Feasibility Analysis On Administration Of Paid Family And Medical Leave In Colorado

COLORADO
Department of
Labor and Employment

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EXECUTIVE SUMMARY

Pursuant to Colorado Senate Bill 19-188 (the Act), the Colorado Department of Labor and Employment (CDLE or the "Department"), was required to conduct a study analyzing the feasibility of contracting with a third party to administer parts of a paid family and medical leave program for all employees in the state as an alternative to state administration of all aspects of such a program. In determining whether a third party should administer parts of a paid family and medical leave program, the CDLE was required to consider whether doing so would be **cost-effective, in the short term and in the long term for both the state and covered individuals, and lead to more efficient program administration and benefit management while assuring quality, worker experience, affordability, coverage, and program accountability, as compared to if the state administers all aspects of the program.**

The Department received limited data while conducting its analysis of third-party versus state administration of a paid family and medical leave program in the state. Specifically, the Department received one formal response to its request for information from third-party vendors and limited information from states with emerging and existing paid family and medical leave programs. As such, there is limited conclusive evidence of cost and program efficiencies to third-party administration versus state administration of a paid family and medical leave program. However, based on input received, the Department did determine that variations in the models that would most likely impact the short-term and long-term costs, affordability, efficiency, quality, coverage, and program accountability would primarily be based on:

- The complexity of the legislation and its relative conformity to existing programs like Family Medical Leave (FML) and Short-Term Disability Insurance (STDI);
- The third-party's ability/inability to leverage their existing technology infrastructure;
- The third-party vendor's reliance on self-attestation for wage and hour data versus integration with state data systems to gather such data;
- The third-party's ability/inability to accept appeals to initial decisions on a claim;
- The level of duplication of costs and technology needed between the state and the third-party vendor depending on areas of program responsibility;
- And the state's lack of an existing technology infrastructure to leverage for the full administration of a paid family and medical leave program in the state.

Based on information collected, there is a small market of potential third-party vendors that have existing technology and administration infrastructures that they could leverage to administer paid family and medical leave in the state. In that scenario, the short-term and long-term costs to leverage the third-party technology and administration infrastructure would depend upon the complexity of the state's legislation. The more similar the legislation is to existing federal family, medical, and short-term disability laws, the less costly it would be for third-party administration of a paid family and medical leave program in the short term.

Conversely, if the state were to administer this type of paid insurance in the state, the state would be required to build and launch a technology and administrative infrastructure which would present a significant short-term cost and risk to the state. However, the state-administered model would be better able to conform with the exact language of the legislation as the technology and resulting administration model would be built to the specifications of the legislation resulting, likely, in higher quality, exact needed program coverage, and the highest program accountability. This scenario may result in lower long-term costs as compared to a third-party vendor administration.

As another consideration, if the third-party vendor relies on self-attestation from employers for information on wages and hours worked for covered individuals, this would most likely result in increased improper payments and require the state to expend more resources long-term on audits, enforcement, and fraudulent claims investigation. Further, if a third-party vendor is not able to accept appeals to claims from interested parties, it would require the state to implement its own technology platform to allow for program appeals. This would increase the short-term and long-term cost to the state for the initial launch and on-going maintenance of such a system, would result in duplication of processes, and increase the complexity to the public who would be required to navigate two different systems for different stages of a claim.

A possible barrier to third-party administration of paid family and medical leave program in the state would be the third-party's inability to accept and track claims from individuals not currently employed but who would otherwise be eligible to receive paid family and/or medical leave (should unemployed individuals be eligible in future state legislation). The state would be required to duplicate and/or produce data that would allow the third-party to administer claims for these individuals. This presents a short-term and long-term cost to the program as the state would be required to potentially launch and maintain technology capable of tracking and reporting this information to the third-party.

As a distinct consideration, if the state were to utilize a private market model, the same challenges would continue to exist as with a single third-party vendor. In a private market model, also referred to as an employer mandate, legislation would mandate that all employers provide a meaningful number of weeks or months of paid leave coverage and benefits directly to the workers. The employer typically funds benefits either by self-insuring or purchasing a paid leave insurance policy

(for a deeper analysis of this model, please see **Appendix C)**. A potential concern with a private market model is related to rating and premium charging schemes that may have unintended consequences and result in discrimination against employee populations that are more likely to need or use paid family and/ or medical leave. Additionally, in order to ensure compliance by all employers in the state, the state (or a dedicated entity) would necessarily have to be the insurer of last resort and provide coverage for those workers that would otherwise not be insurable through the employer's insurance. In this scenario the state would likewise be required to launch its own technology platform and create processes for accepting and adjudicating claims, processing appeals, and ensuring compliance. This would result in the same high short-term start-up costs to the state for technology and administration as would be required in a state administered model.

In summary:

- A state-administered model would result in significant short-term costs and risks to the state as a result of launching the necessary technology platform and administration processes for administering paid family and medical leave in the state. However, a state-administered model would ensure that any technology and processes are built to the exact specifications of any state legislation and would avoid duplication of processes, ensure coverage for all employers and eligible individuals, reduce oversight and appeals costs associated with higher improper payment rates, and reduce complexity to the public. As compared to a third-party vendor, all these factors would likely result in lower long-term costs in administration, higher program accountability, and a better customer experience through one all-inclusive service portal.

- The use of a third-party model would significantly reduce the state's short-term costs of launching a technology and infrastructure system to administer paid family and medical leave benefits in the state. However, significant variation from existing federal family, medical, and short-term disability laws, would increase the short-term cost of using a third-party vendor, would necessitate duplication of processes, and would increase complexity for employers and covered individuals. Moreover, there would be an ongoing, and likely significant, cost to the state to track and enforce overpayment/improper payment cases as a result of the third-party's reliance on employer attestation for wages and hours worked of covered individuals.

- In a private market model, which would necessitate that the state (or other entity) take the role of insurer of last resort, the state would have all of the costs and risks associated with a state administered model.

Recognizing the complexity of this analysis the Department has attempted to provide a high level scenario table of potential advantages along two key factors that will impact the legislative variables outlined for consideration- legislative conformity to existing federal leave programs, such as FML, and presence of a data interface to verify eligibility based on wages/ hours worked in the state. This is intended to provide the reader with which option (third party administration versus state administration) might be the most optimal/ logical given those key factors. In providing this table overview the following assumptions were made, in accordance with the information received in this analysis process.

- All scenarios account for the lack of an existing technology infrastructure for the state to leverage to operate a paid family and medical leave program.

- All scenarios assume that a third party would have some existing technology infrastructure to leverage, but that system would not be capable of accepting appeals on initial benefit determinations by interested parties.

- All scenarios assume, based on existing states' best practices to eliminate conflicts of interest, that the Department (or other delegated state agency) would operate any/all of the program elements, as needed, in the following areas: general oversight of any third-party provider; approval and oversight of private plans; ongoing program and employer compliance audits as well as administrative enforcement; dispute resolution and appeals by interested parties.

