

SB635_FAV_CassandraKemp.pdf

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Position: FAV

SB 635 SUPPORT

**Unemployment Insurance- Appeals and Recovery of Overpayment of Benefits Procedures-
Revisions**

Finance Committee

March 15th, 2022

Dear Chair Kelley, Vice Chair Feldman, and Members of the Finance Committee:

My name is Cassandra Kemp. I retired at the end of 2018 from Corporate America. I have a son, three grandchildren, and I am the primary caretaker for my 101 year old mother that suffered a stroke in 2019.

I worked at the HalfNote Lounge from 2015 until it closed in February 29, 2020. I retired to work at HalfNote (second career) as the General Manager. Once COVID started to rise, the owner decided to close. I stayed on to help liquidate everything. My Official last day was March 12, 2020. The owner told all of us to apply for unemployment. I filed but did not think I would get approved. I had never filed, so I did not know how the process worked. I submitted all the paperwork and created an account on Beacon.

In or around June 2020, I received a debit card and was instructed to set up an account. I set it up and eventually got a message from Beacon, that there was something I needed to respond to.

I received payments starting in June 2020-November 2020. Once the payments stopped, I assumed that I had received all that I was entitled to receive. Until I received a call from Shanda from the unemployment office, indicating that there was a problem with my unemployment classification and the Beacon. She asked for very specific information about my employer, name, contact information. She wanted to give him a call to clarify my eligibility. She called three times: December 14th, 15th, and 16th. The final call back was to let me know that I was eligible to receive benefits and that the error was in my classification (PUA vs UI), and to ignore the overpayment message (\$2,300) that appears in the Beacon. She said it would take a couple of weeks to fix. I asked, "if it is not fixed, what should I do?" She said to call back. Since it was Christmas time, I decided to wait until January 1st.

I logged in on January 1st and discovered that the overpayment amount had increased from \$2,300 in December to \$23,000. I went on the website to try to find someone to communicate with. I found NOTHING. I went to Google and found about six numbers to call. I started calling- each line was busy.

I had taken advantage of the forbearance on my mortgage and my car, but both were coming to an end soon so I needed to get this situation resolved.

I logged back into the Beacon. None of the links in the system worked. So, I found an appeal button at the top of the screen. It was not very interactive, but it appeared that it allowed me to submit an appeal request. In a few days, a confirmation number appeared that included a date and time for the appeal. No phone number

anywhere. I waited for a call; no call came. A few days later, I clicked on that appeal button and it indicated that that appeal had been cancelled. I kept calling.

Finally, in April people started to answer the phones. I spoke to Pat 4/13/21; Mike 4/20/21; Maya 5/11/21; and Carolyn 5/25/21. Each person gave me a different excuse as to why the overpayment appeared and each indicated that they would contact the lower appeal or upper appeal group. All said that it was a problem with my Beacon. Finally, Carolyn on May 25th told me that I was wasting my time and that I needed to figure out how to pay the money back. Oh, she said let me fix your Beacon.

Once she fixed my Beacon, I found ALL the correspondence that I had missed. I found a letter from Judy G Smylie, Esq., Director/Chief Hearing Examiner. I decided to write a letter to her. I waited two weeks. Then I called the phone number that was listed on her stationary. I spoke to Kelly on 6/8/21 who worked in her office. She told me to STOP wasting my time. All the people that I had spoken to were Temps hired by the unemployment office to tell us anything to get us off the phone. She suggested I try to submit a letter to the Board of Appeals. They denied the appeal because I did not call in for the original appeal.

The System is definitely BROKEN, I logged in today and the overpayment amount is still there in the amount of \$23,000.

For these reasons, I respectfully request a favorable report for Senate Bill 0635.

