trust Council.

28 (a) Establishment.--The Long-Term Services and Supports
29 Trust Council is established.

30 (b) Membership.--The council shall include:

1 (1) The Secretary of Human Services or a designee.

2 (2) The Secretary of Revenue or a designee.

3 (3) Two members of the Senate appointed by the President
4 pro tempore of the Senate.

5 (4) Two members of the House of Representatives
6 appointed by the Speaker of the House of Representatives.

7 (5) The Deputy Secretary for the Office of the Budget's
8 Office of Comptroller Operations.

9 (c) Adjustments to benefit unit.--On an annual basis, the
10 council shall determine adjustments to the benefit unit to
11 ensure benefit adequacy and solvency of the fund. The benefit
12 unit shall be adjusted at a rate no greater than the Consumer
13 Price Index, as determined by the council. In determining
14 adjustments to the benefit unit, the council shall review the
15 actuary's actuarial audit and valuation of the fund, any
16 recommendations by the actuary and commission, data on relevant
17 economic indicators and program costs and sustainability.

18 (d) Chair.--The secretary of the department, or the
19 secretary's designee, shall serve as chair of the council.

20 (e) Meetings and quorum.--The council shall meet at least
21 once annually to determine adjustments to the benefit unit under
22 subsection (c). Additional meetings of the council shall be at
23 the call of the chair. A majority of the voting members of the
24 council shall constitute a quorum for any votes of the council.
25 Approval of 60% of the members of the council who are in
26 attendance is required for the passage of any vote. The council
27 may adopt rules for the conduct of meetings, including
28 provisions for meetings and voting to be conducted by
29 telephonic, video or other conferencing process.

30 Section 6. Qualifying beneficiaries.

1 (a) Determination.--The Department of Revenue shall deem an
2 individual to be a qualified individual as provided under this
3 act if the individual has paid the long-term services and
4 supports premiums required under section 9 for the equivalent of
5 either:

6 (1) a total of 10 years without interruption of 5 or
7 more consecutive years; or

8 (2) three years within the last six years.

9 (b) Requirements.--When deeming an individual to be a
10 qualified individual, the Department of Revenue shall require
11 that the individual have worked at least 500 hours during each
12 of the 10 years in subsection (a) (1) and each of the 3 years in
13 subsection (a) (2).

14 Section 7. Disbursement of benefits.

15 (a) General rule.--Beginning January 1, 2025, approved
16 services shall be available and benefits payable to a registered
17 long-term services and supports provider on behalf of an
18 eligible beneficiary under this section.

19 (b) Eligible beneficiary.--A qualified individual may become
20 an eligible beneficiary by filing an application with the
21 department and undergoing an eligibility determination which
22 includes an evaluation that the qualified individual requires
23 assistance with at least three activities of daily living. The
24 department shall engage a qualified assessor so that the
25 determination may be made within 45 days from receipt of the
26 application by the qualified individual to use a benefit.

27 (c) Receipt of services and benefits.--An eligible
28 beneficiary:

29 (1) May receive approved services and benefits through
30 the program in the form of a benefit unit payable to a

1 registered long-term services and supports provider.

2 (2) May not receive more than the dollar equivalent of
3 365 benefit units over the course of the eligible
4 beneficiary's lifetime.

5 (d) Reimbursements.--If the department reimburses a long-
6 term services and supports provider for approved services
7 provided to an eligible beneficiary and the payment is less than
8 the benefit unit, only the portion of the benefit unit that is
9 used shall be taken into consideration when calculating the
10 individual's remaining lifetime limit on receipt of benefits.

11 (e) Combination of benefit units.--Eligible beneficiaries
12 may combine benefit units to receive more approved services per
13 day as long as the total number of lifetime benefit units has
14 not been exceeded.

15 Section 8. Benefits.

16 (a) Payment.--Benefits provided under this act shall be paid
17 periodically and promptly to registered long-term services and
18 supports providers.

19 (b) Qualified family members.--Qualified family members may
20 be paid for approved personal care services in the same way as
21 individual providers, through a licensed home care agency or
22 through a third option if recommended by the commission and
23 adopted by the department.

