



Washington enacts numerous benefit, insurance and related laws

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Washington's 2022 legislative session ushered in new laws affecting employer-sponsored benefits, long-term care (LTC), paid family medical leave (PFML), prescription drugs, telemedicine, and balance billing. This GRIST summarizes the relevant laws for employers and group health plan sponsors offering benefits in Washington.

LTC insurance mandate

Contributions and benefits delayed, benefit eligibility broadened. Effective Jan. 27, a new law ([2022 Ch. 1](#), HB 1732) delays implementation of the state's LTC program by 18 months. This postpones the start of premium collections from Jan. 1, 2022, to July 1, 2023, and the availability of benefits from Jan. 1, 2025, to July 1, 2026. Employers who already withheld contributions from employees must issue refunds no more than 120 days after the law took effect, or May 27. In addition, individuals born before Jan. 1, 1968, may qualify for reduced benefits if they have paid the required premiums for at least one year.

More exemptions available. A second law ([2022 Ch. 2](#), HB 1733) requires the Employment Security Department (ESD) to begin accepting premium exemption applications beginning Jan. 1, 2023, for the following individuals:

- Employees whose primary residence is outside Washington
- US active military spouses and domestic partners
- Certain disability-rated US veterans
- Temporary worker nonimmigrant visa holders

Employees granted one of these exemptions remain permanently ineligible for the state coverage unless they lose the exemption — for example, due to military discharge, a divorce, or a change in immigration status or residence.

Neither law changed the Nov. 1, 2021, deadline to purchase qualifying private LTC coverage for employees seeking an exemption from the public program. That exemption enables employees to opt out of the 0.58% premium contribution by Dec. 31, 2022.

For all state-approved exemptions, employees must provide an exemption notice to their employers before premium collection can be discontinued.

Program funding increased. A supplemental budget bill ([2022 Ch. 297](#), SB 5693) increases funding for the state's [Long-Term Services and Supports](#) Trust Program from \$19.6 million to \$41.1 million for fiscal year 2022.

PFML

Program funding increased. The supplemental budget bill also authorizes additional funds for a variety of programs, including the state's Family and Medical Leave Insurance account. The bill does not include any new employer requirements, but provides another \$350 million to ensure that the account will not operate at a deficit. The additional funding aligns with [ESD calculations](#). Washington's PFML program is funded by employer and employee contributions. General information is available on the state's [PFML website](#).

Bereavement leave, post-childbirth leave modified. Another law ([2022 Ch. 233](#), SB 5649) modifies existing PFML requirements, providing paid family leave during the seven calendar days after the death of a qualifying family member (i.e., a family member for whom the employee could have taken medical leave or child-bonding leave before the relative died). The first six weeks after childbirth automatically qualify as medical leave without the need to show a serious health condition. The changes generally take effect June 9, 2022, but employers under a collective bargaining agreement (CBA) have until Jan. 1, 2024, to comply with the PFML law. (The law formerly exempted employers with CBAs in existence on Oct. 19, 2017.)

Prescription drugs

Board to set payment limits for certain prescription drugs. Effective June 9, a new law ([2022 Ch. 153](#), SB 5532) creates a five-member prescription drug affordability board that will review prices in the state for up to 24 drugs per year. The board will work with the state's [Health Care Authority](#) to set upper payment limits, where appropriate, for up to 12 drugs per year beginning Jan. 1, 2027. Any upper payment limit set for a prescription drug will apply to all drug purchases by a fully insured entity when the drug is dispensed or administered — whether in person, by mail or by other means — to an individual in the state.

An employer-sponsored, self-funded plan may (but is not required to) elect to be subject to the upper payment limits established by the board. Any health plan savings attributable to the program must be used to reduce consumers' out-of-pocket costs. At least two states — [Colorado](#) and [Maryland](#) — have adopted similar programs in recent years.

Drug cost sharing to count toward deductible and out-of-pocket maximum. For policy years starting on or after Jan. 1, 2023, a new law ([2022 Ch. 228](#), SB 5610) requires fully insured plans operating in the state to count prescription drug cost sharing toward the deductible and out-of-pocket maximum, regardless of payment source. The mandate applies only to prescription drugs without a generic or therapeutic-equivalent preferred drug in the health plan's formulary. However, that restriction doesn't apply if the patient is purchasing the drug through prior authorization, step therapy or a utilization-review exception process.

The law does not apply to grandfathered plans under the federal Affordable Care Act. The mandate also exempts high-deductible health plans (HDHPs), but only to the extent necessary to preserve the enrollee's ability to claim tax-exempt contributions and withdrawals from a qualified health savings account (HSA).

Lower cap on insulin cost sharing. For policy years starting on or after Jan. 1, 2023, another law ([2022 Ch. 10](#), SB 5546) reduces Washington's cost-sharing limits on insulin drugs to \$35 for a 30-day supply. The current cost-sharing limit is \$100 for a 30-day supply. The law makes no distinction between in-network and out-of-network providers. The law expires at the end of 2023. If IRS removes insulin from its list of preventive care services eligible for first-dollar coverage in an HSA-qualifying HDHP, the law requires an insurer to set cost sharing at the minimum level that preserves the enrollee's ability to make tax-exempt HSA contributions.

