

Draft EPIP Regulatory Outline For Discussion Purposes Only

Numerous stakeholders submitted feedback to the FAML I Division regarding our Equivalent Private Insurance Plan (EPIP) Discussion Document. Below is a draft outline of the Division’s current thinking which was heavily influenced by the stakeholder feedback. The Division welcomes additional comments, feedback and suggestions as we further refine our thinking.

This section focuses on the employer responsibilities for administering an EPIP. The process for an insurance company to receive approval for a commercially insured EPIP eligible product will be developed in conjunction with the Maryland Insurance Administration.

The Division will be accepting written comments via email - FAML I.policy@maryland.gov and asks that comments be submitted by July 13.

Equivalent Private Insurance Plans

General. All Maryland employers shall participate in the State Plan until the effective date of an approved EPIP.

Definitions¹

- A. The Administration (Maryland Insurance Administration).
- B. Adverse determination.
- C. Actuarially determined event specific utilization rate.
- D. Approved plan.
- E. Certification.
- F. Commercially insured product.
- G. The Department (DOL).
- H. The Division (FAML I).
- I. EPIP Administrator.
- J. EPIP.
- K. Effective plan.
- L. Family leave plan.
- M. Jurisdiction.
- N. Medical leave plan.

¹ Please note, the FAML I Team is in the process of creating a list of terms to be defined via regulation. We are aware that “Employee” and “Localized in Maryland”, among others, are priorities for stakeholders but have not yet been developed for discussion. Definitions will be proposed in later phases.

- O. Reconsideration (internal EPIP appeal process).
- P. Self-insured EPIP.
- Q. State Plan.

Requirements.

A. **COVERAGE:** The EPIP shall cover all individuals employed by the employer whose work is localized in Maryland. Benefits shall be paid to any employee who would be eligible for benefits under the State Plan, had the employer chosen coverage under the State Plan. [cross reference to localization section and eligibility to be added]

B. **FORMS:** All EPIP forms required to be completed by employees/healthcare providers shall either be the state forms or meet or exceed the standard set by the state forms for simplicity of language, ease of use, and concision.

C. **LEAVE PURPOSES:** The EPIP shall allow family and medical leave insurance benefits to be taken for all purposes specified in the State Plan. [cross reference to statutorily defined leave purposes to be inserted]

D. **DURATION OF LEAVE:** The EPIP shall allow covered employees to take family leave or medical leave in a benefit year for periods of time equal to or longer than the duration of leave provided under the State Plan. [cross reference to statutorily defined leave purposes to be inserted]

E. **BENEFIT AMOUNT:** The EPIP benefit calculation shall result in a weekly benefit that is equal to or greater to what the benefit would be if the employee received benefits from the State Plan. [cross reference to statutorily defined leave purposes to be inserted]

F. **NEW EMPLOYEES:** If an employee has less than 680 hours of service with the employer, the EPIP benefit amount shall be the higher of the benefit amount that would be based on wages with that employer or the regular base period for the State Plan.

G. **INTERMITTENT LEAVE:** The EPIP shall allow leave to be taken in increments or nonconsecutive periods as provided under the State Plan.

H. **NO CONDITIONS OR RESTRICTIONS:** The EPIP shall not impose additional conditions, restrictions, or barriers on the use of leave beyond those explicitly authorized by the State Plan.

I. **EMPLOYEE CONTRIBUTION AMOUNT:** The amount at which employee contributions are made to the EPIP cannot exceed the amount an employee would contribute under the State Plan.

J. **CONTRIBUTION START DATE:** Approved self-insured plans may begin payroll withholding of employee contributions on the date payroll withholding would begin for employers in the State Plan, or on the date the EPIP is approved, whichever is later. EPIPs with a commercially insured product cannot begin collection until the policy effective date.

K. **DEDICATED USE OF EMPLOYEE FUNDS:** Ensure employee contributions that are received or retained under an EPIP are used solely for EPIP expenses and are not considered part of an employer's assets for any purpose other than paying benefits under this subtitle.

L. **DECISION REQUIREMENTS:** Provide for decisions on benefit claims to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals shall include the amount of leave approved, reason for any leave denied, the weekly benefit amount, and, if the employee has less than 680 hours of service with the employer, a statement indicating

how the employee may contact the Division to request the eligible employee's average weekly wage amount calculated using the standard base period. Denial decisions shall include the reason(s) for denial of benefits. All decisions shall include an explanation of an employee's right to request a reconsideration and the process by which a reconsideration is requested.

