

Washington  
**Paid Family & Medical Leave**

# VOLUNTARY PLAN GUIDE

WASHINGTON'S NEW PAID FAMILY & MEDICAL LEAVE PROGRAM

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## About this toolkit

This guide is intended to give Washington employers information needed to prepare and apply for a voluntary plan. For more information about the Paid Family and Medical Leave program, [please visit our website.](#)

### *Stay informed and get involved*

1. Explore our website ([www.paidleave.wa.gov](http://www.paidleave.wa.gov)).
2. Connect with us. Sign up for our listserv ([bit.ly/paidleavelist](http://bit.ly/paidleavelist)) and follow us on social media (@PaidLeaveWA on Facebook, Twitter and Instagram).
3. Get involved in rulemaking. Details at [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking).

## Application overview

Voluntary plans are available to employers who wish to operate their own paid family and/or medical leave programs. Employers must apply and be approved to operate a voluntary plan. Employers can submit applications through [paidleave.wa.gov](http://paidleave.wa.gov).

We recommend you allow at least 30 days for a decision to be made from the time the Employment Security Department receives your application payment.

If approved, your plan will take effect the first day of the quarter immediately following the approval of the plan.

Please note, if a voluntary plan is denied, there is an appeal process available. Employers must participate in the state program and pay premiums as required until a voluntary plan is approved.

## Administrative requirements

### Duplication of benefits

Employees cannot collect benefits from both the state plan and an approved voluntary plan for the same period.

If an employee is covered by more than one plan, the employee is considered covered by the employer for which the employee worked the most hours during the qualifying period.

If an employee has worked an equal number of hours for more than one employer:

- During the qualifying period: The employee is considered covered by the employer for which the employee worked the most hours since the qualifying period.
- Since the qualifying period: The employee is considered covered by the employer for which the employee has an earlier start date.

The department will provide weekly benefit, typical workweek hours, and leave duration information, upon request, to any employer with an approved voluntary plan for an employee who intends to take leave under that plan.

### Reporting

Paid family and medical leave benefits are portable between jobs. Employee eligibility is based on hours worked, not money paid into the state Paid Family and Medical Leave account. Therefore, quarterly reporting is necessary for voluntary plan employers so that employees have a record of their total hours worked in the event they move to a business covered under the state plan.

Voluntary plan employers will report quarterly the following for each employee:

- First name
- Last name
- Middle initial
- Social Security number (ITIN if no SSN)
- Wages paid during that quarter
- Total hours worked during that quarter, as paid

And generally:

- UBI
- Business name

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- Total premiums deducted from all employees' wages during the calendar quarter.

Voluntary plan employers must also report weekly benefit and leave duration for any employee who takes leave for a reason that also would have qualified for leave under the state plan. This information includes the following:

- First Name
- Last name
- Social Security number (ITIN if no SSN)
- Benefit amount paid
- Total number of hours claimed for the duration of that leave in that quarter.
- Date the claim year began

Reporting periods follow calendar quarters and are aligned with the reporting periods for Unemployment Insurance (UI). This report is separate from UI.

Reporting quarter	Report due
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

### *Reporting process*

Most employers will file reports and pay premiums online in the new Paid Family and Medical Leave system. We offer two reporting methods:

1. **Manual filing.** You will manually enter the name, SSN or ITIN, hours worked and wages paid separately for each employee. You can do this for up to 50 employees.
2. **Single filing.** You will compile the name, SSN or ITIN, hours worked and wages paid of each employee into a single CSV file (like an Excel spreadsheet). Instructions for creating a CSV file and the required file specifications are posted on our website at [paidleave.wa.gov/reporting](https://paidleave.wa.gov/reporting).

Additionally, employer agents (like payroll companies, CPAs and other third-party administrators) can report using an ICESA file. This is the method you will use if you need to report for multiple UBI numbers in a single report. More information on the ICESA format, including a test site where employer agents can test their ICESA files, is on our website at [paidleave.wa.gov/bulk-filing](https://paidleave.wa.gov/bulk-filing).

