

# STATE OF NEW YORK

8462

## IN SENATE

January 31, 2024

Introduced by Sens. MAYER, MAY -- 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. Individual premium contributions.

12 3678. Appeals and appeal hearings.

13 3679. Waivers.

14 § 3670. Definitions. As used in this article, the following terms  
15 shall have the following meanings, unless the context clearly requires  
16 otherwise:

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

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

21 (a) adult day services;

22 (b) care transition coordination;

23 (c) memory care;

24 (d) adaptive equipment and technology;

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

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(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

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

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

17 12. "Premium contributions" or "premiums" means the payments an  
18 employee or self-employed individual is required to contribute to the  
19 program pursuant to section thirty-six hundred seventy-seven of this  
20 article.

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

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

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

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

33 (i) is age eighteen or older; and

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

36 (1) a total of ten years during the course of such individual's life-  
37 time;

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

41 (3) if the individual was born before January first, nineteen hundred  
42 seventy-two, at least one year. Such individual may receive one-tenth of  
43 the maximum number of benefit units available under section thirty-six  
44 hundred seventy-five of this article for each year of premium payments.  
45 Nothing in this clause shall prohibit an individual born before January  
46 first, nineteen hundred seventy-two, who meets the conditions of clause  
47 two of this subparagraph, from receiving the maximum number of benefit  
48 units available under section thirty-six hundred seventy-five of this  
49 article.

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

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

54 § 3671. Program established. 1. There is hereby established the "New  
55 York long term care trust program" to provide long term care services  
56 and supports benefits for eligible beneficiaries regardless of income or

1 resources in accordance with the provisions of this article. The  
2 department shall implement and administer such program in coordination  
3 with the office of temporary and disability assistance, the office of  
4 mental health, the state office for the aging, the comptroller, the  
5 department of taxation and finance and the department of labor as set  
6 forth in this section.

7 2. The department shall:

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

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

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

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

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

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

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

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

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

44 3. On or before January first, two thousand twenty-six, the department  
45 shall, in consultation with the department of labor, the comptroller,  
46 the department of taxation and finance, the state office for the aging,  
47 the office of temporary and disability assistance, and any other depart-  
48 ment or agency it deems relevant, develop and maintain such programs and  
49 processes as shall be necessary to determine and keep records regarding  
50 the applicability of premium contribution requirements of section thir-  
51 ty-six hundred seventy-seven of this article to employees and self-em-  
52 ployed individuals. The department shall thereafter monitor individual  
53 premium contributions and make eligibility determinations pursuant to  
54 sections thirty-six hundred seventy-four and thirty-six hundred seven-  
55 ty-five of this article.

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

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

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

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

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

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

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

14 (v) the commissioner of the department of health, or such commission-  
15 er's designee;

16 (vi) the state commissioner of the office of temporary and disability  
17 assistance, or such commissioner's designee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (viii) one of whom shall be an individual who is paying the premium  
54 established under section thirty-six hundred seventy-seven of this arti-  
55 cle, or, prior to such section becoming effective, will pay such premi-

um, 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 controller 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



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

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

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

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

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

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

27 (a) Beginning on November fifteenth, two thousand twenty-five, and  
28 annually thereafter, the commission shall, in consultation with the  
29 comptroller, submit an actuarial report to the governor and to the  
30 chairs of the senate finance committee and the assembly ways and means  
31 committee. Such report shall include an actuarial report of the  
32 projected solvency and financial status of the program, anticipated  
33 agency spending and anticipated administrative expenses in the implemen-  
34 tation and initial operation of the program.

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

40 9. Beginning on December thirty-first, two thousand thirty, and annu-  
41 ally thereafter, the commission shall submit a report to the legislature  
42 on the program, which shall include but not be limited to the following:

43 (a) projected and actual program participation;

44 (b) adequacy of premium rates;

45 (c) fund balances;

46 (d) benefits paid;

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

50 (f) the extent to which the operation of the program has resulted in  
51 savings to the Medicaid program by avoiding costs that would have other-  
52 wise been the responsibility of the state.

53 § 3673. Long term care trust advisory panel. 1. The long term care  
54 trust advisory panel is hereby established. The advisory panel shall  
55 consist of each of the members of the commission identified in para-

1 graphs (a) and (b) of subdivision two of section thirty-six hundred  
2 seventy-two of this article, all of whom shall be voting members.

