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Patrick Moran - President

HB 988 - Family and Medical Leave Insurance Program - Modifications

POSITION: FAVORABLE WITH AMENDMENTS

AFSCME Council 3 represents nearly 30,000 state and higher education employees across Maryland. Nationally, AFSCME also represents workers in the 11 states and DC where paid family leave has already been implemented. We support HB 988 with amendments. Here in Maryland, and nationally, AFSCME is proud to support the expansion of paid leave benefits to working families.

We believe publicly administered and funded paid family leave plans ensure the most equity and are best at helping to protect worker access. Connecticut is the only state has privatized 100% of the administration of the plan. We are vehemently opposed to this model as it has been expensive, ineffective and workers have experienced higher rates of denials there (see enclosed report for more details). Most other states generally allow an employer to offer private plans that are the same or better benefits than the public option. The legislation passed last year establishing Maryland's Family and Medical Leave Insurance Program allows employers to provide a private plan, while administering a state-run public plan under the Department of Labor.

Under this model, we believe the following amendments are critical to ensure that workers have robust protections in employer-provided private plans. We also want to ensure that Maryland employers don't get away with having bad private plans at the same time they are getting out of providing contributions to public plan. We believe more safeguards in HB 988 are needed around two key areas:

1. **Initial Plan Approval.** Maryland's law does provide for a private employer's plan to be filed with the Department for approval. We believe some initial guidelines should be placed on these plan approvals to address some or all of the following: benefit levels, purposes, duration, and eligibility; cost to employee; timeliness of benefits;

equal rights and protections; appeals processes; notice requirements; employee approval to seek a private plan; and eligibility standards used to approve or deny claims.

2. **Ongoing Oversight and Enforcement.** In 8.3—406, there are good annual reporting requirements of the public plan, but private plans are exempted from the same annual report, and they should not be. We also believe HB 988 should require some ongoing oversight of the employer-provided private plans related to periodic audits; reporting requirements; penalties for non-compliance; financial disclosures and assurances; restrictions on use of excess funds; and fees to reimburse state administrative costs. These elements are largely focused on ensuring that employers continue to meet the initial requirements for establishing a new plan and on upholding the fiduciary responsibilities involved in providing benefits and managing premiums collected from workers. Establishing reporting requirements and the use of collected data matter greatly for purposes of assessing the impact of private plans on worker access to benefits relative to the state program.

We also believe Maryland should strive to do better with its employee-employer contribution rates than is currently prescribed in law. We support a 50-50 split.

Finally, we look forward to working with the administration at the Maryland Department of Labor to ensure an implementation timeline that is realistic and allows the Department to administer this program in-house.

For these reasons, we urge the committee to provide a favorable with amendments report on HB 988.

Additional Information on Aflac's Interest in Leave Administration
Yvonne Bramble, Care and Leave Policy Advocate
Feb. 22, 2023

This brief providing additional background on Aflac's interest in leave administration was prepared for AFSCME Council 3. It includes information about the company's leave management line of business and the life insurance industry's advocacy for privately run paid leave, and summarizes information about its role in Connecticut's paid leave program.

Aflac's Leave Management Business

In 2020, Aflac acquired an absence management platform as part of its purchase of Zurich North America's group life and pension business and related assets.[i] That platform now forms part of the company's life and absence management insurance line of business that sells group benefits and enrollment and administration services to employers. Aflac describes its absence management offering as an "end-to-end solution to help make it easier to manage your employees' absences related to" a variety of forms of company and legally required leave, including state mandated paid family leave.[ii]

Like much of the life insurance industry, Aflac sees government paid leave mandates as creating a business opportunity so long as leave laws leave the door open for private administration. In its 2022 annual briefing for financial analysts, the company identified new state and federal mandates on paid leave as an important trend that will shape its business in the future.[iii] While life insurance companies are generally interested in managing employers' leave programs and compliance with leave laws, Aflac is the only life insurer, so far, to have gained a foothold in the administration of the government-run side of state leave laws. In its 2021 financial analysts briefing, the company boasted that it was "selected as the claims administrator for [sic] State of Connecticut's paid leave program due to our premier absence management technology — and we will continue to explore these opportunities in the market."[iv]

