

Draft FAMLI Claims Regulatory Outline

For Discussion Purposes Only

Many stakeholders submitted feedback to the FAMLI Division regarding our Claims Discussion Document. Below is a draft outline of possible regulatory language, which was heavily influenced by the stakeholder feedback. The Division welcomes additional comments, feedback, and suggestions as we further refine the policy. This section focuses on Claims.

The Division will be accepting written comments via email - FAMLI.policy@maryland.gov and asks that comments be submitted by September 29, 2023.

Claims

General. Unless expressly provided otherwise, all of the requirements in this document apply to EIPs as well.

Definitions.¹

- A. “Alternative FAMLI purpose leave” means employer-provided leave specifically designed to fulfill a purpose of leave covered by FAMLI and that is not leave provided pursuant to an EIP.
- B. “Application” means
- C. “Application year” means the 12-month period beginning on the Sunday of the calendar week for which benefits are first approved.
- D. “Average weekly wage” means
- E. “Average working week” means
- F. “Base period” means
- G. “Claimant” means an individual who applies for FAMLI leave and benefits pursuant to this Chapter.
- H. “Continuing treatment by a health care provider” means any one or more of the following:
 - (1) Incapacity and treatment. A period of incapacity of more than three full, consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (a) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the order of, or on referral by, the health care provider.

¹ Please note, the FAMLI Team is in the process of creating a list of numerous terms to be defined via regulation. Some draft definitions were included in this document, others will be defined at a later date.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (c) The requirement in paragraphs (1)(a) and (b) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
 - (d) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the licensed health care provider.
 - (e) The term *extenuating circumstances* in paragraph (1)(a) of this section means circumstances beyond the Claimant’s control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.
- (2) Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.
 - (3) Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - (a) Requires periodic visits (defined as at least twice a year) for treatment by a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider;
 - (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
 - (4) Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The Claimant or family member must be under the continuing supervision of, but need not be receiving active treatment by, a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
 - (5) Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
 - (a) Restorative surgery after an accident or other injury; or
 - (b) A condition that would likely result in a period of incapacity of more than three full, consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
 - (6) Absences attributable to incapacity under paragraph (2) or (3) of this section qualify for FAMLI leave even though the Claimant or the family member does not receive treatment from a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider during the absence, and even if the absence does not last more than three full, consecutive, calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

I. “Covered employee” means an individual who has worked sufficient hours in the base period to establish initial qualification for FAMLI benefits and includes a qualified previous employee.

DRAFT FAMILI Claims Regulations Outline – FOR DISCUSSION PURPOSES

J. “Covered individual” means a covered employee and a self-employed individual who has opted into the optional self-employed plan.

K. “Domestic partner” means individuals of the same and the opposite sex.

(1) If an individual makes an application for FAMILI leave to care for a domestic partner *or a child dependent of a domestic partner as a dependent*, an affidavit attesting to the domestic partnership may be required.

(2) Affidavit Attesting to Domestic Partnership.

(a) An affidavit signed by at least the Claimant party to the partnership shall include the following attestations:

- (i) Both individuals are 18 years old or older;
- (ii) Neither individual is related to the other by blood or marriage within four degrees of consanguinity under civil law rule;
- (iii) Neither individual is married or in a civil union or domestic partnership with another individual; and
- (iv) Both individuals have been financially interdependent for at least 6 consecutive months prior to application in which each individual contributes to some extent to the other individual's maintenance and support with the intention of remaining in the relationship indefinitely.

L. “Family leave” means leave:

- (1) To care for or bond with a child of the covered individual during the first year after the child's birth;
- (2) During the process through which a child is being placed with the covered individual through foster care, kinship care, or adoption and to care for and bond with the child during the first year after the placement;
- (3) To care for a family member with a serious health condition; or
- (4) To care for a service member with a serious health condition who is the covered individual's next of kin.

M. “Family member” means

N. “FAMILI leave” means family leave, medical leave, and/or qualifying exigency leave that a covered individual is entitled to under Md. Code Ann., Lab. & Empl. § 8.3-101 *et seq.*

O. “General purpose leave” means employer-provided paid leave that is not alternative FAMILI purpose leave or leave provided pursuant to an EPIP.

P. “Good cause” means a demonstration by a party that a failure to comply with a requirement of the Maryland Family and Medical Leave Insurance Program was due to:

- (1) A serious health condition that resulted in an unanticipated and prolonged period of incapacity and that prevented an individual from filing an application in a timely manner;
- (2) 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, power outage, or a significant and prolonged department system outage; or

DRAFT FMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

(3) A Claimant’s lack of knowledge of their right to apply for family and medical leave insurance benefits.