LAM_SB635_FAV.pdf

Uploaded by: Clarence Lam

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CLARENCE K. LAM, M.D., M.P.H.
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Education, Health, and Environmental Affairs
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Executive Nominations Committee

Joint Committee on Ending Homelessness

Senate Chair

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**SB 635 - Support Unemployment Insurance
Appeals and Recovery of Overpayment of Benefits Procedures - Revisions**

Background:

- Unemployment Insurance (UI) is a limited but essential financial safety net for workers that rely on these benefits to pay for necessities upon losing their employment.
- UI claims exploded at the start of the COVID-19 pandemic as many Marylanders were forced out of their jobs due to COVID precautionary measures.
- Unfortunately, the Department of Labor (DOL) operationalized a new claims processing portal in April 2020, known as BEACON 2.0, which has been plagued with issues throughout the pandemic.^{1 2}
- Issues included incorrect overpayment processing determinations, claimants being incorrectly denied benefits, and a lack of opportunity to connect with customer service representatives to timely resolve problems.
- Many Marylanders struggled to navigate the Beacon portal which users found to be complex and difficult to monitor account updates such as those relating to the scheduling of appeal hearings and benefit adjudications.

Why SB 635 is needed:

- The administration of UI benefits in Maryland is in need of alterations to prevent these issues that Marylanders have faced during the pandemic.

¹ [Baltimore Sun \(April 2020\)](#)

² [CBS Baltimore \(February 2022\)](#)

- Claimants are entitled to the timely notification of important account updates to be delivered via a method that is convenient for them.
- The smooth administration of UI benefits is needed to ensure that Marylanders that need these benefits are not unduly burdened by complicated bureaucratic infrastructure.

As Amended What SB 635 Does:

- Before a claimant can be pursued for an overpayment, the Secretary must provide written notice of the pending predetermination investigation, the rationale for the investigation, and an opportunity for the claimant to respond within a reasonable timeframe before making the determination final.
- SB 635 will mandate that the Department send physical mail correspondence under certain circumstances to ensure that claimants are aware of important account updates such as scheduled hearings and overpayment notices, including information on how to move forward with appropriate follow-up responses.
- SB 635 will have the statutory authority to change their correspondence options to ensure that they are receiving communications conducive to their preferences.
- An amendment will delete the OAH appeal pathway provisions to ensure appropriate conformity with Federal UI statutes.

What SB 635 accomplishes:

- SB 635 enhances protections from incorrect overpayment recoveries by requiring, in accordance with Federal statute, the Department to promptly notify claimants of possible overpayments and conduct a predetermination investigation.
- SB 635 ensures that claimants are better informed of account updates and actionable items.
- SB 635 makes sure that all Maryland residents can receive notice from DOL in the form of their choosing, and mitigates problems associated with claimants' access to the internet and technology literacy.
- SB 635 provides claimants with strengthened positions to contest adverse determinations with correspondence requirements that are enshrined in Maryland statute.

SB 635 Testimony.pdf

Uploaded by: Cornelia Bright Gordon

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MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

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March 15, 2022

Senator Delores G. Kelley
Chair, Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Support for Senate Bill 635

Dear Madam Chair, Vice Chair Feldman, and Members of the Committee:

Thank you for the opportunity to testify in support of SB 635. This Bill creates procedures and much-needed clarity related to the State's recovery of unemployment benefits that have allegedly been overpaid. It will significantly benefit unemployment claimants, because they will receive an explanation of the State's determination and associated billing and an opportunity to contest it rather than just an unexpected bill with no understanding as to how it was calculated. Maryland Legal Aid (MLA) submits this testimony at the request of Senator Lam. Cornelia Bright Gordon, Esq. will testify at the hearing on behalf of MLA.

MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents, including seniors and veterans. MLA handles civil legal cases involving a wide range of issues, including government benefits, housing, family law, consumer law (e.g., bankruptcy and debt collection), health law, and criminal record expungements. Maryland Legal Aid has assisted thousands of clients seeking assistance with unemployment benefits and alleged overpayments.

The current process where Marylanders are notified of an alleged overpayment of benefits lacks clarity and fails to provide due process to citizens. MLA's clients are frequently shocked by hefty, unexpected bills and generally have little recourse to contest the amount and even less understanding as to why it was assessed.