Legend	
=	No evidence of advantage
✓	Likely advantage
✓✓	Likely considerable advantage

Scenario 1	Legislation Conforms to FML/ STDI and Third Party Leverages State Data Interfaces	
Likely Variable Advantage	**Third Party Administration**	State Administration
Short Term Cost Effectiveness	✓	
Long Term Cost Effectiveness	✓✓	
Program Efficiency	=	
Quality	=	
Worker Experience		✓
Affordability	✓	
Coverage	=	
Program Accountability	=	

Scenario 3	Legislation Deviates from FML/ STDI and Third Party Leverages State Data Interfaces	
Likely Variable Advantage	**Third Party Administration**	State Administration
Short Term Cost Effectiveness	✓	
Long Term Cost Effectiveness	✓	
Program Efficiency	=	
Quality	=	
Worker Experience		✓
Affordability	✓	
Coverage	=	
Program Accountability	=	

Scenario 2	Legislation Conforms to FML/ STDI and Third Party Does Not Leverage State Data Interfaces	
Likely Variable Advantage	Third Party Administration	**State Administration**
Short Term Cost Effectiveness	✓✓	
Long Term Cost Effectiveness		✓✓
Program Efficiency		✓
Quality		✓✓
Worker Experience		✓
Affordability	=	
Coverage		✓
Program Accountability		✓

Scenario 4	Legislation Deviates to FML/ STDI and Third Party Does Not Leverage State Data Interfaces	
Likely Variable Advantage	Third Party Administration	**State Administration**
Short Term Cost Effectiveness	✓	
Long Term Cost Effectiveness		✓✓
Program Efficiency		✓
Quality		✓✓
Worker Experience		✓
Affordability		✓
Coverage		✓
Program Accountability		✓✓

A. APPROACH

In order to meet the requirements outlined in Senate Bill 19-188 (the Act), the Department conducted a broad cost-comparison study to consider:

- The estimated difference in administrative costs charged by third-party administrators as compared to a state-run paid family and medical leave program;
- The estimated difference in claim processing speeds;
- The state's costs to oversee any third-party administration, including costs to conduct annual audits and review regular reports from the third party;
- The ability of a third party to satisfy necessary worker privacy and confidentiality requirements;
- The ability of a third party to access existing state data to effectively interface with the department's systems and information;
- The potential costs and challenges associated with terminating a third-party contract due to quality or compliance concerns following the implementation of the program, as well as the feasibility of timely substituting administration by the state or a different third party without a disruption in benefits and administration;

The Department's study also addresses the effect of using a third-party administrator on:

- The claims appeals and administrative enforcement aspect of a paid family and medical leave program;
- The premium rates setting and collection of premiums aspect of a paid family and medical leave program;
- The approval and oversight of private plans;
- Management of elective coverage of employees who may not be included in the program.

To complete this analysis the Department sought information from multiple sources, including responses from third-party vendors to a published request for information (RFI) and information from states with existing and emerging paid family and medical leave programs. The section following immediately below provides an overview of the information collected in preparation of its analysis. After an overview of the sources of information, the study analyzes the elements required by section 8-13.3-303 C.R.S. Specifically, the study is organized to address each section in the following order:

Subsection (1)(b) analyzes the third-party vendors' capacity to administer a paid family and medical leave program in the state;

Subsections (1)(c) and (1)(d) address the differences and impacts of a third party administering a paid family and medical leave program as compared to state administration; and,

A conclusion section, pursuant to subsection (1)(a), on the impact of a third-party administration versus state administration of a paid family and medical leave program as it pertains to short term and long term cost-effectiveness, program efficiency and quality, worker experience, affordability, coverage, and program accountability.

B. SOURCES OF INFORMATION

This section provides an overview of the information sought by the Department via the publication of an RFI and surveys sent to states with emerging and existing paid family and medical leave plans.

REQUEST FOR INFORMATION

On June 17, 2019, the Department published an RFI from third-party administrators that would be willing to administer single or multiple parts of a paid family and medical leave program. The initial submission deadline was July 8, 2019, however because of the limited response to the solicitation, the Department extended the submission deadline to July 12, 2019. At the conclusion of the submission period, the Department received one formal response and one informal response as an email from a vendor who elected not to formally respond to the RFI but wanted to provide policy considerations on the topics of rate setting, administration, eligibility, and private plan opt-outs. The Department's analysis primarily relies upon the information provided in the formal response. However, to the extent that the informal response was relevant and informative to the study, the information was considered and is specifically noted in the analysis in the RFI Requirements section (discussing the requirements of subsection (1)(b) of the statute) of this report.

The RFI asked third-party administrators to broadly describe their ability to meet several operational, cost, system, and technical requirements of a potential paid family and medical leave program. For an overview of the RFI requirements, please see **Appendix A**.

INFORMATION PROVIDED BY STATES WITH EMERGING AND EXISTING PAID FAMILY AND MEDICAL LEAVE PROGRAMS

To help inform its study, the Department also surveyed states with emerging and existing paid family and medical leave programs. The surveys were sent to New Jersey, Rhode Island, California, New York, Hawaii, Massachusetts, Washington State, and Washington D.C. Two additional states, Connecticut and Oregon, passed paid family and medical leave bills as CDLE was attempting to obtain information on other states. Attempts were made to obtain information from these two additional states. Survey responses were received from New Jersey, Rhode Island, Massachusetts, Washington D.C., and California. Additionally, the CDLE also had follow-up calls with the states of New Jersey, Hawaii, and New York to obtain more detailed information about each state's program. The information CDLE sought pertained to the cost and staff necessary to administer the states' various programs and the associated cost of launching and maintaining the states' technology used to administer the programs.

As part of that information gathering process the Department gathered the high level demand and benefit data points for the longest standing state paid family medical leave programs as a means to give a sense of scale to a potential equivalent program in Colorado. This table provides those data points:

State	*Years of Data Collection for Benefits	*Total Number of Claims Paid in All Years of Operation	*AVG Benefits Paid/ Year	AVG Claims Paid/ Year	Reported Operations FTE	**Estimated Civilian Labor Force July 2019	Estimated AVG Utilization	Combined AVG Utilization
CA	14.5	12,000,000	$5,172,413,793	827,586	1,444	19.34M	4.28%	4.63%
NJ	9	1,100,000	$500,000,000	122,222	125+	4.45M	2.75%	
RI	5	189,000	$172,000,000	37,800	97+	0.55M	6.87%	
CO						3.15M		

Source * http://www.nationalpartnership.org/our-work/resources/workplace/paid-leave/meeting-the-promise-of-paid-leave.pdf
Source ** https://www.bls.gov/news.release/laus.t01.htm

For a comprehensive list of information sought from the states, please see **Appendix B**.

C. ANALYSIS

RFI REQUIREMENTS

The RFI solicited specific information, as outlined in the Act, which the CDLE was required to use in its analysis of the feasibility of contracting with a third party to administer a paid family and medical leave program in the state. What follows is a discussion and analysis of the gathered information along the prescribed parameters of the RFI regarding the third party's:

I. Prior experience with paid family and medical leave insurance or providing monetary benefits in Colorado related to employees taking leave from work due to serious health conditions, parental bonding, or other family and medical leave purposes [subsection 8-13.3-303 (1)(b)(I)].

II. Commitment to affirmative action, diversity, equity, and inclusion policies [subsection 8-13.3-303 (1)(b)(II)].

III. Language access experience and cultural competency [subsection 8-13.3-303 (1)(b)(III)].

IV. Current or expected employee pay rates and benefits [subsection 8-13.3-303 (1)(b)(IV)].

I. Prior Experience Findings:

The vendor who provided the only formal response is a disability and paid medical leave and leave management insurance carrier currently offering private-option plans in states with existing paid family and medical leave programs and disability leave programs. The vendor is also currently implementing capabilities to administer private-option insurance plans in states with recently emerging paid family and medical leave programs.

The vendor offers a comprehensive premiums collection system with the ability to track and manage varying contributions from all public- and private-sector workers, self-employed workers and independent contractors that opt into the program and potentially all employers (with qualifying exceptions). The vendor is able to track employees' hours worked within the state by all program included workers (via attestation provided by employers), track average weekly earnings for all participants, track movement of workers among employers, and generate premiums-related communication.

The vendor also offers a comprehensive web-based benefits payment system with the ability to track unique recipient benefits usage in cumulative hours up to a maximum allowable amount. The web-based system allows for electronic submission of claim requests either by the employee or the employer. Once a leave request has been submitted, a leave management analyst sends the employee a packet of information which includes the initial claim letter, the Family Medical Leave Act (FMLA) Eligibility and Rights and Responsibilities Notice, and any other required information to support the request for leave, such as the appropriate Certificate of Health Care Provider form. The letter explains what is required of the employee as well as the time-frame for submission of documentation. An email is also sent to the employer informing them of the leave request. For all non-expedited short-term disability and leave management claims that run concurrently, an analyst also makes a call out to the claimant within one day of claim intake to set expectations about the next steps for the claim.

