HB 988

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 988 (Delegate Qi, *et al.*)
Economic Matters Finance

Family and Medical Leave Insurance Program - Modifications

This bill modifies the Family and Medical Leave Insurance (FAMLI) Program by altering key administrative deadlines, technical definitions, and components of the program's administration. The start dates for required contributions and benefit payments are delayed by one year to October 1, 2024, and January 1, 2026, respectively. The Maryland Department of Health (MDH) is required to reimburse certain service providers for some or all of the employer share of FAMLI contributions on at least a quarterly basis, as specified. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: No substantive effect in FY 2023. General fund expenditures for MDL administrative costs decrease in FY 2024 and increase in FY 2025. General fund expenditures increase by $25.6 million in FY 2025 and by at least $35.5 million annually thereafter for provider reimbursements. State expenditures (all funds) decrease by $28.7 million in FY 2024 and by $10.0 million in FY 2025 due to the delay in required contributions. Net special fund revenues and expenditures for the FAMLI Fund decrease as shown below due to the delay in contributions and benefit payments, offset in part due to program changes with continuous effects. Overall costs to administer the FAMLI program under current law and the bill are assumed to be generally comparable, although costs may rise somewhat with claims volume if the bill incentivizes additional claims. **This bill establishes a mandated appropriation beginning in FY 2025.**

($ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	(-)	(-)	-	-	-
GF Expenditure	(-)	$25.6	$35.5	$37.1	$38.7
SF Expenditure	(-)	(-)	(-)	-	-
GF/SF/FF/HE Exp.	($28.7)	($10.0)	$0	$0	$0
NonBud Exp.	(-)	(-)	$0	$0	$0
Net Effect	$28.7	($15.6)	($35.5)	($37.1)	($38.7)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures for employer contributions are delayed by one year until October 1, 2024, but the overall effect on expenditures cannot be determined, as discussed below. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: In addition to various minor, technical, and conforming changes to the FAMLI Program and its administrative processes, the bill's significant changes include:

- the program's start dates for contributions and benefit payments are delayed by one year, to October 1, 2024, and January 1, 2026, respectively;
- the Secretary of Labor must set the initial total rate of contribution by October 1, 2023, which applies from October 1,2024, through June 30, 2026, and may not exceed 1.2% of an employee's wages (as under current law, the rate applies to all wages up to and including the Social Security wage base);
- the employer/employee contribution split is set at 50%/50%, rather than being determined by the Secretary of Labor after study every two years;
- an individual is no longer required to exhaust all forms of employer-provided leave that is not required under law before receiving FAMLI benefits, although an employer can require that FAMLI benefits be coordinated with other benefits or leave, as specified;
- an individual and an employer may agree to use paid leave and FAMLI benefits to replace up to 100% of the individual's average weekly wage during the FAMLI leave period;
- MDH is required to reimburse certain service providers for some or all of the employer share of FAMLI contributions on at least a quarterly basis, as detailed further below (previously this was similar intent language); and
- the Secretary of Labor must conduct a cost analysis every year, instead of every two years, to determine the appropriate total rate of contribution to the FAMLI Fund for the following 12-month period beginning July 1, and report the information as specified.

Other changes include increasing specificity in certain reports, explicitly defining wages for purposes of the program, altering the required process for sending checks for benefit payments to align with standard State practices, and altering claim notification requirements.

Provider Reimbursements for Employer Share of FAMLI Contributions

At least quarterly, MDH must reimburse each:

- community provider that is required to be licensed or certified under Title 7 of the Health – General Article for 100% of the employer FAMLI contribution for employees who manage or provide services under that title;
- community provider that is required to be licensed or certified under Title 7.5 of the Health – General Article for a percentage of the employer FAMLI contribution for employees who manage or provide services under that title that is equal to the percentage of revenue that is attributable to federal and State Medicaid funding and any other State funding received by the provider for the services during the period covered by the reimbursement; or
- provider, as defined in § 16-201.4 of the Health – General Article, for a percentage of the FAMLI employer contribution for employees who manage or provide specified related services that is equal to the percentage of revenue attributable to federal and State Medicaid funding and any other State funding received by the provider for the services during the period covered by the reimbursement.

Current Law: Chapter 48 of 2022 established the FAMLI Program, to be administered by the Maryland Department of Labor (MDL). The program provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit is based on an individual's average weekly wage and is indexed to inflation. Required contributions to the program, which are shared between employers and employees, are also based on employee wages.

