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White paper

The Long-Term Care Trust Act

Washington state enacts first social insurance program for LTC

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The passage of The Long-Term Care Trust Act, effective January 1, 2022, makes Washington the first state in the nation to create a publicly funded insurance program that will provide working residents of Washington an opportunity to vest into a basic level of LTC benefits. The program will be funded by Washington workers who will pay premium assessments (a tax) through payroll deductions. This program will not be available to residents of Washington who have already permanently retired.

There is also a window of opportunity for residents who own "long-term care insurance" to apply for an exemption from the premium tax. This short time-frame to apply for the exemption spans from October 1, 2021 through December 31, 2022.

The following information is intended only as a summation of the Washington Long-Term Care Trust Act and in no way is a complete description. For further information, you can refer to the State of Washington Second Substitute House Bill 1087[i] and Substitute Senate Bill 6267.[ii] Please note that Nationwide does not give tax advice; please consult a tax professional with any questions.

This discussion will conclude with steps a financial professional may want to consider when talking to clients about the program an how it may or may not fit into the client's overall strategy for long-term care (LTC) planning.

Overview

- Beginning January 1, 2022 each W-2 employee will pay a premium tax through payroll deduction.
- An initial premium rate will be 0.58% of the individual's wages (or $0.58 for each $100 earned). Wages will be taxed without limitation or capped amount; thus high wage earners will pay the tax on all earned wages.
- There is an option for self-employed individuals to elect coverage and be part of the program.
- There is also a limited period of time for individuals who own "long-term care insurance" to apply for an exemption from the premium assessment (tax) – in other words, to opt-out of the program.
- Benefits for approved services will become available starting on January 1, 2025.
- Maximum lifetime benefits are $36,500 per person (adjusted annually) for vested individuals.
- An "eligible beneficiary" of the program is a qualified individual who:
    - is age 18 years or older
    - was not disabled before the age of 18
    - meets the requirement for assistance with ADLs, and
    - has not exhausted their lifetime benefits.
- Benefits will not be available to individuals:
    - who have already permanently retired, thus are unable to vest into the program
    - who are not residing in Washington when qualified to receive benefits - even if vested in the program

Qualifying for and receiving benefits

To be a qualified individual that can access benefits, there are requirements that must be met. These include the following:

- An individual must be vested in the program. This means being employed and paying the premium tax for either:
    - ten years without an interruption of five or more consecutive years; or
    - three years within the last six years; AND
    - the individual must have worked at least 500 hours during each of the ten years or three years required.
- The individual must need assistance with 3 out of 10 activities of daily living (ADLs) mandated by the program:[iii]
    - Eating, toileting, cognitive impairment, bathing, dressing, transferring, ambulation/mobility, medication management, personal hygiene, and body care.
- The individual must be living as a resident of Washington at the time of claim
- Benefits are allocated in units of $100
- Maximum lifetime benefit equals $36,500 (adjusted annually). Thus $100 X 365 units = $36,500.
- Qualified individuals may take less to stretch out their benefits
- Units can be combined if daily expenses exceed one unit, but cannot exceed the lifetime maximum
- Benefits are paid directly to approved service providers and can be used to pay for home modifications, adaptive equipment and technology, home-delivered meals, and in-home personal care. Benefits can also be used for training and compensating qualified family caregivers. If an individual requires greater care and can no longer stay at home, the benefit also may be used to pay for assisted living, adult day care, and nursing home services.

Self-employed individuals wanting to elect coverage

All W-2 employees will automatically be included in the program and subject to paying the premium tax. However, self-employed individuals will not be included in the program unless they choose to elect coverage. A self-employed individual includes a sole proprietor, independent contractor, partner, or joint venturer.

Starting January 1, 2022 a self-employed person may elect coverage. The self-employed person who has elected coverage will be subject to the same premium tax and vesting requirements as outlined for W-2 employees in the program.

Opting out of the program

An employee who attests they have “long-term care insurance” has the option to apply for an exemption from the premium tax. Note that once the employee is determined to be exempt, they may not later apply to become a qualified individual or eligible beneficiary – they are permanently ineligible for coverage under the program.

- The employment security department will accept applications for the exemption **only from October 1, 2021 through December 31, 2022**
- Only employees aged 18 and older can apply for the exemption
- As the tax is assessed through payroll deduction, it is the responsibility of the exempt employee to provide written notification to all current and future employers of an approved exemption

What qualifies as “long-term care insurance” in the state of Washington?

