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Maryland Uninsured Employers' Fund-C96J00
Fiscal Year 2023 Operating Budget
Response to Department of Legislative Services Analysis

Maryland Senate Budget and Taxation
Committee
Public Safety, Transportation and
Environment Sub-Committee
Senator Cory V. McCray, Chair
Hearing – February 17, 2022

Maryland House of Delegates
House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Tony Bridges, Chair
Hearing – February 23, 2022

Please accept the following, with the enclosed attachments, as the written testimony of the Maryland Uninsured Employers' Fund (UEF) on February 17, 2022 and February 23, 2022 regarding the status of the UEF and the budget proposal for FY 2022:

Introduction- Program Description and History

The UEF is a statutorily-created, self-funded agency which does not receive general funding. The agency was created in the 1980's in order to protect Maryland workers who are injured on the job from an accidental injury or an occupational disease under certain circumstances. The agency provides workers' compensation benefits to such injured workers, and to their families and dependents as appropriate, in cases where an uninsured employer fails to carry Workers' Compensation Insurance: an employee is injured; benefits are awarded by the Maryland Workers' Compensation Commission (WCC/Commission) and the uninsured employer fails to pay the WCC award as ordered. The agency's obligation to provide benefits and/or compensation is triggered when an uninsured employer defaults on an award issued by the

Commission. The agency also provides coverage for claims for compensation for injured workers employed by insolvent self-insured employers as well.

The agency provides medical treatment and care, as well as needed financial support, for hundreds of Maryland workers and their families. Without the UEF, they would have nowhere to go for this support and help.

The UEF was originally designed to be a limited stop-gap fund for injured workers whose employers failed to maintain legally required workers' compensation insurance. It was apparently believed when the agency was established that there would only be a fairly small number of such cases because employers would maintain workers compensation insurance to cover their employees since that was, and still is, required of most employers under the law. Over the years this prediction has proven to be erroneous. Some employers, especially in the dangerous construction and landscaping industries, routinely fail to carry required insurance because it enables them to underbid their competition and thus obtain work. Add to this honest employers who simply fail to have coverage for various reasons and then have a claim from an injured worker, as well as bankrupt self-insured employers such as the Bethlehem Steel Corporation (BSC) and A&P Supermarkets (A & P), and by 2022 the result is that the UEF has now grown to cover hundreds of injured workers at any one time – currently approximately 700 active cases, including approximately 26 permanently totally disabled cases, with expenditures for both lost wages and medical bills totaling millions of dollars per year. A&P and BSC, both self-insured, have become insolvent and the UEF has become responsible for tens of millions of dollars in workers' compensation payments for these two corporations over time, a responsibility which continues at the present time, is ongoing and will continue for decades to come.

UEF coverage for a claim can last for any amount of time depending on the Order of the WCC: weeks, months, years, a lifetime. Workers sometimes come back to the WCC with a claim for worsening of their condition, requiring a new hearing, resulting in a new order, multiple times. Even if a claimant does not claim a worsening of their condition the agency is still responsible for casually-related medical treatment for the rest of the claimant's life. Over time, cases can result in millions of dollars in medical and related expenses.

The UEF is a special and dedicated fund. It is funded by fines levied by the WCC against uninsured employers and assessments imposed on awards of indemnity benefits. The agency also is by law to receive reimbursement from uninsured employers for expenditures made to claimants. Many uninsured employers, however, do not make these required payments and reimbursements which has made collecting these funds challenging to collect and requires substantial effort on the part of the agency.

The UEF obtains its funding to provide for operations and injured workers by various mechanisms. It collects fines and assessments; it seeks reimbursement of the benefits paid from the relevant liable uninsured employers, it engages in collection and enforcement actions, both civil and criminal. The agency pursues suspension of business licenses and permits, and seeks criminal penalties against employers who fail to secure insurance and/or fail to pay benefits awarded by the commission.

