

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5664

FISCAL
NOTE

By Delegates Hall, Drennan, Gearheart,
Fehrenbacher, Horst, Shamblin, J. Cannon, Amos,
and Lucas

[Introduced February 17, 2026; referred to the
Committee on Health and Human Resources then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §33-64-1, §33-64-2, §33-64-3, §33-64-4, §33-64-5, §33-64-6, §33-64-7, §33-
 3 64-8, §33-64-9, §33-64-10, §33-64-11, §33-64-12, §33-64-13, and §33-64-14, all relating
 4 to the creation of the West Virginia CARES Fund; providing for legislative findings; setting
 5 forth definitions; providing for the creation of an authority and commission; setting forth
 6 qualifications; defining approved services; explaining benefits; providing for the issuance
 7 of a premium; providing for the election of coverage; providing for the creation of a trust
 8 account; setting forth an appeals process; setting forth reporting requirements; describing
 9 income qualifications; and providing for access to data.

Be it enacted by the Legislature of West Virginia:

ARTICLE 64. WEST VIRGINIA CARES FUND.

<u>§33-64-1.</u>	<u>Legislative</u>	<u>findings.</u>
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1 (a) The legislature finds that:

2 (1) Long-term care is not covered by Medicare or other health insurance plans, and the few
 3 private long-term care insurance plans that exist are unaffordable for most people, leaving more
 4 than ninety percent of seniors uninsured for long-term care. The current market for long-term care
 5 insurance is broken.

6 (2) The majority of people over sixty-five years of age will need long-term services and
 7 supports within their lifetimes. Without access to insurance, seniors must rely on family care and
 8 spend their life savings down to poverty levels in order to access long-term care through Medicaid.
 9 Furthermore, family caregivers who leave the workforce to provide unpaid long-term services and
 10 supports lose an average of \$300,000 in their own income and health and retirement benefits.

11 (3) Paying out-of-pocket for long-term care is expensive. These are costs that most seniors
 12 cannot afford.

13 (4) Seniors and the state will not be able to continue their reliance on family caregivers in
 14 the near future. Demographic shifts mean that fewer potential family caregivers will be available in

15 the future. Today, there are around seven potential caregivers for each senior, but by 2030 that
16 ratio will decrease to four potential caregivers for each senior.

17 (5) An alternative funding mechanism for long-term care access in West Virginia could
18 relieve hardship on families and lessen the burden of Medicaid on the state budget. In addition, an
19 alternative funding mechanism could result in positive economic impact to our state through
20 increased state competition and fewer West Virginians leaving the workforce to provide unpaid
21 care.

22 (6) The average aging and long-term supports administration Medicaid consumer utilizes
23 ninety-six hours of care per month. At current costs, a \$100 per day benefit for 365 days would
24 provide complete financial relief for the average in-home care consumer and substantial relief for
25 the average facility care consumer for a full year or more.

26 (7) As the state pursues an alternative funding mechanism for long-term care access, the
27 state must continue its commitment to promoting choice in approved services and long-term care
28 settings. Therefore, any alternative funding mechanism program should be structured such that:

29 (A) Individuals are able to use their benefits for long-term care services in the setting of
30 their choice, whether in the home, a residential community-based setting, or a skilled nursing
31 facility;

32 (B) The choice of provider types and approved services is the same or greater than
33 currently available through West Virginia's publicly funded long-term services and supports;

34 (C) Transitions from private and public funding sources for consumers are seamless; and

35 (D) Long-term care health status data is collected across all home and community-based
36 settings.

37 (8) The creation of a long-term care insurance benefit of an established dollar amount per
38 day for 365 days each year for all eligible West Virginia employees, paid through an employee
39 payroll premium, is in the best interest of the state of West Virginia.

1 (a) The definitions in this section apply throughout this article unless the context clearly
2 requires otherwise.

3 (1) "Account" means the long-term services and supports trust account created this article.

4 (2) "Approved service" means long-term services and supports including, but not limited to:

5 (A) Adult day services;

6 (B) Care transition coordination;

7 (C) Memory care;

8 (D) Adaptive equipment and technology;

9 (E) Environmental modification;

10 (F) Personal emergency response system;

11 (G) Home safety evaluation;

12 (H) Respite for family caregivers;

13 (I) Home delivered meals;

14 (J) Transportation;

15 (K) Dementia supports;

16 (L) Education and consultation;

17 (M) Evidence-based interventions designed to improve health and well-being, including:

18 (i) Eligible relative care;

19 (ii) Professional services; and

20 (iii) Services that assist paid and unpaid family members caring for eligible individuals,

21 including training for individuals providing care who are not otherwise employed as long-term care
22 workers;

23 (N) In-home personal care;

24 (O) Assisted living services;

25 (P) Adult family home services; and

26 (Q) Nursing home services.

