

STATE OF NEW YORK

9082

IN SENATE

May 9, 2022

Introduced by Sens. MAYER, MAY, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the state finance law and the tax law, in relation to enacting the "New York long term care trust act" and establishing the New York long term care trust program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York long term care trust act".

3 § 2. The public health law is amended by adding a new article 36-B to
4 read as follows:

ARTICLE 36-B

NEW YORK LONG TERM CARE TRUST PROGRAM

Section 3670. Definitions.

5 3671. Program established.

6 3672. Long term care trust commission.

7 3673. Long term care trust advisory panel.

8 3674. Qualified individuals; determination.

9 3675. Eligible beneficiaries; determination.

10 3676. Reimbursement for services and supports.

11 3677. Employee premium contributions.

12 3678. Election for self-employed individuals.

13 3679. Appeals and appeal hearings.

14 3680. Waivers.

15 § 3670. Definitions. As used in this article, the following terms
16 shall have the following meanings, unless the context clearly requires
17 otherwise:

18 1. "Fund" means the long term care trust fund established pursuant to
19 section ninety-nine-pp of the state finance law.

20 2. "Approved service" means long term care services and supports
21 including, but not limited to:

22 (a) adult day services;

23 (b) care transition coordination;

24 (c) memory care;

25 EXPLANATION--Matter in italics (underscored) is new; matter in brackets
26 [-] is old law to be omitted.

27 LBD13149-09-2

1 (d) adaptive equipment and technology;
2 (e) environmental modification;
3 (f) personal emergency response system;
4 (g) home safety evaluation;
5 (h) respite for family caregivers;
6 (i) home delivered meals;
7 (j) transportation;
8 (k) dementia supports;
9 (l) education and consultation;
10 (m) eligible relative care;
11 (n) professional services;
12 (o) services that assist paid and unpaid family members caring for
13 eligible individuals, including training for informal caregivers and
14 other individuals providing care who are not otherwise employed as long
15 term care workers under section thirty-six hundred fourteen of this
16 chapter;
17 (p) home care services as defined in section thirty-six hundred two of
18 this chapter;
19 (q) assisted living services;
20 (r) adult family home services;
21 (s) nursing home services; and
22 (t) any other long term care services as defined in paragraph (b) of
23 subdivision one of section three hundred sixty-seven-f of the social
24 services law or otherwise designated as such in law or regulations by
25 the department.
26 3. "Benefit unit" means the maximum daily benefit the department is
27 authorized to pay a long term care services and supports provider as
28 reimbursement for providing an approved service or services to an eligi-
29 ble beneficiary, which amount shall initially be one hundred dollars,
30 and which shall be adjusted annually by the advisory panel in accordance
31 with the provisions of section thirty-six hundred seventy-three of this
32 article.
33 4. "Commission" means the long term care trust commission established
34 pursuant to section thirty-six hundred seventy-two of this article.
35 5. "Advisory panel" or "panel" means the long term care trust advisory
36 panel established pursuant to section thirty-six hundred seventy-three
37 of this article.
38 6. "Eligible beneficiary" means a qualified individual as defined in
39 subdivision sixteen of this section who:
40 (a) was not disabled before the age of eighteen;
41 (b) has been assessed by the department as needing the minimum level
42 of assistance with activities of daily living necessary to receive bene-
43 fits pursuant to section thirty-six hundred seventy-five of this arti-
44 cle;
45 (c) has not exhausted the lifetime benefit limit as defined in subdi-
46 vision eleven of this section; and
47 (d) does not have in effect an exemption granted pursuant to subdivi-
48 sion six of section thirty-six hundred seventy-seven of this article.
49 7. "Employee" means any person engaged in employment as such term is
50 defined in section five hundred eleven of the labor law.
51 8. "Employer" shall have the same meaning as defined in section five
52 hundred twelve of the labor law.
53 9. "Employment" shall have the same meaning as defined in section five
54 hundred eleven of the labor law.
55 10. "Long term care services and supports provider" or "long term care
56 provider" means an individual or entity authorized to provide long term

1 care services as defined in paragraph (b) of subdivision one of section
2 three hundred sixty-seven-f of the social services law, including but
3 not limited to a nursing facility licensed under article twenty-eight of
4 this chapter; a home care services agency, certified home health agency
5 or long term home health care program, as defined in section thirty-six
6 hundred two of this chapter; an adult day health care program in accord-
7 ance with regulations of the department; a home care services worker as
8 defined in section thirty-six hundred thirteen of this chapter; a
9 personal care provider licensed or qualified to provide services in this
10 state or in any other state or local agency; a qualified family member
11 as defined in subdivision fifteen of this section, and such other indi-
12 viduals or entities that are authorized by law or regulations of this
13 state or any other state or local agency to provide such services.

14 11. "Lifetime benefit limit", or "lifetime limit" means the dollar
15 equivalent of three hundred sixty-five benefit units paid by the depart-
16 ment on behalf of an eligible beneficiary over the course of such eligi-
17 ble individual's lifetime.

18 12. "Premium contributions" or "premiums" means the payments an
19 employee is required to contribute to the program through payroll
20 deductions collected by the employer pursuant to section thirty-six
21 hundred seventy-seven of this article or voluntarily pursuant to section
22 thirty-six hundred seventy-eight of this article.

23 13. "Private long term care insurance coverage" means a contract for
24 insurance which meets the requirements of section one thousand one
25 hundred seventeen of the insurance law.

26 14. "Program" means the New York long term care trust program estab-
27 lished pursuant to section thirty-six hundred seventy-one of this arti-
28 cle.

29 15. "Qualified family member" means a relative of an eligible benefi-
30 ciary who meets the educational or training requirements established by
31 the department or the education department for providing long term care
32 services and supports and is authorized by law or regulation to receive
33 payments from the state.

34 16. (a) "Qualified individual" means an individual who:

35 (i) is age eighteen or older; and

36 (ii) has paid premium contributions pursuant to section thirty-six
37 hundred seventy-seven or thirty-six hundred seventy-eight of this arti-
38 cle for a period equivalent to either:

39 (1) a total of ten years during the course of such individual's life-
40 time without an interruption of five or more consecutive years; or

41 (2) a total of three years within the six years immediately preceding
42 such individual's application for benefits under section thirty-six
43 hundred seventy-five of this article.