As noted, the UEF is entirely self-funded and typically receives approximately 80% of its funding from a 2% assessment on most WCC permanency awards and settlements (with the remainder of funding coming mostly from payments received from uninsured employers). This 2% is the statutory maximum assessment available to the agency and has been the statutory maximum for many years. The 2020 session of the legislature raised that assessment amount temporarily for a period of one year to 3%. During the 2021 legislative session the agency requested, as a result of the COVID pandemic disruption and shutdown, that the temporary 3% figure be extended for one year. Although supported by the Administration the House Economic Matters Committee declined to extend the assessment increase and it therefore terminated on June 30, 2021.

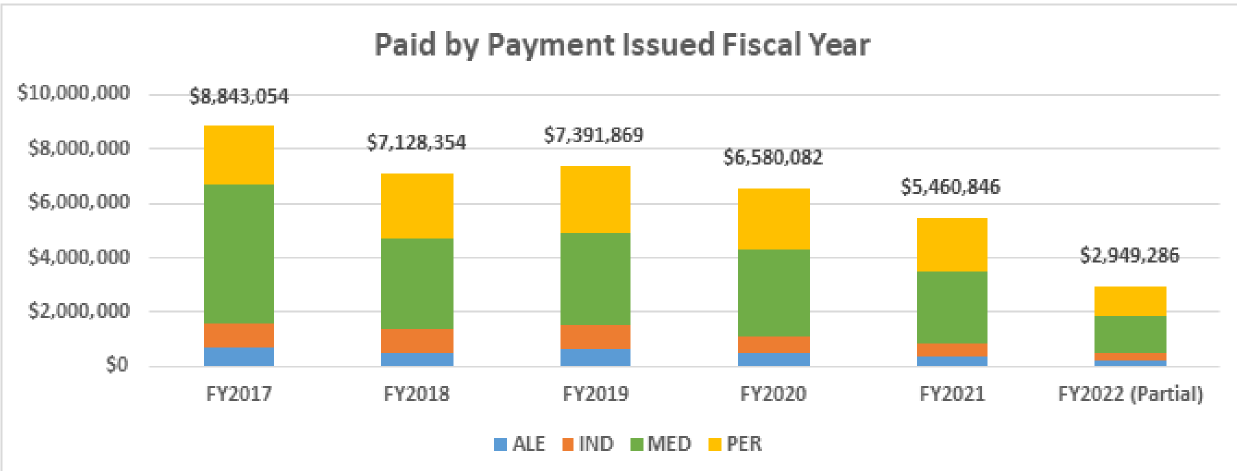
During the past five years the UEF has been continually and actively engaged in the process of identifying and correcting a host of serious issues which were left by prior UEF management, going back years – in some cases decades -, including correcting serious deficiencies in the critical areas of structure, claims administration and collections. It is important to emphasize that this work during these past few years involves a process to fix an agency which had been slowly collapsing over a number of years. That difficult job has been neither easy, steady nor without mishaps – the challenges of dealing with such a situation are difficult to convey without experience dealing with them - but our progress has been real, success has been self-evident and the efforts of the staff, the Administration and the Legislature continues to show genuine measurable results. All involved should take pride in the enormous progress here which directly benefits injured Maryland workers and their families.

Operating Budget Summary – Overview of Agency Spending

The major expenditures of the agency are staffing costs (30%) and the third-party administrator (TPA) contract with the CorVel Corporation (Corvel) (62%). The contract for third-party claims services with CorVel continues be a success, providing large cost savings and competent professional services to the agency for a reasonable cost. The Administration, investigation, medical care and payments, reporting, cost management and other benefits the agency has received under the contract more than recoup the cost of CorVel's services.

Since starting on the program with CorVel, expenditures for claims have declined. From FY 2020 to FY 2021 there has been a 10% reduction in open claims and a 12% reduction in claim payments. From our start of the contract with CorVel there has been more than a 50% decrease in the total open claims and roughly a 39% decrease in money spent on claims. These savings are substantial and could have only been achieved with the agency procuring such TPA services from a competent national TPA. The contract with CorVel was, and remains, one of the major and vital reasons for the agency's success over the past five years.