SB 635 creates a way for claimants to participate when the Maryland Department of Labor (Agency) initiates an overpayment allegation. The Bill also requires that

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the Agency engages in a transparent process during the overpayment assessment process. The Bill establishes fair procedures for both the agency and the public. Unemployment Claimants will receive an explanation as to how an overpayment is calculated, specific facts supporting the determination of the overpayment, an explanation of how to contest the assessment, and a specific explanation of any penalty imposed by the agency. The claimant will be able to contest the assessment in a “predetermination process.” A predetermination process of this nature is also required by federal guidance.¹ MLA has seen many cases where the calculation of the alleged overpayment was a complete mystery. MLA clients, already often struggling to make ends meet, suddenly receive a large bill with a payment deadline. SB 635 creates notice requirements that also are on a par with the process used by other State and Federal agencies when alleging overpaid benefits. The opportunity for appeal and the process brings the State of Maryland in compliance with federal constitutional due process requirements.

The Maryland General Assembly has proclaimed that “economic insecurity due to unemployment is a serious menace to the health ... and welfare of the people” of Maryland.² Unemployment Insurance benefits are intended to benefit individuals who become unemployed due to no fault of their own. Job loss creates uncertainty, hardship, and much fear. Unemployment benefits help to salve the hardship. Unfortunately, the sudden appearance of invoices demanding the return of thousands of dollars of unemployment benefits without explanation represents unreasonable, uncivil, and unconstitutional State action.

MLA also notes that many clients are on the “wrong side” of the digital divide. Many MLA clients lack internet service, smartphones, and/or laptops. Many MLA older adult clients are employed and are entitled to unemployment benefits – but they do not use email. For these clients, emailed notice can be tantamount to zero notice. SB 635 requires the agency to send overpayment notices by U.S. mail, putting these individuals on parity with people who do have internet and email access.

Thank you for the opportunity to provide testimony on this Bill. MLA highly recommends the Bill and **urges the Committee to issue a favorable report on SB 635.**

Sincerely,

/s/ CBG

Cornelia Bright Gordon

Director of Advocacy for Administrative Law

¹ UIPL No. 01-16, UNITED STATES DEPARTMENT OF LABOR, at 4 (October 1, 2015), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf.

² Md. Ann. Code, Lab. & Empl. § 8-102(b)(1).

SB635_MD Center on Economic Policy_FAV.pdf

Uploaded by: Kali Schumitz

Position: FAV



Maryland's Unemployment Insurance System Must Guarantee Transparent Due Process

Position Statement in Support of Senate Bill 635

Given before the Senate Finance Committee

Unemployment insurance is an essential lifeline to ensure that workers who lose their job through no fault of their own can keep up with basic expenses like food and rent. Unemployment insurance is also among the fastest, most effective tools to support the economy in a downturn. However, the COVID-19 pandemic has exposed deep cracks in Maryland's unemployment insurance system. **The Maryland Center on Economic Policy supports Senate Bill 635** because it would ensure basic due process protections for unemployed workers suspected of receiving overpayments.

Maryland's current unemployment insurance system is failing out-of-work Marylanders in multiple ways:ⁱ

- Marylanders who use unemployment benefits to make ends meet face considerable hardship. One in three Maryland adults who used unemployment benefits to cover household expenses between December 2021 and early February 2022 reported that they didn't always get enough to eat, compared to only 7% of Maryland adults overall.
- Before the coronavirus pandemic hit, only 23.5% of unemployed workers in Maryland received unemployment benefits, a smaller share than in 28 other states. Unemployed workers in all four of Maryland's neighboring states were more likely to receive unemployment benefits. In New Jersey, 59.0% of unemployed workers received benefits.
- Maryland has repeatedly been among the worst-performing states on first payment timeliness since the onset of the pandemic, meaning that workers who were eligible to receive benefits often waited months to see a single cent come in. Workers' bills and daily expenses could not be delayed in similar manner.