Employers with an approved voluntary plan must maintain all reports, information, and records relating to that plan and any claims for six years. These records must be provided to the department upon request. [RCW 50A.30.075]

## Family Leave and Medical Leave

There are two parts to Paid Family and Medical Leave: family leave and medical leave. An employer can choose a voluntary plan that covers just family leave, just medical leave, or both.

Family leave covers events like the birth of a baby or the adoption or placement of a child younger than 18, the care for a family member and some [military-connected events](#).

Family members who are eligible for care are children, grandchildren, parents (including parents-in-law), grandparents, siblings, sons-in-law and daughters-in-law or spouses and state-registered domestic partners. This includes step and foster relationships as well as adoption. Military connected events are the same as the rules in the Federal Family and Medical Leave Act (FMLA).

Medical leave covers self-care for the employee's [serious medical condition](#). Medical leave is sometimes called short-term or temporary disability by other programs or private insurance plans.

If an employer chooses to operate one part and not the other, the employees of that business will use the state plan for the part not chosen. The employer must meet the requirements of the state plan for the option not chosen in addition to operating their voluntary plan.

## Employee contributions held in trust

Employee contributions to a voluntary plan must be held in trust. This includes interest or other income arising from these contributions from an approved voluntary plan. These funds held in trust are not considered part of an employer's assets and must be held in a separate, specifically identifiable account in a financial institution.

If an employer withdraws their voluntary plan, funds held in trust must be remitted to the department, less plan costs.

## Third-party administration

Voluntary plan employers have the option to work with a third party to operate their voluntary plan. If an employer chooses to work with a third party, the employer still carries the legal burden of satisfying the requirements of the program.

An employer's application should be submitted, and agreed to, by the applying employer.

## Frequency of benefit payment

A voluntary plan must pay benefits to employees at least as often as normal pay, and no less often than monthly.

## Accelerated payment offer

A voluntary plan employer may incentivize an employee to return to work early. These employers can offer an accelerated payment schedule where they pay the monetary benefit the employee is entitled to in a shorter period of time, allowing the employee the choice to return earlier than expected.

For an offer to meet the requirements of the law, an employer must offer at least half the entitled amount of time for leave, then compensate the employee the benefit amount they would've received had they taken the entire amount of leave.

For example, an employee could intend to take 10 weeks of Paid Family and Medical Leave. The employer could offer eight weeks of paid leave and the compensation of the final two weeks when they return to work. If the employee accepts this offer, they would be out of work for eight weeks and receive the compensation of 10 weeks.

The decision to accept this offer from an employer is entirely the employee. This accelerated payment option is only available to voluntary plan participants.

## Posting and providing notice

Voluntary plan employers must post notice of the Paid Family and Medical Leave program and filing of complaints related to it. It must be in a common area where employee notices are customarily posted.

Failure to post this notice may result in a penalty of \$100 per instance in which ESD determines the employer willfully failed to post this notice.

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An employer must provide written notice of employee rights when they become aware that an employee is taking leave that would qualify for Paid Family and Medical Leave for at least seven consecutive days. If an employee has taken seven days for a qualifying reason, the employer has five business days to provide notice of Paid Family and Medical Leave benefits.

### Penalties

A voluntary plan employer who is found in violation of the law will be assessed the following penalties:

1. \$1,000 for the first violation
2. \$2,000 for the second violation and subsequent violations

ESD will waive the collection of the penalty if the employer corrects the violation within thirty days' notice of the violation and it is the first violation.

The Commissioner of ESD may waive collection of penalties if they determine the violation to be unintentional.

An employer may appeal a decision they disagree with and an employee may appeal an employer's denial of benefits under an approved plan.

### Employee right to appeal

An employee may appeal any adverse decision by an employer or the employer's agent related to voluntary plans. Appeals are subject to [RCW 50A.50.010](#).

### Succession

A voluntary plan stays in place after the sale or transfer of a business. If the new owner chooses to end the voluntary plan, they may terminate the plan within 90 days from the date of the acquisition by notifying the department.

See "[Termination of a voluntary plan](#)" in the "Ending a voluntary plan" section of this guide for additional requirements.