An example of these savings is the following chart (Exhibit 1), which illustrates expenditures for medical payments and related matters:



As this chart illustrates, over the past six years CorVel's management of medical claims has resulted in a significant and steady reduction in costs for the agency.

It is worth quoting, in detail, this agency's report to the legislature in 2020 regarding the performance, and importance, of the contract with CorVel:

> It is clear, when the facts and results are reviewed, that there are multiple reasons why the UEF hiring a TPA such as Corvel is the only rational course for an agency such as the UEF. As illustrated, a professional TPA company such as Corvel provides a host of advantages for all aspects of claims management that this agency could not possible achieve by attempting to manage claims administration in-house, including: a detailed and extensive proprietary claims management and tracking system; experienced claims administration and investigative staff; vast experience with workers compensation claims investigation, management and payments; and, a national network of agreements with literally thousands of vendors which result in substantial savings in costs to the UEF on a daily basis for a host of services, both medical and non-medical. Additionally, Corvel provides the UEF with professional reporting and compliance services required under law to various entities, including state and federal entities, on a regular basis which would be time-consuming, challenging and expensive for a state-run in-house TPA. The data is clear that the savings of having a competent TPA manage this agency's claims results in savings and benefits that far outweigh the costs of the contract.

> Whatever may have once been the case regarding claims management of workers’ compensation claims, the modern environment in which today’s claims are administered, especially medically, make a competent TPA with national exposure and reach a necessity for government agencies dealing with workers’ compensation claims and payments. This is why several large and mid-size Maryland counties – as well as other government entities - choose to contract for these services rather than attempt to provide them in-house.
>
> For the UEF this necessity is even more evident. Our legal team depends on Corvel for superior investigative work in order to defend cases and find insurance coverage that allows the UEF to avoid paying on claims. Our collections unit works with Corvel’s investigators, with the result that our collections staff has more information on potential uninsured employers and is better able to collect funds due from such uninsured employers. Our daily functions at the agency often involve and benefit from interactions with the Corvel staff and system.
>
> The single most important, necessary and successful action the UEF has taken during the rebuilding process of the past four [now five] years has been the hiring of a competent TPA.

The agency has included a copy of the most recent regular report from CorVel, from January 2022, to this testimony as Exhibit 2 in order to illustrate the wide range of performance metrics and requirements the TPA undertakes on an ongoing basis and to illustrate the success over time of the contract.

Personnel Data

The agency was in the process of hiring new staff for positions to fill vacant slots and improve agency function when the closure of State offices and the resulting health restrictions in March of 2020 stopped that process.

As noted in the Analysis, the agency is currently engaged in the hiring process for these positions, having hired one new staff member and being about to hire a second.

The UEF, recognizing the legislature’s interest in our staffing plans, is anxious to hire these new staff, evaluate their performance, and move ahead as required to fill any remaining positions. Such would have already occurred had the Covid-19 pandemic not occurred.

Key Observations

- DLS has recommended that the UEF correctly report TPA contract expenses as operating expenses rather than benefits payments in future reports.

The agency agrees with this recommendation and will work to comply with it in the future.

Audit Findings

- "An audit by the Office of Legislative Audits (OLA) published in September 2021 found that UEF did not ensure that payments to its TPA were supported and consistent with contract terms and did not review recurring payments processed by TPA to ensure that claimants were still eligible. It also found that UEF did not adequately pursue collection on delinquent accounts."

Agency Response –

The agency first notes that the recent OLA Audit found that the agency had resolved six of the eight audit findings from the prior OLA Audit in 2017.

As a result of the findings of the most recent audit the agency has been working to correct and resolve the three issues found in the most recent audit regarding the various payment issues raised by the OLA audit. The agency agrees with the finding described above and continues to work with the contractor to resolve the amounts involved so the parties can correct the processes involved and ensure that proper amounts were, and going forward will be, paid by the agency for services.

As to the issue of perusing collection of delinquent accounts, under Maryland regulations agency debt, of state agencies in general, is to be sent to the Central Collection Unit (CCU). The UEF has sent tens of millions of dollars of such debt over the years to the CCU for collection. Once that debt is sent to the CCU, it comes under the jurisdiction of the CCU and state agencies, including the UEF, do not have jurisdiction over that debt any longer. In other words, once a debt is sent to the CCU it is no longer the agency's debt to collect.