The Life Insurance Industry's Advocacy for Paid Leave

The life insurance industry's lobbying arm, the American Council of Life Insurers (ACLI), actively promotes the adoption of paid leave laws so long as they include a significant role for private paid leave plans (a so-called private option) and therefore for insurers. ACLI describes this approach to designing paid leave laws as a public-private partnership. It has lobbied state legislatures (including in Delaware last year) and Congress to advance life insurers' interests in privately run paid leave and in 2021, commissioned a survey to demonstrate public support for "[c]reating a paid leave program via a partnership between the government and private plans," "[m]odifying and expanding the unpaid leave available through employers today to also include paid leave" and "[p]roviding tax credits and incentives to employers and small businesses who offer paid leave benefits to their employees."[v]

Last month, ACLI published a white paper that criticizes government-run programs and highlights "states, like Maryland, Delaware and Virginia, [that] have recently passed legislation that recognized the importance of the existing private market system in any paid leave policy initiatives."[vi] The white paper also touts Aflac's role in administering Connecticut's paid leave program as "allowing the state to avoid the expense of building, staffing, and maintaining a new claims and customer service system" and having "enabled a smoother benefits roll-out than in other states that built a completely new infrastructure since claims were managed by a vendor with years of experience making timely benefit payments."

Additional Information on Connecticut Paid Leave Privatization

- ***The Decision to Contract Out Program Administration.*** In 2021, the Connecticut Paid Leave Authority (PLA) announced a $72 million, three-year contract for Aflac to handle claims processing and benefit payments for the state's family and medical leave program. Claiming that no state agency was currently handling claims administration work and that the January 2022 deadline to begin benefit payments was too short, the PLA justified giving these funds and the 150 permanent jobs they would create to the private sector instead of investing them in a new department staffed by the unionized state workers.[vii]

- ***Problems Beginning at Launch.*** From April through November 2021, the PLA and Aflac developed claims policies and procedures and built out their claims administration IT infrastructure.[viii] But soon after Aflac began processing claims applications on Dec. 1, 2021, the insurer was flooded with incomplete applications and applications from individuals suffering from COVID-19, many of whom were not ultimately eligible to receive benefits, thereby delaying benefits processing and payments to approved applicants through June 2022.[ix]

    - PLA head Andrea Barton Reeves admitted that Aflac was staffed to handle only the estimated 5,000 monthly claims and not the 10,000 they saw in February alone. She also admitted that the authority had not done a good job properly informing the public about the complex eligibility and application requirements to receive benefits under the new paid leave program.[x]

    - With this underwhelming public education campaign and widespread problems during the program's first six months, projected payouts for the full 2023 fiscal year are expected to fall nearly $20 million short of actuarial estimations of demand.[xi] In line with the limited reach of the program, Aflac denied nearly 40% of processed claims in the program's first six months (through May 31, 2022), which was far more than the roughly 23% denial rate of neighboring Massachusetts' first six months of their state-run paid family and medical leave program.[xii]

    - Excluding COVID-19 related claim denials from Connecticut's rate, the PLA reported a 26% denial rate for the year compared to a 20% denial rate for Massachusetts' first full year (FY 2022), including the same period of the winter omicron surge.[xiii] Despite anecdotal news reports of errors in application processing, the PLA blamed this relatively higher denial rate on client errors and lack of public understanding.[xiv] But these problems again fall at the feet of the PLA's public education campaign and the knock-on effects of widespread dysfunction on residents looking to apply but who don't understand what is required or who decide it is too complicated to bother.

- ***$375,000 in Penalties for Aflac's Underperformance.*** This month, the PLA announced that Aflac did not meet four of 18 performance standards included in the company's service agreement and was being penalized $375,000 for its performance failures.[xv] Three of the failures were for timeliness. One failure was for the inaccuracy of benefit calculations.