Senate Bill 635 would provide the most basic protections to workers suspected but not yet proven to have received overpayments from their unemployment insurance system:

- The bill requires that workers be given an opportunity to dispute suspected overpayments before the state initiates clawbacks or penalties. The state must notify workers of the specific evidence of overpayment, including specific evidence of misconduct that could lead to assessment of penalties or interest.
- The bill requires that the state notify workers of suspected overpayment by mail or email rather than a posting to an online portal that the worker might miss.
- If the state concludes that a worker has been overpaid and seeks to recover the overpayment, the bill requires that the state explain the specific evidence for this conclusion.

- If the state concludes that a worker has been overpaid and seeks to recover the overpayment, the bill requires that the state explain in detail how to appeal a decision, strengthening and clarifying the current, vague requirement that the state explain “appeal rights available.”

An effective unemployment insurance system benefits all workers, the businesses where they spend their money, and the communities they live in. It is especially important for workers who face structural barriers built through centuries of racist policy choices:ⁱⁱ

- Between 2015 and 2020, Black workers in Maryland were on average slightly more than twice as likely as white workers to be unemployed – meaning they were actively looking for a job but unable to find one – at any given time. This means that downturns such as the one caused by the COVID-19 pandemic hit Black workers especially hard.
- While higher levels of education do improve a person’s prospects in the labor market, even highly educated workers of color often face barriers. For example, between 2015 and 2019 in Maryland, the average unemployment rate among Latinx women with a four-year degree was 4.3%, compared to 2.3% among white women with a four-year degree.
- These are not isolated cases. During the same period, Black and multiracial men with a four-year degree, as well as essentially all women of color with a four-year degree, faced higher unemployment rates than white men with the same level of education.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Finance Committee make a favorable report on Senate Bill 635.

Equity Impact Analysis: Senate Bill 635

Bill summary

Senate Bill 635 guarantees basic due process protections to workers suspected of receiving unemployment insurance overpayments:

- The bill requires that workers be given an opportunity to dispute suspected overpayments before the state initiates clawbacks or penalties. The state must notify workers of the specific evidence of overpayment, including specific evidence of misconduct that could lead to assessment of penalties or interest.
- The bill requires that the state notify workers of suspected overpayment by mail or email rather than a posting to an online portal that the worker might miss.
- If the state concludes that a worker has been overpaid and seeks to recover the overpayment, the bill requires that the state explain the specific evidence for this conclusion.
- If the state concludes that a worker has been overpaid and seeks to recover the overpayment, the bill requires that the state explain in detail how to appeal a decision, strengthening and clarifying the current, vague requirement that the state explain “appeal rights available.”

Background

Maryland's unemployment rate increased sharply at the onset of the COVID-19 pandemic, increasing from an average of 3.5% during 2019 to a high of 9.0% in spring 2020.ⁱⁱⁱ Unemployment has since fallen gradually, reaching 5.0% in December 2021.

In 2019, unemployment benefits in Maryland averaged \$357 per week, equivalent to \$18,553 per year.^{iv} Even with the expanded benefits federal pandemic relief legislation provided, Marylanders who use unemployment benefits to make ends meet still faced considerable hardship during summer 2021. Nearly half reported having difficulty paying for usual household expenses; one in five said they didn't always get enough to eat; one in nine were behind on their most recent mortgage or rent payment; and one-third weren't sure they can make their next housing payment.

Before the coronavirus pandemic, only 23.5% of unemployed workers in Maryland received unemployment benefits, a smaller share than in 28 other states.

One in three Maryland adults who used unemployment benefits to cover household expenses between December 2021 and early February 2022 reported that they didn't always get enough to eat, compared to only 7% of Maryland adults overall.

The state's Division of Unemployment Insurance entered the COVID-19 pandemic with 480 full-time equivalent staff (internal and contractual positions), down from a high of 702 in FY 2013. Between FY 2003 and FY 2015, the division never had less than 590 full-time equivalent staff. As unemployment surged during the pandemic, the division struggled to keep up with applications, leading to exceptionally long wait times.