24 Section 9. Payroll premium.

25 (a) General rule.--Beginning January 1, 2022, the Department
26 of Revenue shall assess for each individual in employment with
27 an employer a premium based on the amount of the individual's
28 wages. The initial premium rate shall be 0.58% of the
29 individual's wages. Beginning January 1, 2024, and biennially
30 thereafter, the premium rate shall be set by the Independent

1 Fiscal Office at a rate no greater than 0.58%. In addition, the
2 Independent Fiscal Office shall set the premium rate at the
3 lowest amount necessary to maintain the actuarial solvency of
4 the fund in accordance with recognized insurance principles and
5 designed to attempt to limit fluctuations in the premium rate.
6 To facilitate the premium rate setting the actuary contracted by
7 the department shall perform a biennial actuarial audit and
8 valuation of the fund and make recommendations to the
9 Independent Fiscal Office.

10 (b) Duties of employers.--An employer shall:

11 (1) Collect from employees the premiums provided under
12 subsection (a) through payroll deductions and remit the
13 amounts collected to the Department of Revenue.

14 (2) In collecting employee premiums through payroll
15 deductions, act as the agent of the employees and shall remit
16 the amounts to the Department of Revenue as required by this
17 act.

18 (c) Collective bargaining agreements.--Nothing in this act
19 shall require a party to a collective bargaining agreement
20 taking effect within 24 months or less of the effective date of
21 this section to reopen negotiations of the agreement or to apply
22 any of the responsibilities under this act unless and until the
23 existing agreement is reopened or renegotiated by the parties or
24 expires.

25 (d) Collection.--Premiums shall be collected in the manner
26 and at such intervals as provided by the Department of Revenue.

27 (e) Deposit of premiums.--The Department of Revenue shall
28 deposit all premiums collected under this section into the fund.

29 (f) Increase of premiums.--If the premiums under this
30 section are increased, the Department of Revenue shall notify

1 each qualified individual by mail that the individual's premiums
2 have been increased, describe the reason for increasing the
3 premiums and describe the plan for restoring the funds so that
4 premiums are returned to 0.58% of the individual's wages.

5 (g) Exemption.--An employee who demonstrates that the
6 employee has long-term care insurance is exempt from the premium
7 assessment under this section.

8 Section 10. Self-employed individuals.

9 (a) Electing coverage.--Beginning January 1, 2022, a self-
10 employed individual, including a sole proprietor, independent
11 contractor, partner or joint venturer may elect coverage under
12 this act. An individual electing coverage under this subsection
13 is responsible for payment of all premiums assessed to an
14 employee under section 9. The individual shall file a notice of
15 election in writing with the Department of Revenue, in a manner
16 prescribed by the Department of Revenue. The individual shall be
17 eligible for benefits after paying the long-term services and
18 supports premium for the time required under section 6.

19 (b) Withdraw from coverage.--A self-employed individual who
20 has elected coverage may withdraw from coverage at times
21 prescribed by the Department of Revenue by filing a notice of
22 withdrawal in writing with the Department of Revenue, with the
23 withdrawal to take effect no sooner than 30 days after filing
24 the notice with the Department of Revenue.

25 (c) Cancellation.--The Department of Revenue may cancel
26 elective coverage if the self-employed individual fails to make
27 required payments or file reports. The Department of Revenue may
28 collect due and unpaid premiums and may levy an additional
29 premium for the remainder of the period of coverage. The
30 cancellation shall be effective no later than 30 days from the

1 date of the notice in writing advising the self-employed
2 individual of the cancellation.

3 (d) Rules and regulations.--The Department of Revenue shall
4 promulgate rules and regulations for determining the hours
5 worked and the wages of individuals who elects coverage under
6 this section and for the enforcement of this section.

7 Section 11. Long-Term Services and Supports Trust Fund.

8 (a) Establishment.--The Long-Term Services and Supports
9 Trust Fund is established as a special fund in the State
10 Treasury. Money in the fund shall be appropriated on a
11 continuing basis to the department for the purposes of this act.

12 (b) Administration of fund.--The following shall apply:

13 (1) All receipts from employers under section 9 shall be
14 deposited in to the fund.

15 (2) Expenditures from the fund may be used for the
16 administrative activities of the department and the
17 Department of Revenue.

18 (3) Benefits associated with the program shall be
19 disbursed from the fund by the department. Only the secretary
20 of the department or the secretary's designee may authorize
21 disbursements from the fund.

22 (4) The fund shall provide reimbursement of any amounts
23 from other sources that may have been used for the initial
24 establishment of the program.