- ***Impact of Aflac's Underperformance.*** Aflac's rollout led to untold hardship in the lives of residents across the state who needed benefits when the program was overwhelmed or who have been left uneducated about the benefits available to them or dissuaded from applying due to the company's lackluster implementation. The root of these problems lay in the state's choice to contract out essential Department of Labor functions to a private, profit-oriented company like Aflac. They, like the monopolies in the rail sector, chose a narrow definition of efficiency closely tied to actuarial estimations of projected demand over other, equally important considerations, such as program reliability and resilience in the face of uncertainty. We now live in a world of unexpected disasters and viral surges. States are better able to implement a resilience-based model for program integrity using unionized state workers than are for-profit companies like Aflac.

<u>Key Points</u>

- ***Heads, life insurance companies win. Tails, the public loses.*** Life insurance companies are pushing a two-pronged strategy, so they get two bites at paid leave benefits. They want employers to be able to opt out, so insurance companies can make money administering their private programs. Plus, they want to privatize the administration of the state-run paid leave programs. Aflac is the poster child for this approach, with a whole line of business dedicated to doing both things.

- ***It's straight up privatization.*** Life insurance companies lobbying for private administration of paid leave programs is just more privatization of public programs, similarly to how corporations tried to privatize more and more of Unemployment Insurance, Medicaid, SNAP, etc.

- ***Privatizers over promise and underdeliver.*** In Connecticut, the state said it chose Aflac because it could set up and run the paid leave program faster and better than state employees. In reality, it has fallen far short, failing to meet major performance standards and harming workers attempting to get paid leave. States are more than capable of developing the expertise and systems in-house to facilitate the claims processing of their paid family and medical leave programs, just as they can and must do with every other social welfare program mandated by law and funded by public dollars.

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[v] Paid Family and Medical Leave: The Foundation for Nationwide Access Is There, Public Opinion Strategies, Paid Leave National Survey—Executive Summary Key Findings (Sept. 20. 2021), https://www.acli.com/-/media/acli/public/files/pfml/acli_natlpaidleavesurveyexecsumpub.pdf.
[vi] ACLI, *Paid Family and Medical Leave: The Foundation for Nationwide Access Is There* (January 2023), https://paidleave.life/wp-content/uploads/2023/01/ACLI_PFML_WhitePaper_Base_012623.pdf.
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[viii] "Connecticut Paid Leave Annual Report 2022," *Connecticut Paid Leave Authority*, https://ctpaidleave.my.salesforce.com/sfc/p/#t00000004XRe/a/t00000013z4d/Hc5CTT9A2TdbqE02YgaCLQ6KpPjhx7m18MkgbWu7nYQ
[ix] Matthew Campbell and Evan Sobol, "I-Team Investigation: Workers have issues with new CT Paid Leave Program," *WFSB*, May 12, 2022, https://www.wfsb.com/2022/05/12/i-team-investigation-workers-have-issues-with-new-ct-paid-leave-program/
[x] Ken Dixon, "COVID caused cascade of rejected applications for paid medical leave in CT," *CT Insider*, May 27, 2022, https://www.ctinsider.com/news/article/COVID-caused-cascade-of-rejected-applications-for-17202176.php
[xi] Alexander Soule, "One year into paid family leave, CT residents not using programs as much as expected," *CT Insider*, December 14, 2022, https://www.ctinsider.com/business/article/Are-CT-workers-leaving-money-on-the-table-for-17650815.php
[xii] "Connecticut Paid Leave Annual Report 2022;" "FY2022 Annual Report for the Massachusetts Paid Family and Medical Leave program," *Department of Family and Medical Leave*, https://www.mass.gov/doc/fy2022-dfml-annual-report/download; Alexander Soule, "Rate of paid family leave denials in CT exceeded Massachusetts, Rhode Island," *CT Insider*, Dec. 15, 2022, https://www.ctinsider.com/business/article/CT-Aflac-paid-leave-MA-RI-17653348.php.
[xiii] Reported in Soule, "Rate of paid family leave denials in CT exceeded Massachusetts, Rhode Island."
[xiv] Ibid.
[xv] Bria Lloyd and Jim Haddadin, "CT Paid Leave Authority to Withhold $375,000 From Claims Company for Missing Performance Goals," Connecticut Public Radio (Feb. 10, 2023), https://www.ctpublic.org/news/investigative/2023-02-10/ct-paid-leave-authority-to-withhold-375-000-from-claims-company-for-missing-performance-goals.