## Benefit requirements

To be approved, voluntary plans must meet or exceed the state plan in the following benefits:

- Leave duration available to the employee
- Weekly benefit amount
- Offer leave for at least the same reasons as the state plan

The voluntary plan must meet or exceed the state plan in the following benefits if the employer meets the requirements associated with each of the following:

### *Job protection*

- The employee to take leave is entitled to employment protection found in RCW 50A.35.010 if the employee worked for the employer for at least 9 months and 965 hours during the 12 months immediately preceding the date the leave starts.

### *Continuation of health benefits*

- You are required to maintain existing health benefits for an employee receiving paid family or medical leave benefits **if they have at least one day of overlap** with leave taken under federal FMLA (WAC 192-700-020).
- Health benefits must continue without a break in coverage until the employee's paid leave ends or the employee returns to work after taking their leave.
- Nothing prevents an employer from maintaining a worker's benefits while they take Paid Family and Medical Leave so workers should ask their employer if they will continue their health coverage while on leave. If a worker is responsible for paying some of the health insurance premium, you can require that they continue to pay their share.

## Eligibility

A voluntary plan must cover all current and future employees of an applying employer.

Employees are eligible for benefit payments under an approved voluntary plan once they have worked 820 hours in the qualifying period and 340 hours for that employer. Employees who are not yet eligible for coverage under an approved voluntary plan are eligible for benefits under the state plan if they have worked 820 hours in the qualifying period. An employer may waive these requirements.

The qualifying period is the first four of the last five completed calendar quarters from the date leave begins, or secondarily the last four completed calendar quarters.

If an employee was covered under a voluntary plan by their previous employer, they are immediately eligible for their new employer's voluntary plan.

## Benefit eligibility restrictions

The requirement for benefit eligibility in the state plan is working 820 hours in the qualifying period. Voluntary plans may waive this requirement. Employers cannot add additional hurdles to eligibility and your application will not be approved if it restricts benefit eligibility for reasons like age, gender, race, preexisting conditions, job title, etc.

## Premium amount

The state plan premium will be 0.4 percent in 2021. These state plan premiums are divided into portions for Family Leave and Medical Leave. The family leave portion is 1/3 of the total premium, and the medical leave portion is 2/3.

In an approved voluntary plan, there are no employer premium requirements.

A voluntary plan employer can withhold the equivalent of 100 percent of an employee's portion of the family leave premium. This premium must be equal to or less than:

$$0.4 \text{ percent of gross wages} * .3333.$$

A voluntary plan employer can withhold the equivalent of 45 percent of an employee's portion of the medical leave premium. This premium must be equal to or less than:

$$0.4 \text{ percent of gross wages} * .3000$$

A voluntary plan cannot withhold more than:  $0.4 \text{ percent of gross wages} * (.3333 + .3000)$

## Leave duration

The state plan offers a maximum of 12 typical work weeks per year of family or medical leave, plus up to two weeks if the leave is due to pregnancy complications that result in incapacity. There are up to 16 typical work weeks per year available for a combination of family and medical leave, and again up to an additional two weeks if the leave results from a pregnancy complication.

A typical work week is:

- For an hourly employee, the average number of hours worked per week during the qualifying period.
- For a salaried employee, 40 hours per week.

Approved voluntary plans should ensure that they are meeting at least the equivalent of what that person would get under the state plan.

If a voluntary plan covers only family leave, the maximum leave duration must be 12 times the employee's typical workweek hours or more.

If a voluntary plan covers only medical leave, the maximum leave duration must be 12 times the employee's typical workweek hours or more, plus two times their typical workweek hours if the leave is a result from pregnancy complications.

If a voluntary plan covers both family and medical leave, it must include a maximum leave duration of 16 times the employee's typical workweek hours or more, plus two times the employee's typical workweek hours weeks if the leave is a result from pregnancy complications, in combination of both kinds of leave.

## Weekly benefit

A voluntary plan cannot require an employee to use paid time off or other accrued leave as compensation while using the benefits of the plan.

A voluntary plan may allow employees to use accrued leave to cover the difference between the state plan benefit payment and their normal weekly wage.