44 (b) For the purposes of paragraph (a) of this subdivision, a "year"
45 shall equal no less than five hundred hours of paid work.

46 17. "Wages" means all remuneration paid by an employer to an employee
47 with respect to employment during any calendar year.

48 § 3671. Program established. 1. There is hereby established the "New
49 York long term care trust program" to provide long term care services
50 and supports benefits for eligible beneficiaries regardless of income or
51 resources in accordance with the provisions of this article. The
52 department shall implement and administer such program in coordination
53 with the department of social services, the department of mental
54 hygiene, the state office for the aging, the comptroller, the department
55 of taxation and finance and the department of labor as set forth in this
56 section.

1 2. The department shall:

2 (a) Receive applications for benefits and perform initial and continu-
3 ing eligibility determinations for long term care services and supports
4 benefits in accordance with section thirty-six hundred seventy-five of
5 this article;

6 (b) Monitor the use of benefit units by each eligible beneficiary to
7 verify that such individual's lifetime benefit limit has not been
8 exhausted;

9 (c) Establish and maintain standards for all long term care services
10 and supports provided pursuant to this article;

11 (d) Establish requirements for a uniform system of audits and reports
12 to review the quality and availability of long term care services and
13 supports furnished pursuant to this article to ensure that the program
14 is administered in the best interests of program beneficiaries;

15 (e) Establish schedules of rates, payments, reimbursements and other
16 charges and standards and procedures relating to payments of benefits to
17 registered long term care services and supports providers pursuant to
18 section thirty-six hundred seventy-six of this article; including proce-
19 dures for auditing payments and recoupment of improper payments;

20 (f) Establish plans for the coordination of long term care services
21 and supports benefits under this article for eligible beneficiaries who
22 are funded through Medicaid or receiving other long term care services
23 and supports, including through Medicare, private long term care insur-
24 ance coverage, or other programs;

25 (g) Establish standards and procedures relating to contractual
26 arrangements between long term care providers and the department;

27 (h) Develop and maintain a registry of long term care services and
28 supports providers that meet the minimum qualifications established by
29 the commission pursuant to section thirty-six hundred seventy-two of
30 this article, in accordance with subdivision three of section thirty-six
31 hundred seventy-six of this article; and

32 (i) Provide consultative services to long term care providers in order
33 to assist them: to qualify for payments under the provisions of this
34 article; in providing information needed to determine such payments; and
35 in establishing and maintaining such fiscal records as may be necessary
36 for the proper and efficient administration of long term care services
37 and supports.

38 3. On or before January first, two thousand twenty-four, the depart-
39 ment shall, in consultation with the department of labor, the comp-
40 troller, the department of taxation and finance, the state office for
41 the aging, the department of social services, and any other department
42 or agency it deems relevant, develop and maintain such programs and
43 processes as shall be necessary to determine and keep records regarding
44 the applicability of premium contribution requirements of section thir-
45 ty-six hundred seventy-seven of this article to employees and individ-
46 uals who elect coverage pursuant to section thirty-six hundred seventy-
47 eight of this article. The department shall thereafter monitor
48 individual premium contributions and make eligibility determinations
49 pursuant to sections thirty-six hundred seventy-four and thirty-six
50 hundred seventy-five of this article.

51 § 3672. Long term care trust commission. 1. The long term care trust
52 commission is hereby established to make recommendations to all relevant
53 departments and agencies to ensure the adequacy of benefits provided
54 under the program and to maintain the solvency and sustainability of the
55 fund.

1 2. The commission shall consist of a total of twenty-seven members as
2 follows:

3 (a) twelve voting members representing the legislature and the follow-
4 ing departments, agencies or offices:

5 (i) two members appointed by the speaker of the assembly;
6 (ii) two members appointed by the temporary president of the senate;
7 (iii) one member appointed by the minority leader of the assembly;
8 (iv) one member appointed by the minority leader of the senate;
9 (v) the commissioner of the department of health, or such commission-
10 er's designee;

11 (vi) the state commissioner of social services, or such commissioner's
12 designee;

13 (vii) the director of the state office for the aging, or such direc-
14 tor's designee;

15 (viii) the commissioner of taxation and finance, or such commission-
16 er's designee;

17 (ix) the commissioner of mental health, or such commissioner's desig-
18 nee;

19 (x) the commissioner of the office for people with developmental disa-
20 bilities, or such commissioner's designee;

21 (b) five nonvoting members representing the following departments,
22 agencies or offices:

23 (i) the commissioner of addiction services and supports, or such
24 commissioner's designee;

25 (ii) the state long term care ombudsman, or such ombudsman designee;

26 (iii) the commissioner of the department of labor, or such commission-
27 er's designee;

28 (iv) the superintendent of financial services, or such superinten-
29 dent's designee;

30 (v) the comptroller or the comptroller's designee; and

31 (c) ten members to be appointed by the governor, all of whom shall be
32 voting members:

33 (i) one of whom shall be a representative of local programs for aging;

34 (ii) one of whom shall be a representative of a home care association
35 that represents caregivers that provide services to private pay and
36 Medicaid clients;

37 (iii) one of whom shall be a representative of a union representing
38 long term care workers;

39 (iv) one of whom shall be a representative of an organization repres-
40 enting retired persons;

41 (v) one of whom shall be a representative of an association represent-
42 ing skilled nursing facilities and assisted living providers;

43 (vi) one of whom shall be a representative of an association repres-
44 enting adult family home providers;

45 (vii) two of whom shall be individuals receiving long term care
46 services and supports, or their designees, or representatives of consum-
47 ers receiving long term care services and supports under the program;

48 (viii) one of whom shall be an individual who is paying the premium
49 established under section thirty-six hundred seventy-seven of this arti-
50 cle, or, prior to such section becoming effective, will pay such premi-
51 um, and who is not employed by a long term care services and supports
52 provider; and

53 (ix) one of whom shall be a representative of an organization of
54 employers whose members are required to collect the premium established
55 under section thirty-six hundred seventy-seven of this article, or prior

1 to such section becoming effective, will be required to collect such
2 premium.

