Informal Regulatory Stakeholder Engagement Process
Phase 5
Discussion Document – Claims

The Division of Family and Medical Leave Insurance (the "Division") will begin to receive claims in 2026. The Division has identified numerous questions related to claims. The first sixteen of those questions are presented below with potential answers. The Division seeks feedback from stakeholders on the questions presented. **Additional questions related to claims will be included in Phase 6 of the Informal Regulatory Engagement Process.** To submit a suggestion for inclusion in Phase 6, please use this form or include them in your written comments.

Comments can be submitted by offering oral remarks at the August 21, 2023 informal regulatory stakeholder meeting and/or by submitting written comments via email to FAMLI.policy@maryland.gov. The Division would prefer to receive written comments by August 23, 2023.

Definitions

1. **How might "domestic partner" be defined?**
    - The Division might use COMAR 31.10.35.03 as a model for defining domestic partnership and the requirements for establishing a domestic partnership.

2. **How might "good cause" within the context of untimely filed claims be defined?**
    - Good Cause could be defined as:
        - A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from filing an application in a timely manner; or
        - A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.

3. **How might "covered employee" be defined?**
    - A covered employee could be an individual who worked 680 hours or more in position(s) localized in Maryland over the past 12 months.
    - A covered employee could include a "previous employee," an individual who is currently unemployed and not connected to any employment or self-employment but who worked in positions localized in Maryland for at least 680 hours over the past 12 months.
        - Previous employees may not be able to receive both unemployment insurance and FAMLI benefits for the same time period. They also may not be employed in non-covered employment (i.e. a position with the federal government, a position outside of Maryland, etc…) during the period for which they are seeking benefits.

4. **How might "serious health condition" be defined?**
    - The Division may consider using the Family and Medical Leave Act's regulations regarding the definition of a serious health condition.

5. **Should the Division consider both informal and formal kinship care in the definition of kinship care?**
    - Kinship Care (formal) refers to when a child comes to the attention of a local department of social services and the department then places a child with the relative caregiver. The relative maintains custody of the child by providing 24 hour care, 7 days per week to the child.
    - Informal kinship care means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship. Legal custody is not required. MSDE recognizes informal kinship care and requires caregivers to use this affidavit.

6. **How should "Next of Kin" be defined?**
    - The Division could use the FMLA definition where next of kin refers to a service member's nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave.

Application Process

7. **How might a claimant prove an individual is their family member?**
    - The Division may require the claimant and the family member to sign a certification under the penalties of perjury attesting to the familial relationship.
    - The Division may also receive formal proof of familial relationship such as a birth certificate or marriage license.

8. **What is the timeline for employees to submit claims?**
    - Under § 8.3-701(b)(1) an individual may file an application for benefits within 60 days before the anticipated start date of the leave, but not later than 60 days after the start date of the leave. In cases where a claimant demonstrates good cause, late submission of an application may be accepted.

9. **What if an individual needs to update a claim for leave?**
    - After submitting an application for benefits, a claimant may be required to notify the Division within 10 calendar days of any changes to the information provided on their

application and provide additional information, if applicable. Changes may be allowed for the individual's: First and last name; Mailing address; Telephone number; Current employment or self-employment; Average number of work days worked per work week; Leave schedule; Type of leave taken; or Eligibility to receive Workers' Compensation or Unemployment Insurance benefits.

- Failure to notify the Division of any changes to the information provided on an application for benefits could result in a delay, denial, overpayment, or disqualification of weekly benefits.

10. What information/documentation might be required to file a claim for family leave?

- The date of leave, probable duration, and whether the leave will or is intended to be continuous or intermittent;
- For claims to care for a family member,
    - A certification from a healthcare provider that the covered individual needs to care for a family member and an estimate of the amount of time required to provide the care;
    - A certification establishing the familial relationship
- For claims to bond with a child, proof of the occurrence or imminently expected occurrence of a birth or placement, which may include:
    - Documentation from a hospital
    - A medical certification of pregnancy
    - Documentation from a licensed adoption/foster care agency/Department of Human Services
    - Court documentation
    - Affidavit of an informal kinship care arrangement
- For qualifying exigency leave,
    - Claimants may also need a copy of the family member's active duty orders or a letter of impending activation from the family member's commanding officer.
- The Division may allow claimants to submit the relevant FMLA form in lieu of a state provided form when the leave qualifies for both FMLA and FAMLI.