27 (3) "Benefit unit" means up to \$100 dollars, increasing at a three percent index subject to
28 annual commission approval, paid by the department of social and health services to a long-term
29 services and supports provider as reimbursement for approved services provided to an eligible
30 beneficiary on a specific date.

31 (4) "Commission" means the long-term services and supports trust commission
32 established in this article.

33 (5) "Eligible beneficiary" means a qualified individual who has been determined to meet the
34 minimum level of assistance with activities of daily living necessary to receive benefits through the
35 trust program, as established in this article.

36 (6)(A) "Employee" means an individual who is in the employment of an employer.

37 (B) "Employee" does not include employees of the United States of America.

38 (7)(A) "Employer" means: (i) Any individual or type of organization, including any
39 partnership, association, trust, estate, joint stock company, insurance company, limited liability
40 company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,
41 trustee, or the legal representative of a deceased person, having any person in employment or,
42 having become an employer, has not ceased to be an employer as provided in this chapter; (ii) the
43 state, state institutions, and state agencies; and (iii) any unit of local government including, but not
44 limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political
45 subdivision.

46 (B) "Employer" does not include the United States of America.

47 (8)(A) "Employment" means personal service, of whatever nature, unlimited by the
48 relationship of master and servant as known to the common law or any other legal relationship
49 performed for wages or under any contract calling for the performance of personal services,
50 written or oral, express or implied. The term "employment" includes an individual's entire service
51 performed within or without or both within and without this state, if:

52 (i) The service is localized in this state; or

53 (ii) The service is not localized in any state, but some of the service is performed in this
54 state; and

55 (iii) The base of operations of the employee is in the state, or if there is no base of
56 operations, then the place from which such service is directed or controlled is in this state; or

57 (iv) The base of operations or place from which such service is directed or controlled is not
58 in any state in which some part of the service is performed, but the individual's residence is in this
59 state.

60 (B) "Employment" does not include:

61 (i) Services for remuneration when it is shown to the satisfaction of the commissioner of the
62 employment security department that:

63 (A)(I) Such individual has been and will continue to be free from control or direction over
64 the performance of such service, both under the individual's contract of service and in fact;

65 (II) Such service is either outside the usual course of business for which such service is
66 performed, or that such service is performed outside of all the places of business of the enterprises
67 for which such service is performed; and

68 (III) Such individual is customarily engaged in an independently established trade,
69 occupation, profession, or business, of the same nature as that involved in the contract of service;
70 or

71 (B) As a separate alternative:

72 (I) Such individual has been and will continue to be free from control or direction over the
73 performance of such service, both under the individual's contract of service and in fact;

74 (II) Such service is either outside the usual course of business for which such service is
75 performed, or that such service is performed outside of all the places of business of the enterprises
76 for which such service is performed, or the individual is responsible, both under the contract and in
77 fact, for the costs of the principal place of business from which the service is performed;

78 (III) Such individual is customarily engaged in an independently established trade,

79 occupation, profession, or business, of the same nature as that involved in the contract of service,
80 or such individual has a principal place of business for the work the individual is conducting that is
81 eligible for a business deduction for federal income tax purposes;

82 (IV) On the effective date of the contract of service, such individual is responsible for filing
83 at the next applicable filing period, both under the contract of service and in fact, a schedule of
84 expenses with the internal revenue service for the type of business the individual is conducting;

85 (V) On the effective date of the contract of service, or within a reasonable period after the
86 effective date of the contract, such individual has established an account with the department of
87 revenue, and other state agencies as required by the particular case, for the business the
88 individual is conducting for the payment of all state taxes normally paid by employers and
89 businesses and has registered for and received a unified business identifier number from the state
90 of West Virginia; and

91 (VI) On the effective date of the contract of service, such individual is maintaining a
92 separate set of books or records that reflect all items of income and expenses of the business
93 which the individual is conducting; or

94 (ii) Services that require registration under this code or licensing under this code rendered
95 by an individual when:

96 (A) The individual has been and will continue to be free from control or direction over the
97 performance of the service, both under the contract of service and in fact;

98 (B) The service is either outside the usual course of business for which the service is
99 performed, or the service is performed outside of all the places of business of the enterprise for
100 which the service is performed, or the individual is responsible, both under the contract and in fact,
101 for the costs of the principal place of business from which the service is performed;