The Act also establishes the FAMLI Fund, which is a special fund administered by the Secretary of Labor consisting of employee, employer, and self-employed individual contributions and other specified sources of funds. Funds must be used to pay FAMLI benefits and may be used to pay for public education on the FAMLI Program and any other costs associated with the initial implementation and ongoing administration of the FAMLI Program.

MDL must establish the new program using general funds until monies from required contributions become available. Employer and employee contributions to the program begin October 1, 2023, and claims for benefits begin January 1, 2025.

The Act specified the General Assembly's intent that the State pay the required FAMLI employer contribution for specified community providers. The Act also specified the General Assembly's intent that the State pay the covered employees' required FAMLI contribution through June 30, 2026, for employees who earn an hourly wage of less than $15.00 per hour.

For additional information on the program, see the **Appendix – Family and Medical Leave Insurance Program**.

State Fiscal Effect:

Family and Medical Leave Insurance Program and Fund

State revenues and expenditures associated with the FAMLI Program and Fund are generally delayed by one year, including general fund expenditures necessary for start-up costs. Holding other factors constant, special fund revenues for the FAMLI Fund decrease in fiscal 2024 and 2025 and special fund expenditures decrease from fiscal 2024 through 2026 to reflect the delay's effects on administrative costs and programmatic activity. Independent from the delay, special fund revenues and expenditures for the FAMLI Fund may increase due to other changes in the bill, although likely not substantially enough to outweigh the effect of the delay.

Administrative Costs

Overall costs for MDL to administer the FAMLI Program under current law and the bill are assumed to be generally comparable, although the bill delays start up by approximately one year, which affects the timing of general fund expenditures, and overall administrative costs may increase somewhat with claims volume if the bill incentivizes additional claims. In any case, administrative costs are small in comparison to overall employer contributions and benefit payments once the FAMLI Program is operational.

Generally, a one-year delay reduces administrative expenditures from fiscal 2024 through 2026, before realigning with what would be expected under current law beginning in fiscal 2027. Ultimately, the magnitude of the effect will depend on how MDL proceeds with program administration; however, general funds for start-up expenses are required for an additional year, at a minimum, since contribution revenues are delayed by one year, from October 1, 2023, to October 1, 2024. Accordingly, general fund expenditures decrease in fiscal 2024 and increase in fiscal 2025.

As described in a study procured by the Department of Legislative Services, administrative costs are expected to range from about $50.0 million to about $70.0 million annually, depending on the administrative model, once the program is fully staffed and operational. Start-up costs are highly dependent on the administrative model, but they are about $65.0 million in the two years preceding benefit payments for insourced and co-sourced models, or about $19.0 million in the two years preceding benefit payments for an outsourced model.

The fiscal 2023 budget includes $10.0 million in general funds for FAMLI implementation, which became available in January 2023. The fiscal 2024 budget as passed by the General Assembly appropriates the estimated remaining amount of those funds, $9.3 million, as special funds but does not include any further funding for the FAMLI Program; a deficiency appropriation may be required in the fiscal 2025 budget if the remaining funding is insufficient in fiscal 2024.

Programmatic Revenues and Expenditures

Special fund revenues and expenditures for the FAMLI Fund from contributions and benefit payments are delayed by one year, beginning instead in fiscal 2025 and 2026, respectively. Holding other factors constant, special fund revenues for the FAMLI Fund decrease in fiscal 2024 and 2025 and special fund expenditures decrease in fiscal 2025 and 2026 to reflect the delay.

Independent from the delays, an individual is no longer required to exhaust all forms of employer-provided leave that is not required under law before receiving FAMLI benefits and has the option to use FAMLI benefits along with existing paid leave to replace up to 100% of the individual's average weekly wage. These additional flexibilities may increase the use of FAMLI benefits and, thus, increase special fund expenditures for the FAMLI Fund beginning in fiscal 2026 when benefit payments begin. If benefit payments are sufficiently higher than under current law, the Secretary of Labor may set a higher total contribution rate in order to maintain fund solvency. This would increase annual special fund revenues for the FAMLI Fund from current projections as early as fiscal 2025 if the first rate is set in anticipation of additional benefit payments. Still, these effects are unlikely to outweigh the effect of the delay, so net increases potentially begin in fiscal 2026 for revenues and fiscal 2027 for expenditures.