11. What information/documentation might be required to file a claim for medical leave?

- Certification from a licensed health care provider establishing:
    - the date of leave and whether the leave will or is intended to be continuous or intermittent;
    - the date on which the serious health condition commenced;
    - the probable duration of the serious health condition;
    - the dates of treatment for the serious health condition;
    - the extent of incapacity caused by the serious health condition;
    - the appropriate facts related to the serious health condition within the knowledge of the licensed health care provider; and

    - a statement that the covered individual is unable to perform functions of the covered individual's job from which leave is being sought.
- The Division may allow claimants to submit the relevant FMLA form in lieu of a state provided form when the leave qualifies for both FMLA and FAMLI.

12. What might be the process if an employer suspects employee fraud?

- The Division could develop a form for employers and other members of the public to submit if they suspect a fraudulent claim. The Division could investigate based on the submission.

<u>Benefit Calculation</u>

13. What is the base period for a benefit calculation?

- Under § 8.3-101(d), the benefit calculation is based on the wages earned during the calendar weeks containing the most recent 680 hours the employee worked.

14. How might the benefit amount be calculated?

- An average weekly wage is calculated by dividing the wages earned during the base period by the number of weeks worked.
- Under § 8.3-702(b)(1)(i) if the covered individual's average weekly wage is 65% or less of the State average weekly wage, benefits will be 90% of the covered individual's average weekly wage; or, if the covered individual's average weekly wage is greater than 65% of the State average weekly wage, benefits will be the sum of:
    - 90% of the covered individual's average weekly wage up to 65% of the State average weekly wage; and
    - 50% of the covered individual's average weekly wage that is greater than 65% of the State average weekly wage up to the maximum benefit amount. ($1,000 in 2026.)
- The Department could interpret this calculation to be made per employer of the employee. See Appendix 1.