3 3. Each appointed member shall serve for a term of two years,
4 provided, however that the initial members appointed pursuant to para-
5 graph (c) of subdivision two of this section shall be appointed to stag-
6 gered terms not to exceed four years. Initial appointments to the
7 commission shall be made no later than sixty days after the effective
8 date of this section.

9 4. The commissioner, or such commissioner's designee, shall serve as
10 chair of the commission. Meetings of the commission shall be at the call
11 of the chair, provided, however, that the initial meeting of the commis-
12 sion shall be held no later than thirty days after initial appointments
13 are made pursuant to subdivision two of this section. A majority of the
14 voting members shall constitute a quorum of the commission, and the
15 affirmative vote of sixty percent of the members voting shall be neces-
16 sary for any action to be taken by the commission. Notwithstanding any
17 contrary provision of this section, a majority of the members identified
18 in paragraph (c) of subdivision two of this section shall constitute a
19 quorum for the purposes of approving the annual report required under
20 subdivision eight of this section.

21 5. The commission shall establish an investment strategy subcommittee
22 which shall consist of:

23 (a) the members identified in paragraphs (a) and (b) of subdivision
24 two of this section, who shall serve as voting members of the subcommit-
25 tee; and

26 (b) four nonvoting advisors to be appointed by the governor, all of
27 whom shall be chosen for their experience and qualifications in the
28 field of investment and who are not members of the commission.

29 (c) the subcommittee shall provide guidance and advice to the comp-
30 troller on investment strategies for the fund, including seeking counsel
31 and advice on the types of investments that are constitutionally permit-
32 ted.

33 6. Members of the commission and the subcommittee established in
34 subdivision five of this section shall serve without compensation but
35 shall be reimbursed for reasonable and necessary expenses incurred in
36 the performance of their duties. The commission may employ staff as
37 needed, prescribe their duties, and fix their compensation within
38 amounts appropriated for the commission.

39 7. The commission shall hold its first meeting no later than thirty
40 days after initial appointments have been made pursuant to subdivision
41 three of this section and shall immediately begin development of
42 proposals for the implementation and eventual operation of the program.
43 The commission shall examine the laws and regulations of the state and
44 consult with health care providers, consumers, and other stakeholders
45 and make such recommendations as are necessary to conform the laws and
46 regulations of the state with the purposes of this article, including,
47 but not limited to:

48 (a) the establishment of procedures to be used by the department in
49 determining if an individual is:

50 (i) a qualified individual under section thirty-six hundred seventy-
51 four of this article; and

52 (ii) an eligible beneficiary under section thirty-six hundred seven-
53 ty-five of this article;

54 (b) the establishment of minimum qualifications for the registration
55 of long term care services and supports providers with the department
56 pursuant to section thirty-six hundred seventy-one of this article;

(c) the establishment of maximum allowable payments for approved services, in consultation with affected stakeholders, which (i) shall not be lower than Medicaid payments for comparable services, including limitations based on dollar amount, duration, or number of visits and (ii) shall be sufficient to ensure that long term care providers who are individuals receive at least the greater of (1) one hundred fifty percent of the minimum wage required under section six hundred fifty-two of the labor law or any otherwise applicable wage rule or order under article nineteen of the labor law which is otherwise applicable for home care aides as defined in section thirty-six hundred fourteen-c of this chapter, or (2) the wage otherwise required by law to be paid to home care aides as defined in section thirty-six hundred fourteen-c of this chapter;

(d) recommendations to the advisory panel for the annual adjustment of the benefit unit in accordance with sections thirty-six hundred seventy and thirty-six hundred seventy-three of this article; and

(e) recommendations as to the adoption, amendment or repeal of any rules, regulations or policies the commission deems necessary to improve the operation of the program and maintain solvency.

8. The commission shall monitor agency administrative expenses over time.

(a) Beginning on November fifteenth, two thousand twenty-three, and annually thereafter, the commission shall, in consultation with the comptroller, submit an actuarial report to the governor and to the chairs of the senate finance committee and the assembly ways and means committee. Such report shall include an actuarial report of the projected solvency and financial status of the program, anticipated agency spending and anticipated administrative expenses in the implementation and initial operation of the program.

(b) For the annual report due on November fifteenth of the year beginning five years after the effective date of this article, the commission shall include its recommendations for a method of calculating future agency administrative expenses to limit such expenses while providing sufficient funds to adequately operate the program.

9. Beginning on December thirty-first, two thousand twenty-eight, and annually thereafter, the commission shall submit a report to the legislature on the program, which shall include but not be limited to the following:

(a) projected and actual program participation;

(b) adequacy of premium rates;

(c) fund balances;

(d) benefits paid;

(e) demographic information on program participants, including age, gender, race, ethnicity, geographic distribution by county, legislative district, and employment sector; and

(f) the extent to which the operation of the program has resulted in savings to the Medicaid program by avoiding costs that would have otherwise been the responsibility of the state.

§ 3673. Long term care trust advisory panel. 1. The long term care trust advisory panel is hereby established. The advisory panel shall consist of each of the members of the commission identified in paragraphs (a) and (b) of subdivision two of section thirty-six hundred seventy-two of this article, all of whom shall be voting members.

2. It shall be the duty of the advisory panel to:

(a) determine annual adjustments to the benefit unit as defined in subdivision three of section thirty-six hundred seventy of this article;

1 (b) review the adequacy of benefits provided under this article; and
2 (c) make recommendations to the commission to ensure the solvency of
3 the trust fund.

4 3. The comptroller, or the comptroller's designee, shall serve as
5 chair of the advisory panel. The advisory panel shall meet at least once
6 annually to determine adjustments to the benefit unit. Additional meet-
7 ings of the advisory panel shall be at the call of the chair. A majority
8 of the voting members of the advisory panel shall constitute a quorum of
9 the panel, and the affirmative vote of sixty percent of the panel
10 members voting shall be necessary for any action to be taken by the
11 advisory panel. The advisory panel may adopt rules for the conduct of
12 meetings, including provisions for meetings and voting to be conducted
13 by telephonic, video, or other conferencing process in accordance with
14 all relevant provisions of article seven of the public officers law.