RCW 48.83.020[iv] enacted by the Washington State Legislature defines “long-term care insurance” for Washington state (not federal) purposes. Included in the definition are the following types of insurance:

- Qualified long-term care insurance contracts
- Long-term care riders on life insurance and annuities
- The long-term care riders or policies purchased under group coverage

While not called out specifically in RCW 48.83.020, the general definition would likely include some chronic illness riders, depending on their structure. For example, a charged for and underwritten rider would likely qualify; whereas a discounted chronic illness rider (with no up-front charge and no underwriting) would not likely qualify

Also, please note that Nationwide does not provide legal, tax advice or specific recommendations on how to qualify or apply for the exemption. Individuals should consult their own legal or tax professional for more information. For information regarding potential qualification of other insurance company LTC and chronic illness products, pleases contact the insurance company of issue.

Steps for a financial professional to consider

Connect with your clients to see if they are aware of the new Washington Long-Term Care Trust Act. Ask them if they are interested in being part of the Washington program as part of their LTC planning; or whether they would like to look further into options for being exempt from the program while it is still possible. Currently, the only window of opportunity to opt out of the program as stated in the legislation is from October 1, 2021 through December 31, 2022.

If you have not helped your client purchase any type of LTC coverage, ask your clients if they have purchased any insurance policies from another financial or insurance professional.

- Is the policy a traditional LTC policy, a life/linked benefit LTC policy, or an annuity based LTC hybrid?
- If they own life insurance, check to see if the policy has a long-term care rider
- If a particular policy/rider is in doubt, check with the issuing company to see if the policy qualifies for the tax exemption

Discuss what insurance protection may be missing from a client's overall financial strategy

- Consider life insurance with a LTC rider if there is still a family protection need
- Consider a linked benefit LTC policy if long-term care with premium protection is the primary concern
- Clients who are not concerned with guarantees and only looking for a price point could consider a traditional LTC policy
- Consider an annuity with a LTC rider if the client is not life insurable but still LTC insurable

Discuss with the client any plans they may have for moving to another state upon retiring.

- For example, if the client plans to permanently relocate to a warmer and dryer climate such as Arizona, they would not be eligible to collect the benefits once they no longer reside in Washington state

If your client is nearing retirement:

- Discuss whether extending employment a few more years would be of interest in order to vest into the program

Consider that some clients may want to remain in the program even if they have qualifying LTC coverage that would allow them to apply for an exemption from the tax.

- Benefits from the trust act coupled with benefits from privately owned LTC coverage may provide a stronger LTC strategy for some clients

Nationwide LTC Solutions

RCW 48.83.020 enacted by the Washington State Legislature defines "long-term care insurance" for purposes of the State of Washington. It is Nationwide's position that the following Nationwide solutions meet the Washington State definition of long term care insurance per RCW 48.83.020. This would include but may not be limited to:

- LTC Rider or LTC Rider II attached to a Nationwide life insurance policy
- YourLife CareMatters or CareMatters II policy
- LTC Rider on a Nationwide survivorship policy. Please note that for both spouses/partners to be exempt from the premium tax, both individuals must have an LTC rider issued with the policy. If only one spouse/partner has the LTC rider, then only the individual with the LTC Rider will qualify to apply for the exemption.

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Summary

LTC planning is an important part of a client's retirement planning, but not always an easy subject to approach. Discussing the Washington Long-Term Care Trust Act is another way to bring up the subject of long-term care with your clients. Will $36,500 in state benefits protect the retirement and legacy plans your client has? Walking through the options your clients may have available to them can help bring more light on the importance of having a solid LTC strategy in place.

While Washington is the first state to implement such a program, California, Illinois, Michigan an Minnesota are also considering putting similar programs in place whether through state legislation or state ballot.

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[i] http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1087-S2.PL.pdf

[ii] http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Passed%20Legislature/6267-S.PL.pdf?q=20200729150140

[iii] https://www.agingwashington.org/media/dynamic/files/142-2019-long-term-care-trust-act-factsheet.pdf

[iv] https://app.leg.wa.gov/RCW/default.aspx?cite=48.83.020 - Washington State Legislature, Title 48, Chapter 48.3, Section 48.83.020(5)