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:

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

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

ARTICLE 36-B

NEW YORK LONG TERM CARE TRUST PROGRAM

Section 3670. Definitions.
3671. Program established.
3672. Long term care trust commission.
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3674. Qualified individuals; determination.
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3679. Appeals and appeal hearings.
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§ 3670. Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly requires otherwise:

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

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

(a) adult day services;

(b) care transition coordination;

(c) memory care;

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

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(d) adaptive equipment and technology;
(e) environmental modification;
(f) personal emergency response system;
(g) home safety evaluation;
(h) respite for family caregivers;
(i) home delivered meals;
(j) transportation;
(k) dementia supports;
(l) education and consultation;
(m) eligible relative care;
(n) professional services;
(o) services that assist paid and unpaid family members caring for eligible individuals, including training for informal caregivers and other individuals providing care who are not otherwise employed as long term care workers under section thirty-six hundred fourteen of this chapter;
(p) home care services as defined in section thirty-six hundred two of this chapter;
(q) assisted living services;
(r) adult family home services;
(s) nursing home services; and
(t) any other long term care services as defined in paragraph (b) of subdivision one of section three hundred sixty-seven-f of the social services law or otherwise designated as such in law or regulations by the department.

3. "Benefit unit" means the maximum daily benefit the department is authorized to pay a long term care services and supports provider as reimbursement for providing an approved service or services to an eligible beneficiary, which amount shall initially be one hundred dollars, and which shall be adjusted annually by the advisory panel in accordance with the provisions of section thirty-six hundred seventy-three of this article.

4. "Commission" means the long term care trust commission established pursuant to section thirty-six hundred seventy-two of this article.

5. "Advisory panel" or "panel" means the long term care trust advisory panel established pursuant to section thirty-six hundred seventy-three of this article.

6. "Eligible beneficiary" means a qualified individual as defined in subdivision sixteen of this section who:
(a) was not disabled before the age of eighteen;
(b) has been assessed by the department as needing the minimum level of assistance with activities of daily living necessary to receive benefits pursuant to section thirty-six hundred seventy-five of this article;
(c) has not exhausted the lifetime benefit limit as defined in subdivision eleven of this section; and
(d) does not have in effect an exemption granted pursuant to subdivision six of section thirty-six hundred seventy-seven of this article.

7. "Employee" means any person engaged in employment as such term is defined in section five hundred eleven of the labor law.

8. "Employer" shall have the same meaning as defined in section five hundred twelve of the labor law.

9. "Employment" shall have the same meaning as defined in section five hundred eleven of the labor law.

10. "Long term care services and supports provider" or "long term care provider" means an individual or entity authorized to provide long term

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

11. "Lifetime benefit limit", or "lifetime limit" means the dollar equivalent of three hundred sixty-five benefit units paid by the department on behalf of an eligible beneficiary over the course of such eligible individual's lifetime.

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

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

14. "Program" means the New York long term care trust program established pursuant to section thirty-six hundred seventy-one of this article.

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

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

(i) is age eighteen or older; and

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

(1) a total of ten years during the course of such individual's lifetime without an interruption of five or more consecutive years; or

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

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

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

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

2. The department shall:

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

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

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

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

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

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

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

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

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

3. On or before January first, two thousand twenty-four, the department shall, in consultation with the department of labor, the comptroller, the department of taxation and finance, the state office for the aging, the department of social services, and any other department or agency it deems relevant, develop and maintain such programs and processes as shall be necessary to determine and keep records regarding the applicability of premium contribution requirements of section thirty-six hundred seventy-seven of this article to employees and individuals who elect coverage pursuant to section thirty-six hundred seventy-eight of this article. The department shall thereafter monitor individual premium contributions and make eligibility determinations pursuant to sections thirty-six hundred seventy-four and thirty-six hundred seventy-five of this article.

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

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

(a) twelve voting members representing the legislature and the following departments, agencies or offices:

(i) two members appointed by the speaker of the assembly;

(ii) two members appointed by the temporary president of the senate;

(iii) one member appointed by the minority leader of the assembly;

(iv) one member appointed by the minority leader of the senate;

(v) the commissioner of the department of health, or such commissioner's designee;

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

(vii) the director of the state office for the aging, or such director's designee;

(viii) the commissioner of taxation and finance, or such commissioner's designee;

(ix) the commissioner of mental health, or such commissioner's designee;

(x) the commissioner of the office for people with developmental disabilities, or such commissioner's designee;

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

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

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

(iii) the commissioner of the department of labor, or such commissioner's designee;

(iv) the superintendent of financial services, or such superintendent's designee;

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

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

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

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

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

(iv) one of whom shall be a representative of an organization representing retired persons;

(v) one of whom shall be a representative of an association representing skilled nursing facilities and assisted living providers;

(vi) one of whom shall be a representative of an association representing adult family home providers;

(vii) two of whom shall be individuals receiving long term care services and supports, or their designees, or representatives of consumers receiving long term care services and supports under the program;

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

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

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

3. Each appointed member shall serve for a term of two years, provided, however that the initial members appointed pursuant to paragraph (c) of subdivision two of this section shall be appointed to staggered terms not to exceed four years. Initial appointments to the commission shall be made no later than sixty days after the effective date of this section.

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

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

(a) the members identified in paragraphs (a) and (b) of subdivision two of this section, who shall serve as voting members of the subcommittee; and

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

(c) the subcommittee shall provide guidance and advice to the comptroller on investment strategies for the fund, including seeking counsel and advice on the types of investments that are constitutionally permitted.