The vendor also adjudicates claims. If the leave is associated with a disability claim, the information obtained to support the disability claim is used to support the leave request. If the disability claim is approved, the leave is also approved. The vendor's leave management system automatically receives information that staff review and use to determine a worker's eligibility to the requested type of leave.

The vendor's system is able to track benefit payments per week up to a maximum allowable amount with calculation of payments based on a stratified or progressive wage replacement coverage system; whether benefit usage is for contributing employee or other qualifying persons; track employee dates, duration of usages and return to work date; apply fines and mark individuals as ineligible for the program; collect overpayments; and, analyze/predict potential fraudulent claims. The vendor's system can also track numerous qualifying events that would allow for benefits payments and the system can be programmed to track for qualifying events consistent with state legislation and regulations.

Based on information received from states who rely on third-party insurance companies to provide paid family and/or medical leave, the private insurance companies generally collect payment of premiums, provide the initial claim intake processes, and issue initial eligibility and entitlement decisions while any oversight and appeals functions are handled by the state.

II. Commitment to Affirmative Action, Diversity, Equity, and Inclusion Findings:

Based on vendor responses to the RFI solicitation, the CDLE has not received tangible evidence of discrepancy between state-run and third-party administration of a paid family medical leave program with respect to commitment to affirmative action, diversity, equity, and inclusion policies.

III. Language Access Findings:

The vendor provides access to a web-based portal, which includes mobile compatibility, viewing claim status, viewing payment information, viewing contact information for the claim analyst (including name and direct extension), enrolling/updating direct deposit information and submitting premiums payments, uploading materials, and tracking accounts. In its response, the vendor also initially indicated that its web-based portal was Americans with Disabilities Act (ADA) compatible. The vendor indicated that the web-based portal is only available in English.

The vendor does provide an Interactive Voice Response (IVR) telephony system, which offers callers the option to select English or Spanish at the beginning of the call. When the caller selects Spanish as the primary language, the IVR system presents a Spanish language version of the vendor's menu. The IVR system provides options to assist with payments, materials, accounts, and more.

Otherwise, the vendor also has access to an interpreter service if callers contact customer- service agents either to request assistance with their accounts or to file an initial claim. In the event that a caller needs to speak with a representative or the caller remains on the line, the system directs them to a representative. If a representative is not immediately available, the caller joins a queue until a representative is available to answer a call. The customer-service representatives have access to Language Line Services, an interpreter company. The vendor uses this interpreter service when the vendor receives a call where a caller speaks a language other than English. Language Line Services identifies the language of the caller and acts as an interpreter for the call. Language Line Services has interpreters for 200 languages. Language Line Services is also available during the claim-intake process. This process is similar to that utilized by a state administering a state-run program.

Possible differences that may exist between a third-party vendor administering a paid family and medical leave program and a state administering this program are additional costs that would be incurred for multilingual translation of materials and additional costs associated with printing the materials. The vendor is able to provide standard communications in Spanish. Marketing materials and other forms can be customized and translated however there is a fee for creation and printing those materials. The vendor did not provide specific information about the total cost for customization.

Alternatively, under a state-administered approach, the state enters into a contract with an interpreter/translation company whereby funds are allocated for the provision of interpretation and translation services. When the state requires interpretation or translation services, the state requests the service and is billed for the service within a specific agreed upon range of prices, which are predictable. In either scenario those expenses would be added to the administrative cost of the program and may likely be equal under a third-party or state-run program.

IV. Employee Pay Rates and Benefits Findings:

The vendor did not disclose this information as it is considered confidential and proprietary information. Based on this response, an analysis of the third party's approach to this element is not available.

Generally speaking public-sector employees tend to have comparable wages to private-sector employees at lower level positions but have lower base wages at middle to higher level positions. On the whole, across all positions, total benefits can tend to be more generous under public-sector employment as compared to the private sector.

In terms of a cost comparison of third party versus state run, no clear cost analysis conclusions can be drawn in the present or in future years based on the information available.

STUDY REQUIREMENTS ON FEASIBILITY OF CONTRACTING WITH A THIRD PARTY

As outlined in the Act, the CDLE study on the feasibility of contracting with a third party to administer a paid family and medical leave program in the state must consider:

I. The estimated difference in administrative costs charged by third parties as compared to a state-run paid family and medical leave program [subsection 8-13.3-303 (1)(c)(I)].

II. The estimated difference in claims processing speeds [subsection 8-13.3-303 (1)(c)(II)].

III. The state's costs to oversee any third party administration, including costs to conduct annual audits and review regular reports from the third party [subsection 8-13.3-303 (1)(c)(III)].

IV. The ability of a third party to satisfy necessary worker privacy and confidentiality requirements [subsection 8-13.3-303 (1)(c)(IV)].

V. The ability of a third party to access existing state data or to effectively interface with the department's systems and information [subsection 8-13.3-303 (1)(c)(V)].

VI. The potential costs and challenges associated with terminating a third-party contract due to quality or compliance concerns following implementation of the program, as well as the feasibility of timely substituting administration by the state or a different third party without a disruption in benefits and administration [subsection 8-13.3-303 (1)(c)(VI)].

VII. A timeline that presumes a paid family and medical leave program that is established by July 1, 2020; begins public education and outreach on January 1, 2022; establishes the funding stream on January 1, 2023; and starts paying benefits on January 1, 2024 [subsection 8-13.3-303 (1)(c)(VII)]

I. Estimated Cost Comparison Findings:

Existing State Programs Cost Analysis

Attempts were made to obtain information regarding administration costs from all other states with various types of paid family and medical leave programs. (For more information on the various model types available for the administration of paid family and medical leave, please see Appendix C.) Only four states responded, including California, New Jersey, Rhode Island, and Hawaii.

California

California's program was built on an existing TDI infrastructure and technology platform. The ongoing technology costs were unavailable however the state reported $117 million was required to launch the technology and the state leveraged an existing technology system.

The state reported utilizing a total of 1,444 full-time equivalent staff to administer benefits, audits, and appeals. Of the total reported, 1,397 full-time equivalent staff are designated to benefits, 7 full-time equivalent staff are designated to audits, and 40 full-time equivalent staff are designated to appeals.

The state combines its premiums collections with other state programs and was unable to report operating costs or staffing levels for the premiums portion of the program.

New Jersey

The New Jersey program was also built on an existing TDI infrastructure and technology platform. The state was unable to provide information on the initial technology cost to launch the paid family and medical leave program in the state. Based on information provided by New Jersey:

The total cost to administer the program in New Jersey is $30 million annually and requires approximately 125 full-time equivalent staff members. This includes cost of administering premiums, benefits, and audits, as well as operational costs and other costs such as legal, human resources, and budget and finance.

Appeals on family and medical leave insurance claims are filed to an outside tribunal and not computed into the cost of staffing or administering the program in New Jersey, though clearly there are FTE and expenses associated with that function not captured here.

The state also reported that the annual technology costs incurred by the state to continue to administer the program is a total of $3 million and requires 10 full-time equivalent staff members.

Rhode Island

Rhode Island reported that at the time that it launched the family paid leave insurance portion of the program, the state likewise leveraged the existing technology system that it used to administer its temporary disability insurance and temporary caregiver insurance programs that were already in existence. Based on the response received from Rhode Island:

The total cost to administer the program in the state is $11.3 million annually for premiums, benefits, appeals, and audits.

Premiums collection operations utilizes 13 full-time equivalent staff members, benefits utilizes 71 full-time equivalent staff members, audits utilizes eight (8) full-time equivalent staff members, and appeals utilizes five (5) full-time equivalent staff members, for a total of 97 full-time equivalent staff members to administer the program in the state.

The ongoing maintenance and technological support for the state program utilizes four (4) full-time equivalent staff members.

The total technology cost, both for initial launch and for ongoing annual maintenance was not available.