Q. “Incapacity” means the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three full, consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:

- (1) Two or more treatments by a licensed health care provider or a provider of health care services under orders of, or on referral by, a health care provider; or
- (2) One treatment plus a regimen of continuing care.

R. “Inpatient care” means an overnight stay in a hospital, as defined in § 19-301 of the Health General Article of the Maryland Code, or related institution, as defined in § 19-301 of the Health General Article of the Maryland Code, or a hospice, as defined in § 19-901 of the Health General Article of the Maryland Code, and any subsequent treatment in connection with such inpatient care.

S. “Kinship care” means informal kinship care and formal kinship care. Informal kinship care has the meaning as stated in Md. Code Ann. Ed. § 4-122.1. Formal kinship care has the meaning for kinship care as stated in Md. Code Ann. Fam. Law § 5-501.

T. “Medical leave” means leave taken because the covered individual has a serious health condition that results in the covered individual being unable to perform the functions of the covered individual’s position.

U. “Next of kin of a service member” means the nearest blood relative other than the 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 service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the federal Family and Medical Leave Act (FMLA). When no such designation is made, and there are multiple family members with the same level of relationship to the service member, all such family members shall be considered the service member’s next of kin and may take FMLI leave to provide care to the service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the service member’s only next of kin.

V. “Other competent individual” means a provider of health care services under orders of, or on referral by, a health care provider.

W. “Qualified previous employee” means an individual who is currently unemployed and not connected to any employment or self-employment but who worked in positions localized in Maryland for sufficient hours in the base period to establish initial qualification for FMLI benefits.

X. “Qualifying exigency leave” means leave taken when a qualifying exigency arises out of the deployment of a service member who is a family member of the covered individual.

Y. “Qualifying period” means

Z. “Recipient” means a Claimant whose application for FAMILI benefits has been accepted and is receiving benefits.

AA. “Serious health condition” means an illness, injury, impairment, or physical or mental condition of a Claimant or their family member that:

- (1) Requires inpatient care in a hospital, as defined in § 19-301 of the Health General Article of the Maryland Code, or related institution, as defined in § 19-301 of the Health General Article of the Maryland Code, or a hospice, as defined in § 19-901 of the Health General Article of the Maryland Code;
- (2) In the medical judgment of the treating health care provider, poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
- (3) Requires constant or continuing care, including home care administered by a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider;
- (4) Involves a period of incapacity lasting at least three full, consecutive calendar days and requires treatment by a medical provider;
- (5) Is a chronic condition that requires at least two treatments per year by a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, continues over an extended period of time, and causes episodic rather than a continuing period of incapacity;
- (6) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective. The Claimant or family member must be under the continuing care of a licensed health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, but need not be receiving active treatment;
- (7) Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three full, consecutive calendar days;
- (8) Involves pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or
- (9) Involves the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.

BB. “Social Security Wage Base” means

CC. “Weekly benefit amount” means

Qualifying Events.

A. Child care or bonding is a qualifying event under the FAMILI Program in the following circumstances:

- (1) To care for or bond with a child of the Claimant during the first 12 months after the child's birth;
or
- (2) During the process through which a child is being placed with the Claimant through foster care, kinship care, or adoption and to care for and bond with the child during the first 12 months after the placement.

B. Caring for a family member with a serious health condition is a qualifying event under the FAMILI Program.

C. The diagnosis or occurrence of one’s own serious health condition is a qualifying event under the FAMLI Program.

D. Caring for a service member (*defined by statute*) with a serious health condition is a qualifying event under the FAMLI Program if:

- (1) The service member is the Claimant’s next of kin; and
- (2) The serious health condition resulted from, or was exacerbated by, military service.

E. A qualifying exigency arising out of the deployment of a service member who is a family member of the Claimant is a qualifying event under the FAMLI Program.

Application Process.

A. Eligibility. A covered individual experiencing a qualifying event is eligible to receive FAMLI benefits if they file a completed application within 60 days of FAMLI leave commencing.

- (1) The 60 day filing deadline shall be waived for good cause.
- (2) Beginning January 1, 2026, applications may be accepted up to 60 days before the first day of FAMLI leave requested.

