

Response to

Analysis of the FY 2019 Maryland Executive Budget, 2018

Maryland Uninsured Employers' Fund

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Analysis in Brief

Major Trends:

New cases Continue to Exceed Resolved Cases – terms such as “resolved” and “unresolved” are not appropriate to UEF cases. The UEF exists to manage claims of injured workers whose employers have failed to obtain legally-required workers’ compensation insurance. Each claim is injury specific – some workers return to work in a few weeks after an injury; others can never return to work. We have cases ongoing for decades with claimants receiving benefits. When some claimants die their dependents then receive benefits.

Under the “resolved”/“unresolved” scenario these later claims are “unresolved” – they are, however, exactly the type of claims we manage and precisely why this agency exists – to protect claimants for as long as individual cases may require.

DLS recommends that the “UEF develop annual Managing for Results (MFR) performance measures that track other aspects of agency performance and the efficiency of the staff, such as (1) the number of settlements reached; (2) the number of claims processed; (3) claims processing times; and (4) fines and penalties issued to uninsured employers.

These recommendations are misplaced – they simply do not correlate with this agency’s mission, structure, function or unique nature. They might be appropriate for a regular insurance company or some other state agency but they do not relate to how this agency functions. The UEF is a very different entity than other state agencies and workers compensation entities: a fact that requires constant emphasis by the UEF when dealing with outside persons and entities.

Analyst Recommendations:

Settlements reached: As has been explained to budget staff previously, unlike regular insurance companies, settlements are neither a goal nor a normal outcome in our cases. The UEF does settle cases selectively; which occurs when claimants approach this agency with settlement offers or when our attorneys and/or claims administrator suggest that a settlement is appropriate in a case.

This agency does not, however function like private insurance companies which seek to limit their exposure in claims. This agency exists to protect and support injured workers whose employers have failed to protect them, not to make a profit. Settlements are an occasional byproduct of this basic mission.

In fact, it must be emphasized strongly that many of our settlements must be approved by the WCC, which does not simply approve a settlement even if the parties agree on it. Also, some medical set-aside settlements must be additionally submitted and approved by the federal Centers for Medicare and Medicaid Services (CMS) as well.

Basing performance evaluations on settlements for MFR purposes would, therefore, have no utility and measure nothing of relevance. They would also be, for the reasons given, an inaccurate measure of any relevant employee's work performance and lead to inaccurate evaluation data. Since settlements are not a goal of, nor are they even often within the control of the UEF for final approval, it would be unfair and unacceptable to base an evaluation of either UEF or staff performance on settlement numbers. Emphasizing settlements as an MFR factor, therefore, would be inappropriate.

Claims processed and claims processing times: "Claims processed" has no practical meaning in and of itself as regards the UEF. The UEF "processes" all claims that are submitted. Legally, there is no claim to process until the UEF has been brought into a case AND found responsible by an Order of the WCC.

Claims processing is, to a great extent, subject to the actions and decisions of the Workers' Compensation Commission (WCC), claimants, other involved parties and the nature of the claim itself. There is no such thing as a typical UEF claim – each one is unique depending on a host of factors.

For example – in the normal compensation claim scenario: a worker gets injured; he/she lets their employer know; employer then lets their compensation insurer know; the injured worker and employer work with the insurer on the case; a claim gets filed with WCC; a hearing is held; an Order is issued; and payments are made per the Order by the insurance company.

The UEF scenario is vastly different: a worker gets injured; sometimes they let their employer know and sometimes they don't; an employer who does not have required compensation insurance responds in any number of ways, including participating in the claim, ignoring the claim, or even closing down business and starting up another similar business to dodge responsibility. Claims get filed whenever they get filed – it is common for claims to be filed months or even years after the actual injury occurred. Injured workers and/or uninsured employers may or may not cooperate with UEF or even contact the UEF in a case. The UEF usually must conduct an investigation to attempt to determine if the UEF is liable for the claim (usually with little or no cooperation from the claimant or employer) or if another insured employer is involved. A hearing eventually gets conducted at which time the uninsured employer often actually appears and becomes involved for the first time – a result which requires a continuance for the parties to deal with the uninsured employer. Another hearing gets conducted

at some later date but because of the process of these cases a year before the final hearing is not unusual.

