CALIFORNIA CONSIDERS A STATEWIDE LONG-TERM CARE INSURANCE PROGRAM

Californians are worried about the costs of growing older. Recent research has found that two-thirds of California residents are worried about being able to afford long-term care—as worried about the cost of long-term care as they are about the cost of future health care.

Lawmakers are concerned as well. The number of elderly Americans is expected to double in the next 40 years, and approximately 70% of people over the age of 65 can be expected to use "long term services and supports" (LTSS). The Medicaid program is the primary funder for "long-term services and supports" in the United States, paying for more than half of all long-term care in the U.S. California spending on Medicaid has grown over the last decade, outpacing growth in state revenues. Medi-Cal (the California Medicaid program) comprises the second largest budget outlay in the state—just behind K-14 education. So while lawmakers are sensitive to constituent concerns, they are also cognizant that dealing with the need for long-term care coverage is a budget priority as well.

In response to these pressures, California passed AB 567 (Chapter 746, Statutes of 2019) establishing the Long Term Care Insurance Task Force (Task Force) in the California Department of Insurance. In the last year, the Task Force has explored the feasibility of developing and implementing a statewide insurance program for "long-term care services and supports" (LTSS).

On December 23, 2022, the Task Force submitted its recommended options to the Governor and the Legislature in a report entitled the AB 567 Oliver Wyman Feasibility Report (Report).

TASK FORCE RECOMMENDATIONS

While a range of design options were considered, Task Force members leaned toward a comprehensive benefit design, with the support increasing as benefit levels did, ranging from $36,000 ($3,000/month) at the low end to $144,000 ($6,000/month) at the high end. That benefit would be available to pay for comprehensive home, community-based and facility-based care, for up to two years for Californians aged 18 and older who are unable to perform two of six activities of daily living for at least 90 days or who suffer from severe cognitive impairment.

FUNDING

The state LTC benefit would likely be funded by a progressive payroll tax split between employees and employers with a contribution cap and a contribution waiver for lower-income individuals. Although the Task Force recommended a payroll tax with an employer-paid portion of up to 50%, there was recognition that it would be challenging to garner political support for an employer-paid tax. The Task Force has recommended assessing the financial impact of various employer-paid portions of the program contribution rate, including an entirely employee-paid tax.

For now, the actual tax rate has not been decided. Washington State's implemented rate of 0.58% proved too low to fund its program, and Task Force members have been eager to avoid some of the problems that Washington encountered in implementation. New York State's long term care bill, SB 9082, would establish a payroll tax of up to 1%.

Regardless of the rate or the employer share, any payroll tax borne by employees will impact their take-home pay. The higher the tax amount, the more likely employees would be to expect wage increases to offset this new expense, especially in wake of rapid inflation that has eroded the spending power of California employees.

Actuarial Report

The Task Force deferred a number of important discussions to an Actuarial Report, which will be prepared by the Actuarial Subcommittee of the Task Force. The Actuarial Report, which is due to be released by January 1, 2024, will provide a more detailed analysis of certain choices regarding benefit eligibility age and vesting criteria, portability and divesting criteria, benefit maximums and elimination periods, as well as revenue sources, contribution limits, investment strategy and other program design considerations. One of the most important topics that the Actuarial Report will discuss is the differing impacts of different opt-out dates.

Opt-out Considerations

Members of the Task Force have expressed significant reservations about designing an option for those who already have private long-term care insurance to opt out of the state program. Much discussion was targeted at the idea of adverse selection—that the ability to opt out of the program would significantly reduce program revenues as higher-income individuals obtain their own coverage. With regard to opt-out, the Actuarial Report will be tasked to "assess the financial impact of changing the deadline for the purchase of opt-out eligible private insurance policies from the program.

One of the options that seemed to have wide support from the Task Force members was creating an opt-out deadline that *predates the enactment of the program.* **That means the legislature could pass a law that says that unless an individual had private coverage *in place before January 1, 2024 (or an even earlier date)* then that individual cannot opt out of the program or the payroll tax that will fund it.** Those that wait until legislation is drafted will have missed the opportunity to choose their insurance coverage and to avoid additional taxation.

Timing and Employer Considerations

Below are some important dates related to the enactment of LTC legislation in California.

- **December 23, 2022: Task Force issued AB 567 Oliver Wyman Feasibility Report**
- January 4, 2023: Legislature reconvened for 2023 session
- February 17, 2023: Last day for 2023 bills to be introduced in the California legislature
- June 15, 2023: Presentation of preliminary actuarial results to the full Task Force
- **July 1, 2023: First day of 2023-2024 Fiscal Year**

- August 24, 2023: Draft Actuarial Report update and input
- September 14, 2023: Last day for California legislature to pass bills for the 2023 session
- September 21, 2023: Presentation of Draft Actuarial Report to Task Force
- December 14, 2023: Presentation of Final Actuarial Report to Task Force
- **January 1, 2024: Potential deadline for obtaining LTC coverage that qualifies as an opt-out**

In order for a statewide long-term care insurance program to be enacted, the legislature must pass, and the Governor must sign a law establishing a program. The deadline for the introduction of legislation for 2023 was February 17, 2023. No comprehensive long-term care legislation was introduced before that deadline. While language establishing a long-term care program could be drafted and grafted into another bill later in the legislative session, it appears the legislature is prepared to wait for the release of the Actuarial Report before introducing a long term care bill.

However, employers that wish to reserve the full range of options for their employees should not wait until the legislature acts. In fact, employers that wait for legislation may well find themselves boxed into whatever tax-funded option the legislature establishes, at whatever payroll tax level and employer share the legislature chooses employers to bear.