Hawaii

Hawaii implemented an employer mandate to administer only short-term disability insurance to workers of the state. By contrast, employers in Hawaii are not mandated to provide paid family leave insurance. According to the information provided by Hawaii:

The state does not provide a state option for disability leave, medical leave, or family leave.

The state also does not conduct random audits on employers to enforce compliance. Instead, the state investigates employer compliance only if the state receives a direct complaint against an employer.

Once a claim is adjudicated by a private insurer, employees and employers file an appeal to the state and the appeal is administered by the state.

The current appeal rate is low due to the limited nature of Hawaii's program and the limited enforcement measures Hawaii has for ensuring compliance.

Due to the limited nature of the program and the reliance on the private insurance market to provide coverage, the state shares administrative costs with Worker's Compensation and other benefits programs.

The state also currently relies solely on a paper-based system and is not able to provide administrative costs regarding the temporary disability program in the state.

Reported annual operation costs for the program are approximately $221,500.

Vendor Responses:

The vendors, via their response to the RFI, did not provide estimated administrative costs for administering a paid family and medical leave program in the state therefore an analysis of the specific cost for this vendor is not available. This is largely because the parameters of such a program would likely relate directly to associated costs.

However, the vendor did provide parameters that would both minimize and increase the cost of administration. Currently, the vendor has an existing technology infrastructure that it could leverage to administer a paid family and medical leave program in the state. The technology infrastructure would include the ability to track:

- Employee hours via employer attestation (including for all public and private sector workers and self-employed workers or independent contractors).
- Average weekly earnings for all participants.
- Movement of workers among employers.
- Benefit payments.
- Portability of benefits among employers.
- Numerous qualifying events.
- Whether benefit usage is for contributing employees or other qualifying persons.
- Employee duration of leave and return to work date.

The technology infrastructure can also apply fines and mark individuals as ineligible for the program, collect overpayments, and provide a self-service web-based application.

The web-based portal allows customers to

- Submit a claim,
- View claim status,
- View payment information,
- View contact information for the claim analyst,
- Enroll and update direct deposit information, and
- Access email alerts.

Additionally, the vendor can also leverage the current platform to:

- Send electronic billing statements where parties can view invoices.
- Perform real-time calculations.
- Print actual invoices through the self-service employer and employee portals.
- Permit the employer to make a one-time premium payment or set up automatic recurring payments.

The vendor is not able to use its current infrastructure to allow parties to file an appeal to the determinations issued by the vendor's analysts. Further, the current vendor infrastructure is programmed to track claims for family medical leave (FML) and short-term disability insurance (STDI) claims.

However, if the state of Colorado legislation deviates significantly from the parameters and protections of the FMLA and STDI laws, the cost of customizing the vendor's existing platforms and infrastructure would increase. Any added complexity may also ultimately impact the timeline and long-term administration costs. Customization would include, but is not limited to, broader definitions of qualifying events, broader definitions of "family member," job protection extending past FMLA definitions, and a longer number of weeks of qualifying leave. Similarly, the current infrastructure does not allow the vendor to track leave for claimants who are not currently employed or not working for any employer. If, under possible legislation in Colorado, eligible claimants includes those individuals that are currently separated from employment (yet have sufficient earnings/hours worked in the claim period to qualify for paid leave benefits in case of a qualifying life event), the vendor would not be able to administer this benefit under its existing infrastructure model.

Additionally, there are limitations to third-party administration of paid family and medical leave in the state based on the limited nature of the vendor's ability to leverage or access state data systems. Specifically, the vendor's current system tracks only claims for currently employed workers. The system does not allow tracking of hours and earnings of unemployed workers who may otherwise be eligible to receive paid family and medical leave benefits. Because the vendor's system relies on the attestation of employers for verification of hours and earnings, the vendor is unable to determine unemployed workers' eligibility to benefits. Individuals who are not currently employed may not be able to file a claim using the vendor's current systems. More broadly, the inability to independently verify workers' hours and earnings may increase the instances of improper payment of benefits as well as fraud investigations. A higher rate of improper payment would increase the state's administrative cost of enforcing and hearing appeals on overpayment decisions.

Another cost consideration is that any appeal filed by a party to a decision would need to be filed directly with the state as the vendor's current system is not able to accept appeals from employers or claimants. In order to be able to process appeals, the state would be required to launch and administer an analogous technology system for administration of appeals and enforcement functions. Requiring parties to use two different systems for the filing of a claim and the appeal of a claim would result in duplication of technology costs and could result in confusion and undue burden on the employers and claimants.

The state's necessity for an analogous technological system that could support the administration of appeals and oversight and enforcement mechanisms of the state would most likely result in a duplication of initial stand-up costs under a third-party administration model. In order for the state to effectively

oversee and enforce proper payments, proper reporting, and general compliance with the law, the state would be required to track hours and earnings for all workers, to accept and process all appeals, and to conduct audits to ensure that participants are in compliance with the law.

Alternatively, if the state administers a paid family and medical leave program for employees in the state of Colorado, it is the position of the state's Office of Information Technology (OIT) technical and procurement subject matter experts that the ability to reuse an existing technical platform (such as an STDI program in other states) to satisfy the requirements of a paid family and medical program system is not feasible.

This position was formulated after a high-level assessment by OIT of inventoried systems known in use and is based on the following conclusions:

- Technical complexity exceeds the current functional scope of any existing system, or the ability of any commercially available addition to existing systems, so as to be considered viable for a turn-key approach to the requirements.

- For a project of this magnitude in cost and scale, a competitive solicitation process is to the benefit to the State.

Therefore, under a state-administered model the initial development and short term start-up cost of a technology system would be high, but the system developed could be customized to fit the needs of the specific legislation passed for the administration of a paid family and medical leave program in the state, as well as adjust readily to future legislative modifications to the program. The ability to customize the technology would ensure that workers who are not currently employed would remain able and eligible to collect benefits in compliance with any state legislation. The state would also be able to access state databases more easily and with the inherent customization of a technology system, ensure that earnings and hours reported by employers are correct, which would ultimately lower the rate of improper payment and, more likely than not, reduce long-term administration costs for the state. Additionally, only one technology system would be necessary for initial claim filing and for any subsequent appeal or enforcement action, allowing for a more efficient product for users, reducing confusion, ensuring greater accuracy, and reducing short-term and long-term administration costs by removing duplicate processes.

II. Claim Processing Speed Comparison Findings:

The vendor makes FMLA decisions within five business days of receipt of all certifying documents, as required by the regulations. The 2018 actual percentage of FMLA determinations made within five business days of receipt of all certifying documentation was 94.93%. Certifying materials were gathered within 30 days, in compliance with regulations. However, the vendor can adjust this timeline, if necessary, to meet the specifications of any state legislation and regulations.

By comparison, for the state's unemployment insurance program, claim information must be received by the Division of Unemployment Insurance (the "Division") within 12 days for the initial request for information from employers. Any follow-up information requested by the Division from either employers or claimants is due back no later than 7 days after the Division makes the request. To be timely, the Division is required to issue its decisions by a specific deadline, which can vary depending upon the type of claim. The end-to-end processing times are set for 19 to 25 days on average, depending upon the type of claim. According to Division records, the average number of days needed by a staff member to issue a decision in 2018 was 20.29 days. The percentage of decisions issued within the Division's deadline is 91.0%.

While the state issued its decisions on average within 20 days of receiving certifying information from parties, which is fewer than the 30 days currently averaged by the third party vendor, the third party vendor has indicated that it is able to reduce processing time based on legislation requiring a shorter processing period. Therefore, processing times would most likely be equal between the state and the third party vendor model. In 94.93% of instances, the third party vendor issued its decisions within 5 business days following the 30-day information collection period, equaling an average 35-day processing period. The Division receives its information on average by the 20th day, and issues 91.0% of all decisions by the 25th day of when the claim is first established. Therefore, both entities require an average of 5 days to issue an initial decision on a claim.

