

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.

8 3671. Program established.

9 3672. Long term care trust commission.

10 3673. Long term care trust advisory panel.

11 3674. Qualified individuals; determination.

12 3675. Eligible beneficiaries; determination.

13 3676. Reimbursement for services and supports.

14 3677. Individual premium contributions.

15 3678. Appeals and appeal hearings.

16 3679. Waivers.

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

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

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

24 (a) adult day services;

25 (b) care transition coordination;

26 (c) memory care;

27 (d) adaptive equipment and technology;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] 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 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

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-six hundred seventy-five of this article, including:

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

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

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

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

8 (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;

9 (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

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

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

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

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

14 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.

15 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.

16 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:

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

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

19 (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

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

21 § 3679. 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

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.