B. Required Documentation²:

- (1) Claimant information.
- (2) Employer information.
 - (a) Name of employer from whom the Claimant is requesting FAMLI leave.
- (3) Proof of relationship. The following will be accepted as proof of relationship:
 - (a) Affidavits attesting to qualifying relationships as provided by the Division;
 - (b) Copies of official orders, certifications, or registrations from a government entity; or
 - (c) Copies of documentation from licensed foster care and/or adoption providers.
- (4) Certification of qualifying event:
 - (a) Care or Bonding with a Child. To certify an application for FAMLI leave to care for or bond with a child of the Claimant, the Claimant shall submit:
 - (i) A certification of live birth;
 - (ii) Documentation of placement from a licensed child placement agency or government agency responsible for child placement;
 - (iii) A court order;
 - (iv) Affidavit of an informal kinship care arrangement; or
 - (v) Other reasonable documentation determined by the Division.
 - (b) Family Member’s Serious Health Condition. To certify an application for FAMLI leave to care for a family member with a serious health condition, the Claimant shall submit documentation from a licensed health care provider establishing:
 - (i) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;
 - (ii) Date of diagnosis;
 - (iii) The date on which the serious health condition of the family member commenced;

² The Division is still in the process of developing the application process. The information included here is incomplete. As the process is developed more information will be released.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (iv) The probable duration of the serious health condition;
 - (v) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider;
 - (vi) A statement that the covered individual needs to care for a family member and an estimate of the amount of time required to provide the care; and
 - (vii) If intermittent FAMLI leave is requested, the expected frequency and duration of the intermittent FAMLI leave.
- (c) Own Serious Health Condition. To certify an application for FAMLI leave for one’s own serious health condition, the Claimant shall submit documentation from a licensed health care provider establishing:
- (i) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;
 - (ii) The date on which the serious health condition of the covered individual commenced;
 - (iii) Treatment dates;
 - (iv) Period of incapacity;
 - (v) The probable duration of the serious health condition;
 - (vi) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider;
 - (vii) A statement that the covered individual is unable to perform the functions of the covered individual's position; and
 - (viii) If intermittent FAMLI leave is requested, the expected frequency and duration of the intermittent FAMLI leave.
- (d) Military Caregiving. To certify an application for FAMLI leave to care for a next of kin who has been injured while in active duty with the United States Military, the Claimant shall submit documentation from a licensed health care provider establishing:
- (i) The first date on which the covered individual took or intends to take FAMLI leave from employment and whether the FAMLI leave will or is intended to be taken for a continuous period of time or intermittently;
 - (ii) The date on which the serious health condition of the service member commenced;
 - (iii) The probable duration of the serious health condition;
 - (iv) The appropriate facts related to the serious health condition within the knowledge of the licensed health care provider; and
 - (v) If intermittent FAMLI leave is requested, a statement that the covered individual needs to care for a service member and the expected frequency and duration of the intermittent FAMLI leave.
- (e) Military Exigency. To certify an application for FAMLI leave for a qualifying exigency arising out of the deployment of a service member who is a family member, the Claimant shall submit a copy of the family member’s active duty orders or a letter of impending activation from the family member's commanding officer.
- (5) Attestations. Claimants for FAMLI benefits shall attest to knowledge of certain information which will impact their applications. The Division will provide a list of attestations in the applications and on its website.

C. Updating a claim.

DRAFT FAMILI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (1) This provision applies to the incomplete application notification requirements in Md. Code Ann., Lab. & Empl. § 8.3-703.
- (2) A claim shall be updated within 10 calendar days of any changes to the following information provided on an application:
 - (a) Basis for leave;
 - (b) Start date of leave;
 - (c) Duration of leave;
 - (d) End date of leave; or
 - (e) Eligibility to receive Workers' Compensation or Unemployment Insurance benefits.
- (3) Failure to update a claim with any changes to the information provided on an application for benefits may result in a delay, denial, underpayment, overpayment, or denial of benefits.

D. Canceling a claim. In the event a Claimant no longer requires FAMILI benefits, their application may be withdrawn. If the FAMILI leave period has already commenced, the total amount of FAMILI leave actually taken, not the total amount applied for, will be assessed against the Claimant's FAMILI leave balance for the application year.

Determination of Length of Leave.

A. In General. Claimants may receive up to 12 weeks of leave per year. However, a Claimant may receive up to 12 weeks of leave per application year for their own serious health condition and 12 weeks per application year for bonding leave. For each claim, Claimants may be approved for the lesser of:

- (1) 12 weeks;
- (2) The remaining FAMILI leave balance for the Claimant for the application year;
- (3) The amount requested; or
- (4) If applicable, the amount supported by any required documentation.

