

Long-Term Care Legislative Update

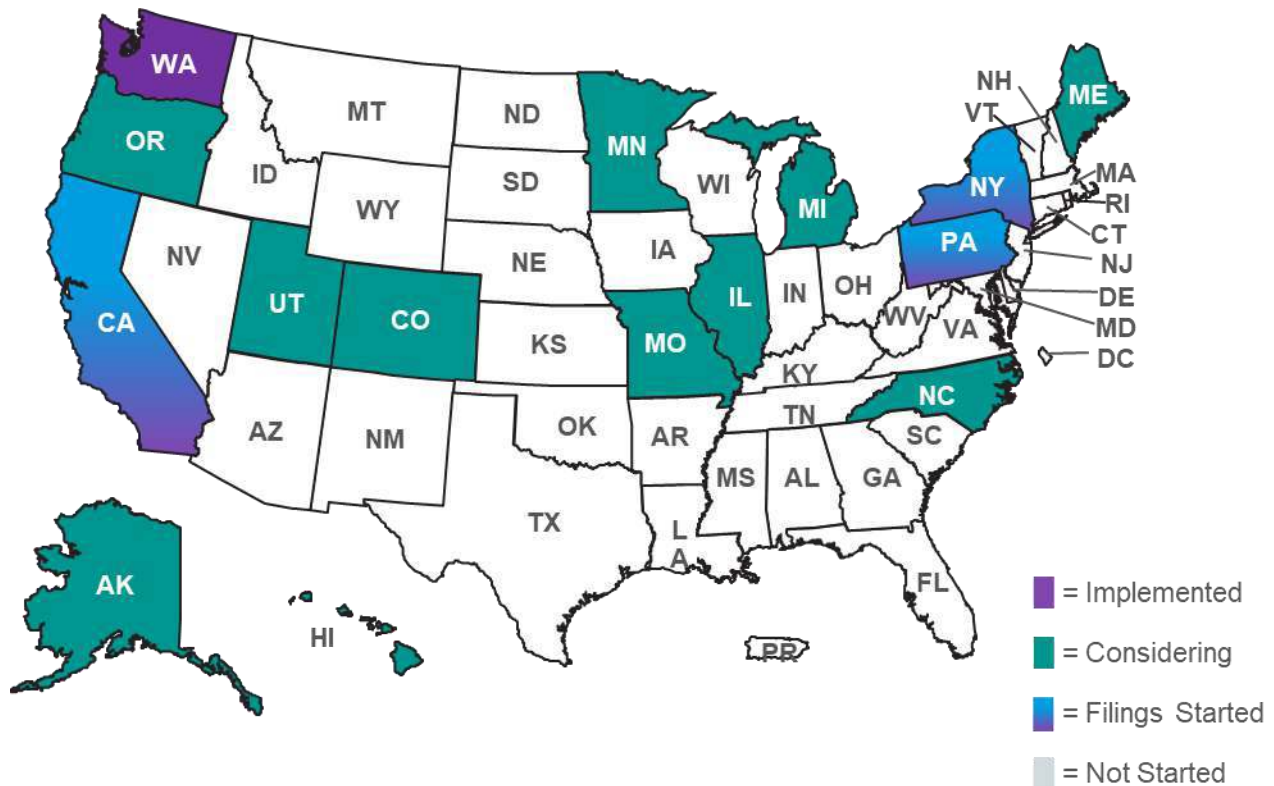
November 23, 2022

State of the market

The traditional long-term care (LTC) market has been challenged due to a strict regulatory environment, rising claims, and lower than expected lapses, leading to higher prices often unaffordable to a large portion of the affected population. People **reaching the age of 65 now have an average life expectancy of an additional 19.4 years¹**; and **70% of those will require long-term care²**, with a large portion of this care provided by a family member—creating additional caregiving pressures on the working population and impacting employers.

As the costs associated with eldercare increase, and Medicaid budgets are further strained, state governments are looking for new ways to address the looming problem. As state Medicaid budgets get depleted and liabilities grow, more states are considering or sponsoring legislation around employee funded LTC solutions. **Adding complexity, a number of insurers have opted out of the traditional LTC market, leaving relatively few to provide much-needed long-term care solutions.**

This document is designed to provide a high-level overview of each bill as it has been delivered to date. Please note that for all of these states, with the exception of Washington, it is still too early to tell what their final plan designs, eligibility and opt-out requirements will be. We will continue to monitor and report any updates.