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

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

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

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

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

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

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

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

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

42 § 3674. Qualified individuals; determination. 1. The department shall,  
43 in coordination with the department of labor, the comptroller, and the  
44 department of taxation and finance, develop and maintain a record of all  
45 individuals subject to the premium requirements pursuant to section  
46 thirty-six hundred seventy-seven of this article.

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

53 (a) all individuals subject to the premium requirements of section  
54 thirty-six hundred seventy-seven of this article; and



1 (b) every employer required to collect and remit premiums from employ-  
2 ee wages pursuant to subdivision two of section thirty-six hundred  
3 seventy-seven of this article.

4 3. The department shall monitor individual premium contributions paid  
5 and individual hours worked for the purposes of determining and verify-  
6 ing whether an individual is a qualified individual as defined in subdi-  
7 vision sixteen of section thirty-six hundred seventy of this article.

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

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

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

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

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

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

54 (b) The department shall complete the eligibility determination  
55 required pursuant to paragraph (a) of this subdivision or any subsequent  
56 redetermination of eligibility under this article and decide whether the

1 applicant is eligible for benefits within forty-five days of the date of  
2 a completed application for benefits.

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

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

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

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

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

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

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

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

1 medical assistance, any state or federal program, Medicaid, or any other  
2 means-tested program or benefit.

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

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

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

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

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

31 (A) the provider is incompetent;

32 (B) the provider has exhibited a course of conduct which is inconsis-  
33 ent with program standards and regulations; or

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

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

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

52 § 3677. Individual premium contributions. 1. Beginning January first,  
53 of the year beginning two years after the effective date of this arti-  
54 cle, every employee, and every self-employed individual, unless other-  
55 wise exempt, shall contribute to the cost of providing long term care  
56 benefits under this article by payment of the premium assessed pursuant

1 to this section. The initial premium contribution rate and any adjust-  
2 ments to such rate shall be set by the comptroller, after consultation  
3 with the commission, at the lowest amount necessary to maintain the  
4 actuarial solvency of the long term care services and supports trust  
5 fund, in accordance with recognized insurance principles and in a manner  
6 designed to limit fluctuations in such rate.

7 (a) The initial premium contribution rate shall be set no later than  
8 September thirtieth of the year beginning one year after the effective  
9 date of this article and shall become applicable to each employee's  
10 wages paid or self-employed individual's income earned on and after  
11 January first of the year beginning two years after the effective date  
12 of this article.

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

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

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

32 3. Premiums shall be collected at the same time and in the same or  
33 substantially similar manner as the assessment, collection, and report-  
34 ing procedures used for the withholding of tax pursuant to title five of  
35 article twenty-two of the tax law or, in the case of an individual who  
36 is self-employed, including a sole proprietor, independent contractor,  
37 member of a limited liability company or limited liability partnership,  
38 or other self-employed person, at the same time and in the same or  
39 substantially similar manner as the assessment, collection, and report-  
40 ing procedures used for the payment of tax pursuant to part four of  
41 article twenty-two of the tax law.

42 4. The department, in coordination with the department of labor, the  
43 department of taxation and finance, and the comptroller shall promulgate  
44 rules for determining the hours worked and the wages of self-employed  
45 individuals.

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

50 6. If the premiums established in this section are changed, the comp-  
51 troller shall notify each individual subject to this section by mail  
52 that such person's premiums have changed.

53 7. (a)(i) Notwithstanding any contrary provision of this section, the  
54 following individuals may apply for an exemption from the premium  
55 contributions required under subdivision one of this section, as  
56 provided in this subdivision:

1 (1) an individual who has maintained private long term care insurance  
2 coverage on an uninterrupted basis beginning no later than January first  
3 of the year in which this article takes effect;

4 (2) a veteran of the United States military who has been rated by the  
5 United States department of veterans' affairs as having a service-con-  
6 ected disability of seventy percent or greater;

7 (3) a spouse or registered domestic partner of an active duty service  
8 member in the United States armed forces whether or not deployed or  
9 stationed within or outside of the state of New York;

10 (4) an employee who holds a nonimmigrant visa for temporary workers,  
11 as recognized by federal law, and is employed by an employer in the  
12 state of New York; or

13 (5) an individual who maintains a permanent address outside of the  
14 state of New York as the individual's primary location of residence.