III. State Costs to Oversee Third-Party Administration Findings:

Based on an analysis of other states' paid family and medical leave programs, and experience with operating Unemployment Insurance and Workers' Compensation programs, the CDLE estimates to solely operate oversight of a third-party administration would approximate up to (depending on the size and scope of the program) 70 FTE (equates to approximate $6-$6.5M staffing budget) as follows:

- Appeals- 10 FTE
- Integrity/ Audits- 30 FTE
- Direct Program Support (Doc. Mgmt, Policy, Outreach, Communications)- 20 FTE
- Indirect Program Support (Mgmt/ Budget/ Finance, HR, Contracts)- 10 FTE

Separately, it is challenging to accurately estimate associated technology start up and ongoing costs for a state oversight role. It is believed that some existing technology infrastructure could be leveraged but costed customizations should be expected.

IV. Satisfy Privacy and Confidentiality Requirements Findings:

The vendor complies with the Gramm-Leach Bliley Act and all applicable federal and state laws to adhere to the vendor's own privacy and protection information. The vendor also requires its employees to follow the companies internal policies and sign a confidentiality agreement acknowledging his or her personal obligation to privacy or security concerns. The vendor may release certain confidential information with a signed confidentiality agreement and a signed claimant authorization.

The vendor indicated that it outsources certain non-customer facing functions to firms in the United States and overseas. The vendor makes efforts to protect and monitor, through contractual, technological, and process safeguards, any information that it outsources. Additional information was requested from the vendor about the specific type of content it outsources to third parties outside of the United States however the vendor did not provide any additional responses.

Alternatively, a state-administered approach would allow for the collection of all sensitive or confidential data within one state-run department or division reducing the risk that such data would be exposed to a potential breach.

V. Access to State Data or Interface with Department Systems Findings:

The vendor did not specify to what extent it is familiar with state OIT policies and technical standards. However, the vendor has indicated that it follows internal information technology policies and technical standards and that it is willing to work with the state to interface its systems with existing state data or department information. It should be assumed that conformance to OIT policies and standards would not be an issue but would likely come at an additional expense.

The interface would not include a claimant or employer's ability to directly file an appeal through their online portal to an initial finding by the vendor regarding benefits entitlement or eligibility. The state would therefore necessarily be required to build or support an alternate/outside system to receive claimant and employer appeals.

In current operations, the vendor does not interface with state systems and thus relies on employer attestation for hours and earnings verification for any currently employed worker filing a claim. Therefore, the vendor's system does not have the ability to track hours and earnings for claimants that are not currently employed and it does not have the ability to independently verify the information provided by employers for any currently employed individuals. Based on the vendor's reliance on self-attestation from employers, any additional limitations that the vendor may have interfacing with department systems necessary to verify the accuracy of claim information, would likely result in delays in claims processing, an increase in improper payment rates, and increased long-term administration and oversight costs for the state.

Alternatively, a fully state-administered program, and associated dedicated paid family and medical leave technology platform, would ensure compliance with all existing OIT policies and technical standards as well as interface with all needed state systems to improve quality controls. As background on that concept, in January-February 2019 CDLE and OIT issued a joint RFI solicitation to gauge estimated costs for a vendor to deliver a customized technology solution for the state. Estimates from that solicitation, based on eight vendor responses, ranged from $30M-$45M to build a customized solution. It was noted in many of the RFI responses that some level of savings on that cost could be achieved if Colorado legislation for such a program was modeled closely to that of other states and a common vendor was used to develop the technology platform.

So, while there would be a significant initial cost to launching and administering technology to support a state-administered paid family and medical leave program, it would include the capacity for claimants and employers to file claims, view claim status, track claims, pay premiums, and file appeals through one integrated source versus requiring users of the program to file a claim through a vendor and then be required to use a state-run platform to file appeals and track ongoing progress of the claim under appeal.

VI. Costs and Challenges of Terminating a Third-Party Contract Findings:

Based on the information received from the vendor, it is not possible to estimate potential costs associated with terminating a third party contract with an in-flight, operating program.

However, it can be reasonably assumed, based on a need for continuity of operations and ongoing customer needs, that a change over in program administration would be cumbersome, would require some level of cost duplication for a period of time (assume three months minimum), and could result in poor customer service and customer confusion for a period of time. Beyond that, more than likely, there would be significant challenges to maintain quality and compliance standards in the event of administration changeover. As one example, in such a circumstance, it would need to be decided if legacy program data (including in-flight claims) would be migrated and converted from one vendor to the next (which would entail complex coordination and significant cost) or if there would be a hard date cutover from one vendor to the next- which would result in loss of data continuity and a need to maintain the legacy vendor administrator, as well as associated costs, for a period of time.

Overall, the prospect of an administration change over from a single vendor mid operations is daunting, complex, and inefficient from a cost and time perspective. A program design similar to that of New York (private market with minimal state insurance operations) or Hawaii (employer mandate) is far better to absorb the prospect of a vendor leaving the administration space simply because those states do not rely on a single vendor but rather leverage a marketplace of multiple vendors for administrative purposes. Even in such a design however, if the state wanted to have a 100% program compliance with the law, a vendor (or the state itself as is the case in New York) would need to operate as the administrator/ insurer of last resort.

VII. Presumed Timeline Findings:

Based on vendor responses to the RFI solicitation, the Department has not received tangible evidence of discrepancy between state-run and third-party administration of a paid family medical leave program with respect to being able to meet the provided timeline. However, the parameters of potential legislation would largely influence the probability to meet those deadlines for the state and a third party respectively.

In a third-party administered program, there is a presumption that there is an existing technology platform to leverage, and thus no system to stand up and deploy. In such a situation, the capacity to meet the proposed timeline is increased if the parameters of the paid family and medical leave program largely conform to those of existing FMLA and STDI. Further, the state would likely need to be amenable to a vendor system that does not interface with state systems and relies on employer attestation to verify employee eligibility, such as hours worked and earnings during a potential claim period. If the legislation deviates from FMLA and STDI, and if state interfaces are expected to verify wages and/ or hours worked, then the complexity and cost increases and customization would likely be needed to the vendor systems. With that customization naturally comes some level of risk to meet the aforementioned timeline. It cannot be concluded that meeting that timeline, even with system customization, cannot be achieved assuming additional cost burdens can be overcome.

As discussed, the state of Colorado does not have an existing STDI system to leverage as a means to collect premiums and pay family and medical leave benefits as was done in longstanding programs like California, New Jersey and Rhode Island. As such, if a paid family and medical leave program was fully administered by the state, then Colorado would be required to stand up its own technology platform via a competitive vendor bid process, as was the case for several states like Washington state, Washington D.C., and Massachusstettes. In those instances, given the systems are being stood up for this distinct purpose, the technology can conform directly to the legislation and therefore does not necessarily need to align to FMLA and STDI parameters. The states that stood up their own technology platforms to administer a paid family and medical leave program demonstrated that the state/ territory was able to meet a timeline similar to that as described above. Based on these experiences from other states, the likelihood of success within those timelines increases if the following conditions exist:

- State dollars are provided immediately to fund the technology system build (Note--other states have then paid back the state once premiums for the program are collected) and

- There is a swift and seamless means to procure a capable vendor to build the technology system.

STUDY REQUIREMENTS ON THE EFFECTS OF USING A THIRD PARTY

As outlined in the Act, the CDLE study must specifically address the effect of using a third-party administrator on the following aspects of a paid family and medical leave program:

I. Claims appeals and administrative enforcement [subsection 8-13.3-303(1)(d)(I)].

II. Premium rates setting and collection of premiums [subsection 8-13.3-303(1)(d)(II)].

III. Approval and oversight of private plans, if applicable [subsection 8-13.3-303(1)(d)(III)].

IV. Management of elective coverage of employees who may not be included in the program [subsection 8-13.3-303(1)(d)(IV)].

I. Claims Appeals and Administrative Enforcement Findings:

Vendor responses were asked to assume that the CDLE (or other delegated state agency) would operate any/all of the program elements, as needed, for claim appeals and administrative enforcement. As such, vendors were informed that those elements would not need to be considered in the vendor's staffing, technology, or cost considerations.

