WES MOORE
GOVERNOR

MICHAEL W. BURNS
Director
michael.burns1@maryland.gov

STATE OF MARYLAND

MARTIN E. LEWIS
CHAIR

CASEY BRYANT
DONCELLA S. WILSON
MEMBERS

STATE OF MARYLAND
UNINSURED EMPLOYERS' FUND
300 East Joppa Road, Suite 402
Towson, MD 21286
PHONE - (410) 321-4136
FAX - (410) 321-3975

Maryland Uninsured Employers' Fund-C96J00
Fiscal Year 2024 Operating Budget
Response to Department of Legislative Services Analysis

Maryland Senate Budget and Taxation
Committee
Public Safety, Transportation and
Environment Sub-Committee
Senator Sarah K. Elfreth, Chair
Hearing – February 22, 2024

Maryland House of Delegates
House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Jazz Lewis, Chair
Hearing – February 26, 2024

Please accept the following, with the enclosed attachments, as the written testimony of the Maryland Uninsured Employers' Fund (UEF/Fund/Agency) on February 22, 2024 and February 26, 2024 regarding the status of the UEF and the budget proposal for FY 2025:

MISSION STATEMENT

The Uninsured Employer's Fund (UEF/agency) exists to protect Maryland workers whose employers fail to obtain Worker's Compensation Insurance. The UEF reviews and investigates claims by injured workers who are not properly insured and compensated for their injuries by their employers and pays claims when appropriate. We work to ensure that benefits and medical expenses are properly paid to injured workers, and that uninsured employers are held accountable with penalties and sanctions for their failure to comply with Maryland law to insure and protect their employees.

Our mission is, therefore, to protect innocent injured employees and to ensure that noncompliant employers are held accountable for their actions as mandated by law.

BACKGROUND AND DESCRIPTION

Worker's Compensation is a system of no-fault insurance that provides wage replacement and medical benefits to employees for accidental injuries or diseases related to the employee's work.

Workers' compensation is one of America's oldest, and successful, social insurance programs: It was adopted in most states during the first decades of the twentieth century. The Maryland Workers Compensation Act was first enacted in 1914.

The workers' compensation system is based on a trade-off between employers and employees. Employees are entitled to receive prompt, effective medical treatment for on-the-job injuries or illnesses no matter who is at fault and appropriate compensation for lost wages and, in return, are prevented from suing employers over those injuries. This is the system set up generally throughout the various states, including Maryland.

As a result of this system, most Maryland employers are required by law to secure and maintain workers' compensation insurance, even if they have only one employee, or must meet the criteria for becoming self-insured. Labor and Employment section 9-402 (2016 Replacement Volume and 2023 Supplement). And, if employees get injured in the course of their employment, the employer is required to pay by way of their insurance for their injured workers' medical and other compensation benefits.

This system works exceedingly well – the tradeoff between the rights of employers and employees results in serious protections for the injured worker at a reasonable cost to the employer for workers compensation insurance.

When, however, the employer fails to live up to its part of the trade off – when that employer, for whatever reason, fails to carry the required insurance - the system breaks down, leaving the injured worker in a serious and dangerous position. For the system to work all relevant employers must secure and maintain the required workers compensation insurance. Were it not for uninsured employers' funds such as Maryland's UEF, injured workers with uninsured employers would face terribly difficult – potentially catastrophic - situations in which lost wages and medical treatment payments would be difficult, if not impossible, to recover, from employers without insurance and then only by means of long, costly legal action.

The Maryland Uninsured Employers' Fund

In 1983, the Uninsured Employers' Fund Board was created by the General Assembly to protect workers whose employers are not insured under Workers' Compensation (Chapter 576, Acts of 1983).

The Fund reviews and investigates claims by employees, or by their dependents in case of death, who have not been compensated properly by their employer. The agency also provides coverage for claims for compensation for injured workers employed by insolvent self-insured employers as well. In cases of uninsured workers, or insolvent self-insured employers, the Fund makes the payments due to injured workers and seeks recovery from uninsured employers (absent funds held in trust for self-insured employers by the WCC or ordered by bankruptcy courts there is no source of funding for these insolvent self-insured payments). Additionally, the UEF supervises the operation and administration of the Uninsured Employers' Fund itself and State staff as well.

The UEF is a statutorily-created, self-funded agency which does not receive other general funding. The agency was created in order to protect Maryland workers who are injured on the job from an accidental injury or an occupational disease under certain circumstances. Specifically, the agency provides workers' compensation benefits, including medical benefits, to 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 by the Commission. 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 UEF was originally designed to be a limited stop-gap funding mechanism for injured workers whose employers failed to maintain legally required workers' compensation insurance. It was apparently felt 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 insurance was, and still is, required of most Maryland employers under the law.