The weekly benefit of the state plan is calculated using the following method:

- First, find the average weekly wage of the employee by taking the total wages over the two highest quarters during the qualifying period and divide by 26.
- Second, determine if the weekly wage is greater than  $\frac{1}{2}$  the state average. \$670 is  $\frac{1}{2}$  of the state average weekly wage.
  - If the employee's average weekly wage is equal to or less than  $\frac{1}{2}$  the state average, the employee's weekly benefit is 90 percent of their average weekly wage. (The state's average weekly wage is recalculated each June, and employers should expect this number to change accordingly.)
  - If the employee's average weekly wage is greater than  $\frac{1}{2}$  the state average then then do the following:
    - Subtract the employee's average weekly wage and from  $\frac{1}{2}$  of the state average weekly wage and divide by two.
    - Take 90 percent of  $\frac{1}{2}$  the state average weekly wage
    - Add those two numbers together and the result is the weekly benefit amount.

A voluntary plan must meet or exceed the benefit calculated for each employee.

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An employer with an approved voluntary plan must send the first benefit payment to an employee within 30 calendar days of the first day of leave, or 30 days after receiving a completed application for benefits, whichever is later.

### Job protection

Job protection is available to employees if their voluntary plan employer has 50 or more employees. The employee must work for nine months with that employer and 965 hours for that employer during the 12 months preceding the date leave will begin.

When the employee returns from leave, they are entitled to return to:

- A position of employment held by the employee when leave commenced; or
- An equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

Using the voluntary plan benefits can't result in the loss of employment benefits accrued before leave begins, or any other right, benefit or position of employment the employee would have been entitled to if they had not taken leave.

An employer can, as a matter of policy:

- Request from the employee certification by the employee's health-care provider that the employee can resume work, as long as this policy is uniformly enforced.
- Require periodic reporting from the employee about their status and intention to return to work.

An employer may deny job protection to a salaried employee who is among the highest paid 10 percent of employees within 75 miles of the facility they work in if:

- Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; and
- The employer notifies the employee of the intent of the employer to deny restoration on this basis at the time the employer determines that the injury would occur; and
- The leave has commenced and the employee elects not to return to employment after receiving the notice.

A voluntary plan must meet or exceed all provisions in this job protection section.

## Health benefits

You are required to maintain existing health benefits for an employee receiving paid family or medical leave benefits if they have at least one day of overlap with leave taken under federal FMLA (WAC 192-700-020).

Health benefits must continue without a break in coverage until the employee's paid leave ends or the employee returns to work after taking their leave.

Nothing prevents an employer from maintaining a worker's benefits while they take Paid Family and Medical Leave so workers should ask their employer if they will continue their health coverage while on leave. If a worker is responsible for paying some of the health insurance premium, you can require that they continue to pay their share.

## Application process

Applications have been accepted online since Sept. 2018. The application is the first release of new technology that will increase in sophistication and features over the coming months.

Please use these guidelines to prepare and check the voluntary plans page on our website up-to-date information. We also encourage you to sign up for our voluntary plan [newsletter specific to voluntary plan information](#)<sup>1</sup> and updates.

## Before applying

An employer who chooses to apply for a voluntary plan will need to develop a program that meets or exceeds the state plan. Before you start the application process, you should have a voluntary plan that meets this requirement. You will need a UBI and business name to apply for a voluntary plan. Each UBI requires their own voluntary plan application.

You will be asked to upload your Paid Family & Medical Leave policy documents at the end of the application. Acceptable file types are: .pdf, .doc, .docx, .xls, .xlsx, .tif, .tiff, .jpeg, .jpg, .png.

## While applying

The voluntary plan application can be found at <https://paidleave.wa.gov/voluntary-plan-application>

### ***The voluntary plan application process is three steps:***

1. Submit the application
2. Upload your policy
3. Pay the application fee

The voluntary plan application is organized in a series of questions about your plan. Provided you have all the information prepared ahead of time, the application submission process is short.

Your work will not be saved within the application. If you close the browser or click the back button before submitting, you must start over.

The fee for applying for a voluntary plan is \$250. Your application will not be considered complete until you have completed the fee payment. By statute, the amount of the application fee is subject to change, but will not change before 2022.