M. RECONSIDERATION: Provide procedures for processing benefits claims and appeals of adverse benefit determinations in accordance with COMAR 31.10.30.03. The employer or administrator has 10 business days from the date a completed reconsideration request is submitted to reply to the employee.²

N. TIMEFRAME FOR APPROVALS: Provide that the EPIP administrator shall notify an applicant within 5 business days if a submitted application is considered incomplete. Provide that the EPIP administrator shall make a decision on whether to allow the claim within 10 business days of receiving a completed application. Once approved, the EPIP administrator shall issue the first payment of any benefits to an employee within 5 business days after approving the claim or the start of leave, whichever is later. Subsequent benefit payments shall be provided no less frequently than every 2 weeks. If the benefit is being paid on the employer's regular payroll schedule, the benefit may be paid according to the existing paycheck schedule as long as the first benefit is included in the first regularly scheduled pay date after the approval.

O. EMPLOYEE NOTICE: Ensure written notices, incorporating all Division requirements³, are provided at the same times as provided under the State Plan to all Maryland employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

P. NO OFFSET: EIPs shall not reduce the weekly benefit paid to an eligible employee based on any other benefits received other than unemployment insurance or worker's compensation (not including partial permanent worker's compensation).

Q. CONFIDENTIALITY OF RECORDS: Employers shall follow FMLA confidentiality rules regarding employee medical information.

R. EPIP FORMS: The employer shall submit to the Division any forms to be used by employees and/or health care providers under the approved EPIP at least thirty (30) days prior to making them available to employees for usage.

S. LANGUAGE ACCESS: Employers shall ensure their documents comply with the transcription and translation requirements applicable to the Department under Md. Code Ann., State Gov't § 10-1103.

T. STATE PLAN DEFAULT COVERAGE: Employees remain eligible for benefits under the State Plan on and after January 1, 2026, and until the effective date of the approved EPIP.

U. BENEFIT CARRY-OVER: Benefits awarded to an employee shall be paid by the plan that awarded the benefits for the full duration of the employee's approved FAMLI benefits claim. The Division, in its sole discretion, may pay benefits to a covered individual that an EPIP was obligated to pay, if the Division determines that (1) some benefits went unpaid; and (2) it is unlikely that the covered individual will otherwise be paid such benefits. If the Division does pay benefits to a covered individual that a EPIP was obligated to pay, then the employer is indebted to the Division for such amounts, and the Division may pursue all legal means to collect such amounts from the employer.

² The appeal from a reconsideration will be handled in the Appeals Phase of the Informal Regulatory Engagement Process.

³ The Division intends to post to its website a list of notice requirements.

Job Protection and Retaliation. Participation in an EPIP does not negate employer obligations with respect to job protection and retaliation under Md. Code Ann., Lab. & Empl. §§ 8.3-801(b)(2)(v) and 8.3-904.

State Plan Premiums must be remitted to the Department on a quarterly basis unless an employer has an effective EPIP or the employer meets the requirements for a Declaration of Intent as described in the Temporary Provisions Section.

Employer Application Process

A. EPIP selections must be approved by the Division before an employer is exempt from remitting mandatory premiums to the State Plan. Employers may select to provide a commercially insured product that is approved as an EPIP eligible product by the Administration and/or a self-insured plan.

B. To obtain approval of an EPIP, the employer shall first submit a completed application for an EPIP to the Division. Applications may be submitted at any time, and the Division will review applications as they are received.

C. An approved application becomes effective on the first day of the calendar quarter following the date of approval by the Department.

D. EIPs shall make benefits available to all covered employees localized in Maryland employed by the employer.

E. An application shall include:

(1) Basic identifying information including a designated contact person for the employer, with that person's name and contact information;

(2) An indication of whether the EPIP is a commercially insured product and/or a self-insured plan.

(3) A copy of the employer's self-insured EPIP and/or if any part of the EPIP is in the form of a commercially insured product approved as EPIP eligible by the Administration, a copy of that insurance policy form;

(4) If any part of the EPIP is in the form of self-insurance, proof of solvency as described in paragraph G of this section;

(5) If any part of the EPIP is a self-insured plan, attestation that the employer has complied with the separate account requirements;

(6) A copy of the notice provided to employees;

(7) An attestation, completed by the employer, that:

(a) the employer understands, and the EPIP satisfies, the requirements set forth in Title 8.3 and its implementing regulations.