15 4. (a) In determining adjustments to the benefit unit, the advisory
16 panel shall review the commission's actuarial audit and valuation of the
17 trust account, any recommendations by the commission, and data pertain-
18 ing to economic indicators, program costs, and sustainability. Such
19 data shall include, without limitation, data regarding inflation,
20 regional differences in costs of living and costs of long term care
21 services and supports, and wages of individuals who are long term care
22 services and supports providers.

23 (b) The advisory panel may, to the extent the panel deems appropriate,
24 determine that adjustments to the benefit unit shall vary by region in
25 the event that such a determination is necessary to accomplish the
26 purposes of this article.

27 (c) In the absence of the required vote necessary to take action to
28 adjust the benefit unit prior to November fifteenth, the advisory panel
29 shall adjust such benefit unit for the succeeding year as of January
30 first of such year as necessary to reflect any change in the "current
31 cost of living index figure" based upon the Consumer Price Index as
32 issued by the bureau of labor statistics of the United States depart-
33 ment of labor since November fifteenth of the prior year.

34 5. The members of the advisory panel shall receive no compensation but
35 shall be reimbursed for travel and other expenses actually and necessar-
36 ily incurred in the performance of their duties.

37 § 3674. Qualified individuals; determination. 1. The department shall,
38 in coordination with the department of labor, the comptroller, and the
39 department of taxation and finance, develop and maintain a registry of
40 every employee subject to the premium requirements pursuant to section
41 thirty-six hundred seventy-seven of this article and every individual
42 who elects coverage pursuant to section thirty-six hundred seventy-eight
43 of this article.

44 2. No later than January first, two thousand twenty-four, the depart-
45 ment shall, in accordance with subdivision one of this section and the
46 cooperative agreement entered into pursuant to subdivision six-c of
47 section one hundred seventy-one-a of the tax law, as added by chapter
48 five hundred forty-five of the laws of nineteen seventy-five develop and
49 maintain a registry of:

50 (a) every employee subject to the premium requirements of section
51 thirty-six hundred seventy-seven of this article;

52 (b) every employer required to collect and remit premiums from employ-
53 ee wages pursuant to subdivision two of section thirty-six hundred
54 seventy-seven of this article; and

55 (c) every individual who elects coverage pursuant to section thirty-
56 six hundred seventy-eight of this article.

1 3. The department shall monitor individual employee premium contrib-
2 utions paid and individual hours worked for the purposes of determining
3 and verifying whether an employee is a qualified individual as defined
4 in subdivision sixteen of section thirty-six hundred seventy of this
5 article.

6 4. The department shall, in cooperation with the department of labor,
7 the department of taxation and finance, and the comptroller, monitor
8 compliance by employers subject to the collection and reporting require-
9 ments set forth in section thirty-six hundred seventy-seven of this
10 article, article eighteen of the labor law, and articles eight and twen-
11 ty-two of the tax law; and collect, monitor, maintain, and dispose of
12 any other information that the department, in consultation with the
13 department of labor, the comptroller, the commissioner of taxation and
14 finance, and the commission, shall deem relevant and necessary to comply
15 with the reporting, monitoring, administering, or evaluation responsi-
16 bilities required pursuant to this article or otherwise necessary to
17 accomplish the purposes of this article.

18 5. The department, in consultation with the department of labor, the
19 comptroller, and the commissioner of taxation and finance, shall estab-
20 lish procedures to monitor individual employee premium contributions and
21 verify benefit eligibility pursuant to section thirty-six hundred seven-
22 ty-five of this article.

23 6. The department, in consultation with the department of labor, the
24 comptroller, and the commissioner of taxation and finance, shall publish
25 and distribute educational materials about the program to inform employ-
26 ees, employers and members of the public of their rights and obligations
27 under this article and the benefits available under the program.

28 § 3675. Eligible beneficiaries; determination. 1. Beginning on January
29 first of the year beginning five years after the effective date of this
30 article, and thereafter, approved long term care services and supports
31 benefits shall be available, without regard to income or resources, for
32 eligible beneficiaries who are assessed as needing assistance with at
33 least three activities of daily living by the department in accordance
34 with the provisions of this section.

35 2. Any qualified individual, or any person authorized by law to act on
36 behalf of a qualified individual, may apply for long term care benefits
37 provided under this article by filing an application therefor with the
38 department in writing, by telephone, online, or by any other manner
39 approved by the commissioner for such purpose.

40 3. (a) Upon receipt of such application, the department or its agent
41 shall verify that the applicant is a qualified individual as defined in
42 subdivision sixteen of section thirty-six hundred seventy of this arti-
43 cle, and upon such verification, shall perform an eligibility determi-
44 nation, which shall include an assessment of whether the applicant needs
45 assistance with at least three activities of daily living, defined and
46 determined by using an evidence based validated assessment instrument
47 approved by the commissioner and in accordance with regulations of the
48 department and any applicable state and federal laws by an independent
49 assessor, of which such independent assessor may be, subject to approval
50 by the commissioner, a licensed health care provider selected by the
51 applicant.

52 (b) The department shall complete the eligibility determination
53 required pursuant to paragraph (a) of this subdivision or any subsequent
54 redetermination of eligibility under this article and decide whether the
55 applicant is eligible for benefits within forty-five days of the date of
56 a completed application for benefits.

1 (c) Notwithstanding any contrary provision of this subdivision, the
2 department shall develop expedited procedures for determining eligibil-
3 ity for an applicant with an immediate need for long term care services
4 and supports whereby a final eligibility determination shall be made
5 within seven days of the date of a completed application for benefits.

6 4. The department shall notify the applicant of the results of the
7 department's eligibility determination, and, where such applicant is
8 found to be an eligible beneficiary, the amount of benefit units avail-
9 able and the date on which such benefit units shall become payable for
10 approved services on behalf of the eligible beneficiary, which shall be
11 the date of the application, or subject to applicable department regu-
12 lations, such earlier date as may be deemed reasonable based on the
13 needs of the beneficiary. Where such applicant is found ineligible, the
14 department shall notify the applicant of the reasons therefor and shall
15 advise such applicant of the applicant's right to appeal such determi-
16 nation pursuant to section thirty-six hundred seventy-nine of this arti-
17 cle.

18 5. (a) All continuing benefits under this article shall be subject to
19 reconsideration and redetermination as frequently as the department
20 deems necessary to ensure that each person receiving benefits under this
21 article continues to be in need of long term care services and supports
22 and has not exhausted the lifetime benefit limit. The department may
23 conduct any investigation it may deem necessary or required to effectuate
24 the purposes of this subdivision.