102 (C) The individual is customarily engaged in an independently established trade,
103 occupation, profession, or business, of the same nature as that involved in the contract of service,
104 or the individual has a principal place of business for the business the individual is conducting that

105 is eligible for a business deduction for federal income tax purposes, other than that furnished by
106 the employer for which the business has contracted to furnish services;

107 (D) On the effective date of the contract of service, the individual is responsible for filing at
108 the next applicable filing period, both under the contract of service and in fact, a schedule of
109 expenses with the internal revenue service for the type of business the individual is conducting;

110 (E) On the effective date of the contract of service, or within a reasonable period after the
111 effective date of the contract, the individual has an active and valid certificate of registration with
112 the department of revenue, and an active and valid account with any other state agencies as
113 required by the particular case, for the business the individual is conducting for the payment of all
114 state taxes normally paid by employers and businesses and has registered for and received a
115 unified business identifier number from the state of West Virginia;

116 (F) On the effective date of the contract of service, the individual is maintaining a separate
117 set of books or records that reflect all items of income and expenses of the business that the
118 individual is conducting; and

119 (G) On the effective date of the contract of service, the individual has a valid contractor
120 registration or an electrical contractor license.

121 (9) "Long-term services and supports provider" means an entity that meets the
122 qualifications applicable in law to the approved service they provide, including a qualified or
123 certified home care aide, licensed assisted living facility, licensed adult family home, licensed
124 nursing home, licensed in-home services agency, adult day health program, vendor, instructor,
125 qualified family member, or other entities as registered by the Department of Human Services.

126 (10) "Premium" or "premiums" means the payments required by this article and paid to the
127 employment security department for deposit in the account created in this article.

128 (11) "Program" means the long-term services and supports trust program established in
129 this chapter.

130 (12) "Qualified family member" means a relative of an eligible beneficiary qualified to meet

131 requirements established in state law for the approved service they provide that would be required
132 of any other long-term services and supports provider to receive payments from the state.

133 (13) "Qualified individual" means an individual who meets the age, residence, and duration
134 of payment requirements, as established in this article, and has not exhausted the lifetime limit of
135 benefit units.

136 (14) "Wages" has the same meaning as defined in, except that all wages are subject to a
137 premium assessment and not limited by the commissioner of the employment security
138 department.

§33-64-3. Establishment of authority.

1 (a) The West Virginia Health Care Authority (sometimes referred to as "the health care
2 authority"), the Department of Human Services, and the WorkForce WV office each have distinct
3 responsibilities in the implementation and administration of the program. In the performance of
4 their activities, they shall actively collaborate to realize program efficiencies and provide persons
5 served by the program with a well-coordinated experience.

6 (b) The West Virginia Health Care Authority shall:

7 (1) Make determinations regarding an individual's status as a qualified individual under this
8 article;

9 (2) Ensure approved services are provided through audits or service verification processes
10 within the service provider payment system for registered long-term services and supports
11 providers and recoup any inappropriate payments;

12 (3) Establish criteria for the payment of benefits to registered long-term services and
13 supports providers under this article; and

14 (4) Adopt rules and procedures necessary to implement and administer the activities
15 specified in this section related to the program.

16 (c) The West Virginia Department of Human Services shall:

17 (1) Make determinations regarding an individual's status as an eligible beneficiary under

18 this article;

19 (2) Approve long-term services and supports eligible for payment as approved services
20 under the program, as informed by the commission;

21 (3) Register long-term services and supports providers that meet minimum qualifications;

22 (4) Discontinue the registration of long-term services and supports providers that: (i) Fail to
23 meet the minimum qualifications applicable in law to the approved service that they provide; or (ii)
24 violate the operational standards of the program;

25 (5) Disburse payments of benefits to registered long-term services and supports providers,
26 utilizing and leveraging existing payment systems for the provision of approved services to eligible
27 beneficiaries under this article;

28 (6) Prepare and distribute written or electronic materials to qualified individuals, eligible
29 beneficiaries, and the public as deemed necessary by the commission to inform them of program
30 design and updates;

31 (7) Provide customer service and address questions and complaints, including referring
32 individuals to other appropriate agencies;

33 (8) Provide administrative and operational support to the commission;

34 (9) Track data useful in monitoring and informing the program, as identified by the
35 commission;

36 (10) Establish rules and procedures for benefit coordination when the eligible beneficiary is
37 also funded for Medicaid and other long-term services and supports, including Medicare,
38 coverage through the department of labor and industries, and private long-term care coverage;
39 and

40 (11) Adopt rules and procedures necessary to implement and administer the activities
41 specified in this section related to the program.