Provider Reimbursements and State Employer Share of Required Contributions

Requiring MDH to reimburse specified service providers for the employer share of FAMLI contributions (rather than specifying similar intent) increases general fund expenditures beginning in fiscal 2025. Despite repeated requests, MDH did not provide any information on the fiscal or operational effect of these requirements. Therefore, the following estimate is based solely on a study conducted by Milliman Inc. under Chapter 48. The study assumes a total contribution rate of 0.91% and the 50%/50% employer/employee contribution split in the bill, but it does not account for the additional limitations on certain provider reimbursements or changes to benefits under the bill. Additionally, to the extent the contribution rate set by the Secretary of Labor differs from this projection, or MDH requires additional staff or administrative expenditures, State expenditures also differ. Therefore, the estimates shown in **Exhibit 1** should be viewed as preliminary.

The change in the cost to the State, as an employer, once contributions begin cannot be determined because the employer/employee contribution split and the total rate of contribution are set by the Secretary of Labor under current law. However, costs decrease in fiscal 2024, and likely decrease in fiscal 2025, due to the one-year delay in contributions under the bill. For purposes of this estimate, holding other factors constant, the delay reduces State expenditures (all funds) by $28.7 million in fiscal 2024 and by $10.0 million in fiscal 2025. Beginning in fiscal 2026, State expenditures for employer contributions are estimated to be at least $41.7 million annually, although those should not be considered new costs.

Exhibit 1
Change in State Expenditures for Employer Contributions
Fiscal 2024-2028
($ in Millions)

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Community Provider Reimbursements	$0.0	$25.6	$35.5	$37.1	$38.7
State Contribution as an Employer	(28.7)	(10.0)	0.0	0.0	0.0
Net Effect	**($28.7)**	**$15.6**	**$35.5**	**$37.1**	**$38.7**

Notes: Numbers may not sum to total due to rounding. Milliman's estimates, which are used for these preliminary provider reimbursement estimates, have been adjusted to fiscal years. State expenditures for employer contributions reflect only the one-year delay under the bill; expenditures after the delay continue in perpetuity but are not new costs. The effect shown for the State contribution as an employer assumes the employer/employee split would have been set at 50%/50% by the Secretary of Labor under current law.

Source: Milliman, Inc.; Department of Legislative Services

Local Expenditures: Local expenditures for employer contributions are delayed by one year until October 1, 2024, but the overall effect cannot be determined for the same reasons described above for the State government.

Small Business Effect: The bill makes several significant changes to the FAMLI Program, including delaying employer contributions by one year and adding flexibility to FAMLI benefit eligibility for employees. Such changes are likely significant for small businesses, particularly those that incentivize additional paid days of leave.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 828 (Senator Hayes) - Finance.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Maryland Department of Labor; Milliman, Inc.; Spring Consulting Group; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2023
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Revised - Budget Information - May 9, 2023
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Appendix – Family and Medical Leave Insurance Program

Chapter 48 of 2022 established the Family and Medical Leave Insurance (FAMLI) Program, to be administered by the Maryland Department of Labor (MDL). The program provides up to 12 weeks of benefits to a covered individual who is taking leave from employment due to caring for certain family members, the individual's own serious health condition, or a qualifying exigency arising out of a family member's military deployment. The weekly benefit is based on an individual's average weekly wage and is indexed to inflation. Required contributions to the program, which are shared between employers and employees, are also based on employee wages.

Generally, employers with 15 or more employees must contribute to and participate in the program – although employers may instead demonstrate to MDL that they maintain a private plan that meets or exceeds the rights, protections, and benefits under the State-administered program.

MDL must establish the new program using general funds until monies from required contributions become available. Contributions to the program begin October 1, 2023, and claims for benefits begin January 1, 2025.

Preparation for Implementation

In preparation for implementation of the FAMLI Program, MDL advises that it is participating in monthly meetings with other states that have passed similar laws establishing paid family leave programs. During these meetings, MDL has exchanged information relating to program administration and has begun coordination with counterparts in Washington, DC and Delaware to establish a cooperative relationship aimed at enforcing potentially overlapping programs. Such coordination is necessary as many workers in the region work in one jurisdiction while living in another. MDL further advises that it has begun meeting with interested stakeholders to understand their particular concerns and obtain knowledge from their expertise.

