Maryland
DEPARTMENT OF LABOR

Family and Medical Leave Insurance Division
1100 North Eutaw Street
Baltimore, MD 21201

Date:	February 14, 2024
To:	Chairman CT Wilson, House Economic Matters Committee
From:	Elliot Schreur, Assistant Secretary, Family and Medical Leave Insurance
Bill Number:	HB 571
Bill Title:	Family and Medical Leave Insurance Program - Modifications
Position:	**Favorable**

The Time to Care Act created Maryland's Family and Medical Leave Insurance (FAMLI) system. The Department of Labor is working to implement the statute and make FAMLI a reality for Marylanders. Through an extensive stakeholder engagement process, which involved a series of meetings with over 1300 attendees, research on best practices in paid family and medical leave programs in other states, and discussions with sister agencies, the Department of Labor has identified a series of amendments to the Time to Care Act that will provide the Department with the tools and time it needs to effectively implement and administer FAMLI.

HB 571 incorporates these amendments. The requested changes fall into three main categories: additional time, administrative changes, and clarifications and corrections. Taken together, the three groups of changes will allow the Department to effectively administer FAMLI.

TIMELINE

HB 571 will change the timeline for the implementation of the program to provide the State with enough time to build the capacity to collect premium contributions and wage-and-hour reports from every employer in the state. The contribution start date is shifted by three quarters, from October 1, 2024 to July 1, 2025. In order to build up funds that will eventually pay out benefits, the benefit start date will be shifted two quarters, to July 1, 2026. Other dates in the bill were amended to conform to this timeline change.

ADMINISTRATIVE CHANGES

HB 571 amends the definition of “wages'' in the FAMLI statute to match the definition of “wages'' in the Unemployment Insurance statute. Conforming the definitions will reduce administrative burden for employers and the State by eliminating the need to calculate two different sets of wages for the two programs.

HB 571 adjusts the base periods for both eligibility purposes and the calculation of a claimants' benefits. These adjustments will greatly reduce the administrative burden on employers and the Department. The current statute would potentially require nearly real-time wage data from employers to be implementable, which would impose an unreasonably high burden on employers. The bill's language instead allows the Department to rely on periodically submitted reports, a process already familiar to employers under the Unemployment Insurance program.

The current law allows for employers to offer private plans but lacks detail regarding applications, administration, and enforcement. HB 571 provides clarity. First, the bill improves the sustainability of the State FAMLI Trust Fund by spreading the costs for FAMLI administration across participants in both the State Fund and private plans. To do this, the bill allows the Department to charge reasonable administrative assessments on employers that choose to use a private plan instead of the State Plan. This ensures that the Department's costs of administering private plans are not borne solely by those choosing to participate in the State Plan, as is the case under current law.

Second, HB 571 describes the factors the Secretary should take into account when evaluating applications for non-commercial (self-insured) employer-provided plans, and requires that private plans either be commercial plans or self-insured, not a combination. These changes will provide the Department with the authority necessary to ensure private plans provide benefits equivalent to the State Plan and have the financial solvency to sustainably provide those benefits.

Finally, although the current law allows the Division to impose certain penalties, the provisions are not broad enough to discourage bad actors and encompass enforcement of the entire title. HB 571 gives the Division the authority to impose the costs of appeals arising from private plans back to the private plans, and attaches mechanisms for enforcement.

CLARIFICATIONS AND CORRECTIONS

HB 571 clarifies that the program is also available to covered individuals who file a claim for benefits to care for a service member for whom they are next of kin, instead of the current language which requires the servicemember to be next of kin of the claimant. This will align FAMLI with FMLA.

Current law prohibits the Department from disclosing personal information disclosed to the Department by an applicant for benefits. HB 571 provides the Department with more detailed guidance on what is protected personal information and, consistent with feedback from employers during our stakeholder engagement process, resolves a conflict in the law regarding whether it can be shared with employers.

The current law uses the term "Commissioner" even though there is no Commissioner for FAMLI. HB 571 would correct that language.

The current law states that an employer obtaining coverage under a private plan may not deduct from an employee more than the maximum contribution amount. HB 571 clarifies that employers may not deduct more than the maximum *employee* contribution amount (50% of the maximum contribution amount).

Thank you for your attention to this matter. We look forward to our continued work with the committee to make FAMLI a reality for Marylanders. The Department respectfully requests a favorable report on HB 571.