(b) the forms used by the employees and/or health care providers shall be no more onerous than the forms used by employees and/or health care providers under the State Plan.

(c) the employer is responsible for ensuring quarterly wage and hour data is submitted to the Division by the employer or the EPIP Plan Administrator;

(d) the employer is responsible for ensuring annual informational reports are submitted by employer or the EPIP Plan Administrator as requested by the Division; and

(e) the employer acknowledges that the EPIP shall need to be updated if the law changes

(8) Other information required by the application form.

F. Approved EIPs shall take effect on the first day of the calendar quarter following the date of approval. Approval may take at least 60 days from the date of application so that the Division has sufficient time to review the application, and the employer has sufficient time to provide notice to employees of the change in coverage.

G. Special Requirements for a Self-Insured Plan

(1) Proof of Solvency

(a) Employers desiring to establish a self-insured EPIP must provide proof of assured funds as demonstrated by obtaining a surety bond issued by a surety company authorized by the Administration to transact such business in MD.

(b) The bond amount shall be an amount equal to one year of expected future benefits as determined by the following formula: Product of the number of employees⁴ rounded up to the nearest 50 multiplied by 12 weeks multiplied by the actuarially determined event specific utilization rate multiplied by the maximum benefit amount.

(c) A surety bond shall be issued on a form prescribed by the Division.

(d) The bond shall include a statement that the bonding company shall give ninety (90) days' notice of its intent to terminate coverage to both the principal and the Division, except that if the bonding company is terminating liability because it is issuing a replacement bond, it may do so without providing prior notice. In the event of a replacement bond, the surety company and the employer shall notify the Division no later than fourteen (14) days after its effective date.

(e) The employer shall maintain surety bond coverage for the duration of its approved self-insured EPIP.

(f) The Division may review the bond annually to ensure that the amount corresponds with the wage projections as described in this rule. The employer shall provide the Division with any documentation necessary to review the bond amount. If the Division determines that the bond amount shall be increased, the employer shall do so to maintain EPIP approval. If the Division determines that the bond amount exceeds the projected wages, the employer may reduce the bond amount to match such projected wages.

(g) The Division may execute on and collect on the bond amount if the employer's EPIP approval is terminated, voluntarily or involuntarily, pursuant to the rules provided in the Termination section.

(2) Separate Account

(a) Employers who are approved to self-insure to provide FAMILI benefits shall establish and maintain a separate account: (1) into which all employee contributions are deposited and kept; and (2) from which only benefits shall be paid.

⁴ Reminder, it's all MD employees, not just those employees w/ 680 hours.

(b) Funds collected from employee contributions must be

- i. held separately from all other employer funds
- ii. separately accounted for
- iii. made available for audits

(c) The separate fund does not represent the extent of liability of the employer.

(3) Recertification. Employers with a self-insured plan shall submit a recertification application every three years.

Oversight of EPIPS

A. The Division may, at any time at its sole discretion, initiate a review of an EPIP to determine whether the EPIP is in accordance with Title 8.3 and its implementing regulations.

B. Upon initiation of a review and request by the Division, the EPIP administrator and the employer shall provide all information and documentation necessary to conduct the review.

C. The Division shall ensure confidentiality of records.

D. Information and documentation requested by the Division shall be provided within ten (10) business days after the request. The Division may extend the deadline where good cause for such an extension exists.

E. Failure to cooperate with the Division's review of a private plan may result in the Division's withdrawal of the private plan's approval.

Dispute Resolution.

A. Denial to an employer of an EPIP

An employer denied an exemption from the requirement to remit mandatory premium contributions due to the denial of an application to establish an EPIP, and that believes, in good faith, that its EPIP meets or exceeds the requirements for exemption may request higher review by the Division.

B. Denial of benefit⁵

C. Denial to carrier of an approval of a product

A commercially insured product shall be approved through the Administration's processes. Appeals shall also be handled through the Administration's normal processes.

Recording Keeping Requirements.

A. An EPIP administrator shall collect and maintain documentation of the following for a minimum of five years:

- (1) Applications for benefits;

⁵ Per FN2, an employee's appeal from denial of a benefit will be discussed in the Appeals Phase of the Informal Regulatory Engagement Process.