Over the years this expectation has proven to be erroneous. Some employers, especially in the dangerous construction and landscaping industries, routinely and deliberately fail to carry required insurance because it enables them to underbid their competition and thus obtain work, or because it increases their own profits, or for other reasons. Add to this honest employers who simply fail to have coverage at the time of an injury 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 2024 the result is that the UEF has now grown to cover hundreds of injured workers at any one time – currently a monthly average currently of approximately 900 active cases, including approximately 30 permanently totally disabled cases, with expenditures for both lost wages and medical bills totaling millions of dollars per year.

A&P and BSC, both large self-insured companies, have become insolvent during the past 20 years and the UEF has also become responsible for tens of millions of dollars in workers' compensation payments for these two corporations' injured workers, a responsibility which continues at the present time, remains ongoing and will continue for decades to come. It is important to note that there is no source of funding in existence currently for the BSC claims which the Fund manages and pays for.

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 often come back to the WCC with a claim for worsening of their condition, requiring a new hearing, resulting in a new order with increased payments, 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 remainder of the claimant's life. Over time, cases can result in millions of dollars in medical and related expenses.

It is important to emphasize again that the UEF is self-funded. The agency does not receive General Funding. Maryland State staff are paid out of the Fund.

The UEF is a special fund. It is partially funded by fines levied by the WCC against uninsured employers and assessments imposed on awards of indemnity benefits. The agency also is to receive reimbursement from uninsured employers for expenditures made to claimants. Many uninsured employers refuse to make these required payments and reimbursements which has made collecting these funds is often a challenge to recover requiring substantial time and effort from the agency.

In addition to collecting these fines and assessments the UEF seeks repayment of the benefits paid from the relevant liable uninsured employers by way of civil and criminal collection and enforcement actions. The agency now vigorously pursues suspension of business licenses and permits from, 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% plus 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) as well as penalties assessed by the WCC against employers who fail to carry required workers' compensation insurance.

The 2% assessment amount is the statutory maximum assessment available to the agency and has been the statutory maximum for many years. During the 2020 legislative session 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 which occurred starting in March of 2020, that the temporary 3% figure be extended for one additional year. Although supported by the prior Administration the House Economic Matters Committee declined to extend the assessment increase and it therefore terminated on June 30, 2021. The result of that one-year increase in the assessment, even during the Covid shutdown, indicated that such a permanent assessment increase would result in a substantial increase in the Fund's revenue, balance and financial health.

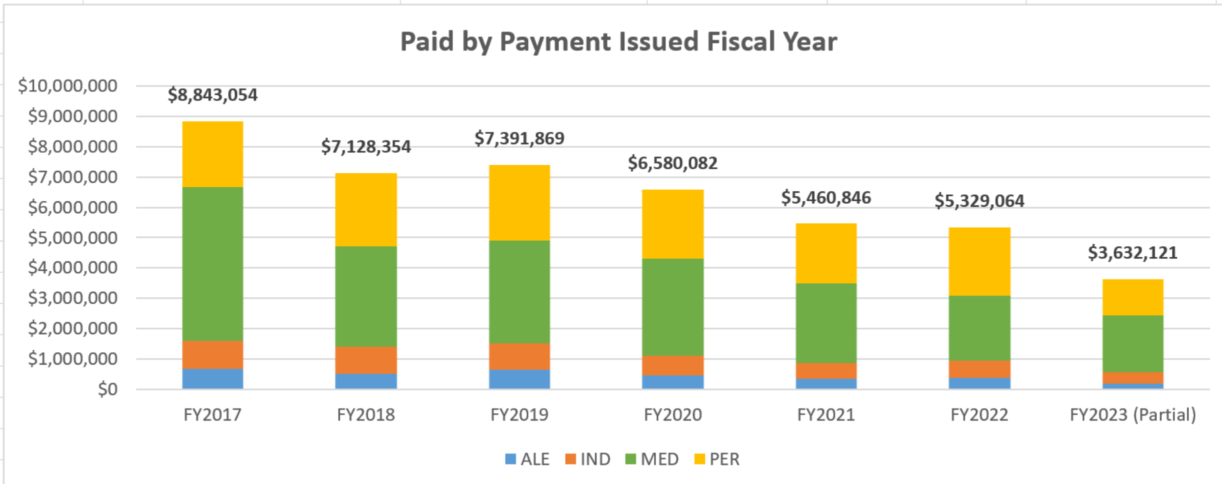
During the past seven years the UEF has been continually and actively engaged in the process of identifying and correcting a host of serious issues and deficiencies which were left by prior UEF management going back years – in some cases decades - including correcting serious deficiencies in the critical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

OPERATING BUDGET – OVERVIEW OF AGENCY SPENDING

The major expenditures of the agency are staffing costs (33%) and the third-party administrator (TPA) contract with the CorVel Corporation (Corvel) (59%). 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 savings, 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. There continues to be a more than 60% decrease in the total number of open claims and roughly a 39% decrease in money spent on claims over time. 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 critical reasons for the agency's success over the past six and one-half years.

