

COMPLIANCE ALERT

Washington State Cares Fund Contributions Begin July 1, 2023; State Enacts My Health My Data Act

June 15, 2023

Action Required:

- Payroll deductions must begin on July 1, 2023 for the WA Cares Fund.
- Remove any geofence before July 22, 2023 for the My Health My Data Act.
- Your Corporate Synergies Account Manager can assist you with these requirements.

In May 2019, the Washington State Legislature enacted the “WA Cares Fund” - the first state law in the country to implement a public, mandatory, long-term care insurance program for all workers in the state. The law requires employers to deduct premiums for the Fund from employees’ pay to fund future long-term care benefits. Employers must begin deducting these contributions July 1, 2023. Benefits become available from July 1, 2026 onward.

In addition to the above, Governor Jay Inslee signed the My Health My Data Act “MHMD” on April 27, 2023. The MHMD is the first state privacy legislation which specifically addresses consumer health data. Intended to close the gap on businesses not included in HIPAA’s definition of “covered entities,” the new law provides stronger privacy protections to state residents. The Act goes into effect on March 31, 2024, with a 90-day extension for small businesses to June 30, 2024. However, the geofencing prohibition will take effect on July 22, 2023.

What Should Employers and Plan Sponsors Do Next?

Beginning July 1, 2023, all employers with employees working in the state of Washington must make the mandatory payroll deductions and remit them to the Washington State Employment Security Department through the state’s Paid Leave website.

With regards to the MHMD, employers doing business in Washington should begin preparing now by ensuring any geofence is removed by July 22, 2023. Employers who collect, sell, or process consumer health data should take steps to ensure compliance, including creation of a consumer health data privacy policy. ■

↓ Full Explanation Follows ↓

Washington State Cares Fund Contributions Begin July 1, 2023; State Enacts My Health My Data Act

Washington State Cares Fund

On May 13, 2019, the Washington State Legislature enacted the [Long-Term Services and Supports Trust Program](#), now called the “WA Cares Fund,” which is the first state law in the country to implement a public, mandatory long-term care insurance program (the “Fund”) for all workers in the state. The law requires that employers deduct premiums for the Fund from employees’ pay to fund future long-term care benefits. Originally, employee deductions were to begin in 2022, but implementation of the program was delayed. Contributions will now be required to be deducted from employees’ paychecks beginning July 1, 2023, and benefits will become available July 1, 2026.

Summary of the Key Components of the WA Cares Fund:

- Covered Employees (defined below) must pay a premium of 0.58% of gross wages—without any wage cap—for each pay period (for example, \$5.80 for every \$1,000 of wages).
- Payments and quarterly reports are due to the Washington Employment Security Department by the last day of the month after the end of the calendar quarter.
- Employees could obtain an exemption if they purchased private long-term care insurance before November 1, 2021. Other exemptions are also available but are limited in scope (as explained in more detail in guidance issued by the state and available [here](#)).
- There is no required contribution from employers, but employers are required to collect, remit, and report the premiums, utilizing the existing Paid Family & Medical Leave reporting system for Washington State.
- Employers that willfully fail to withhold and remit premiums will be liable for the full premium and interest and may be subject to a penalty.
- Benefits will begin to be paid in 2026 adjusted annually for inflation, in amounts up to \$100 per day for a range of long-term care services. The lifetime maximum benefit will be set at \$36,500.

How are Covered Employees Defined?

The Cares Fund applies to any worker covered by the state’s paid family and medical leave (PFML) law. Specifically, the Fund’s requirements will apply to any W-2 employee who works in the state if one of the following applies:

- The employee’s service is localized in the state of Washington.
- The employee’s service is not localized in any state, but some service is performed in the state of Washington and the employee’s base of operations is there.
- The employee does not have one location that serves as a base of operations, service area, or place from which service is directed or controlled, but the employee’s residence is in Washington.

For employees covered by a collective-bargaining agreement in existence on Oct. 19, 2017, the law does not apply until the agreement expires or is reopened or renegotiated. The Fund doesn’t cover employees younger than 18, independent contractors or casual laborers. However, certain self-employed individuals may choose to opt-in by following certain regulatory guidelines, but they are not required to participate.

Who is Eligible to Receive Benefits?

Washington residents aged 18 or older may receive benefits if the premium was paid for 10 years without interruption of five or more consecutive years, or three years within the last six years. An employee must work at least 500 hours during each of the 10 or three years. WA Cares benefits are available only if the employee requires assistance with at least three activities of daily living and receives care in the state of Washington.

What Services Qualify for Payment through the WA Cares Act?

Services include in-home, assisted living and nursing home services, as well as in-home meals, home equipment, necessary renovations, and family members who are caregivers may also qualify for payments under the program. A comprehensive list of all covered services is available on the WA Cares Fund website [here](#).