Once a hearing actually occurs, the Commission will determine if the claimant is a covered employee with a compensable claim, identify the proper employer(s), determine if the employer(s) are insured, and award benefits. If the employer(s) is/are uninsured and defaults on provision of the benefits by the WCC, the claimant may petition the UEF for “payment” of the award. It is the default of the employer and the petition of the claimant that triggers the liability of the UEF in a case. The UEF pays the claimant and seeks to obtain reimbursement from the uninsured employer for the costs of the benefits paid.

UEF coverage in a claim can last for any amount of time depending on the Order – weeks, months, years, a lifetime. Workers sometimes come back to the WCC for a claim for worsening of their condition, requiring a new hearing and resulting in a new Order. Even if a claimant does not claim a worsening of their condition the UEF is still responsible for casually related medical treatment for the rest of the claimant’s life.

In fact, support may be paid to various dependents under the statute even after claimant dies when appropriate under the law.

“Claims processed” and “claims processing times” are, therefore, not reflective of either the UEF’s mission, process or performance. Technically and legally, the UEF is not responsible for a “claim” until an Order of the Commission finds that to be the case. Technically, therefore, all claims are “processed” by the UEF and the time for processing is how long they last in each case – which is impossible to know or predict in many cases since many are organic, ongoing and subject to revision over time.

Neither term could, therefore, possibly be measured in MFR because neither term has relevance to the UEF’s process function.

Fines or penalties: Fines or penalties are issued to uninsured employers by the WCC in show cause hearings, not the UEF. The UEF has now initiated a process to take those WCC-issued actions and recover any fines or penalties assessed due and owing to the UEF. Any MFR requirements regarding the issuance of these orders should be directed to the WCC not the UEF.

As to defining “active” and “inactive” cases the UEF has been working on this and expects to define the terms in the near future, but only after a complete evaluation by the agency and its third-party claims administrator.

Issues:

Fund could face insolvency in Fiscal 2024 – As noted, this finding is based on a 2014 actuarial study. The facts are clear that at that time the UEF was not managing either assessments, collections or claims administration in an acceptable manner. The numbers obtained by the 2014 study are, therefore, based on inaccurate and incomplete data. They are abnormally low for Fund

income and abnormally high for Fund expenditures and the results are, therefore, based on faulty factors and dubious numbers.

As the agency has repeatedly stated, there is no issue with an actuarial study; the issue is the timing for accuracy purposes. Any study including numbers from before the current leadership became responsible and improvements were developed and initiated will be by its very nature inaccurate because of the obviously flawed numbers resulting from both dysfunctional claims administration practices and a lack of an organized program of assessments and collections from the prior period.

The actuarial study must have enough accurate data to perform a statistically valid study.

The UEF has initiated an emergency procurement contract with a national third-party administration corporation, Corvel, which began on September 1, 2017. The transition and implementation of the Corvel system and administration has been effective and efficient, but hampered by the lack of accurate data and poor record-keeping of the past claims administration process.

Since new leadership at the UEF in late 2016 the two issues of competent, and legally established, claims administration and an organized system of assessing and collecting on amounts due and owed to the UEF have been the UEF's top priorities. When sufficient time has passed for both processes to produce accurate data an actuarial study will make statistical sense. Until that time arrives it would be a waste of funds.

As to the UEF discussing additional personnel and information technology resources to assist the agency with recoveries and case management, that process has been independently underway for some time by the UEF and remains ongoing.