- (2) Benefits paid, including payment dates and amounts;
- (3) Adverse determinations of benefits applications;
- (4) Internal appeals received;
- (5) The outcome of internal appeals received;
- (6) Documents, including wage data, containing the information upon which benefits determinations were based; and
- (7) Records of any premium contributions it collected from employees.

B. Within thirty (30) days of the Division's written request, an EPIP administrator or an employer with an approved EPIP shall provide any documentation either is obligated to maintain. If the employer or EPIP administrator requests an extension and provides good cause for the extension, the Division may extend the 30-day deadline. If the employer or EPIP administrator does not provide the requested documentation by the deadline, the Division may withdraw its approval of the EPIP.

Reporting requirements for employers who have selected an EPIP to State

A. While employers may authorize TPAs to report on their behalf, employers shall be responsible for the accuracy of the data and subject to any adverse actions related to inaccurate, late, or incomplete reporting.

B. All reported figures shall represent totals for each employer, not each EPIP

C. Annual Reporting Requirements include:

(1) Each employer shall provide in an electronic template provided by the Division claims level data. For each claim, the following elements shall be requested:

- a) Employee Taxpayer Identification Number;
 - b) Birthdate;
 - c) Gender;
 - d) Worksite location;
 - e) Benefit amount;
 - f) Length of leave;
 - g) Initial claim disposition (approved, denied, partial);
 - h) Date of submission;
 - i) Date of decision;
 - j) Date of reconsideration request;
 - k) Date of reconsideration decision; and
 - l) Final claim disposition (approved, denied, partial).
- (2) Contribution rate for employees.
 - (3) Total amount collected from employee contributions.
 - (4) Total amount disbursed.

(5) Fund balance (*if self-insured*).

D. Employers shall report wage and hour data quarterly.

Annual Election. Employers shall submit an annual election with the Division every year.

Changes to EPIP.

A. An employer shall notify the Division, in writing, of any material change to an approved EPIP within sixty (60) days before the change is to take effect. The notification shall include:

- (1) A detailed explanation of all material changes; and
- (2) A statement describing how any material changes do not reduce benefits or impose new requirements on covered employees beyond what would be provided and required under the state plan.

B. The Division shall review the material change to the approved EPIP, and shall determine whether the material change impacts EPIP approval. The Division shall make a good faith effort to confer with the employer regarding any impact to continued EPIP approval, and to notify the employer of its determination within thirty (30) days of the employer's notification to the Division. In no event may an employer make a material change without first obtaining Division approval and providing at least thirty (30) days' notice to its employees.

C. Material changes to an approved EPIP include, but are not limited to:

- (1) Changing from one EPIP to another;
- (2) Changing the EPIP to reduce benefits or leave types;
- (3) Changing the EPIP to increase claims adjudication timeframes;
- (4) Changing the EPIP to increase benefits payment timeframes; or
- (5) Changing the EPIP to increase the information collected from employees to apply for or receive benefits.

D. Material changes to an approved EPIP do not include:

- (1) Updating the EPIP benefits application form in a way that does not make the form more onerous than the state's benefits application form;
- (2) Changing business or contact information;
- (3) Correcting typographical errors; or
- (4) Increasing benefits or leave types.

E. A change to an approved self-insured EPIP shall not extend the duration of its certification.

Termination rules effective July 1, 2027

A. Voluntary

- (1) An employer cannot voluntarily terminate unless they have been in their EPIP for 1 year.

- (2) An employer may terminate its approved private plan by notifying the Division in writing at least thirty (30) days before the voluntary termination's effective date.
- (3) The employer shall notify employees of the voluntary termination no later than thirty (30) days before the termination's effective date.
- (4) An employer shall continue the approved private plan's coverage through the termination's effective date.
- (5) A voluntary termination shall become effective on the first date of the calendar quarter following the expiration of the 30-day period.

B. Involuntary. The Division shall involuntarily terminate approval for a EPIP when the Division determines that terms or conditions of the plan have been violated or that conditions necessitate termination.