As required by Chapter 48, the Secretary of Labor, in consultation with other State agencies and relevant stakeholders, conducted a study of the program that focused on the cost of maintaining solvency and paying benefits to covered individuals and studied and made recommendations on the total rate of contribution and the appropriate cost-sharing formula between employers and employees. A related actuarial analysis conducted pursuant to Chapter 48 provides additional program-level cost estimates, projects overall cash flows, and estimates costs to the State of paying employer contributions for certain community providers and employee contributions for employees earning less than $15.00 per hour.

Also as required by Chapter 48, the Department of Legislative Services (DLS) contracted with a consultant, Spring Consulting Group, to study and make recommendations regarding the capability and capacity of MDL to implement and administer the FAMLI Program, including recommendations regarding additional resources needed by MDL to meet future demands of the program. The findings and recommendations can be found on the DLS website.

Contributions

Beginning October 1, 2023, each employee, each employer with 15 or more employees, and each participating self-employed individual must pay to the Secretary of Labor a percentage contribution based on wages, which are established in regulation. The Act establishes a process for determining the initial contribution rates of employees and of employers with 15 or more employees, as well as a process for reassessing the contributions every two years. By June 1, 2023, the Secretary must set the total rate of contribution for employees and the percentage of the total contribution rate to be paid by employers with 15 or more employees.

Benefits

Individuals may submit claims for benefits beginning January 1, 2025. A covered individual who is taking leave from employment may submit a claim for intermittent leave, or up to 12 weeks of benefits, to (1) care for a newborn child or a child newly placed for adoption, foster care, or kinship care with the individual during the first year after the birth, adoption, or placement; (2) care for a family member with a serious health condition; (3) attend to a serious health condition that results in the individual being unable to perform the functions of the individual's position; (4) care for a next of kin service member; or (5) attend to a qualifying exigency arising out of the individual's family member's deployment, as defined by the Act.

A covered individual may not receive more than 12 weeks of benefits in an application year, except under specified circumstances. A covered individual may take eligible leave on an intermittent leave schedule under specified conditions. If leave is taken on an intermittent leave schedule, an employer may not reduce the total amount of leave to which the covered individual is entitled beyond the amount of leave actually taken.

The weekly benefit payable to a covered individual is calculated based on the employee's average weekly wage and ranges from a minimum of $50 to a maximum of $1,000 for the 12-month period beginning January 1, 2025. Beginning January 1, 2026, the maximum weekly benefit must be increased by the annual percentage growth in the Consumer Price Index, subject to a determination by the Board of Public Works based on expected economic conditions.

Leave Requirements and Job Protections

Leave taken under the program must run concurrently with leave taken under the federal Family and Medical Leave Act. A covered individual must exhaust all employer-provided leave that is not required to be provided under law before receiving FAMLI benefits.

If a covered individual is receiving FAMLI benefits or is taking leave, the employer must continue any employment health benefits for the time that the covered individual is absent from work or receiving FAMLI benefits. Additionally, the employer generally must restore the individual to an equivalent position of employment when the employee returns to work. Generally, an employer may only terminate an employee on FAMLI leave for cause and may only deny restoration of a covered individual's position in circumstances related to economic injury.

Private Employer Plan

An employer may satisfy the Act's requirements through a private employer plan consisting of employer-provided benefits, insurance, or a combination of both, if the plan is offered to all eligible employees and at least meets the rights, protections, and benefits provided to a covered employee under the program. An employer that provides covered employees with a private employer plan approved by MDL, those covered employees are exempt from the Act's required contributions.

Prohibited Acts and Penalties

An individual is disqualified from receiving benefits for one year if the individual willfully makes a false statement or misrepresentation regarding a material fact or willfully fails to report a material fact to obtain benefits. An employer is subject to a civil penalty of up to $1,000 for each occurrence if the employer willfully makes or causes a false statement to be made or willfully fails to report a material fact regarding an employee's claim for benefits. In addition, an employer is prohibited from retaliating against an employee who exercises their rights under the program. The Act also specifies how the Secretary must investigate and enforce the Act, which includes mediation, issuing orders, assessing a civil penalty of up to $1,000 for each employee for whom the employer is not in compliance, and asking the Attorney General to bring an action on behalf of the employee.