Regarding proposed legislation, although staff have been discussing various proposals and ideas for legislation other priorities have been more pressing requiring attention first. Any proposed legislation to change the law is a serious matter and the UEF, recognizing our responsibility to the legislature, will propose legislation as is appropriate in future sessions of the General Assembly in an organized fashion only after careful study and consideration.

New Claims Administrator Not Budgeted -There are several errors in the analysis for the claims administration budget item. The UEF entered into the emergency procurement contract with Corvel in June, not March, of 2017. The contract is for a term of 18, not 30, months and is at a rate of \$994,500.00 for twelve months of service, so the total amount for eighteen months is \$1,491,000.00. The start date was September 1, 2017.

Based on comparative data from December 31, 2015, 2016 and 2017 the UEF has gone from a prior negative cash flow balance of approximately one-half million dollars in 2015 and 2016 to a positive cash-flow balance of approximately one and one-half million dollars in 2017. The only difference between those years are the establishment of the UEF's new collections program and the arrival of Corvel as claims administrator. Based on this, and other evidence, it is the UEF's conclusion that Corvel is not only providing the UEF with far better organized and managed

claims administration services generally, Corvel's claims administration has lowered UEF claims expenditures and is resulting in savings for the Fund. With time, data should become available to document this conclusion more fully.

The UEF would not have signed the contract with Corvel unless it concluded that the agency had the financial resources to do so. The UEF has no hesitancy in stating that it continues to have the ability to afford this contract and emphasizes again the competent services being received and the expenditure savings being realized under the contract.

The goal remains to issue a RFP for claims administration services before Corvel's emergency contract ends in 2019. The RFP must, however, be developed from scratch because no such document has ever been prepared for the UEF to issue before apparently so that date remains a goal which is subject to further examination as that process unfolds.

The UEF intends on reclassifying one of the three remaining staff positions as a Claims Administrator. Among that position's responsibilities will be to serve as the UEF's Procurement Officer. One of the initial tasks of that position will be the development of a Request for Proposals (RFP) for Claims Administration Services.

Executive Branch Staffing Adequacy Study - There are several factual errors involved in the analysis regarding an Executive Branch Staffing Adequacy Study.

First, the UEF **technically** had a total of six, not five, staff vacancies on December 31, 2017. As was explained in person to the budget analyst at a meeting with UEF staff on December 14, 2017 at the UEF office, however, two of these positions had been reclassified to Assistant Attorney General positions, interviews had occurred, and offers been made and accepted. One of the other vacancies as of December 31, 2017 was for the position of Principal Counsel at the UEF to replace the prior Principal Counsel, who left in October of 2017 to become a federal Administrative Law Judge. That position had also been filled in December, 2016. All three newly hired staff were scheduled to start at the UEF on January 3, 2018, the date of the relevant pay period starting.

So, in point of fact, the UEF has had only three staff positions vacant for practical purposes since December of 2017 and in practice since January 3, 2018. The UEF has no explanation why this information and these facts do not appear in the submitted budget analysis nor why the recommended action herein continues to focus on five vacant staff positions when, in point of fact, there remain only three positions to be filled at this time.

The UEF is grateful for the opportunity to correct these statements and present the legislature with accurate and complete facts.

As to the remaining three positions, the UEF is in the immediate process of filling all three positions as quickly as possible within the confines of state staffing and hiring requirements. A summary of the plans for filling these three positions was submitted to staff at the Department of

Management and Budget on January 17, 2017 in response to an inquiry on the status of the six staff vacancies which existed on December 31, 2017 and is reproduced below:

“The Principal Counsel and the two Assistant Attorney General positions both started on January 3, 2018, the beginning of the pay period. So those positions are filled.