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

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

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

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

(ii) an eligible beneficiary under section thirty-six hundred seventy-five of this article;

(b) the establishment of minimum qualifications for the registration of long term care services and supports providers with the department 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;

(b) review the adequacy of benefits provided under this article; and

(c) make recommendations to the commission to ensure the solvency of the trust fund.

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

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

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

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

5. The members of the advisory panel shall receive no compensation but shall be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties.

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

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

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

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

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

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

4. The department shall, in cooperation with the department of labor, the department of taxation and finance, and the comptroller, monitor compliance by employers subject to the collection and reporting requirements set forth in section thirty-six hundred seventy-seven of this article, article eighteen of the labor law, and articles eight and twenty-two of the tax law; and collect, monitor, maintain, and dispose of any other information that the department, in consultation with the department of labor, the comptroller, the commissioner of taxation and finance, and the commission, shall deem relevant and necessary to comply with the reporting, monitoring, administering, or evaluation responsibilities required pursuant to this article or otherwise necessary to accomplish the purposes of this article.

5. The department, in consultation with the department of labor, the comptroller, and the commissioner of taxation and finance, shall establish procedures to monitor individual employee premium contributions and verify benefit eligibility pursuant to section thirty-six hundred seventy-five of this article.

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

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

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

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

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

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

4. The department shall notify the applicant of the results of the department's eligibility determination, and, where such applicant is found to be an eligible beneficiary, the amount of benefit units available and the date on which such benefit units shall become payable for approved services on behalf of the eligible beneficiary, which shall be the date of the application, or subject to applicable department regulations, such earlier date as may be deemed reasonable based on the needs of the beneficiary. Where such applicant is found ineligible, the department shall notify the applicant of the reasons therefor and shall advise such applicant of the applicant's right to appeal such determination pursuant to section thirty-six hundred seventy-nine of this article.

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

(b) The department shall develop a simplified statewide recertification form for use in redetermining eligibility under this article.

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

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

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

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

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

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

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

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

(i) registration with the department pursuant to this section; and

(ii) the suspension, revocation, or termination of a provider's registration or other limitation on the provider's authorization to provide services under the program where it is determined that:

(A) the provider is incompetent;

(B) the provider has exhibited a course of conduct which is inconsistent with program standards and regulations; or

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

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

4. A long term care services and supports provider which employs or contracts with one or more individuals performing approved services shall pay such individuals no less than the greater of (a) 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 (b) 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.

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

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

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

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

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

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

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

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

5. If the premiums established in this section are changed, the comptroller shall notify each employee subject to this section by mail that such person's premiums have changed.

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

(ii) The department shall review each request for an exemption submitted pursuant to subparagraph (i) of this paragraph, and upon a determination that the employee satisfies the private long term care insurance coverage requirements in accordance with this paragraph, the department shall issue notice to such employee of such employee's exemption from paying premium contributions beginning thirty days after the issuance of such notice of exemption.

(iii) An exemption issued to an employee pursuant to this subdivision shall relieve such employee's employer of the duty to collect premiums pursuant to subdivisions two and three of this section, provided, however, that the employee shall have first given proper notice of such exemption to the employer, including a copy of such exemption, together with any additional materials the department may require. No such employer shall be liable to an employee for continuing to collect premium contributions in the event that the employee fails to provide the notice of exemption to such employer in accordance with this subparagraph.

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

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

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

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

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

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

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

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

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

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

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

§ 3679. Appeals and appeal hearings. 1. Any applicant or recipient, or any individual authorized to act on behalf of any such applicant or recipient, and any long term care provider may appeal to the department from determinations of department officials or failures to make determinations upon grounds specified in subdivision four of this section. The department shall review the appeal de novo and give such person or entity an opportunity for an appeal hearing. The department may also, on its own motion, review any decision made or any case in which a decision has not been made by the department official within the time specified by law or regulations of the department. The department may make such additional investigation as it may deem necessary, and the commissioner shall make such determination as is justified and in accordance with applicable law.

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

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

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

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

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

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

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

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

(i) an initial determination as to whether the applicant is a qualified individual;

(ii) an initial determination as to whether the applicant is an eligible beneficiary, including whether:

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

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

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

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

(c) a determination with respect to a long term care provider, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The moneys of the fund shall be paid out on the audit and warrant of the comptroller on vouchers certified and approved by the commissioner of the department of health.

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

§ 8-d. Additional duties of the comptroller; long term care trust program. 1. Beginning on and after the effective date of this section, the comptroller shall provide all necessary assistance, including auditing and actuarial services to the long term care trust commission established pursuant to section thirty-six hundred seventy-two of the public health law and in accordance with all relevant provisions of article thirty-six hundred-B of the public health law, the tax law, the labor law, and this chapter.

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

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

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

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

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

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

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

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

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

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

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

(6-c) Notwithstanding any provision of law to the contrary and not later than January first of the year beginning one year after the effective date of this subdivision, the commissioner shall enter into a cooperative agreement with the department of health, the department of labor, and the comptroller to allow the information obtained by the department pursuant to subdivision one of this section and section one hundred seventy-one-h of this article to be made available to such departments, or other individuals designated by the commissioners of such departments, for the purposes of determining and verifying whether a person is a "qualified individual" for the purposes of section thirty-six hundred seventy-seven of the public health law, or for other purposes deemed appropriate by the commissioners of health and labor and the comptroller, consistent with the provisions of article thirty-six-B of the public health law, the state finance law, and the labor law, with respect to which such departments have reporting, monitoring, administering, or evaluating responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

§ 8. Severability. If any provision or application of this act shall be held to be invalid, or to violate or be inconsistent with any applicable federal law or regulation, that shall not affect other provisions or applications of this act which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 9. This act shall take effect immediately.