25 (b) The department shall develop a simplified statewide recertif-
26 ication form for use in redetermining eligibility under this article.

27 6. (a) An eligible beneficiary shall receive benefits through the
28 program in the form of a benefit unit payable by the department to a
29 registered long term care provider for approved services and supports in
30 an amount determined by the advisory panel pursuant to section thirty-
31 six hundred seventy-three of this article. If the value of services
32 provided to an eligible beneficiary on a single date is less than the
33 benefit unit, only the portion of the benefit unit that is actually paid
34 on such beneficiary's behalf shall be taken into consideration when
35 calculating the balance of such person's lifetime benefit limit. The
36 balance of the benefit unit not expended on such date shall remain
37 available to the eligible beneficiary for use in accordance with para-
38 graph (b) of this subdivision or until otherwise exhausted pursuant to
39 this article.

40 (b) Notwithstanding any contrary provision of this article, an eligi-
41 ble beneficiary may receive benefits in excess of the benefit unit as
42 defined in subdivision three of section thirty-six hundred seventy of
43 this article, for services provided on a single date, provided that such
44 eligible beneficiary has not exhausted the lifetime benefit limit. In no
45 event shall a person receive benefits under this article after such
46 person's lifetime benefit limit has been exhausted.

47 7. The department shall develop procedures to monitor each eligible
48 beneficiary's use of benefit units and shall notify eligible benefici-
49 aries of the balance of benefit units remaining within a reasonable time
50 after approved services are rendered.

51 8. Notwithstanding any contrary provision of law, benefits paid on
52 behalf of an individual pursuant to this article shall not be considered
53 income or resources for the purposes of any determinations of eligibil-
54 ity for any other state program or benefit, including but not limited to
55 medical assistance, any state or federal program, Medicaid, or any other
56 means-tested program or benefit.

1 9. Notwithstanding any contrary provision of law, nothing in this
2 article shall be construed to create an entitlement for any individual
3 to receive, or require the state or any department or agency thereof to
4 provide, case management services, including, but not limited to, case
5 management services under title eleven of article five of the social
6 services law.

7 § 3676. Reimbursement for services and supports. 1. Beginning on
8 January first of the year beginning five years after the effective date
9 of this article, the department shall reimburse registered long term
10 care providers for approved services rendered to eligible beneficiaries
11 in accordance with this article. Reimbursement for services provided
12 pursuant to this section shall be paid to registered long term care
13 providers at such times and in such manner as the department may
14 prescribe, provided however, such payments shall be made no less than
15 quarterly.

16 2. The department may reimburse qualified family members for providing
17 approved personal care services in the same manner as reimbursements are
18 paid to an individual provider, whether directly, through a licensed
19 home care agency, or through a third option if recommended by the
20 commission and adopted by the department.

21 3. (a) The department shall develop and maintain a registry of long
22 term care providers in accordance with subdivision two of section thir-
23 ty-six hundred seventy-one of this article, and in consultation with the
24 commission, shall establish standards and procedures for:

25 (i) registration with the department pursuant to this section; and
26 (ii) the suspension, revocation, or termination of a provider's regis-
27 tration or other limitation on the provider's authorization to provide
28 services under the program where it is determined that:

29 (A) the provider is incompetent;

30 (B) the provider has exhibited a course of conduct which is inconsis-
31 tent with program standards and regulations; or

32 (C) the provider has willfully failed to comply with program standards
33 and regulations.

34 (b) Beginning on and after January first of the year beginning five
35 years after the effective date of this article and thereafter, all
36 information in the registry developed and maintained pursuant to this
37 subdivision, including any and all records relating to actions taken
38 pursuant to subparagraph (ii) of paragraph (a) of this subdivision shall
39 be readily accessible on the department's website by the public.

40 4. A long term care services and supports provider which employs or
41 contracts with one or more individuals performing approved services
42 shall pay such individuals no less than the greater of (a) one hundred
43 fifty percent of the minimum wage required under section six hundred
44 fifty-two of the labor law or any otherwise applicable wage rule or
45 order under article nineteen of the labor law which is otherwise appli-
46 cable for home care aides as defined in section thirty-six hundred four-
47 teen-c of this chapter, or (b) the wage otherwise required by law to be
48 paid to home care aides as defined in section thirty-six hundred four-
49 teen-c of this chapter.

50 § 3677. Employee premium contributions. 1. Beginning January first, of
51 the year beginning two years after the effective date of this article,
52 every employee in the employment of an employer shall contribute to the
53 cost of providing long term care benefits under this article by payment
54 of the premium assessed pursuant to this section. The initial premium
55 contribution rate and any adjustments to such rate shall be set by the
56 comptroller, after consultation with the commission, at the lowest

1 amount necessary to maintain the actuarial solvency of the long term
2 care services and supports trust fund, in accordance with recognized
3 insurance principles and in a manner designed to limit fluctuations in
4 such rate.

5 (a) The initial premium contribution rate shall be set no later than
6 September thirtieth of the year beginning one year after the effective
7 date of this article and shall become applicable to each employee's
8 wages paid on and after January first of the year beginning two years
9 after the effective date of this article.

10 (b) Beginning January first of the year beginning four years after the
11 effective date of this article, and biennially thereafter, the comp-
12 troller shall make such adjustments to the premium contribution rate, if
13 necessary, and after consultation with the commission, to ensure that
14 such rate continues to be set at the lowest amount necessary to maintain
15 the actuarial solvency of the long term care services and supports trust
16 fund, in accordance with recognized insurance principles and in a manner
17 designed to limit fluctuations in the premium rate.

18 2. (a) Notwithstanding any other provision of law, every employer is
19 authorized to collect from its employees, the premium assessed under
20 subdivision one of this section, through payroll deductions and remit
21 the amounts so collected to the department of taxation and finance in
22 accordance with the provisions of section four hundred seventy-four of
23 the tax law.

24 (b) When collecting employee premiums through payroll deductions, the
25 employer shall act as the agent of its employees and shall remit all
26 such amounts to the department of taxation and finance as required by
27 subparagraph (D) of paragraph four of subsection (a) of section six
28 hundred seventy-four of the tax law.