This agency proactively recognized the ineffectiveness of the collection situation regarding old debt sent to the CCU several years ago. After much work by this agency's staff, particularly our Attorney Generals, the UEF and the CCU entered into a five-year Memo of Understanding (MOU) in June of 2019 which gave the two entities joint jurisdiction over the debt forwarded to the CCU. That MOU has proven of assistance in the UEF collecting debt.

For example, upon the signing of the MOU the UEF immediately initiated a program of mailing requests for payment to insurers who owed payments the UEF. Of the approximately $6,000,000 owed by insurers the UEF recovered over $2,000,000 within several months by just doing three mailings.

The UEF continues to work to recover that shared debt with the CCU at this time.

The UEF notes that as of December 31, 2021 the CCU had collected $63,773.30 on the millions of dollars of debt available for collection during FY22 – with approximately $50,000 of that debt collected came from one case.

This agency has established, and in some cases re-established dormant procedures, a series of initiatives and processes to collect debt owed. These processes include a completely renewed and ongoing business license suspension program, an initiation of criminal prosecutions of uninsured employers who fail to pay obligations and an ever-growing monthly payment program which currently is projected to collect approximately $400,000-500,000 in debt this year and should get larger each month as new debts enter the program.

- "The report noted a lack of review of approximately $1.9 million in recurring indemnity payments in fiscal 2020. The OLA review determined that UEF could not document a review of the recurring payments. The report did not detect any improper payments."

Agency Response –

This matter has been reviewed by the agency over the past several months, team meetings were conducted among the relevant parties and a process has been established to satisfy the requirements noted in the OLA in the audit and is now in place.

- "DLS recommends that UEF resolve issues surrounding its TPA contract before pursuing an increase in the annual assessment. DLS also recommends adding language to the budget restricting $250,000 in special funds pending a report from OLA certifying that UEF has taken corrective action on its audit findings."

Agency Response -

The agency intends on complying with the OLA audit findings as fully as possible as quickly as possible as regards all the audit findings.

- 1. Add the following language to the special fund appropriation:

, provided that since the Uninsured Employers' Fund (UEF) has had serious findings in the most recent fiscal compliance audit issued by the Office of Legislative Audits (OLA), $250,000 of this agency's special fund appropriation may not be expended unless:

(1) UEF provides a status report to OLA describing the corrective action that it has taken with respect to all audit findings on or before November 1, 2022; and

(2) a report is submitted to the budget committees by OLA listing each audit finding along with a determination that each finding was corrected. The budget committees shall have 45 days from the date of the receipt of the report to review and comment to allow for funds to be released prior to the end of fiscal 2023.

Explanation: Due to audit findings regarding a lack of oversight of the UEF third-party administrator, a portion of its budget will be withheld pending the adoption of corrective action by the agency and a determination by OLA that each finding was corrected. OLA shall submit reports to the budget committees on the status of repeat findings.

Information Request

Status of corrective actions related to the most recent fiscal compliance audit

Author OLA

Due Date 45 days before the release of funds

Agency Response –

The agency continues to work to comply with the findings of the OLA audit and offers no objections or opposition to the language suggested by DLS to the budget appropriation.

In conclusion, the agency sincerely thanks the budget analyst, Mr. Jason A. Kramer, for his professional and collaborative work with this agency. We appreciate his efforts to work with this agency to provide the legislature with both information and various recommendations regarding the UEF. His performance and demeanor have made the process more successful for all involved.

As a former member of this legislature, it is always my pleasure to appear before legislative committees – albeit remotely sometimes – and I look forward to working with you all to continue our collaborative progress to make the Maryland Uninsured Employers' Fund an even more outstanding and successful State government agency which helps thousands of Marylanders through very difficult times.

Sincerely,

Michael W. Burns

The Honorable Michael W. Burns, Esquire
Director

Encls.