The only impact therefore of using a third party administrator in this area is that the state would need to bear some costs to develop a claims appeals and enforcement technology system.

II. Premium Rates Setting and Collection Findings:

The rates setting and collection of premiums would not differ significantly or have a major effect if administered by a third party versus the state.

Upon receipt of the complete request for proposal with necessary rate and plan information, the vendor would provide a financial review response.

Based on the policy recommendations offered in the informal response to the RFI solicitation, insurers should be allowed to set rates for paid family and medical leave with oversight by the Division of Insurance and Department of Labor. The vendor also recommends providing an industry rating option to offset the cost to employers with a larger number of employees more likely to require paid family and medical leave.

The vendor provides self-administered billing options which allow employers to pay premiums via check, money order and electronically. The vendor also sends out monthly premium statements which include the premium rates, cost of coverage, rates based on insured benefits or per unit, and a monthly premium amount due and the due date. Based on all employees' coverages, the employer will specify the total premium due based on a total census count (as attested by the employer), volume, and premium for each line of coverage as detailed on the monthly bill. The employer will also report the current census, volume and premium due, and calculate the current month's premium.

The vendor also offers leave of absence direct billing for an added cost and electronic billing options via its web-based portal which allows users to update invoices online, perform real-time calculations and print actual invoices through the self-service portal. Employers can also make one-time payments or set up automatic recurring payments. The web-based portal also requires employers to update and submit actual monthly census, volume, and premium dues on the employer portal.

III. Approval and Oversight of Private Plans Findings:

The vendor recommends that the state's Department of Insurance require insurers to file and receive approval from the Division of Insurance and Department of Labor on any offered private plans in the state. This model is largely congruent with other states' processes.

The vendor also recommends that the state provide employers and carriers with a policy template to streamline the review and approval process for the state and employers when employers file for a private plan. The vendor also recommends that the state separate medical leave (short-term disability leave) from family leave as most employers already provide STDI through a private carrier, satisfying the statutory requirements. This would lessen the burden on the employer and the state's administrative and oversight costs, because the maximum duration of time allowed can be calculated by each type of leave without coordination.

The vendor additionally recommends allowing for underwriting of the risk to ensure program solvency and that the employee's financial burden is equal to or less than the financial burden of a state plan.

IV. Management of Elective Coverage Findings:

The vendor that submitted a formal response to the RFI solicitation tracks earnings and hours across multiple employers and for independent contractors and those who are self-employed who elect coverage for paid family and medical leave. However, as discussed, the vendor relies on employer and employee/worker attestation regarding the number of hours worked for the purposes of determining an individual's eligibility to benefits. While this reduces the cost of administration to both the vendor and the state, the reliance on self-attestation may decrease the quality and accuracy of the information obtained. Lack of quality or accuracy may lead to delayed benefit payments to employees/workers, possible overpayments in benefits, and an increase in state audits and appeals of decisions to the state which would result in higher administrative costs for the state.

The vendor's reliance on an active employee attestation model does not allow the vendor to receive or track claims from claimants that are not job-attached but would otherwise be eligible to collect paid family and medical leave insurance. As such, under a third-party administered paid family and medical leave program, certain members of the population, particularly those that may experience less job stability and arguably have an increased need for such a benefit, might be excluded.

Alternatively, state administration would require submission of reports by employers, independent contractors/self-employed individuals on a recurring basis to track hours worked and the number of employers in any claimant's base period. The state's ability to integrate multiple sources of information when determining claimant eligibility would reduce delays in benefit payout, reduce the risk of improper payment, and reduce the need for appeals and audits.

D. CONCLUSIONS

Below are the conclusions found based on the requirements of **the Act, which must include the impact of a third-party administration versus state administration of a paid family and medical leave program as it pertains to short-term and long-term cost-effectiveness, program efficiency and quality, worker experience, affordability, coverage, and program accountability** [subsection 8-13.3-303 (1)(a)].

The foremost challenge the Department faced producing this report was the limited availability of data sets. Specifically, CDLE was only able to obtain one formal third-party vendor response to the published request for information (RFI). While the responding vendor provided information that it would generally be able to administer paid family and medical leave in the state, the vendor was not able/ willing to provide cost estimates for technology and administration of a paid family and medical leave program in the state. However, the dialogue with the responding vendor did help to illuminate factors for consideration in utilizing any third party for potential administration.

Additionally, a limited number of states currently have enacted legislation for paid family and medical leave and fewer still have existing programs in place. The Department made numerous attempts to obtain information from all states with emerging and existing paid family and medical leave programs and received a limited response. While some states were able to provide specific information on the cost and staffing levels necessary to launch and administer the state paid family and medical leave program, other states did not collect or maintain some or all of this data. Furthermore, some states also launched the paid family leave component after the initial implementation of a paid medical leave component. As such, it was difficult to capture the total cost of the implementation for both the family and medical components of those states' programs. It was also difficult to extrapolate the information for comparison to Colorado since Colorado does not currently have either paid family or medical leave programs in place. This limitation also presented unique challenges in attempting to conduct a cross-analysis of the information from all states that could be useful in analyzing the challenges and benefits of a third-party versus state administered paid family and medical leave program.

Despite the described challenges, the Department was able to make certain key conclusions regarding third-party versus state administration of a paid family and medical leave program in Colorado.

THIRD-PARTY ADMINISTRATION

Third-Party Administration Advantages:

- Regardless of the complexity of the law, if the third-party vendor has an existing technology platform and administration model it could be leveraged to launch a paid family and medical leave in the state. In such a scenario the technology and administration short-term costs and short-term risks would most likely be lower than those required for the state to launch and administer such a program.

- Assuming that the vendor does have a means to integrate state data interfaces into everyday business operations to verify wages and hours of current and former employees, then a third-party operated system is likely either equivalent or superior to a state-run system on all but one variable considered, regardless of the complexity of the law (see the scenario table in Executive Summary).

- If the legislation closely conforms to existing federal family and medical leave laws then the proposed timeline will be most easily met in a third-party administration model.

Third-Party Administration Challenges:

- If the state's paid family and medical leave legislation diverges significantly from the current federal family, medical, and short-term disability laws, the overall cost to administer the program in the third party model would increase due to needed customizations by the third party.

- Reliance on self-attestation for information verification (meaning no state data interfaces) would mean an inability to track and administer benefits for individuals who are separated from employment but qualify for paid family and/or medical leave, and more broadly likely increase the instances of improper payments and fraud.

- If the need ever arose, transitioning from one third-party vendor to another would be cumbersome, costly, and have a bearing on customer service for a period of time.

STATE ADMINISTRATION

State Administration Advantages:

- Assuming a third party could not/ would not integrate state data interfaces to verify key claim information, then a state-run system likely holds virtually every variable advantage, aside from short term costs (see the scenario table in Executive Summary).
- Because the state would be launching a new technology system and building administration processes in compliance with the legislation, this would ensure that the technology and administration conforms with existing laws and does not exclude any eligible individuals and entities.
- A state administration model would eliminate the need for duplicate processes and reduce complexity for the public who would be accessing one state agency and one technology system for all aspects of paid family and medical leave benefits (i.e. information reporting, payment of premiums, claim filing, tracking of information, payment of benefits, appeals, etc.) thus, resulting in an advantage for worker/ customer experience.

State Administration Challenges:

- The state of Colorado currently does not have an existing technology infrastructure to leverage a paid family and medical leave program; therefore, short-term costs and short-term risks will always be higher as compared to a third party.
- The state's ability to meet the stated timeline would also be dependent on the availability of sufficient funding to meet the specifications of the legislation and the speed of procurement.
- A state-run program may lack administrative efficiencies that might exist in the private market which may impact operational costs adversely.