25 (c) Utilization of revenue.--The revenue generated under
26 this act shall be utilized to expand long-term care in this
27 Commonwealth. The money may not be used either in whole or in
28 part to supplant existing State or county funds for programs
29 that meet the definition of approved services.

30 (d) Money expended for other purposes.--Money deposited in

1 the fund shall remain in the fund until expended in accordance
2 with the requirements of this act. If money is expended for any
3 purpose other than supporting the long-term services and
4 supports program, the Department of Revenue shall notify each
5 qualified individual by mail that the individual's premiums have
6 been expended for an alternate use, describe the alternate use
7 and state the Department of Revenue's plan for restoring the
8 funds so that premiums are not increased and benefits are not
9 reduced.

10 Section 12. Management of fund.

11 (a) Investment of money in fund.--The department shall have
12 the State Treasury invest the money in the fund. The State
13 Treasury shall have full power to invest, reinvest, manage,
14 contract, sell or exchange investment money in the fund.

15 (b) Investment policy.--All investments made by the State
16 Treasury shall be made with the degree of judgment and care
17 required and the investment policy established by the State
18 Treasury.

19 (c) Investment with other funds.--As deemed appropriate by
20 the State Treasury, money in the fund may be commingled for
21 investment with other funds subject to investment by the State
22 Treasury.

23 (d) Policies.--The department shall establish all policies
24 relating to the fund, other than the investment policies as
25 provided under this section.

26 (e) Disbursement.--With the exception of expenses of the
27 State Treasury under this section, disbursements from the fund
28 shall be made only on the authorization of the secretary of the
29 department or the secretary's designee and money in the fund may
30 be spent only for the purposes specified under this act.

1 (f) Consultation.--The State Treasury shall routinely
2 consult and communicate with the department on the investment
3 policy, earnings of the fund and related needs of the program.

4 Section 13. Appeals.

5 Determinations made by the department under this act,
6 including determinations regarding functional eligibility or
7 related to registration of long-term services and support
8 providers, are subject to appeal in accordance with 2 Pa.C.S. §
9 702 (relating to appeals). In addition, the standards and
10 procedures adopted for appeals under this section shall address
11 the following:

- 12 (1) Time lines.
- 13 (2) Eligibility and benefit determination.
- 14 (3) Judicial review.
- 15 (4) Fees.

16 Section 14. Information sharing.

17 The department shall:

18 (1) Seek access to Medicare data from the Federal
19 Centers for Medicare and Medicaid Services of the United
20 States Department of Health and Human Services to analyze the
21 potential savings in Medicare expenditures due to the
22 operation of the program.

23 (2) Apply for a demonstration waiver from the Federal
24 Centers for Medicare and Medicaid Services of the United
25 States Department of Health and Human Services to allow for
26 the Commonwealth to share in the savings generated in the
27 Federal match for Medicaid long-term services and supports
28 and Medicare due to the operation of the program.

29 (3) Submit a report on the status of the waiver to the
30 following by December 1, 2022:

1 (i) The chairperson and minority chairperson of the
2 Aging and Youth Committee of the Senate.

3 (ii) The chairperson and minority chairperson of the
4 Aging and Older Adult Services Committee of the House of
5 Representatives.

6 (iii) The chairperson and minority chairperson of
7 the Finance Committee of the Senate.

8 (iv) The chairperson and minority chairperson of the
9 Finance Committee of the House of Representatives.

10 Section 15. Report.

11 Beginning December 1, 2026, and annually thereafter, the
12 commission shall report to the General Assembly on the program,
13 including:

14 (1) Projected and actual program participation.

15 (2) Adequacy of premium rates.

16 (3) Fund balances.

17 (4) Benefits paid.

18 (5) Demographic information on program participants,
19 including age, gender, race, ethnicity, geographic
20 distribution by county, legislative district and employment
21 sector.

22 (6) The extent to which the operation of the program has
23 resulted in savings to the Medicaid program by avoiding costs
24 that would have otherwise been the responsibility of the
25 Commonwealth.

26 Section 16. Exclusions.

27 Any benefits used by an individual under this act are not
28 income or resources for any determinations of eligibility for
29 any other State program or benefit, Medicaid, a State-Federal
30 program or for any other means-tested program.

1 Section 17. Effective date.

2 This act shall take effect 60 days.