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Proposed statutory changes to MD's forthcoming **Family and Medical Leave Insurance (FAMLI) System** SB 485/HB 571

Overview

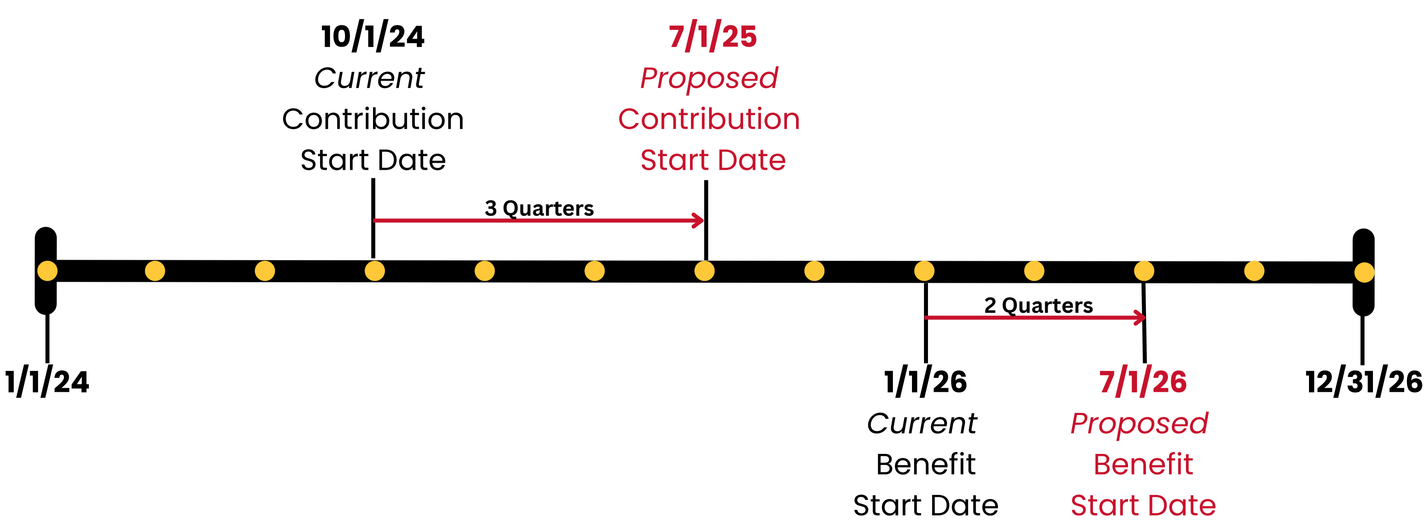
Maryland's Family and Medical Leave Insurance (FAMLI) system was established through the Time to Care Act passed by the Maryland General Assembly in 2022. Starting in 2026, workers will leverage FAMLI to take time away from work to care for themselves or a family member and still receive up to $1000 a week for up to 12 weeks. The Time to Care Act was amended in 2023 to foster implementation.

In 2024, the Maryland General Assembly will review more proposed amendments to the Time to Care Act via SB 485/HB 571. The Maryland Department of Labor (MD DOL) has made significant progress in a short period of time. To help ensure that Maryland has a paid leave system that serves MD businesses and workers in the best way, the MD DOL is requesting amendments to the law. These amendments fall into three broad categories: a timeline shift; administrative changes; and clarifications and corrections.

Impacts of Bill

Shifting the timeline

The current statutory timeline for implementing paid leave is not feasible. MDOL is seeking additional time before collecting contributions and issuing benefits. The proposed shift is three quarters for contributions and two quarters for benefits. This will provide MDOL with additional leeway to build the systems that will be the backbone of the FAMLI system.



Administrative Changes

- Uses UI definition of wages and alters wage base period.
- Increases privacy protections, while also allowing MD DOL to share necessary information with a claimant's employer.
- Allows MD DOL to set an administrative assessment for employers seeking coverage options alternative to the State Plan.
- Grants MD DOL greater discretion when requiring documentation from employers who apply to be self-insured.
- Strengthens language regarding employee eligibility and contribution amounts in a private plan.
- Expands MD DOL's ability to impose penalties on bad actors.
- Provides MD DOL with grant making authority for FAMLI.
- Requires the use of electronic filing by employers.

Clarifications and corrections

- Clarifies language so that employers choose only one type of private plan.
- Resolves conflicting language surrounding S-Corp and C-Corp owners.
- Clarifies language regarding employee eligibility and contribution amounts in a private plan.
- Adds clarifying language to better define employee eligibility requirements regarding place of work.
- Corrects deviation from FMLA regarding relationship of employee and a service member.

For programmatic questions, please contact Regan Vaughan, Director of Policy for FAMLI, at **Regan.Vaughan@maryland.gov**.

Visit **paidleave.maryland.gov** for more.