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<sup>1</sup> [https://public.govdelivery.com/accounts/WAESD/subscriber/new?topic\\_id=WAESD\\_56](https://public.govdelivery.com/accounts/WAESD/subscriber/new?topic_id=WAESD_56)

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We are currently accepting payment by check only. After you submit your application, we will email you a confirmation that your plan is submitted. That email will provide a payment coupon which must be included in the mail with your check.

A future release will include the ability to pay electronically.

### After applying

We recommend you allow at least 30 days for a decision about your application from the time ESD receives your payment.

Please do not submit multiple voluntary plan applications while you wait to hear from us. Each voluntary plan application has a non-refundable application fee.

### If your application is approved

Once a voluntary plan is approved, it will go into effect on the first day of the following calendar quarter. A voluntary plan must be in place for at least one year after it has been accepted.

You will need to resubmit your plan each year for the first three years. After three years, you'll need to resubmit only if you make a change that is not legally required. Resubmitting in these first three years doesn't require additional payment.

If you are operating a voluntary plan, your employees will file claims for benefits directly with you or your designated third-party agent. It is important to remember that the employer bears the responsibility under this law, regardless of whom it has delegated operation.

All reporting requirements of the state plan, which include wages and hours worked for all employees, will still be required of voluntary plan operators. Additionally, voluntary plan operators are required to report weekly benefit use and leave information for employees who take leave. Voluntary plans are subject to audits to confirm the maintenance of the plan.

### If your application is denied

If your application for a voluntary plan is denied, your business must participate in the state plan. There is no penalty for being denied a voluntary plan. Your application fee is not refundable. Denials may be appealed within 30 days.

### Ending a Voluntary Plan

A voluntary plan must be in place for at least one year after it has been accepted.

## Withdrawing a voluntary plan

A voluntary plan can be withdrawn by an employer with 30 days' notice. The plan is then withdrawn at the beginning of the next calendar quarter. If the end of the calendar quarter falls within the 30 days of notice, the plan will be withdrawn the following calendar quarter.

When the plan is withdrawn, the employer must pay the department any money held by the voluntary plan, including premiums paid by employees, money owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued.

## Termination of a voluntary plan

ESD may terminate a voluntary plan. If the department terminates a voluntary plan, the department will calculate the amount owed by the employer and send an invoice for payment due immediately. Interest will be charged after 30 days.

Good cause reasons for terminating a voluntary plan include failure to:

- Pay timely and accurate paid family and medical leave benefits.
- Provide leave for a qualified event.
- Protect the employment and employment benefits of an employee when required.
- Provide complete quarterly reports.
- Report to the department any changes to the plan.
- Adhere to the approved plan.
- Adhere to the requirements of the law.

## Amending a voluntary plan

Employers may amend their plan as needed. Amendments that are not required by statutory changes must be submitted to the department along with a \$250 fee.

Voluntary plans must update their plan with any relevant statutory changes.

The employer must notify employees of any amendments at least 10 days prior to the department approving the amendments.

An annual review of the voluntary plan will be held to ensure the voluntary plan is still in compliance with the law.

## How do I appeal?

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To appeal a decision, you must submit your intent to appeal in writing to the Employment Security Department.

Your letter must include:

- A statement indicating this letter is an appeal to a decision made by the Employment Security Department.
- The decision you are appealing, the reason you disagree with the decision, and with supporting information if applicable.

You must also include:

- Your business name, address and phone number.
- Employer-authorized representative signature. We will return any unsigned appeals.

Mail or fax the letter to:

Employment Security Department  
Paid Family and Medical Leave Care Center  
P.O. Box 19020  
Olympia, WA 98507-0020  
Fax\*: 833-535-2273

After we receive an appeal:

- We will send the appeal and all information we have about this decision to the Office of Administrative Hearings (OAH), which will schedule a hearing.
- OAH will send a Notice of Hearing to you about the hearing date and time. OAH will hear the case and make a determination on your appeal.

\*When faxing documents please include a cover page with legal entity name, UBI and contact information.

## Application questions

The questions below are provided to help you submit your application. Please keep in mind that the questions or format of the application may change.