B. Family leave.

(1) Bonding leave.

(a) Birth of a Child. A Claimant seeking leave for bonding with a child may apply for up to 12 weeks of FAMILI leave within the first 12 months beginning on the date of the birth.

(b) Adoption/Fostering/Kinship. A Claimant seeking leave for bonding with a child placed through adoption or fostering may apply for up to 12 weeks of FAMILI leave within 12 months of the placement. FAMILI leave may also be used in anticipation of placement for the following events, provided they are substantiated by documentation required:

- (a) Court appearances;
- (b) Legal appointments;
- (c) Placement agency appointments;
- (d) Counseling appointments;
- (e) Medical appointments; and
- (f) Travel.

(2) Caring for a family member. A Claimant seeking leave to care for a family member may apply for up to 12 weeks of FAMILI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (3) Caring for a service member. A Claimant seeking leave to care for a service member may apply for up to 12 weeks of FAMLI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

C. Medical leave. A Claimant seeking leave for their own serious health condition may apply for up to 12 weeks of FAMLI leave provided documentation from a licensed health care provider substantiating the time period requested is submitted with the application.

D. Qualifying exigency leave. A Claimant seeking leave for a qualifying exigency may apply for up to 12 weeks of FAMLI leave provided a copy of the family member's active duty orders or a letter of impending activation from the family member's commanding officer is submitted with the application for the following events:

- (1) Because the service member has received notice of deployment within 7 days before the deployment is to begin;
- (2) To attend military events and related activities including family support programs related to the active duty of the service member;
- (3) To arrange, provide, or attend child care or school activities only when the service member is on active duty call or active duty status;
- (4) To make financial and legal arrangements for the service member's absence or because of the absence;
- (5) To attend counseling that:
 - (a) Is needed due to the active duty or call to active duty status of the service member; and
 - (b) Is provided by an individual who is not a licensed health care provider;
- (6) To spend up to 15 calendar days with a service member who is on short-term temporary rest and recuperation leave during the period of deployment;
- (7) To attend postdeployment activities including reintegration services for a period of 90 days immediately following the termination of active status;
- (8) To attend to matters related to the death of the service member while on active duty status;
- (9) To arrange for or provide alternative care for a parent of the service member when the parent is incapable of self-care and the covered active duty or call to active duty necessitates a change; or
- (10) Because of any other issues that arise out of active duty or a call to active duty that an employer and covered employee agree should be covered.

Benefit Calculation.

A. Average Weekly Wage.

- (1) An employed Claimant's average weekly wage shall be calculated by dividing the wages earned from the employer from whom the Claimant is taking FAMLI leave over the most recent 680 hours worked by the number of weeks worked.
 - (a) If an employed Claimant has worked fewer than 680 hours for their employer, the most recent wages and hours from other employment can be used to calculate average weekly wage.
- (2) A qualified previous employee's average weekly wage shall be calculated by dividing the wages earned for their previous employers during the base period by the number of weeks worked.

B. Continuous FAMLI Leave Benefit Calculation.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (1) If the Claimant’s average weekly wage is 65% or less of the State average weekly wage, benefits will be 90% of the Claimant’s average weekly wage; or, if the Claimant’s average weekly wage is greater than 65% of the State average weekly wage, benefits will be the sum of:
 - (a) 90% of the Claimant’s average weekly wage up to 65% of the State average weekly wage; and
 - (b) 50% of the Claimant’s average weekly wage that is greater than 65% of the State average weekly wage up to the maximum benefit amount.
- (2) Changes to the State average weekly wage and maximum benefit amount only apply to claims that begin after the date the increase becomes effective.

C. Intermittent FAMLI Leave Calculation.

- (1) How to calculate.
 - (a) For intermittent FAMLI 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 Claimant for the employer during the qualifying period.
 - (b) The benefit amount to be disbursed will be calculated by multiplying the hourly benefit amount by the number of hours of intermittent FAMLI leave taken in a week.

Intermittent FAMLI Leave Benefit Request Process.

- A. Claimants taking intermittent FAMLI leave shall submit requests for benefits on a biweekly basis.
- B. Intermittent FAMLI leave must be taken in an increment of not less than 4 hours unless the claimant’s scheduled shift was fewer than 4 hours.³
- C. Benefits will not be issued for requests that exceed the expected duration and frequency listed on the medical certification without an updated certification.

Notice Requirements.