29 3. Premiums shall be collected at the same time and in the same or
30 substantially similar manner as the assessment, collection, and report-
31 ing procedures used for the withholding of tax pursuant to title five of
32 article twenty-two of the tax law.

33 4. The department of taxation and finance shall deposit all premiums
34 collected under this section in the long term care services and supports
35 trust fund established pursuant to section ninety-nine-pp of the state
36 finance law.

37 5. If the premiums established in this section are changed, the comp-
38 troller shall notify each employee subject to this section by mail that
39 such person's premiums have changed.

40 6. (a)(i) Notwithstanding any contrary provision of this section, an
41 employee who has maintained private long term care insurance coverage on
42 an uninterrupted basis beginning no later than January first of the year
43 in which this article takes effect may apply for an exemption from the
44 premium contributions required under subdivision one of this section, as
45 provided in this subdivision. Such request for an exemption shall be
46 made in such form and in such manner as the department shall prescribe
47 for such purpose no later than one year after the effective date of this
48 article.

49 (ii) The department shall review each request for an exemption submit-
50 ted pursuant to subparagraph (i) of this paragraph, and upon a determi-
51 nation that the employee satisfies the private long term care insurance
52 coverage requirements in accordance with this paragraph, the department
53 shall issue notice to such employee of such employee's exemption from
54 paying premium contributions beginning thirty days after the issuance of
55 such notice of exemption.

1 (iii) An exemption issued to an employee pursuant to this subdivision
2 shall relieve such employee's employer of the duty to collect premiums
3 pursuant to subdivisions two and three of this section, provided, howev-
4 er, that the employee shall have first given proper notice of such
5 exemption to the employer, including a copy of such exemption, together
6 with any additional materials the department may require. No such
7 employer shall be liable to an employee for continuing to collect premi-
8 um contributions in the event that the employee fails to provide the
9 notice of exemption to such employer in accordance with this subpara-
10 graph.

11 (b) (i) If an employee who has been issued an exemption from paying
12 premium contributions pursuant to paragraph (a) of this subdivision
13 ceases to hold private long term care insurance coverage, such employee
14 shall notify the department and such employee's employer of the termi-
15 nation of such private long term care insurance coverage within thirty
16 days of such termination. Such notice shall be in writing and submitted
17 in such form and in such manner as the department shall prescribe for
18 such purpose, and shall state whether the employee intends to obtain
19 private long term care insurance coverage within ninety days following
20 the cessation of coverage. If the employee subsequently obtains long
21 term care insurance coverage within such ninety-day period, the employee
22 shall so notify the department and the employee's employer.

23 (ii) In the event that an employee described in subparagraph (i) of
24 this paragraph ceases to hold private long term care insurance coverage
25 for a period of more than ninety days, the exemption from paying premium
26 contributions issued pursuant to this subdivision shall be automatically
27 and permanently revoked and such employee shall thereafter be responsi-
28 ble for the payment of all premium contributions required pursuant to
29 subdivision one of this section and shall no longer be eligible for any
30 new exemption under this subdivision. The employee shall be responsible
31 for notifying the department and their employer in the event of such
32 cessation of coverage for more than ninety days. Any premium contrib-
33 utions not paid after such date shall be subject to such reasonable
34 monetary penalties and interest as shall be determined by the department
35 and may levy an additional premium for the remainder of the period of
36 coverage.

37 (c) An employee receiving an exemption pursuant to paragraph (b) of
38 this subdivision, shall forfeit any and all rights to receive benefits
39 under this article and shall in no event be an eligible beneficiary
40 under this article while such exemption is in effect.

41 (d) An employer of an employee whose exemption is revoked in accord-
42 ance with this subdivision shall not be held liable for a failure to
43 collect premium contributions to the extent such employer was not aware
44 of such cessation of coverage and did not have reason to be aware of
45 such cessation of coverage, provided that such exemption from liability
46 shall terminate when such employer becomes so aware.

47 § 3678. Election for self-employed individuals. 1. Beginning January
48 first of the year beginning two years after the effective date of this
49 article, any person not subject to premium payment requirements under
50 section thirty-six hundred seventy-seven of this article, including a
51 sole proprietor, independent contractor, member of a limited liability
52 company or limited liability partnership, or other self-employed person,
53 may elect coverage under this section. Those electing coverage under
54 this section shall be responsible for payment of one hundred percent of
55 all premiums assessed to an employee under section thirty-six hundred
56 seventy-seven of this article. Such self-employed person shall file a

1 notice of election in writing with the department of labor in the manner
2 prescribed by the department for such purpose. Such self-employed person
3 shall be eligible for benefits after paying the long term care services
4 and supports premium for the time required under section thirty-six
5 hundred seventy-four of this article, unless such self-employed person
6 elects to withdraw from coverage pursuant to subdivision two of this
7 section.

8 2. A self-employed person who has elected coverage may withdraw from
9 coverage, at such times as the department, in coordination with the
10 department of labor and the department of taxation and finance, shall
11 adopt by rule or regulation, by filing a notice of withdrawal in writing
12 with the department, provided that no such withdrawal shall take effect
13 earlier than thirty days after the filing of the notice with the depart-
14 ment.

15 3. The department shall cancel elective coverage upon the failure of a
16 self-employed person to make required premium payments or to file any
17 required reports in accordance with such rules as the department may
18 prescribe, including a reasonable grace period and any appropriate
19 exceptions. The department shall collect any due and unpaid premiums
20 from such person and may levy an additional premium for the remainder of
21 the period of coverage. Such cancellation shall be effective no later
22 than thirty days from the date of the notice in writing advising the
23 self-employed person of the cancellation.

24 4. A person who withdraws from coverage pursuant to subdivision two of
25 this section or is subject to a cancellation pursuant to subdivision
26 three of this section may subsequently elect coverage by satisfying all
27 of the requirements of subdivision one of this section, and disregarding
28 for such purposes, premium payments made for any previous periods of
29 coverage elected pursuant to subdivision one of this section.

30 5. For the purposes of this article, an individual who elects coverage
31 under this section shall be considered both an employee and an employer
32 whenever the context so dictates.