15 (ii) Such request for an exemption shall be made in such form and in  
16 such manner as the department shall prescribe for such purpose no later  
17 than one year after the effective date of this article.

18 (iii) The department shall review each request for an exemption  
19 submitted pursuant to subparagraph (i) of this paragraph, and upon a  
20 determination that the individual satisfies the requirements in accord-  
21 ance with this paragraph, the department shall issue notice to such  
22 individual of such individual's exemption from paying premium contrib-  
23 utions beginning thirty days after the issuance of such notice of  
24 exemption.

25 (iv) An exemption issued to an individual pursuant to this subdivision  
26 shall relieve such individual's employer, if any, of the duty to collect  
27 premiums pursuant to subdivisions two and three of this section,  
28 provided, however, that the individual shall have first given proper  
29 notice of such exemption to the employer, including a copy of such  
30 exemption, together with any additional materials the department may  
31 require. No such employer shall be liable to an individual for continu-  
32 ing to collect premium contributions in the event that the individual  
33 fails to provide the notice of exemption to such employer in accordance  
34 with this subparagraph.

35 (b) (i) If an individual who has been issued an exemption from paying  
36 premium contributions pursuant to paragraph (a) of this subdivision due  
37 to having maintained private long term care insurance coverage on an  
38 uninterrupted basis ceases to hold private long term care insurance  
39 coverage, such individual shall notify the department and such individ-  
40 ual's employer, if any, of the termination of such private long term  
41 care insurance coverage within thirty days of such termination. Such  
42 notice shall be in writing and submitted in such form and in such manner  
43 as the department shall prescribe for such purpose, and shall state  
44 whether the individual intends to obtain private long term care insur-  
45 ance coverage within ninety days following the cessation of coverage. If  
46 the individual subsequently obtains long term care insurance coverage  
47 within such ninety-day period, the individual shall so notify the  
48 department and the individual's employer, if any.

49 (ii) In the event that an individual described in subparagraph (i) of  
50 this paragraph ceases to hold private long term care insurance coverage  
51 for a period of more than ninety days, the exemption from paying premium  
52 contributions issued pursuant to this subdivision shall be automatically  
53 and permanently revoked and such individual shall thereafter be respon-  
54 sible for the payment of all premium contributions required pursuant to  
55 subdivision one of this section and shall no longer be eligible for any  
56 new exemption under this subdivision. The individual shall be responsi-



1 ble for notifying the department and their employer, if any, in the  
2 event of such cessation of coverage for more than ninety days. Any  
3 premium contributions not paid after such date shall be subject to such  
4 reasonable monetary penalties and interest as shall be determined by the  
5 department and may levy an additional premium for the remainder of the  
6 period of coverage.

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

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

17 (e) If an individual who has been issued a notice of exemption from  
18 paying premium contributions on the basis of a status listed in clauses  
19 two through five of subparagraph (i) of paragraph (a) of this subdivi-  
20 sion, has a change of status which would render them otherwise subject  
21 to the requirements of subdivision one of this section, such individual  
22 shall be obligated to so inform the department and their employer, if  
23 any, within thirty days. The exemption from paying premium contributions  
24 issued pursuant to this subdivision shall be discontinued and such indi-  
25 vidual shall thereafter be responsible for the payment of all premium  
26 contributions.

27 § 3678. Appeals and appeal hearings. 1. Any applicant or recipient, or  
28 any individual authorized to act on behalf of any such applicant or  
29 recipient, and any long term care provider may appeal to the department  
30 from determinations of department officials or failures to make determi-  
31 nations upon grounds specified in subdivision four of this section. The  
32 department shall review the appeal de novo and give such person or enti-  
33 ty an opportunity for an appeal hearing. The department may also, on its  
34 own motion, review any decision made or any case in which a decision has  
35 not been made by the department official within the time specified by  
36 law or regulations of the department. The department may make such addi-  
37 tional investigation as it may deem necessary, and the commissioner  
38 shall make such determination as is justified and in accordance with  
39 applicable law.