Telemedicine

PSYPACT adopted. Under a new law ([2022 Ch. 5](#), HB 1286), Washington will join the [Psychology Interjurisdictional Compact](#) (PSYPACT), an interstate compact that facilitates the practice of mental health services across state boundaries. This is particularly relevant for telehealth services. Licensed healthcare providers can apply to practice telepsychology and/or to conduct temporary in-person, face-to-face sessions in PSYPACT states, depending on the certificate issued. Services available through PSYPACT are now available in a [majority of the states](#). The effective date is not clear. The law requires the state's Health Department to communicate the effective date.

Audio-only telemedicine eased. Effective June 9, amendments ([2022 Ch. 213](#), HB 1821) to the state's existing telehealth insurance coverage mandates allow a patient's "established relationship" with a healthcare provider to exist through audio-only telemedicine under certain conditions:

- The provider must have access to sufficient health records to ensure safe, effective, and appropriate care services.

- For mental health and substance use disorder services, including behavioral health treatment, the patient either:
 - Has within the past three years had at least one in-person appointment or at least one real-time interactive appointment using both audio and video technology provided by healthcare or insurance carrier
 - Was referred to the health provider delivering audio-only telemedicine by another provider with whom the patient has within the past three years had at least one in-person appointment or at least one real-time interactive appointment using both audio and video technology
- For any other healthcare services, the patient either:
 - Has within the past two years had at least one in-person appointment or, until Jan. 1, 2024, at least one real-time interactive appointment using both audio and video technology with the provider delivering audio-only telemedicine or using a licensed health carrier's integrated delivery system
 - Was referred to the provider using audio-only telemedicine by another provider with whom the patient has within the past two years had at least one in-person appointment or, until Jan. 1, 2024, at least one real-time interactive appointment using both audio and video technology

One of the long-standing challenges limiting telemedicine has been whether state law requires an in-person visit to establish a doctor-patient relationship.

Balance billing

State balancing-billing law aligned with federal law. Effective March 31, changes ([2022 Ch. 263](#), HB 1688) to the state's existing balance-billing program align Washington's requirements with those in the federal [No Surprises Act](#) (NSA) enacted by the 2021 Consolidated Appropriations Act (CAA). Highlights include:

- Updates every other year through 2030 to the claims data used in determining the qualifying payment amount
- Confirmation that the state's arbitration process applies instead of the NSA's independent dispute resolution process until at least July 1, 2023; air ambulance services will continue to be subject to state law beyond that date
- Authorization for the Office of the Insurance Commissioner to enforce state law and NSA protections by assessing civil penalties of up to \$100 per affected individual per day
- An Insurance Commissioner report and recommendations by Oct. 1, 2023, on how to include ground ambulance services in balance-billing protections
- Expansion of the emergency services definition consistent with the NSA

- Inclusion of post-stabilization and air ambulance services to mirror the NSA

While the law applies to fully insured plans underwritten in the state, Washington allows self-funded plans to elect to follow its balance-billing law.

Employer next steps and other considerations

Here are actions that employers may want to consider:

- Stop collecting and begin refunding any employee LTC contributions, and communicate the updated deadlines.
- Review PFML policies to ensure coverage for the clarified reason and for employees covered by CBAs.
- Consider what impact the telemedicine changes will have on participants, and communicate accordingly.
- For employers that purchase group health coverage, ensure that plan materials, summary plan descriptions, and summaries of benefits and coverage are updated next year to include the new coverage mandates for prescription drugs and insulin.

Related resources

Non-Mercer resources

- [2022 Ch. 297](#), SB 5693, Additional funding for PFML and LTC (Washington Legislature, March 31, 2022)
- [2022 Ch. 263](#), HB 1688, Balance-billing alignment with federal No Surprises Act (Washington Legislature, March 31, 2022)
- [2022 Ch. 233](#), SB 5649, Additional PFML changes (Washington Legislature, March 30, 2022)
- [2022 Ch. 228](#), SB 5610, All prescription drug payments must count toward deductible and OOPM (Washington Legislature, March 30, 2022)
- [2022 Ch. 213](#), HB 1821, Establishment of provider-patient relationship for telemedicine (Washington Legislature, March 30, 2022)
- [2022 Ch. 153](#), SB 5532, Establishment of prescription drug affordability board (Washington Legislature, March 24, 2022)
- [2022 Ch. 10](#), SB 5546, Insulin cost sharing limited to \$35 per 30-day supply (Washington Legislature, March 4, 2022)

- [2022 Ch. 5](#), HB 1286, Adoption of PSYPACT for telemedicine mental health services (Washington Legislature, March 4, 2022)
- [2022 Ch. 2](#), HB 1733, Additional premium exemptions for LTC program (Washington Legislature, Jan. 27, 2022)
- [2022 Ch. 1](#), HB 1732, LTC program implementation delayed until July 1, 2023, expanded benefit eligibility (Washington Legislature, Jan. 27, 2022)
- [PSYPACT state map](#) (Psychology Interjurisdictional Compact)
- [Title II, Division BB of the 2021 CAA](#), the No Surprise Act (Congress, Dec. 27, 2020)
- [2017 Ch. 5](#), SB 5975, Paid Family and Medical Leave (Washington Legislature, July 5, 2017)

Mercer Law & Policy resources

- [Washington changes long-term care law](#) (April 13, 2022)
- [Roundup of selected state health developments, fourth-quarter 2021](#) (Jan. 21, 2022)
- [2022 state paid family and medical leave contributions and benefits](#) (Jan. 19, 2022)
- [Washington adds tight exemption timeline to long-term care law](#) (May 3, 2021)

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