- (1) Causes for plan termination shall include, but not be limited to, the following:
 - (a) Failure to pay benefits in the amount and duration required by Title 8.3 and its implementing regulations;
 - (b) Failure to make timely benefit determinations or reconsiderations;
 - (c) Failure to pay benefits in the amount and duration required by the EPIP, where the EPIP provides benefits in a greater amount or duration than is required by Title 8.3 and its implementing regulations;
 - (d) Failure to pay benefits within the timeframes and in the manner specified by Title 8.3 and its implementing regulations;
 - (e) Failure to maintain an adequate surety bond in accordance with Title 8.3 and its implementing regulations;
 - (f) Misuse of EPIP money, including the use of EPIP funds for anything other than paying out benefits, or transferring EPIP funds from an account established pursuant to Title 8.3 to any account not exclusively for holding EPIP funds;
 - (g) Failure to submit reports or comply with other compliance requirements as required by Title 8.3 and/or its implementing regulations; or
 - (h) Failure to otherwise comply with Title 8.3 and its implementing regulations.
- (2) The Division shall conclude that the terms or conditions of the plan have been violated, and therefore involuntarily terminate approval of the EPIP, if the Division determines that the employer or the EPIP administrator has violated the EPIP's terms and/or Title 8.3 and its implementing rules, has willfully or recklessly violated the EPIP's terms and/or Title 8.3 or its implementing rules, or has otherwise violated the EPIP's terms and/or Title 8.3 or its implementing rules in such a way that indicates a widespread compliance concern.
- (3) If the Division withdraws approval of an employer's EPIP, the Division shall issue to the employer and the EPIP administrator a Notice of Termination of EPIP Approval with an effective date fourteen days after the date of the Notice. The employer may request a higher-level review of the withdrawal before its effective date by filing with the Division.

- (4) Notice requirements to employees if involuntarily terminated: The notice should include the effective date of the change in plans and explain the alternative process for employees to access the benefits they are entitled to under the statute.
- (5) Involuntary terminations shall result in the establishment of past-due mandatory premium contribution debt in the amount that would have been owed to the State Plan had the employer been in the State Plan for a period of one year prior to the date of the Notice of Termination of EPIP Approval.
- (6) Involuntary terminations may result in civil penalties against employers, including but not limited to execution on and collection of any bond amount.

Temporary Provisions.

A. Declaration of Intent

- (1) If an employer is unable to submit an EPIP application, the Division will allow an employer to submit a Declaration of Intent (DOI) acknowledging and agreeing to the following:
 - (a) The employer intends to provide an EPIP to all its employees that meets all the requirements of this section.
 - (b) Beginning on the quarter that starts 30 days or more after submission of the DOI and continuing until the Division has approved the EPIP, the employer shall hold all contributions due in an escrow account. The employer can collect employee contributions or make contributions on behalf of the employee.
 - (c) The DOI must be received 30 days prior to the quarterly payment date to avoid remitting payments for that quarter.
 - (d) The employer must submit an equivalent plan application no later than September 1, 2025.
- (2) If an EPIP is approved, the employer can return employee contributions or use them for benefits.
- (3) If the employer does not submit an EPIP application or the DOI is cancelled, the employer is liable for remitting an amount equal to the sum of all unpaid employer and employee contribution payments due for the periods contributions were not made. The funds held in escrow may be used toward this purpose.
- (4) The Division may cancel a DOI for:
 - (a) Misuse of employee contributions withhold or retained by the employer;
 - (b) Failure to adhere to applicable FAMLI program requirements;
 - (c) Withheld contributions exceeding the amount that would have been charged in the State Plan;
 - (d) Failure to respond timely to a reasonable request from the Division for information about the EPIP or DOI;
 - (e) Failure to submit quarterly wage and hour reports;
 - (f) Failure to submit an EPIP application; or

(g) Denial by the Division of an EPIP application.

(5) The final date to submit a DOI is August 1, 2025.

B. In the event an employer is approved to be exempt from contribution to the State Plan Fund via a DOI or approved EPIP between October 1, 2024, and January 1, 2026, the employer shall remain in an EPIP until at least January 1, 2029. If the EPIP is terminated, either voluntarily or involuntarily, prior to January 1, 2029, the employer must remit to the Division any employee contributions in their possession and past due employer contributions back to October 1, 2024 minus contributions the employer made to the Fund prior to approval of the EPIP.

C. Special Transition Considerations

(1) Employers offering a commercially insured product as part of their EPIP may provide a confirmation of coverage letter or other evidence of a sold Administration approved EPIP eligible product to the division in lieu of the employer's policy in an application submitted prior to December 1, 2026. The insurance policy form must be submitted to the Department by January 15, 2026.

(2) During the first three years of a self-insured EPIP, the employer must apply for annual recertification.