If our Plan Offers Long-term Care Benefits to Employees, does that Exempt Employees from the Premium?

No. Employers may offer long-term care insurance to their employees, but it does not exempt the employee from making the premium contribution. Employer-sponsored long-term care benefits can supplement their WA Cares Fund benefits in the future. Employees who applied for the exemption and who are approved due to having private long-term care coverage may not opt back in to the WA Cares Fund.

Will our Organization be Exempt from the Cares Fund's Requirements if we Do Not have Any Locations within the State?

No. There is no exemption for this purpose.

What Should Employers and Plan Sponsors Do Next?

Beginning July 1, 2023, all employers with employees working in the state of Washington must make the mandatory payroll deductions and remit them to the [Washington State Employment Security Department](#) through the state's Paid Leave website (instructions on how employers can remit these premiums to the state are available [here](#) and the secure payment portal is available [here](#)). As noted above, it's important to understand that employers do not need to have a headquarters or other physical location in the state of Washington to be subject to the new law's requirements and can be subject to the law's requirement if they have only one covered employee in the state.

Additional information for [employers](#) and an [employer toolkit](#) including [FAQs](#) are available on the Washington Cares Fund website. Employers should ensure that they inform employees of the premium deduction and comply with the reporting requirements. Your Corporate Synergies Account Manager can assist with these requirements.

Washington My Health My Data Act

Additionally, on April 27, 2023, Governor Jay Inslee signed the [My Health My Data Act](#) ("MHMD" or "the Act") passed by the Washington State Legislature. The MHMD is the first state privacy legislation which specifically addresses consumer health data, and echoes similar privacy laws in Europe, California and other states which address non-health consumer data. Intended to close the gap on businesses not included in HIPAA's definition of "covered entities," the new law provides stronger privacy protections to residents of the state. The Act goes into effect on March 31, 2024, with a 90-day extension for small businesses to June 30, 2024. However, the geofencing prohibition (described below) will take effect 90 days after the end of the legislative session, which is July 22, 2023.

Summary of the key components of the MHMD:

- All legal entities doing business in Washington State, including those not based in Washington, are subject to the Act's provisions to protect consumer health data as "regulated entities," with some limited exceptions. Any entity which processes consumer health data on behalf of a regulated entity is also subject to the Act.
- The definition of "consumer" under the Act is broad and includes Washington State residents but also any "natural person whose consumer health data is collected in Washington."
- Specifically, the Act:
 - Creates consumer privacy rights specific to consumer health data such as the right to access, delete, and withdraw consent from sharing, sale, or collection of consumer health data.
 - Requires companies to have a consumer health data privacy policy that clearly discloses required information in addition to existing HIPAA notices of privacy practices and website privacy policies.
 - Prohibits the collection and sharing of consumer health data without prior consumer consent for the specified purpose or to the extent necessary to provide a product or service to the consumer.
 - Restricts the sale of consumer health data without an authorization.
 - Makes unlawful the practice of geofencing around any facility providing in-person health care services.

What is Considered Consumer Health Data under the Act?

Consumer health data is defined in the Act as "personal information that is linked or reasonably linkable to a consumer and that identifies the consumer's past, present, or future physical or mental health status" and also includes but is not limited to: gender-affirming care information, reproductive or sexual health information, biometric data, genetic data, use or purchase of prescribed medication, precise location data and any information derived or extrapolated electronically or otherwise that a regulated entity (or its processor) processes to associate or identify a consumer with consumer health data.

What is Geofencing?

According to the Act, geofencing is defined as "technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, Wi-Fi data, and/or any other form of location detection to establish a virtual boundary around a specific physical location" within 2,000 feet from the perimeter of the physical location.

What Will Be Required of Regulated Entities?

Businesses will be required to:

- Remove or refrain from implementing any geofence two thousand feet or less around a healthcare facility.
- Refrain from selling consumer health data without a signed authorization.
- Maintain a consumer health data privacy policy and include new disclosures in their website privacy policy on its homepage.
- Restrict collection and sharing of consumer health data to limited purposes without consumer consent.
- Provide and respond to consumer rights inquiries regarding consumer health data in a timely fashion and establish an appeals process.
- Implement security measures which restrict access to consumer health data and tighten information security; and
- Put in place data processing agreements with processors to ensure compliance.

What Should Employers and Plan Sponsors Do Next?

While there is still time before the MHMD is fully in force, employers doing business in Washington, particularly those in the health or life-sciences-related industries, should begin preparing now by ensuring any geofence is removed by July 22, 2023. Employers who collect, sell, or process consumer health data should familiarize themselves with the Act and take steps to ensure compliance, including creation of a consumer health data privacy policy. Corporate Synergies will continue to keep your organization updated on this law and related developments. ■

**If you have any additional questions,
please call your Corporate Synergies
Account Manager or 866.CSG.1719.**