42 (d) WorkForce WV shall:

43 (1) Collect and assess employee premiums as provided in this article;

- 44 (2) Assist the commission in monitoring the solvency and financial status of the program;
- 45 (3) Perform investigations to determine the compliance of premium payments in this
- 46 article; and
- 47 (4) Adopt rules and procedures necessary to implement and administer the activities
- 48 specified in this section related to the program.

§33-64-4. Establishment of commission.

- 1 (a) The long-term services and supports trust commission is established.
- 2 (b) The commission includes:
- 3 (1) Two members from the West Virginia House of Delegates;
- 4 (2) Two members from the West Virginia Senate;
- 5 (3) The commissioner of the West Virginia Health Care Authority, or the commissioner's
- 6 designee;
- 7 (4) The secretary of the West Virginia Department of Human Services, or the secretary's
- 8 designee;
- 9 (5) The director of WorkForce WV, or the director's designee;
- 10 (6) One representative of the organization representing the area agencies on aging;
- 11 (7) One representative of a home care association that represents caregivers who provide
- 12 services to private pay and Medicaid clients;
- 13 (8) One representative of a union representing long-term care workers;
- 14 (9) One representative of an organization representing retired persons;
- 15 (10) One representative of an association representing skilled nursing facilities and
- 16 assisted living providers;
- 17 (11) One representative of an association representing adult family home providers; and
- 18 (12) Two individuals receiving long-term services and supports, or their designees, or
- 19 representatives of consumers receiving long-term services and supports under the program.
- 20 (c)(1) Other than the agency heads identified in this section, members of the commission

21 are appointed for terms of two years, except that the governor shall appoint the initial members
22 identified in this section to staggered terms not to exceed four years.

23 (2) The secretary of the West Virginia Department of Human Services, or the secretary's
24 designee, shall serve as chair of the commission. Meetings of the commission are at the call of the
25 chair.

26 (3) Members of the commission must be compensated and must be reimbursed for their
27 travel expenses while on official business.

28 (d) Beginning January 1, 2028, the commission shall propose recommendations to the
29 appropriate executive agency or the legislature regarding:

30 (1) The establishment of criteria for determining that an individual has met the
31 requirements to be a qualified individual as established in this article or an eligible beneficiary as
32 established in this article;

33 (2) The establishment of criteria for minimum qualifications for the registration of long-term
34 services and supports providers who provide approved services to eligible beneficiaries;

35 (3) Changes to rules or policies to improve the operation of the program;

36 (4) The annual adjustment of the benefit unit in accordance with the formula established in
37 this article; and

38 (5) The preparation of regular actuarial reports on the solvency and financial status of the
39 program.

§33-64-5. Qualifications.

1 The health care authority shall deem a person to be a qualified individual as provided in
2 this article if the person:

3 (1) Is at least eighteen years old;

4 (2) Is a West Virginia resident; and

5 (3) Has paid the long-term services and supports premiums required by this article for the
6 equivalent of either:

7 (A) A total of 10 years without interruption of five or more consecutive years; or

8 (B) Three years within the last six years.

§33-64-6. Approved services.

1 (a) Beginning January 1, 2031, approved services must be available and benefits payable
2 to a registered long-term services and supports provider on behalf of a qualified individual under
3 this section.

4 (b) A qualified individual may receive approved services and benefits that are payable to a
5 registered long-term services and supports provider on behalf of a qualified individual under this
6 section if the qualified individual has been determined by the department of social and health
7 services to require assistance with at least three activities of daily living.

8 (c)(1) An eligible beneficiary may receive approved services and benefits through the
9 program in the form of a benefit unit payable to a registered long-term services and supports
10 provider.

11 (2) An eligible beneficiary may not receive more than the dollar equivalent of 365 benefit
12 units over the course of the eligible beneficiary's lifetime.

13 (d) If the West Virginia Department of Human Services reimburses a long-term services
14 and supports provider for approved services provided to an eligible beneficiary and the payment is
15 less than the benefit unit, the West Virginia Department of Human Services shall credit the unused
16 portion of the benefit unit to the eligible beneficiary for future use.

17 (e) Eligible beneficiaries may combine benefit units to receive more approved services per
18 day as long as the total number of lifetime benefit units has not been exceeded.