NOTES ON A COMPETITIVE PRIVATE MARKET MODEL

- The greater conformity with existing federal family, medical, and short-term disability laws, the lower the short-term and long-term costs to administer paid family and medical leave in a private market.
- One challenge with a private market model is related to rating and charging schemes that may have unintended consequences and result in discrimination against employee populations that are more likely to need or use paid family and/or medical leave.
- Additionally, in order to ensure compliance by all employers in the state, the state (or designee) would necessarily have to be the insurer of last resort and provide coverage for those workers that would otherwise not be insurable. In order for the state to fulfill this function, it would necessarily be required to launch its own technology and create administration processes for accepting and adjudicating claims, processing appeals, and ensuring compliance. This would result in the same start-up costs to the state for technology and administration as would be required in a state administered model.

FINAL THOUGHTS

As was outlined in the Executive Summary, two key elements to consider may be the complexity of the legislation and its relative conformity to existing programs like Family Medical Leave (FMLA) and Short Temporary Disability Insurance (STDI), as well as the third-party vendor's reliance on self-attestation for wage and hour data versus integration with state data systems.

In a third-party administration model, the complexity of the legislation will likely have a significant impact on the initial short-term and long-term costs to launch and administer a paid family and medical leave program. If the third-party vendor relies on party attestation for verification of hours worked, then it does not have the capacity to verify the accuracy of data reported against state interfaces. The reliance on self-attestation would likely increase the instances of improper payments and fraud as well as duplication of technology costs and administrative compliance costs.

In a state-run model, the complexity of the legislation and its relative conformity to existing programs is a moot point as in any scenario the state would be required to build a new technology system to administer the program. However, the development of a new technology system, by necessity, will create unavoidable and significant up-front costs and risks for the state. Conversely, a state-run system will have data integration points with all needed state systems which drive down improper payments, reduce duplication of systems, and allow for an end-to-end customer-service experience.

In conclusion, the Department's recommendation is that the decision point for third-party administration versus state administration comes back around to the design of the legislation that may be passed as well as which of the variables considered in this analysis the legislature and Governor's Office wishes to prioritize.

APPENDICES

Appendix A: RFI Requirements

RFI REQUIREMENTS TABLE
Request for Information Requirements

Core Competency and Organizational Maturity

Describe capacity to meet the system and operational requirements of a paid family and medical leave program, including:

- Ability to operate a comprehensive premiums collections system
- Capacity to operate a comprehensive web-based benefits payment system
- Program development and ongoing costs
- Estimated technology costs for each phase of the establishment and implementation of a paid family and medical leave program within the state
- Program administration and technical capacities

Provide prior experience with paid family and medical leave insurance or providing monetary benefits in Colorado (or other states) related to employees taking leave from work due to serious health conditions, parental bonding, or other family and medical leave purposes

Describe the commitment to affirmative action, diversity, equity, and inclusion policies

Detail language access experience and cultural competency

Provide current or expected employee pay rates and benefits.

Ability or Willingness to Deliver Program Elements

Describe the functional program elements that could be administered, such as:

Premiums Collection System: Describe the capacity to operate a comprehensive premiums collection system with the ability and capacity to:

- Track and manage varying contributions from areas such as all public and private sector workers
- Track employee hours worked within the state
- Track weekly earnings for all participants
- Track the movement of workers among employers

Web-Based Benefits System: Describe the capacity to operate a comprehensive web-based benefits payment system with the ability and capacity to perform functions such as:

- Tracking recipient usage of available leave
- Adjudicating claims
- Tracking benefit payments
- Tracking portability of benefits among employers
- Tracking numerous qualifying events
- Collecting overpayments and applying fines
- Interfacing with various governmental technology and private sector systems

Provide the estimated short-run and long-run costs for

- Delivery of the functional services
- Number of staff (full-time equivalents) that would be required to deliver those functional areas.

Program Development and Ongoing Costs

Provide details on any existing technology infrastructure that could be leveraged.

Provide details on the projected cost differential that would be borne by the state/its citizens (if any) to operate the program with the existing infrastructure.

Describe the estimated administrative costs to operate a comprehensive program with cost projections over a 10-year period.

Include estimated cumulative numbers staffing counts, costs, and technology costs for specific phases included in the RFI.

Program Administration

Provide information on estimated claims processing speeds in determining benefit eligibility and making benefit payments.

Describe the role the third party administrators envisioned, if any, in the annual premium rates setting.

Describe the process by which the third-party administrator would ensure effective and efficient administration of benefit payments and collection of premiums, while ensuring ease of use for customers.

Detail how exception processes, such as the management of elective coverage of employees who may not be included in the program via their employers due to possible legislative exemptions, would be handled.

Provide standard contract language, if any, required by the third-party administrator in case of termination caused by quality or compliance issues.

- Include the associated operational impact that might be borne by the state/its citizens if the contract was terminated.
- Describe efforts the third-party administrator would undertake to prevent disruption to benefits and administration in case of contract termination.

Detail any intended use of subcontractors to provide services and what roles and responsibilities, if any, would be assigned to subcontractors in the administration of a paid family and medical leave program.

Technical Capacity

Describe the ability to align with the State of Colorado Governor's Office of Information Technology (OIT) policies and technical standards, which include ensuring that any data obtained in the administration of a paid family and medical leave program:

- Not leave the contiguous continental United States.
- Is never transported, stored, or transmitted on any portable devices.

Provide operational and technical capacity to satisfy necessary participant/customer privacy and confidentiality requirements.

Identify operational and technical capacity to access existing state and private-sector data to effectively interface with the department's systems and information while remaining in compliance with OIT policies and technical standards.

Identify familiarity with Colorado's OIT standards (included in the RFI) and to assess how the technology for a paid family and medical leave program would meet and remain in compliance with those security standards.

Appendix B: Survey Questions

- The CDLE surveys sent to states with emerging and existing paid family and medical leave programs requested the following information:
- Whether the state's paid family and medical leave program was funded by premium contributions from the employees, employers, or both;
- Total approximate contracted cost to build the technology systems required to administer the program for necessary functional areas (premiums, benefits, audits, and appeals/dispute resolution);
- Whether the state leveraged an existing IT system for the purposes of the program;
- Whether the program generally adheres to federal performance metrics of another program in place (such as unemployment insurance);
- Total approximate cost to staff the program internally during the IT system(s) build/ramp-up period;
- Total number of staff (full-time equivalent) to staff the program internally during the IT system(s) build/ramp up period;
- Total number of staff (full-time equivalent) and total cost required annually to support the technology used to administer the program;
- Total administrative cost annually of maintaining the technology used to administer the program;
- Estimated timelines associated with each of the elements of standing up the program (Request for Proposal, Contracting, IT System Premiums Build, It System Benefits Build, other IT elements);
- The approximate total number of staff (full-time equivalent) and total annual cost required annually to administer the program in identified functional areas (premiums, benefits, audits, appeals/dispute resolution);
- Approximate total annual cost of office supplies, telephone, rent, furniture, IT hardware and software, IT security, legal support, human resources, budget and finance, and marketing;
- Whether the state's plan excludes employers of a certain size/type from compulsory participation in the state's paid family leave program, and, if so, the size/type excluded, the estimated percentage of total employers excluded from participation, estimated percentage of workers excluded from participation in the state's plan, impact to those in the labor force as a result of the exclusion; and percentage of those excluded employers that voluntarily enrolled in the state's paid family and medical leave program.