33 6. The department, in coordination with the department of labor, the
34 department of taxation and finance, and the comptroller shall promulgate
35 rules for determining the hours worked and the wages of individuals who
36 elect coverage under this section and rules for enforcement of this
37 section, including a reasonable cure period with respect to a cancella-
38 tion made pursuant to subdivision three of this section.

39 § 3679. Appeals and appeal hearings. 1. Any applicant or recipient, or
40 any individual authorized to act on behalf of any such applicant or
41 recipient, and any long term care provider may appeal to the department
42 from determinations of department officials or failures to make determi-
43 nations upon grounds specified in subdivision four of this section. The
44 department shall review the appeal de novo and give such person or enti-
45 ty an opportunity for an appeal hearing. The department may also, on its
46 own motion, review any decision made or any case in which a decision has
47 not been made by the department official within the time specified by
48 law or regulations of the department. The department may make such addi-
49 tional investigation as it may deem necessary, and the commissioner
50 shall make such determination as is justified and in accordance with
51 applicable law.

52 2. Regarding any appeal pursuant to this section, with or without an
53 appeal hearing, the commissioner may designate and authorize one or more
54 appropriate members of his or her staff to consider and decide such
55 appeals. Any staff member so designated shall be authorized to decide
56 such appeals on behalf of the commissioner with the same force and

1 effect as if the commissioner had made such decisions. Appeal hearings
2 shall be held on behalf of the commissioner by members of his or her
3 staff who are employed for such purposes or who have been designated and
4 authorized by the commissioner.

5 3. Persons entitled to appeal to the department pursuant to this
6 section must include:

7 (a) applicants for or recipients of long term care benefits under the
8 program;

9 (b) long term care services and supports providers; and

10 (c) such other persons as the commissioner may deem to be entitled to
11 an opportunity for an appeal hearing.

12 4. An applicant, beneficiary, or long term care provider shall have
13 the right to appeal at least the following issues:

14 (a) an eligibility determination made in accordance with section thir-
15 ty-six hundred seventy-five of this article, including:

16 (i) an initial determination as to whether the applicant is a quali-
17 fied individual;

18 (ii) an initial determination as to whether the applicant is an eligi-
19 ble beneficiary, including whether:

20 (A) the applicant needs assistance with at least three activities of
21 daily living; and/or

22 (B) the applicant has exhausted the lifetime benefit limit;

23 (iii) a continuing eligibility determination or redetermination with
24 respect to a beneficiary pursuant to subdivision five of section thir-
25 ty-six hundred seventy-five of this article;

26 (b) a failure by the department to provide timely written notice of
27 any eligibility determination made in accordance with this article, this
28 chapter, or any other applicable law; and

29 (c) a determination with respect to a long term care provider, includ-
30 ing:

31 (i) suspension, revocation, limitation or annulment of qualification
32 for participation as a provider under the program;

33 (ii) disputes relating to payments and reimbursements for approved
34 services; and

35 (iii) any other determination the commissioner deems subject to
36 appeal.

37 5. The department may, subject to the discretion of the commissioner,
38 promulgate such regulations, consistent with federal or state law, as
39 may be necessary to implement the provisions of this section.

40 6. Regarding every decision of an appeal pursuant to this section, the
41 department shall inform every party, and his or her representative, if
42 any, of the availability of judicial review and the time limitation to
43 pursue future review.

44 7. The department shall include notice of the right to appeal as
45 provided by subdivision four of this section and instructions regarding
46 how to file an appeal in any eligibility determination issued to the
47 applicant or enrollee in accordance with applicable law. Such notice
48 shall include:

49 (a) an explanation of the applicant or enrollee's appeal rights;

50 (b) a description of the procedures by which the applicant or enrollee
51 may request an appeal;

52 (c) information on the applicant or enrollee's right to represent
53 himself or herself, or to be represented by legal counsel or another
54 representative; and

55 (d) an explanation of the circumstances under which the appellant's
56 eligibility may be maintained or reinstated pending an appeal decision.

1 § 3680. Waivers. Notwithstanding any contrary provision of law, the
2 commissioner shall, to the extent necessary, develop and submit any
3 appropriate waivers, including, but not limited to, those authorized
4 pursuant to sections eleven hundred fifteen and nineteen hundred fifteen
5 of the federal social security act, or successor provisions, and any
6 other waivers necessary to achieve the purposes of high quality, inte-
7 grated, and cost effective care and integrated financial eligibility
8 policies under the medical assistance program or pursuant to title XVIII
9 of the federal social security act. Copies of such original waiver
10 applications shall be provided to the chair of the senate finance
11 committee and the chair of the assembly ways and means committee simul-
12 taneously with their submission to the federal government.

13 § 3. The state finance law is amended by adding a new section 99-pp to
14 read as follows:

15 § 99-pp. Long term care trust fund. 1. There is hereby established in
16 the joint custody of the comptroller, the commissioner of taxation and
17 finance and the commissioner of health a special fund to be known as the
18 "long term care trust fund".

19 2. Such fund shall consist of all moneys collected by the department
20 of taxation and finance pursuant to section thirty-six hundred seventy-
21 seven of the public health law. Any interest earned by the investment of
22 moneys in such fund shall be added to such fund, become a part of such
23 fund, and be used for the purpose of such fund.

24 3. Moneys of such fund shall only be used for the purposes established
25 under article thirty-six-B of the public health law and expenses of the
26 state in administering the long term care trust program as defined ther-
27 ein. In no event may expenditures be used to supplant existing state or
28 local programs which fund the provision of approved services.

29 4. The moneys of the fund shall be paid out on the audit and warrant
30 of the comptroller on vouchers certified and approved by the commission-
31 er of the department of health.

32 § 4. The state finance law is amended by adding a new section 8-d to
33 read as follows:

34 § 8-d. Additional duties of the comptroller; long term care trust
35 program. 1. Beginning on and after the effective date of this section,
36 the comptroller shall provide all necessary assistance, including audit-
37 ing and actuarial services to the long term care trust commission estab-
38 lished pursuant to section thirty-six hundred seventy-two of the public
39 health law and in accordance with all relevant provisions of article
40 thirty-six hundred-B of the public health law, the tax law, the labor
41 law, and this chapter.