Equity Implications

Structural barriers in our labor market, which were built through centuries of racist policy choices, put Black workers and other workers of color at greater risk of being unemployed – actively seeking a job but unable to find one. For this reason, ineffective or overly restrictive unemployment insurance policies disproportionately harm workers of color.

- Between 2015 and 2020, Black workers in Maryland were on average slightly more than twice as likely as white workers to be unemployed – meaning they were actively looking for a job but unable to find one – at any given time. This means that downturns such as the one caused by the COVID-19 pandemic hit Black workers especially hard.
- While higher levels of education do improve a person's prospects in the labor market, even highly educated workers of color often face barriers. For example, between 2015 and 2019 in Maryland, the average unemployment rate among Latinx women with a four-year degree was 4.3%, compared to 2.3% among white women with a four-year degree.
- These are not isolated cases. During the same period, Black and multiracial men with a four-year degree, as well as essentially all women of color with a four-year degree, faced higher unemployment rates than white men with the same level of education.

Impact

Senate Bill 635 would likely **improve racial and economic equity** in Maryland.

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- ⁱ See discussion in Christopher Meyer, “Budgeting for Opportunity: Maryland’s Workforce Development Policy Can Be a Tool to Remove Barriers and Expand Opportunity,” Maryland Center on Economic Policy, 2021, <http://www.mdeconomy.org/budgeting-for-opportunity-workforce>
- ⁱⁱ Meyer, 2021.
- ⁱⁱⁱ BLS Local Area Unemployment Statistics.
- ^{iv} See Meyer, 2021.

SB 635- Unemployment Insurance - Appeals and Recov

Uploaded by: Robin McKinney

Position: FAV



SB 635 - Unemployment Insurance - Appeals and Recovery of Overpayment of Benefits Procedures - Revisions
Senate Finance Committee
March 15, 2022
SUPPORT

Chair Kelley, Vice-Chair and members of the committee, thank you for the opportunity to provide testimony in support of Senate Bill 635. This bill will strengthen Maryland's unemployment system and protect Marylander's from having their benefits negatively affected.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

The pandemic has put a huge financial burden on many Marylanders and social safety nets such as Unemployment Insurance (UI) are put in place to provide individuals with the ability to survive. Unfortunately, Maryland's UI program has failed in its core mission of providing a critical but temporary safety net for people out of work. **The Department of Labor's (DOL) mishandling of redetermination and overpayment notices results in claimants losing crucial benefits.**

CASH held many conversations with stakeholders that identified key issues their clients are facing revolving around redetermination and overpayment notices. Problems include people not being able to find their notices in BEACON. This is due to many reasons. Some claimants do not have access to BEACON. BEACON can only be fully accessed through a computer- not a mobile device. This also limits claimants' ability to file an appeal, which also must be done through BEACON. For many claimants, the button to file an appeal would not work. Also, past notices that were only sent through BEACON have disappeared. Notices also offer insufficient information to the claimants. The notices did not include any evidence showing where the department overpaid, and the notices did not include information on how to submit an appeal.

SB 635 addresses these concerns by:

- Establishing a predetermination investigation before seeking recovery benefits,
- Requiring the department to send a written notice that includes evidence of overpayment and instructions on how to appeal, and
- Delegating the Office of Administrative Hearings the authority to hold contested case hearings under certain circumstances.

UI is a basic and essential safety net for workers who are temporarily unemployed through no fault of their own. Unfortunately, Maryland's system is not functioning properly in a manner that protects unemployed Marylanders. The issues with BEACON and overpayment notices did not come from additional stress from the pandemic. It came from the inadequate and ineffective infrastructure of Maryland's UI system, and it must be solved by strengthening that infrastructure.

Thus, we encourage a favorable report on SB 635.

Creating Assets, Savings and Hope

SB635_PJC_FAV.pdf

Uploaded by: David Rodwin

Position: FWA



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SB 635: Unemployment Insurance - Appeals and Recovery of Overpayment of Benefits Procedures - Revisions

Hearing before the Senate Finance Committee, March 15, 2022

Position: FAVORABLE WITH AMENDMENTS

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work through litigation and public policy. The **PJC SUPPORTS SB 635** and requests a **FAVORABLE** report on the bill and its sponsor amendments.