Appendix C: Summary of Paid Family and Medical Leave Models

Published Literature

Based on a review of published literature regarding the administration of paid family and medical leave programs, three model types were identified: Universal, contributory social insurance programs (exclusive state fund); contributory social insurance programs with regulated private options; and employer mandate programs. What follows below is a summary of the discussion of each design option for each model type:

Universal, contributory social insurance program, exclusive state fund

A universal contributory model is a classic social insurance program design that is the prevailing design choice among the vast majority of paid leave programs in industrialized nations across the world and is most similar to the Social Security and Unemployment Insurance benefits programs.[1] The primary features of this program are that the workers contribute to an exclusive state social insurance fund throughout their careers in return for an earned benefit.[2] This model is primarily financed through payroll contributions paid by workers and/or their employers however these contributions can be supplemented with general revenues or an earmarked tax, particularly for expenses such as administrative costs, infrastructure and infrastructure startup, maintenance and improvement, and program evaluation.[3]

A program that primarily relies on payroll contributions is highly sustainable as the funding stream is likely to be relatively consistent year to year.[4] Additionally, a state's entire workforce comprises a large pool of funders and beneficiaries, making this type of model less susceptible to dramatic swings year to year and ultimately more sustainable.[5]

Moreover, as state and federal governments have decades of experience administering social insurance programs, such as Social Security, Unemployment Insurance, and Medicare, a new state paid leave program could leverage the administrative processes and structures developed in those established programs, allowing for straightforward program management.[6] From an administrative standpoint, this type of model is the simplest as it relies upon one exclusive state fund.[7] Alternatively, allowing employers to opt out of the state fund by self-insuring or purchasing private coverage would increase the complexity for state administrators who would need to manage the state fund and monitor compliance for employers who opt for alternative coverage options.[8]

The impact of this type of model on workers is relatively minimal on the workers' take-home pay as the payroll taxes are typically low.[9] Workers are also not required to reveal personal details of their family or personal health circumstances to their employers as the benefits are administered by the state.[10] In states where employers share contributions, they also typically pay relatively modest costs.[11] State-managed programs may also save employers money required to administer paid leave benefits themselves, which is especially challenging for small businesses and the self-employed.[12]

Contributory social insurance program with regulated private options

A contributory social insurance program with regulated private options requires employers to offer a certain level and type of coverage and to comply with specified anti-discrimination and other consumer and employment law protections.[13] In this model, the state would set a minimum required benefit level and a maximum permissible employee contribution, and would regulate the benefit provision and enforcement.[14] Under this model, employers can purchase private insurance coverage, participate in the state social insurance fund, or self-insure.[15]

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1 Laura Addati, Naomi Cassirer, and Katherine Gilchrist, Maternity and Paternity at Work: Law and Practice Across the World, (Geneva, Switzerland: International Labour Organization, 2014), http://www.ilo.org/global/publications/ilo-bookstore/orderonline/books/WCMS_242615/lang--en/index.htm.

2 Benjamin W. Veghte, Alexandra L. Bradley, Marc Cohen, and Heidi Hartmann, eds. Designing Universal Family Care: State-Based Social Insurance Programs for Early Child Care and Education, Paid Family and Medical Leave, and Long-Term Services and Supports (Washington, DC: National Academy of Social Insurance, 2019), https://universalfamilycare.org/wp-content/uploads/2019/06/Designing-Universal-Family-Care_Digital-Version_FINAL.pdf

3 Id.

4 Id.

5 Id.

6 Id.

7 Id.

8 Id.

9 Id.

10 Id.

11 Id.

12 Id.

13 Id.

14 Id.

15 Id.

A contributory paid leave program with regulated private options could be funded in whole or in part by employee payroll contributions.[16] Depending upon the model selected by the employer, these funds would be channeled to the private plan provider, the state fund, or an employer-managed self-insurance pool.[17] Employers are able to make their program more generous to workers by waiving employee contributions and/or offering benefits above the state-mandated levels.[18]

This model is also likely to be sustainable because it relies on payroll taxes for funding. Several states have relied on this type of model for decades, also suggesting long-term stability. However, due to the provision of regulated private options, this model presents more fiscal risk than an exclusive state fund model.[19] Additionally, for states with limited options for private coverage and/or a limited private insurance market, employers whose employees were disproportionately women of childbearing age and/or older workers, might opt into the state fund for administrative or cost reasons.[20] This might cause an increase in the funding required for the state program relative to other program models.[21]

The administrative burden on the state of this type of model is greater due to the inherent complexity of both administering the state fund and monitoring compliance among private plans and/or self-insured employers.[22] The effect on workers is the same or similar as under an exclusive state fund program since contributions would be deducted from their pay.[23] However, absent appropriate state regulation, workers might face discrimination based on their perceived level of "risk" to the employers.[24] This outcome is more likely under an experience rating model where employer experience rates are set based on the amount of claims for benefits submitted by their employees.[25] This impact can be offset by a community rating model where everyone contributes at the same rate or level, reducing incentive for discrimination against certain demographics of employees.[26]

Employers under this model are provided with more options for providing paid leave for employees however, this increases the amount of time and effort employers would need to spend determining which type of plan best meets their needs.[27] Researching the fully available options might be most challenging to small businesses that traditionally have fewer resources.[28]

Employer Mandate

An employer mandate model imposes a state-mandated requirement for employers to provide a specific number of weeks or months of paid leave coverage and benefits directly to their workers.[29] Hawaii is currently the only state to adopt this option for its paid medical leave program. No state, to date, has enacted an employer mandate for paid family leave.[30] Hawaii is currently also looking into expanding its program to include paid family leave, which might ultimately require that they change their existing model for paid medical leave.

Under this model, the employer typically funds benefits either by self-insuring or by purchasing a paid paid leave insurance policy.[31] Depending on the language of the legal mandate, employee may be required to contribute as well.[32] Because premiums are paid directly to an insurance company, any monitoring or enforcement of the mandate by the state would require funding from general revenues or an earmarked tax on employers, employees, and/or some other broad-based source, such as a sales tax.[33] Predicting the employer mandate's fiscal sustainability is difficult to predict as the availability of paid leave benefits depends heavily on each employer's long-term solvency.[34] Additionally, because private insurance coverage would reduce administrative requirements for employers, the sustainability

16 Id.
17 Id.
18 Id.
19 Id.
20 Id.
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.
31 Id.
32 Id.
33 Id.
34 Id.

of this model would depend upon a strong private market for such coverage.[35] This impact may be most significant to small-businesses and employers whose labor force is heavily dependent on workers statistically more likely to use paid family and/or medical leave.[36] Similarly, program stability is difficult to determine as any state that enacted this model would need to monitor employer compliance with policy and whether the appropriate amount of benefits was paid.[37] The political feasibility is also uncertain because no state has adopted an employer mandate for paid family and medical leave.[38]

An employer mandate would require little to no governmental administration however absent some monitoring mechanism, there is a risk that employers could ignore the mandate.[39] To ensure that employees are receiving the mandated coverage, some government administrative effort would be required.[40] In this model type, employers would bear the burden of making eligibility determinations, maintaining records, and demonstrating compliance with the law.[41]

Research also suggests that this type of model may lead to discrimination against women, though employee contributions to financing coverage may temper this effect.[42] If employers are funding the entirety of this type of model, it may require that workers serve longer in their jobs, resulting in workers staying in less optimal jobs for longer periods of time if they anticipate needing paid family and/or medical leave in the future.[43] Workers perceived as more likely to need this type of leave in the future may face discrimination in hiring, wages, or working conditions from employers' attempts to minimize paid leave costs.[44] This type of model also makes it unlikely that self-employed workers can participate in the program and raises questions about how other nonstandard workers, such as temporary workers, would be covered.[45]

Employers also face more uncertainty under this model as the employer mandate imposes higher and less predictable costs on employers than does a social insurance.[46] This may cause employers to avoid opening or expanding operations in a state with a mandate.[47] The impact may be most pronounced for small businesses and/or companies that rely heavily on a workforce that may be more likely to use paid leave.[48] This may result in benefits being denied to the type of workers who are most in need of paid family and/or medical leave.[49]

35 Id.

36 Id.

37 Id.

38 Id.

39 Id.

40 Id.

41 Id.

42 Id.

43 Id.

44 Id.

45 Id.

46 Id.

47 Id.

48 Laura Addati, Naomi Cassirer, and Katherine Gilchrist, Maternity and Paternity at Work: Law and Practice Across the World, (Geneva, Switzerland: International Labour Organization, 2014), http://www.ilo.org/global/publications/ilo-bookstore/orderonline/books/WCMS_242615/lang--en/index.htm.

49 Id.

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