§33-64-7. Benefits provided.

1 (a) Benefits provided under this article shall be paid periodically and promptly to registered
2 long-term services and supports providers.

3 (b) Qualified family members may be paid for approved personal care services in the same
4 way as individual providers, through a licensed home care agency, or through a third option if

5 recommended by the commission and adopted by the West Virginia Department of Human
6 Services.

§33-64-8. Issuance of premium.

1 (a) Beginning January 1, 2029, WorkForce WV shall assess for each individual in
2 employment with an employer for at least 10 percent of full-time employment status a premium
3 based on the amount of the individual's wages. The premium is fifty-eight hundredths of one
4 percent of the individual's wages.

5 (b)(1) The employer must collect from the employees the premiums provided under this
6 section through payroll deductions and remit the amounts collected to WorkForce WV.

7 (2) In collecting employee premiums through payroll deductions, the employer shall act as
8 the agent of the employees and shall remit the amounts to the WorkForce WV as required by this
9 chapter.

10 (c)(1) Premiums shall be collected in the manner and at such intervals as provided in this
11 chapter and directed by the employment security department.

12 (2) To the extent feasible, WorkForce WV shall use the premium assessment, collection,
13 and reporting procedures.

14 (3) The employment security department shall deposit all premiums collected in this
15 section in the long-term services and supports trust account created in this article.

16 (4) Premiums collected in this section are placed in trust for the individuals that the
17 program is intended to assist.

§33-64-9. Election of coverage.

1 (a) Beginning January 1, 2030, any self-employed person, including a sole proprietor,
2 independent contractor, partner, or joint venturer, may elect coverage under this article. Those
3 electing coverage under this subsection are responsible for payment of 100 percent of all
4 premiums assessed to an employee under this article. The self-employed person must file a notice
5 of election in writing with WorkForce WV, in the manner required by the employment security

6 department in rule. The self-employed person is eligible for benefits after paying the long-term
7 services and supports premium for the time required under this article.

8 (b) A self-employed person who has elected coverage may withdraw from coverage, at
9 such times as WorkForce WV may adopt by rule, by filing a notice of withdrawal in writing with the
10 employment security department, with the withdrawal to take effect not sooner than 30 days after
11 filing the notice with the employment security department.

12 (c) WorkForce WV may cancel elective coverage if the self-employed person fails to make
13 required payments or file reports. WorkForce WV may collect due and unpaid premiums and may
14 levy an additional premium for the remainder of the period of coverage. The cancellation must be
15 effective no later than 30 days from the date of the notice in writing advising the self-employed
16 person of the cancellation.

17 (d) Those electing coverage are considered employers or employees where the context so
18 dictates.

19 (e) For the purposes of this section, "independent contractor" means an individual
20 excluded from the definition of "employment" in this article.

21 (f) WorkForce WV shall adopt rules for determining the hours worked and the wages of
22 individuals who elect coverage under this section and rules for enforcement of this section.

§33-64-10. Trust account created.

1 (a) The long-term services and supports trust account is created in the West Virginia
2 Treasurer's office. All receipts from employers under this article must be deposited in the account.
3 Expenditures from the account may be used for the administrative activities and payment of
4 benefits associated with the program. Only the secretary of the West Virginia Department of
5 Human Services or the secretary's designee may authorize disbursements from the account. The
6 account is subject to the allotment procedures otherwise provided for in this code. The account
7 must provide reimbursement of any amounts from other sources that may have been used for the
8 initial establishment of the program.

4 program;

5 (2) Apply for a demonstration waiver from the federal centers for Medicare and Medicaid
6 services to allow for the state to share in the savings generated in the federal match for Medicaid
7 long-term services and supports and Medicare due to the operation of the program;

8 (3) Submit a report on the status of the waiver to the office of financial management and the
9 appropriate committees of the legislature by December 1, 2029.

§33-64-13. Reporting requirements.

1 Beginning December 1, 2034, and annually thereafter, the long-term services and
2 supports trust commission shall report to the Legislature on the program, including:

3 (1) Projected and actual program participation;

4 (2) Adequacy of premium rates;

5 (3) Fund balances;

6 (4) Benefits paid;

7 (5) Demographic information on program participants, including age, gender, race,
8 ethnicity, geographic distribution by county, legislative district, and employment sector; and

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

§33-64-14. Income exemption.

1 Any benefits used by an individual under this article are not income for any determinations
2 of eligibility for any other state program or benefit.

NOTE: The purpose of this bill is to provide for the creation of the West Virginia CARES Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.