Tens of Thousands of Marylanders Face Unemployment Benefit Overpayments Because of Government Errors. Maryland's unemployment insurance program provides temporary financial assistance to eligible workers unemployed through no fault of their own. The COVID-19 pandemic overwhelmed state unemployment agencies. Unfortunately, this resulted in "a significant number of state errors and inaccuracies due to these fast-changing circumstances,"¹ according to the United States Department of Labor. Local news stations have reported that nearly 90,000 Marylanders face this overpayment problem.²

Unemployment Overpayment Practices Must Comply with Due Process and Federal Law. Before collecting unemployment benefits that were allegedly overpaid, state unemployment agencies, such as the Maryland Department of Labor ("MDL"), are required by federal law to provide individuals with due process protections, including by:

- (1) conducting a pre-determination investigation,
- (2) providing individuals with pre-determination notice that includes specific information about why an overpayment is suspected, and an opportunity to contest that information,
- (3) delivering – in a manner likely to actually reach the individual – a written determination with detailed factual and legal information so individuals can understand the basis of the overpayment, and
- (4) granting individuals full appeal rights because overpayments are ultimately denials of benefits.³

¹ U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 20-21, Change 1 at 5 (Feb. 7, 2022), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_20-21_Change_1.pdf.

² See, e.g., Mallory Sofastaii, *Maryland Now Processing Waivers for Unemployment Claimants Who Were Overpaid* (Oct. 2021), <https://www.wmar2news.com/unemploymentguide/maryland-now-processing-waivers-for-unemployment-claimants-who-were-overpaid>.

³ U.S. Const. amend. XIV, § 2; 42 U.S.C. § 503(a)(3); U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 01-16 (Oct. 1, 2015), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf.

Maryland's Overpayment Determination Practices Deny Individuals Due Process and Violate Federal Law.

MDL has a history of failing to comply with any of these safeguards. The majority of callers seeking assistance from PJC for unemployment overpayment issues stated that (1) they never received notice that MDL was investigating a suspected overpayment, (2) they never had an opportunity to be heard before MDL imposed the overpayment, (3) any overpayment notices they did receive were only issued through the online portal known as BEACON and individuals often did not see them as a result, and (4) those notices did not include any factual or legal basis to explain why they were overpaid nor did they outline any appeal rights. Further, MDL has not allowed affected individuals to appeal overpayment notices; instead, MDL has said that it allows individuals to appeal a determination underlying the overpayment, which MDL frequently fails to even issue. This renders overpayments essentially unappealable. An unexplained, unappealable taking by the government of a person's money – with no notice or opportunity to be heard – is a textbook denial of due process.

Maryland's Overpayment Determination Practices Hurt Vulnerable Workers. Many Marylanders now face debts of \$15,000, \$20,000, or more – money they relied on during the worst months of the pandemic economic crisis – without ever having had a chance to explain why the overpayment determination is wrong.

Unemployment overpayments in Maryland can be recovered by offsetting the value of future benefits and tax refunds, or by civil action without limitation to the number of years that have passed since the overpayment was issued.⁴ Marylanders who are already struggling financially lack recourse from MDL's procedurally inadequate unemployment overpayment practices.

SB 635 Will Solve This Problem by Incorporating Existing Federal Requirements into State Law. SB 635 reiterates federal due process requirements in Maryland state law. The bill provides that, before issuing an overpayment determination, MDL must conduct an investigation and give the individual notice and an opportunity to be heard. It further provides that the overpayment determination include enough information to truly inform the individual of the reasons for the determination. It gives the individual the right to appeal the overpayment. Further, the bill greatly increases the likelihood that notice of an overpayment determination actually reaches individuals. In short, SB 635 will ensure that Marylanders who are already facing significant financial difficulties are not further pushed into a worse financial situation without requisite procedural safeguards.