As to the last three:

1) Fiscal Accounts Technician II - MS 22 is being revised by Mr. Anderson; when complete will advertiser [sic] and hire for that position

2) Administrative Specialist II - this is being reclassified as a higher level managerial position which will actually Manage the UEF Office, including serving as the Chief Clerk

3) Administrative Officer III - this is being reclassified to a Program Senior Manager I for purposes of being the UEF Claims Administrator who will be responsible for all claims related matters and issues and will serve as the UEF Procurement Officer”

There is, therefore, no need for the legislature to require a report evaluating the agency’s staffing needs since this information is detailed in the answer herein submitted.

OPERATING BUDGET RECOMMENDED ACTIONS

1. Add budget language restricting funding until agency takes corrective action to address repeat audit findings.

Agency Response – The UEF is unclear exactly what “language restricting funding” entails and what impact it would have on the agency’s mission.

It is critical for the legislature to know certain facts: The UEF exists to support injured workers, their families and their dependents in cases when employers have failed to protect them with legally required workers compensation insurance. It is why we exist and what we do. Nothing is more important.

The UEF issues hundreds of check to Marylanders, and their medical providers, every week thru our claims administrator totaling amounts ranging from \$100,000 to \$250,000. Every week our claims administrator produces a list of each of these checks, and that list is reviewed by UEF staff for accuracy. That information is then forwarded to Annapolis by same day courier delivery for expedited processing and transfer of the funds for payment. This is a very detailed and involved process from start to finish and must be done each and every week.

If “language restricting funding” includes involvement in, or hinderance of, this process the legislature needs to know that it will disrupt the issuance of these checks on a weekly basis and our claimants will not receive their support.

Many of our claimants, and their families, count on these weekly checks for their support. Anything that disrupts this system will cause these people pain and hardship.

The audit in question covered the period before the current leadership took charge of the UEF. The UEF upon current management's arrival was a barely functioning entity on the verge of seizing up and stopping in various areas, including collections and claims management. The audit not only details failures of the UEF under the previous administration, it notes that a number of those failures were repeat findings from the prior audit. These audit findings took place, and worsened, over years of time.

The current management of the UEF has made enormous progress in the past year to correct both the deficiencies noted in the UEF in the audit and other issues not reported therein. The hiring by written contract of a national third-party claims administrator and the development of a system of requesting and then collecting amounts owed to the agency has resulted in an increase in revenue, savings in expenditures and a resulting increase in the Fund's cash flow balance of approximately two million dollars as of December 31, 2017 compared to prior years.

The UEF is working on responding to each audit finding and understands the need to respond to all as soon as possible. It is critical to emphasize, however, that it took years for the UEF to get to the point described in the audit; it will take time to correct the findings of the audit as well as other deficiencies which are being addressed as well.

The UEF respectfully asks the legislature not to penalize our agency, and our claimants and their families, for the failures of people who are no longer associated with the UEF or in State government. This agency continues to make progress in becoming a normal, functional state agency and welcomes the recommendations for improvements offered by the recent audit. We are working diligently on implementing them but respectfully note again that after years of dysfunction we need to be given sufficient time to make these changes and to continue to improve this agency.

2. Adopt committee narrative expressing intent that the agency conduct an actuarial study and establish an actuarial schedule.

Response - This concept makes sense so long as any such schedule take into account that there is no reliable claims data before the advent of Corvel in September of 2017 and that although vastly improved, UEF collections systems continue to evolve and improve. Quit simply we need time to generate sufficient reliable data for an actuarial study or it will be worthless.

In addition, the UEF notes that the cost of the actuarial study would come not from the general fund but from the UEF's dedicated special fund.

The proposed timeline by the analysis leads the UEF to have serious reservations concerning the sufficiency and reliability of any data available under the proposed timeline. The UEF

respectfully suggests this language be delayed until the 2019 session and inserted in the budget at that time.

3. Adopt committee narrative requesting the UEF to submit a report evaluating the agency's staffing needs.

Response – As previously described in detail, the UEF has, or is in the process of, filling every staff vacancy at this time. This process will be completed within a few months. There is, therefore, no need for budget language requiring a report on staffing.