- A. Employers to employees.
 - (1) Employers are required to give employees notices about FAMLI benefits in the following circumstances:
 - (a) At hire,
 - (b) Annually, and
 - (c) When the employer knows that an employee’s leave or leave request or leave request may be eligible for FAMLI.
 - (i) When an employee seeks leave for the first time for a qualifying event, the employee need not assert rights under FAMLI or even mention family or medical leave. In all cases, the employer should seek further information from the employee to determine whether paid FAMLI leave is being sought by the employee.
 - (2) Notices must include the following:
 - (a) Explanation of FAMLI
 - (i) Who is covered;

³ If a recipient’s need for FAMLI leave is equal to or less than 4 hours, the recipient is eligible to take 4 hours of intermittent FAMLI leave.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (ii) Qualifying circumstances;
- (iii) Where to apply;
- (iv) Job protection and anti-retaliation language; and
- (v) Intermittent FAMLI leave.
- (b) Employee Responsibility of 30 Days Notice (if required)
- (c) Coordination of Benefits
 - (i) If the employer offers alternative FAMLI purpose leave (AFPL);
 - (ii) If the employer will consider supplementing with general purpose leave; and
 - (iii) FMLA Overlap.
- (d) Any other items which may be required by the Division.
- (3) The Division will publish templates for employer use. If the employer collects an electronic or physical acknowledgement of receipt by the Claimant (such as an electronic or wet signature) of the notice, the Claimant is considered notified.

B. Employees to employers.

- (1) Foreseeable FAMLI leave. If the need for FAMLI leave is foreseeable, for example a pregnancy due date, scheduled surgery, etc., employees may be required by employers to give 30 days notice to employers. However, employees must be given notice (see above) of that 30 days requirement.
- (2) Unforeseeable FAMLI leave. If an employee did not or could not have known about the need for FAMLI leave 30 days before the FAMLI leave commencement date, employees shall not be required to provide notice of the need for FAMLI leave to their employers.
- (3) Intermittent FAMLI leave.
 - (a) If FAMLI leave is to be taken on an intermittent schedule, the employee shall:
 - (i) Make a reasonable effort to schedule the intermittent FAMLI leave in a manner that does not unduly disrupt the operations of the employer; and
 - (ii) Provide the employer with reasonable and practicable prior notice of the reason for which the intermittent FAMLI leave is necessary.
 - (b) A recipient who takes FAMLI leave on an intermittent FAMLI leave schedule and who fails to provide reasonable and practicable prior notice may be subject to employer discipline. An employer shall notify the Division when a recipient approved for intermittent FAMLI leave fails to provide notice. In the event that a recipient's utilization of intermittent FAMLI leave is inconsistent with the FAMLI leave approval, it shall not be considered retaliation for an employer to request additional information related to the use of FAMLI leave.

C. Claimants shall be provided notice in the following circumstances:

- (1) When a Claimant's application is submitted.
 - (a) Claimants shall be notified of an incomplete application within five (5) days of application submission.
- (2) When a notice is sent to the Claimant's employer (confidentiality restrictions).
 - (a) Claimants shall be notified of their employer's response.
- (3) Claimants shall be notified if their application is approved within 10 days of complete application submission including:
 - (a) Benefit amount;
 - (b) Benefits beginning date;

- (c) FAMLI leave period beginning date;
 - (d) Benefits ending date;
 - (e) FAMLI leave period ending date;
 - (f) Duration and frequency of intermittent FAMLI leave (if applied for); and
 - (g) The Claimant’s appeal rights.
- (4) Claimants shall be notified if their application is denied (in full or in part) within 10 days of complete application submission including:
- (a) The reasons for denial; and
 - (b) The Claimant’s appeal rights.

D. Employer notice. Employers will be notified of claim details, subject to confidentiality restrictions, electronically within five (5) days of receipt of a complete application from a Claimant to take FAMLI leave from an employer.

Sample Notice to Employer. Employers shall have three (3) business days to respond to the notice with any details necessary to report fraud before a determination on the application for benefits is made.

Coordination of Benefits.

A. FMLA. If the Claimant has taken FMLA leave in the last 12 months, that FMLA leave may impact the balance of FAMLI leave pursuant to Md. Code Ann., Lab. & Empl. § 8.3-702(c). *This provision does not apply to FMLA leave taken before January 1, 2026.*

B. Employer-Provided Leave.

(1) Alternative FAMLI Purpose Leave.