For the foregoing reasons, the PJC **SUPPORTS SB 635** and urges a **FAVORABLE** report on the bill and the sponsor amendments. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

⁴ U.S. Dep't of Labor, Comparison of State Unemployment Laws 2020, Chapter 6 Overpayments, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf>.

SB 635_MDL_Letter of Information.docx.pdf

Uploaded by: Andrew Fulginiti

Position: INFO

Senate Bill 635

Date: March 15, 2022
Committee: Senate Finance Committee
Bill Title: Unemployment Insurance - Appeals and Recovery of Overpayment of Benefits
Procedures - Revisions
Re: Letter of Information

Senate Bill 635 (“S.B. 635” or “the Bill”) would amend the Labor and Employment Article of the Annotated Code of Maryland in four ways; it: (1) disallows some notices via a claimant’s BEACON portal; (2) allows appeals of overpayment determinations to OAH; (3) allows appeals of Lower Appeals Division decisions to OAH; and (4) changes predetermination procedures, notices and collections for overpayments. The major fiscal and operational impacts of each of these changes are described below.

1. Disallows some notices via a claimant’s BEACON portal

The Division of Unemployment Insurance (“Division”) is subject to federal regulations and internal policies about the transmittal of a claimant’s personal identifiable information (“PII”). The Division may mail documentation containing PII but may not send PII in email form unless the attachment containing the PII is encrypted.

Due to extensive identity theft fraud during the pandemic, the Division has prepared, printed and mailed thousands of letters, notices, and updates to undeliverable addresses and to addresses where the claim application does not match any person living there. The Division currently puts a “mail block” on those claims and defaults claimants to receive notifications via their online portal, but S.B. 635 would require email or mail delivery even for those addresses.

The Bill may drive the Division to send all notices by mail, which would double the budget for mailing supplies (currently about 51% of claimants who have selected a preferred method of communication, have chosen to be alerted to correspondence in their BEACON portal via text or email). This would add an annual cost of approximately \$1,680,000.

2. Allows appeals of overpayment determinations to OAH

OAH hearings are heard by administrative law judges (“ALJs”) and comply with the Administrative Procedure Act (APA) and the Rules of the Office of Administrative Hearings. Depending on the case, an OAH hearing may include discovery, motions, motion hearings, subpoenas, prehearing conferences, and postponements. The APA requires ALJs to issue decisions within 90 days of the conclusion of a hearing.

www.labor.maryland.gov

Because overpayment appeals at OAH are likely to take several months and because the Division would be required to continue payments to the claimant pending resolution on appeal, this lengthy process could lead to incredibly large overpayments when the Division's overpayment determinations are affirmed. This would be worse for the claimant and in some cases may lead to the Division being unable to recover overpayments at all. The creation of more and greater overpayments is not in the interest of claimants or the Division. In addition, reimbursing employers, which includes state and county governments, would have to foot the bill for benefits paid to their employees while the claims are pending appeal. And, if the Division's determinations are affirmed, these employers would not receive any refunds unless and until the Division were able to recover the overpayments.

In short, this provision of the Bill would lead to a significantly longer appeals process and larger overpayments.

Assuming that an average of 15,000 non-fraud overpayment determinations are appealed to OAH at a cost of even \$1,000 per hearing (because those cases are not likely to be as complex as appeals from Lower Appeals decisions), the cost would be \$15,000,000. It is estimated that the Division would need fifty (50) additional UI Legal Officers to handle the estimated 15,000 annual appeals of overpayments established. The cost of 50 new UI Legal Officers would be approximately \$4,100,000.

The Maryland Department of Labor ("Department") is required to operate merit personnel systems as a condition of eligibility for federal assistance and participation in the intergovernmental UI program. As ALJs are not Department merit staff, it is likely that the Bill would take the Department out of compliance with this merit staffing requirement and jeopardize federal funding.

USDOL guidelines require Lower Appeals to decide 60% of cases within 30 days and 85% of cases within 45 days. The Department is required to report compliance with case-aging guidelines monthly. It is unclear how these reporting requirements could be met if cases were appealed to OAH. Failure to meet these reporting requirements could jeopardize federal funding for the Lower Appeals Division.