42 2. Beginning on November fifteenth of the year beginning four years
43 after the effective date of this section, and biennially thereafter, the
44 comptroller shall perform an actuarial audit and valuation of the long
45 term care trust fund established pursuant to section ninety-nine-pp of
46 this chapter. Such biennial audit and valuation shall be prepared and
47 published in conjunction with the annual report prepared by the long
48 term care trust commission pursuant to subdivision seven of section
49 thirty-six hundred seventy-two of the public health law, and shall be
50 submitted to the long term care trust advisory panel and the legisla-
51 ture. Such audit and valuation shall include, but not be limited to
52 recommendations regarding actions necessary to maintain the solvency of
53 the fund; options for adjustments to the benefit unit, approved
54 services, or both, to the extent necessary to eliminate unfunded actuar-
55 ially accrued liability and maintain solvency.

1 3. The comptroller shall perform such additional or more frequent
2 actuarial audits and valuations of the long term care trust fund upon
3 request of the advisory panel pursuant to section thirty-six hundred
4 seventy-three of the public health law.

5 4. The comptroller shall, not later than November fifteenth, two thou-
6 sand thirty-four, conduct a comprehensive evaluation of the long term
7 care trust program and shall submit a report, including a conclusion and
8 recommendations for improvement to the legislature regarding:

9 (a) program operations, including the performance of the long term
10 care trust commission established in section thirty-six hundred seven-
11 ty-two of the public health law;

12 (b) the financial status of the program, including solvency, the value
13 of the benefit provided, and the financial balance of program benefits
14 to costs; and

15 (c) the overall efficacy of the program, based on the established
16 goals under this act including, but not limited to:

17 (i) delaying middle class families' need to spend to poverty to
18 receive Medicaid funded long term care;

19 (ii) strengthening the state economy through improving workforce
20 participation;

21 (iii) reducing the caseload and expenditures of the state Medicaid
22 program on long term care; and

23 (iv) obtaining shared savings through a Medicaid demonstration waiver,
24 or the impact of any waiver entered into pursuant to section thirty-six
25 hundred eighty of the public health law.

26 § 5. Section 171-a of the tax law, as added by chapter 545 of the laws
27 of 1978, is amended by adding a new subdivision 6-c to read as follows:

28 (6-c) Notwithstanding any provision of law to the contrary and not
29 later than January first of the year beginning one year after the effec-
30 tive date of this subdivision, the commissioner shall enter into a coop-
31 erative agreement with the department of health, the department of
32 labor, and the comptroller to allow the information obtained by the
33 department pursuant to subdivision one of this section and section one
34 hundred seventy-one-h of this article to be made available to such
35 departments, or other individuals designated by the commissioners of
36 such departments, for the purposes of determining and verifying whether
37 a person is a "qualified individual" for the purposes of section thir-
38 ty-six hundred seventy-seven of the public health law, or for other
39 purposes deemed appropriate by the commissioners of health and labor and
40 the comptroller, consistent with the provisions of article thirty-six-B
41 of the public health law, the state finance law, and the labor law, with
42 respect to which such departments have reporting, monitoring, adminis-
43 tering, or evaluating responsibilities.

44 § 6. Paragraph (e), subparagraph (iv) of paragraph (f) and paragraph
45 (g) of subdivision 4 of section 171-h of the tax law, paragraph (e) and
46 subparagraph (iv) of paragraph (f) as amended by chapter 214 of the laws
47 of 1998, paragraph (g) as amended by chapter 398 of the laws of 1997,
48 are amended and a new paragraph (h) is added to read as follows:

49 (e) conduct matches with the office of temporary and disability
50 assistance, the department of health, and the department of labor to
51 verify individuals' eligibility for the various programs specified under
52 section one thousand one hundred thirty-seven (b) of the social security
53 act and for other public assistance programs authorized by state law,
54 and for the purposes of administering state employment security
55 programs, and for the purposes of administering the long term care trust

1 program, and with the workers' compensation board for the purpose of
2 administering workers' compensation programs;

3 (iv) include such other matters as the parties to such agreement shall
4 deem necessary to carry out the provisions of this section; ~~[and]~~

5 (g) furnish to the national directory of new hires, on a quarterly
6 basis, extracts of the reports required under paragraph six of
7 subsection (a) of section three hundred three of the federal social
8 security act to be made to the secretary of labor concerning wages and
9 unemployment compensation paid to individuals, by such dates, and in
10 such manner as the secretary of health and human services shall specify
11 by regulations. The state department of labor shall, consistent with the
12 authority contained in paragraph e of subdivision three of section five
13 hundred thirty-seven of the labor law, disclose to the state directory
14 of new hires, such wage and unemployment compensation information as may
15 be necessary to allow such state directory to comply with the provisions
16 of this paragraph~~[-]~~; and

17 (h) on or before January first of the year beginning two years after
18 the effective date of this paragraph, enter into written agreements with
19 the commissioners of health and labor on behalf of the departments of
20 health and labor respectively, which shall:

21 (i) provide for the disclosure of information obtained from the
22 reports required to be submitted pursuant to this section to such
23 departments and board for the purposes set forth in this section;

24 (ii) specify the frequency with which the department shall furnish
25 information obtained from such reports to such office, departments, and
26 board, which shall be within one business day after the date the infor-
27 mation is entered into the state directory of new hires;

28 (iii) set forth the procedure for reimbursement of the department by
29 such office, departments, and board subject to the approval of the
30 director of the budget for the additional costs of carrying out the
31 provisions of this section; and

32 (iv) include such other matters as the parties to such agreement shall
33 deem necessary to carry out the provisions of this section.

34 § 7. Paragraph 4 of subsection (a) of section 674 of the tax law is
35 amended by adding a new subparagraph (D) to read as follows:

36 (D) The provisions of article thirty-six-B of the public health law
37 relating to administration of the state's long term care trust program
38 shall apply to the department's duties under this chapter relating to
39 employee premium information, contributions and payments.

40 § 8. Severability. If any provision or application of this act shall
41 be held to be invalid, or to violate or be inconsistent with any appli-
42 cable federal law or regulation, that shall not affect other provisions
43 or applications of this act which can be given effect without that
44 provision or application; and to that end, the provisions and applica-
45 tions of this act are severable.

46 § 9. This act shall take effect immediately.