This application asks questions regarding your business's voluntary plan. Answer each question, selecting the answer that accurately reflects your business's voluntary plan.

When choosing an answer that might depend on an employee's job title, wage, or other criteria, submit the answer that corresponds to the minimum benefits given to all your employees.

You will be asked to upload your Paid Family & Medical Leave policy documents at the end of the application. Acceptable file types are: .pdf, .doc, .docx, .xls, .xlsx, .tif, .tiff, .jpeg, .jpg, .png.

You must complete this application in one session or start over in a new session, noting that your answers will not be saved. Also, you must pay the \$250 application fee for your application to be considered complete. Partial applications will not be evaluated.

Question Number	Question
1	What kind of paid leave plan will you offer?
2	Will all of your Washington employees, including full-time, part-time, permanent or temporary employees, who work at least 820 hours in a qualifying period, with at least 340 of those hours in your employment, be eligible for benefits under your plan?
3.a	What is the minimum duration of paid weeks your plan makes available to employees during a period of 52 consecutive calendar weeks?
3.b	What is the minimum duration of paid weeks your plan makes available to employees for combined paid family and medical leave during a period of 52 consecutive calendar weeks?
3.c	How many weeks will your plan allow paid medical leave to be extended if an employee experiences complications from pregnancy which results in incapacity?

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Question Number	Question
4	Will your plan provide employees paid leave if they are unable to work due to a serious health condition?
5	Will your plan provide employees paid leave to provide care, including physical or psychological, to a family member with a serious health condition?
6	Will your plan provide employees paid leave to care for a grandchild, grandparent, parent, or sibling with a serious health condition?
7	Will your plan allow employees paid leave to care for their husband or wife, or state registered domestic partner with a serious health condition?
8	Will your plan provide employees paid leave to care for a child with a serious health condition whether biological, adopted, foster, step or a child of whom the employee has legal guardianship over regardless of age or dependency status?
9	Will your plan provide employees paid leave to bond with a child during the first 12 months after the child's birth, or the first 12 months after placement of a child under the age of 18?
10	If an employee's spouse, child or parent is a current member of the Armed Forces (including the National Guard and Reserves) and is on covered active duty or notified of an impending call or order to covered active duty, will the employee be eligible for paid family leave under your plan?
11	Will your plan pay benefits that are greater than or equal to the states plan to your eligible employees?
12	Do you intend to withhold premiums from your employee's wages?
13	Do you have 50 or more employees?

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Question Number	Question
13.a	Will you protect the job of an employee on leave who was employed with your business at least 9 months and 965 hours in a 12-month period before the leave began?
14	Do you currently provide employees with health benefits?
14.a	Will you continue to provide the same health benefits while the employee is on leave as long as they can maintain their share of the employee's cost of medical premiums?

## Document change log

### **This Version: 6.0**

#### **6.0 (Release 11/05/2020)**

- Page 9: Continuation of health benefits
- Page 13: Health benefits

#### **5.0 (Release 2/26/2020)**

- Page 9: Continuation of health benefits
- Page 13: Health benefits

#### **4.0 (Release 12/31/19)**

- Page 4: Duplication of benefits
- Page 5: Reporting
- Page 8: Employee right to appeal, Succession
- Page 11: Benefit Requirements

#### **3.0 (Release 4/2/18)**

- Page 5: Updated reporting information
- Page 5: First quarter reporting has been moved from April to July. First and second quarter reporting will be done in separate reports in the month of July.

#### **2.0 (Release 12/13/18)**

- New design layout
- Page 6: Updated "Family" to include step, foster, and adoptive relationships
- Page 11: Updated information about interaction with other paid leave
- Page 15: Multiple Edits
  - Included information about steps of application process

#### **1.3 Updates (10/18/18)**

- Corrected correspondence address

#### **1.2 Updates (9/11/18)**

- Updated website to new [paidleave.wa.gov](http://paidleave.wa.gov).
- Update to application process information.
- Added Customer Care phone number.
- Fixed error in Weekly Benefit Section.

#### **1.1 Updates (8/16/18)**

- Correction to the premium amount section of the Benefit Requirements chapter.

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- Added feedback form to contact information.

### **1.0 First Release**