

Legislative swirl continues for Long-Term Care

The mad-dash for Long-Term Care (LTC) coverage is once again looming large for employers and their employees. While the Washington Cares Act (the nation's first mandatory state LTC plan) remains postponed until July 2023, New York is the latest to push the pace of additional states looking for ways to address the overwhelming costs of Medicaid liability.

The New York Trust Act is set for further legislative review come early fall (August/September). As proposed (June 2022), **beginning January 1, 2024, any employee in New York must pay a to-be-determined percentage of annual wages into a state LTC fund through payroll tax.**

The opt out period for Washington has closed, but the time is now for employers and employees to be better prepared for the ways and rate at which New York implements its LTC plan.

Long-Term Care legislative state of the union



Initially targeted to start January 1, 2022, the Washington Cares Fund implementation is currently delayed until July 2023



California approved funding to explore a statewide LTC program — while an outside consultant was hired and committee sessions are taking place, the plan structure is yet to be finalized (expecting discounted payroll tax for those with private LTC coverage versus full payroll tax opt out)



Additional states considering enacting LTC legislation (Alaska, Colorado, Hawaii, Illinois, Maine, Michigan, Minnesota, Missouri, Oregon, North Carolina and Utah), as well as numerous pieces proposed at the federal level

What is the New York plan structure?

This remains a fluid situation, as New York continues to finalize details around its law (expected later this year). The proposal drafted is very detailed and similar to Washington, but does close some gaps from the original legislation.

Here are the key New York developments you need to know:



Employee must pay into the program for either a) three of the past six years OR b) a total of 10 years (five of which must be consecutive) to qualify for the benefit



Wages include all compensation (e.g., wage, bonuses, commissions, etc.) paid by employer during a calendar year



Employers are responsible for administering collection and remittance of payroll tax

Who is impacted?



W-2 employees
in New York



500+ hours
every year, as long
as employed



18+ years old
may participate

- Self-employed individuals are exempt from the program, however, may choose to opt in
- Collectively bargained employees are not temporarily exempted until future contract negotiation

New York's average annual cost of care:
\$158,797
private nursing home¹

\$66,352
home healthcare¹

What are the benefits?

\$36,500 lifetime benefit (\$100/day) for qualified LTC expenses

- LTC services include broad scope of home, community, facility-based LTC services, including training for unpaid/informal caregiving provision that may lead to becoming qualified to receive payment
- Current wording potentially allows for no residency requirement at time of claim, meaning those who move out of state could still receive the benefit
- At the time of claim, employees must need help with at least three activities of daily living

What are the opt out qualifications?



Employees with private LTC may apply to opt out of the payroll tax



Private LTC coverage requirements and the opt out deadline are not known at this time

Private LTC coverage will be subject to a review process, ensuring it satisfies coverage requirements. It is unclear at this time whether Life with LTC will be considered an approved form of private LTC coverage. Carriers are actively communicating with New York to ensure these products are considered. Employees may have to pay payroll tax premiums in the event they don't receive approval prior to New York Trust Act effective date.

The New York plan requires ongoing **employee eligibility audits** and resumption of payroll tax deduction if employee drops coverage related to their exemption. Employees must notify the plan and their employer of eligibility changes; their failure to pay tax will be subject to penalties and potential fines. Employers will not be held responsible for employee failure to provide notice to their employer.

Unique carrier landscape in New York

To request an opt out, employees must have qualified, private LTC coverage, but New York has a semi-complex carrier landscape. With limited private LTC coverage approved, employees and employers must evaluate options early. Carriers and enrollment firms were flooded by demand in Washington, and if employers/employees wait too long, the same is expected to unfold in New York.



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