Another operational cost relates to the Division's BEACON 2.0 system. BEACON 2.0 was designed with current appeals processes in mind. Should the bill go into effect, it likely would require a costly revision to the coding of BEACON 2.0 to allow greater flexibility while entering appeals data and still allowing effects of decisions to be automated and appeals data to be captured for reporting purposes. It may also require the hiring of data entry professionals to hard code/enter details of thousands of appeals cases.

This provision of the Bill would create a much costlier appeals process (which might be both unfunded and risk other funding) and could require costly system upgrades.

3. Allows appeals of Lower Appeals Division decisions to OAH

As with the provision described above, this provision of the Bill would lead to a significantly longer appeals process and larger overpayments.

Assuming that an average of 4,000 cases were referred to OAH under the Bill at a cost of \$2,000 per hearing, the cost would be \$8 million. It is estimated that the Division would need fifty (50) additional UI Legal Officers to handle the estimated 4,000 annual appeals of Lower Appeals decisions. The cost of 50 new UI Legal Officers would be approximately \$4,100,000.

As with the provision described above, this provision might take the Department out of compliance with federal timeliness standards and the merit staffing requirement, which may jeopardize federal funding.

This provision of the Bill would create a much costlier appeals process (which might be both unfunded and risk other funding) and could require costly system upgrades.

4. Changes predetermination procedures, notices and collections for overpayments

Because the Bill's proposed changes would require the Secretary to provide to a claimant a 30-day period to respond in writing or by telephone before making a finding of overpayment, the Division would be required to continue payments to the claimant for the extra 30-day period specified in the bill. This is longer than the Division took to review overpayment assessments prior to the pandemic and will lead to greater overpayments assessments. And, if a case involves fraud, the Division may pay out additional benefits which may not be recoverable.

Furthermore, the bill lengthens the process unnecessarily. This lengthened process will require additional staff hours for each claimant that chooses to respond to the Secretary's notice by mail or phone. Because the BEACON 2.0 system does not account for this 30-day predetermination process, this provision of the Bill may require the Division to work with its vendor Sagitec to make coding changes to allow for this lengthened and different process for determining overpayments.

The Division sent a request for a conformity opinion to the United States Department of Labor ("USDOL") to determine whether the Bill, if passed, would conflict with federal law and requirements for Maryland's UI program. USDOL reviewed SB 635 and affirmed that "This bill raises certain conformity issues".

USDOL cited the following concerns within their analysis of SB 635:

1. **The thirty-day notice requirement is not a method of administration that ensures UC will only be paid when due.**
 - a. The provision in the bill that requires a thirty-day time frame to respond to the notice of potential overpayment would allow payment of UC to continue when, potentially, the UC agency has sufficient information to reasonably conclude that no further benefits are due given the factual circumstances of the individual claim.
 - b. Allowing the claimant an opportunity to delay the adjudication process for up to thirty days may result in continued payments that may not be due under the provisions of the state UC law and prevents the duty of the UC agency to make timely determinations on continued claims.
2. **The methods of administration requirement requires that staff conducting UC appeals must be merit-staffed.**
 - a. SB 635 creates an issue with the merit-staffing requirement in Section 303(a)(1), SSA as it provides that the claimant or employer may choose to file an appeal with the Maryland Office of Administrative Hearings (MOAH) rather than the lower appeals authority and the appeal hearings will be conducted by Administrative Law Judges (ALJs) in the MOAH.
3. **There are two aspects of Federal law which the state must take into consideration when transferring the appeals functions outside of the state agency.**
 - a. The transfer of some UC appeals to an OAH must not result in appeals being more complex, or in a failure to promptly dispose of appeals hearings.
 - b. If some UC appeals are to be heard by the OAH, only the costs of hearing those appeals, and not appeals on non-UC matters, may be funded from the grant.

The Department respectfully requests that the Committee consider this information.