State legislative updates

Pennsylvania

Pennsylvania introduced House Bill 2779 on August 22, 2022. The Aging and Older Adult Services Committee was developed to enact a bill that provides statewide long-term care. The proposed bill appears to mirror the Washington State Cares Fund Act (WA Cares Fund). The bill will not receive consideration in 2022, therefore, new legislation will need to be introduced in 2023.

Bill Proposal

- Workers near retirement (born before 1968) will be able to qualify for partial benefits on a pro-rated basis. (1/10th of the lifetime benefit for each year)
- Opt-out available if an individual has a private LTC plan or is self-employed. Specific requirements regarding qualifying coverage for the opt-out are yet to be determined.
 - Program design
- \$36,500 lifetime benefit (\$100 per day)
- .58% payroll tax for every \$100 earned
- Work 500 hours for 10 years or 3 years if individual experienced a catastrophic disabling event
- Loss of three activities of daily living to activate LTC benefits

For more information on the Pennsylvania legislation please visit: [HB# 2779](#)

Washington

The first to enact a law was Washington State, which is now slated to take effect July 1, 2023. The program, Long-Term Services & Supports (LTSS) is publicly funded by a 0.58% payroll tax on all wages and remuneration withheld quarterly by employers and is mandatory for all W-2 employees. Owners of private LTC insurance are permitted to “opt-out” by applying for an exemption by December 31, 2021.

April 13, 2022, Washington Cares Fund Law Changes

- Workers near retirement (born before 1968) will be able to qualify for partial benefits on a pro-rated basis. (1/10th of the lifetime benefit for each year)
- Opt-out available to:
 - Anyone who purchased a private LTC policy before Nov. 1, 2021. Applications accepted until 12/31/22
 - Anyone who works in Washington but resides in another state: Opt-out start date 1/1/23
 - Anyone working in Washington with a temporary visa: Opt-out start date 1/1/23
 - Spouses of military stationed in Washington: Opt-out start date 1/1/23
 - Veterans with a 70% or more disability: Opt-out start date 1/1/23
- Still Being Considered:
 - Recertification: Opted-out individuals to re-attest every 3 years

For more information on the WA Cares Fund program please click [here](#).

California

California has secured funding and enacted a Task Force to explore an LTC Services Support program (LTSS). The goal of the Task Force is to recommend options for establishing a statewide long-term care insurance program, and comment on the respective degrees of feasibility of those options in a report submitted to the commissioner, the Governor, and the Legislature on or before January 1, 2023.

At this time, it appears the Task Force is considering recommending several designs that would include “opt-outs” for individuals who own private coverage. Specific requirements regarding qualifying coverage for the opt-out are yet to be determined.

Final recommendations are expected at the Task Force meeting on December 15, 2022. Given the complexity and cost to fund a state run LTC program, we would expect the legislative process to take 1-2 more years before a program is in place.

For more information on the CA LTSS program please click [here](#).

New York

New York State has established a draft LTC Trust Act (Senate Bill 9082), which is only in committee and has not yet passed. The proposed act appears to copy the Washington Cares Fund program. This does include an opt-out for the State Plan, however, specific requirements regarding qualifying coverage for the opt-out are yet to be determined.

Bill Proposal

- Program design
 - \$36,500 lifetime benefit (\$100 per day)
 - Loss of three activities of daily living to activate LTC benefits
- Opt-out available if an individual has a private LTC plan or is self-employed. Specific requirements regarding qualifying coverage for the opt-out are yet to be determined (see below notable draft bill language).
 - "An employee who has maintained private long term care insurance on an uninterrupted basis beginning no later than January 1 of the year in which the article takes effect may apply for an exemption of premium contributions..."
 - The Senate Bill 9082 refers to Section 1117 of the NY Insurance Code <https://www.nysenate.gov/legislation/laws/ISC/1117> and Sec. 7702B, as it defines a private long-term care policy. One of these key provisions state “the only insurance protection provided under such contract is the coverage of qualified long-term care services”. This definition appears to not include hybrid life with long-term care policies. In preparation for the 2023 legislative session, many carriers are working closely with the Life Insurance Council of New York (LICONY) to educate the Senators on LTC riders included in life insurance policies, with the goal that these programs be given consideration for the opt-out in future legislation. It is important to note that Washington legislation started the same way and ultimately accepted these programs for the opt-out.

For more information on the NY act, please click the link to read the full [draft](#).

1. https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf

2. <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need>

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