40 2. Regarding any appeal pursuant to this section, with or without an  
41 appeal hearing, the commissioner may designate and authorize one or more  
42 appropriate members of his or her staff to consider and decide such  
43 appeals. Any staff member so designated shall be authorized to decide  
44 such appeals on behalf of the commissioner with the same force and  
45 effect as if the commissioner had made such decisions. Appeal hearings  
46 shall be held on behalf of the commissioner by members of his or her  
47 staff who are employed for such purposes or who have been designated and  
48 authorized by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 § 3679. Waivers. Notwithstanding any contrary provision of law, the  
47 commissioner shall, to the extent necessary, develop and submit any  
48 appropriate waivers, including, but not limited to, those authorized  
49 pursuant to sections eleven hundred fifteen and nineteen hundred fifteen  
50 of the federal social security act, or successor provisions, and any  
51 other waivers necessary to achieve the purposes of high quality, inte-  
52 grated, and cost effective care and integrated financial eligibility  
53 policies under the medical assistance program or pursuant to title XVIII  
54 of the federal social security act. Copies of such original waiver  
55 applications shall be provided to the chair of the senate finance

1 committee and the chair of the assembly ways and means committee simul-  
2 taneously with their submission to the federal government.

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

5 § 99-rr. Long term care trust fund. 1. There is hereby established in  
6 the joint custody of the comptroller, the commissioner of taxation and  
7 finance and the commissioner of health a special fund to be known as the  
8 "long term care trust fund".

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

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

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

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

24 § 8-d. Additional duties of the comptroller; long term care trust  
25 program. 1. Beginning on and after the effective date of this section,  
26 the comptroller shall provide all necessary assistance, including audit-  
27 ing and actuarial services to the long term care trust commission estab-  
28 lished pursuant to section thirty-six hundred seventy-two of the public  
29 health law and in accordance with all relevant provisions of article  
30 thirty-six-B of the public health law, the tax law, the labor law, and  
31 this chapter.

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

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

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

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

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

4 (c) the overall efficacy of the program, based on the established  
5 goals under article thirty-six-B of the public health law including, but  
6 not limited to:

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

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

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

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

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

18 (6-c) Notwithstanding any provision of law to the contrary and not  
19 later than January first of the year beginning one year after the effec-  
20 tive date of this subdivision, the commissioner shall enter into a coop-  
21 erative agreement with the department of health, the department of  
22 labor, and the comptroller to allow the information obtained by the  
23 department pursuant to subdivision one of this section and section one  
24 hundred seventy-one-h of this article to be made available to such  
25 departments, or other individuals designated by the commissioners of  
26 such departments, for the purposes of determining and verifying whether  
27 a person is a "qualified individual" for the purposes of section thir-  
28 ty-six hundred seventy-seven of the public health law, or for other  
29 purposes deemed appropriate by the commissioners of health and labor and  
30 the comptroller, consistent with the provisions of article thirty-six-B  
31 of the public health law, the state finance law, and the labor law, with  
32 respect to which such departments have reporting, monitoring, adminis-  
33 tering, or evaluating responsibilities.

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

39 (e) conduct matches with the office of temporary and disability  
40 assistance, the department of health, and the department of labor to  
41 verify individuals' eligibility for the various programs specified under  
42 section one thousand one hundred thirty-seven (b) of the social security  
43 act and for other public assistance programs authorized by state law,  
44 and for the purposes of administering state employment security  
45 programs, and for the purposes of administering the long term care trust  
46 program, and with the workers' compensation board for the purpose of  
47 administering workers' compensation programs;

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

50 (g) furnish to the national directory of new hires, on a quarterly  
51 basis, extracts of the reports required under paragraph six of  
52 subsection (a) of section three hundred three of the federal social  
53 security act to be made to the secretary of labor concerning wages and  
54 unemployment compensation paid to individuals, by such dates, and in  
55 such manner as the secretary of health and human services shall specify  
56 by regulations. The ~~state~~ department of labor shall, consistent with

1 the authority contained in paragraph e of subdivision three of section  
2 five hundred thirty-seven of the labor law, disclose to the state direc-  
3 tory of new hires, such wage and unemployment compensation information  
4 as may be necessary to allow such state directory to comply with the  
5 provisions of this paragraph[+]; and

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

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

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

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

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

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

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

29 § 8. Severability. If any provision or application of this act shall  
30 be held to be invalid, or to violate or be inconsistent with any appli-  
31 cable federal law or regulation, that shall not affect other provisions  
32 or applications of this act which can be given effect without that  
33 provision or application; and to that end, the provisions and applica-  
34 tions of this act are severable.

35 § 9. This act shall take effect immediately.