- (a) An employer may require an employee to use alternative FAMLI purpose leave (AFPL) in coordination with FAMLI provided the AFPL is:
 - (i) Specifically designed to fulfill a purpose of FAMLI;
 - (ii) Paid;
 - (iii) Not accrued;
 - (iv) Not subject to repayment if the employee leaves their position;
 - (v) Not available for general purposes; and
 - (vi) Available without a requirement to exhaust another form of leave.
- (b) After receiving notification, if an employee chooses to use AFPL for a reason that would qualify for FAMLI, their FAMLI eligibility is reduced by the amount of time taken.
- (c) If an employee receives wage replacement from both FAMLI and AFPL concurrently, the FAMLI benefit is primary and the AFPL benefit may be used to supplement the employee’s wage to equal no more than 100% of their average weekly wage.
 - (i) An employer may deduct the full amount of time taken under both forms of leave from the employee’s AFPL balance even if the employee only received partial wage replacement from the AFPL.
- (d) An employee’s decision to use AFPL instead of FAMLI does not negate the job protection or retaliation provisions of Md. Code Ann., Lab. & Empl. §8.3-706 and §8.3-904.

(2) General Purpose Leave. Neither the employee nor the employer may require the substitution of general purpose leave for FAMLI leave. However, employers and employees may agree to have general purpose leave wages supplement FAMLI benefits, up to the employee’s average weekly wage.

- (a) If employer-provided general purpose leave is used to supplement FAMILI wage replacement benefits, the employer may: (1) convert the dollar amount of the supplement into the corresponding number of employer-provided general purpose leave hours; and (2) subtract those hours from the employee’s balance of accrued and unused employer-provided general purpose leave.
- (b) The use of employer-provided general purpose leave to supplement FAMILI wage replacement benefits requires mutual agreement between the employer and the employee. If either the employer or the employee does not so mutually agree, employer-provided general purpose leave may not be used to supplement FAMILI wage replacement benefits. Any such agreement shall be documented and retained by the employer.
- (c) Mutual agreement between the employer and the employee is not necessary in order for an employee to use paid sick leave prior to receiving FAMILI leave benefits.

C. Workers’ compensation and unemployment benefits.

- (1) Pursuant to Md. Code Ann., Lab. & Empl. § 8.3-702 (e), an individual receiving Unemployment Insurance benefits from the State shall not be eligible for FAMILI benefits.
- (2) Pursuant to Md. Code Ann., Lab. & Empl. § 8.3-702 (e), an individual receiving Workers’ Compensation wage replacement benefits shall not be eligible for FAMILI benefits.
 - (a) However, an individual receiving Workers’ Compensation benefits for a permanent partial disability may be eligible for FAMILI benefits.

Benefit Payment Process.

A. Payment Schedule.

- (1) The first payment to a recipient shall be within 5 business days after the completed application is approved or the FAMILI leave has started, whichever is later.
- (2) Subsequent benefit payments to recipients shall be made every 2 weeks until the benefit period ends.

B. Payment Methods.⁴

C. Overpayment.

- (1) Upon learning of overpayment of benefits, notice will be sent to the recipient. Included in the notice shall be a statement that:
 - (a) Repayment of the overpayment is being sought; or
 - (b) A waiver of the repayment is being offered.
- (2) In cases of seeking repayment, the recipient shall have thirty (30) days to reply to the notice as follows:
 - (a) The recipient agrees to repay; or
 - (b) The recipient requests a waiver.
- (3) Repayment. Repayment of benefits may be sought from an individual who received benefits under this title if:
 - (a) Benefits were paid erroneously or as a result of willful misrepresentation by the recipient; or

⁴ The Division is still in the process of determining vehicles for benefit payment and will make announcements when that information becomes available.

DRAFT FAMLI Claims Regulations Outline – FOR DISCUSSION PURPOSES

- (b) A claim for benefits under this title is rejected after the benefits were paid.
- (4) Waiver. Repayment of benefits may be waived if:
 - (a) The error in payment was not due to any false statement, nondisclosure of material fact, or misrepresentation by a covered individual; or
 - (b) The repayment would be against equity and good conscience or administrative efficiency.
- (5) Denial of waiver. In the event a recipient requests a waiver and the request is denied, the recipient may file a request for reconsideration.⁵
- (6) In the event an EPIP seeks reimbursement of an overpayment of benefits, the EPIP administrator shall notify the Division of its intent to seek reimbursement simultaneously with its notice to the recipient.

D. Underpayment.⁶

⁵ The Division has not yet finalized this process.

⁶ The Division will address underpayment of benefits in its appeals outline.