15. For covered individuals who take intermittent leave, how might prorated benefits be calculated?

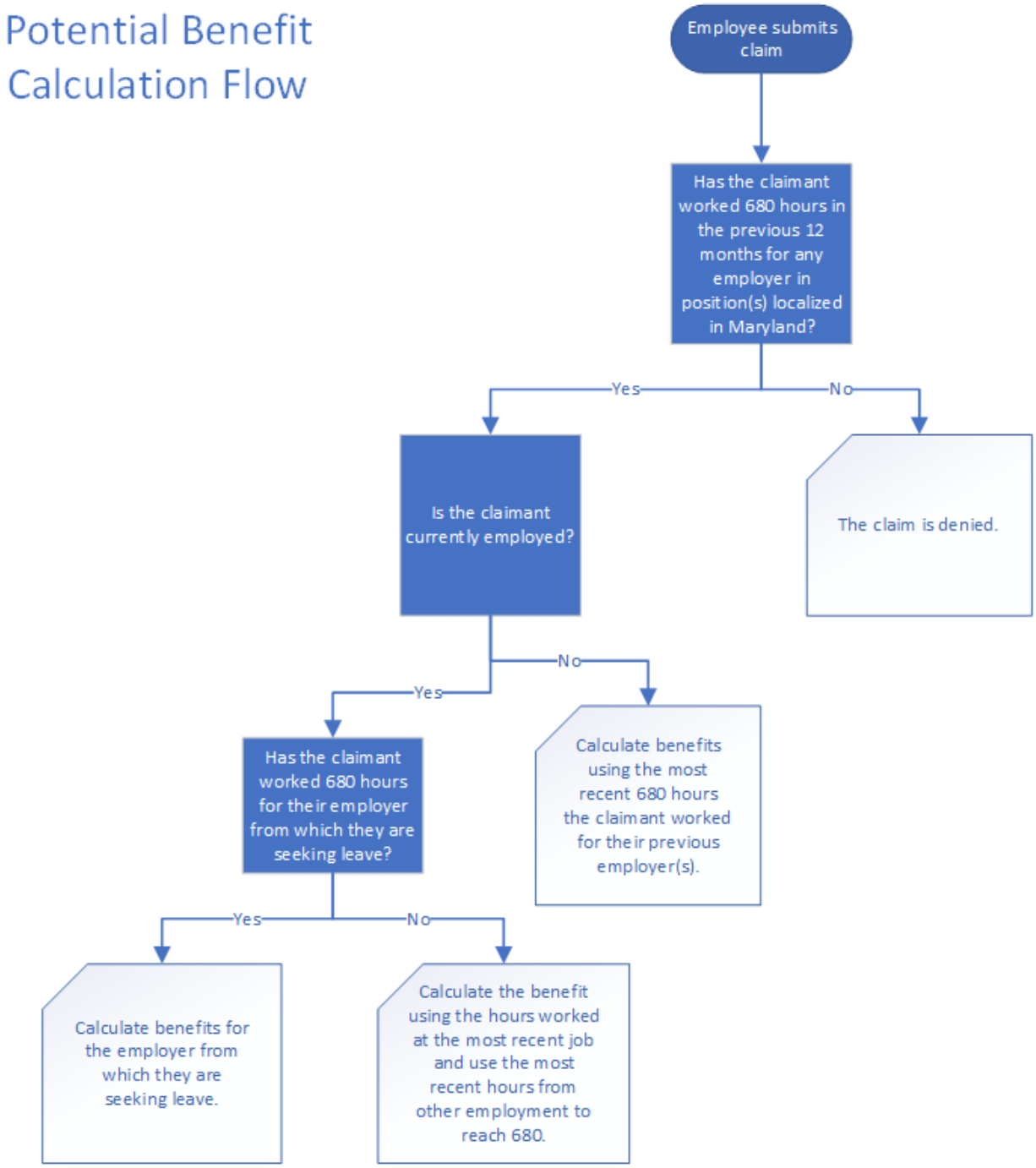
- For intermittent leave an *hourly benefit amount* will be calculated by dividing the weekly benefit amount by the average number of hours worked per week by the employee for the employer during the qualifying period.
- The benefit amount to be disbursed will be calculated by multiplying the hourly benefit amount by the number of hours of intermittent leave taken in a week.
- The claimant cannot take intermittent leave in increments of less than 4 hours a day.
- The claimant cannot take intermittent leave for more hours in a workweek than the average number of hours worked in the base period.

16. What might happen if benefits are overpaid to employees?

- The Division may review an overpayment of benefits to determine the cause of the overpayment and whether the claimant may be liable for repayment of the benefits and any applicable penalties.
- The Division may decide to waive, in whole or in part, the repayment amount of FAMLI benefits if: (a) The benefits were paid based on an error other than a false statement, nondisclosure of material fact, or misrepresentation by a covered individual, and (b) Recovery would be against equity, good conscience, or administrative efficiency.
- Under § 8.3–901(a), if an individual willfully makes a false statement or misrepresentation regarding a material fact or willfully fails to report a material fact to obtain benefits under this title, the individual is disqualified from receiving benefits for 1 year.

The Division recognizes that there are other questions regarding both the Claims process and previous Phases. We invite stakeholders to submit suggestions for additional questions that should be posed in the Phase 6 - Miscellaneous Discussion Document. Suggestions can be submitted through written comments or using this form.

Appendix 1


Potential Benefit Calculation Flow
Employee submits claim
Has the claimant worked 680 hours in the previous 12 months for any employer in position(s) localized in Maryland?
Yes
No
The claim is denied.
Is the claimant currently employed?
Yes
No
Calculate benefits using the most recent 680 hours the claimant worked for their previous employer(s).
Has the claimant worked 680 hours for their employer from which they are seeking leave?
Yes
No
Calculate benefits for the employer from which they are seeking leave.
Calculate the benefit using the hours worked at the most recent job and use the most recent hours from other employment to reach 680.