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



As his chart illustrates, over the past seven years CorVel's management of medical claims and expenses has resulted in a significant and ongoing reduction in costs for the agency, saving the UEF millions of dollars in medical payments over time.

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 six plus] years has been the hiring of a competent TPA.

The past four years have only reaffirmed those statements and findings. A competent and proven TPA, with significant experience, experienced staff and national networks made available to the State of Maryland is absolutely essential to the continued success of the UEF. The savings achieved by employing a competent TPA have been, and remain, demonstrable and substantial.

Just one data point illustrates the basis for that finding: before the current TPA the UEF found insurance coverage in 9% of monthly incoming cases (finding coverage means, quite simply, the UEF is not required to be involved, and pay WCC awards, in an uninsured employer case). In the six plus years of employing a competent, professional TPA the UEF has found coverage in approximately 58% of monthly cases received. And it is vital to note that because there are always cases where there is no insurance to be found no matter how thorough the search, that 58% figure is actually higher by an unknowable amount.

This is a demonstrable 640% increase in the number of cases found for coverage by the UEF with the TPA investigating over years of experience. It is impossible to know how much this increase has saved the UEF monetarily but clearly it has been an enormous amount in dollars saved due to coverage found.

Clearly, the hiring of a TPA has been a tremendous success for the agency.

The agency has included a copy of the most recent regular report from CorVel, from December 2023, to this testimony as UEF Budget Testimony Exhibit 2 (UEF 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.

Key Observations

1. Fund Balance Decreases with Downturn in Assessment Revenue

As noted in the Department of Legislative Services (DLS) Budget Analysis (Budget Analysis):

> UEF's fund balance covers all of its operating costs and payments to workers injured on the job. Most revenues (about 86%) come from a 2% assessment on workers' compensation awards. The fund also gets some revenues from benefit payments owed by uninsured employers, fines collected from employers who do not carry the required insurance, and interest earned on the fund balance. Chapter 495 of 2020 increased the assessment, from 2% to 3%, for fiscal 2021 only to assist with the UEF declining fund balance.
>
> Expenditures exceeded revenues by $1.3 million in fiscal 2023, which led to a decline in the fund balance. Expenses increased slightly in fiscal 2023, but revenues declined much more, driven by a $1.8 million decrease in assessment revenues from the prior year due to a decrease in the total value of awards and settlements made by the Workers' Compensation Commission. . .
>
> If costs continue to outpace revenues, the fund balance will continue to decrease, endangering the fund's long-term stability and ability to meet its obligations. UEF has suggested ways to increase the amount of funding that the agency receives, such as by increasing the assessment rate on Workers' Compensation Commission (WCC) awards, from 2% to 3%, or increasing the penalty for employers that do not carry workers' compensation insurance.
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> Budget Analysis, pp. 5-6 (Exhibit 3 omitted).

The UEF controls neither the number of assessments issued by the WCC nor the amount of those assessments. The WCC issues assessments based on claims received and found to be legitimate and compensable. Neither the UEF nor the WCC can unilaterally increase the number of assessments which provide revenue to both the UEF and the Subsequent Injury Fund (SIF), which receives 61/2 percent of each assessment found by the WCC, nor for the amounts of those assessments.

The Agency has recognized this decline in assessment revenue and has been working with the WCC staff for some time to consider and develop effective options to increase funding to the agency to stabilize the Fund in lieu of decreasing assessment income from the 2 percent current assessment. That process is ongoing and will continue. The legislature can expect to receive recommendations from that cooperative effort in the future.

Proposed Legislation Would Increase Penalties

The Budget Analysis presents an excellent summary of SB0216, a proposal to increase the penalty for employers that do not carry workers' compensation insurance.

SB0216 grew out of a request from the Legislature in the Joint Chairmen's Report (JCR) of April 2023, page 11, requested in "Committee Narrative" that the Maryland Uninsured Employers' Fund (UEF) provide a report (Report) by September 1, 2023, regarding the following:

> **Recommendations on Fines for Uninsured Employers**: The committees are concerned about the low penalties assessed on employers that do not carry workers' compensation as is required by State law. The committees request that the Uninsured Employers' Fund (UEF) provide a report by September 1, 2023, that describes the current fine structure for employers that are uninsured, the amount of fines imposed for fiscal 2020 through 2023, to where the revenue from the fines is provided, and recommendations for revised fine structures if necessary.
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> JCR, p.11.

The UEF, having reviewed and researched the Legislature's request for information and recommendations and having reviewed and evaluated the facts, researched other states' relevant laws and available data, timely presented a detailed Report to the Legislature in August, 2023.

In that Report, the UEF recommended that the current penalty of a maximum of $10,000 for failing to obtain and carry legally required workers' compensation insurance be increased to a set penalty of $25,000:

> We again emphasize that the current fine/penalty system has not proven effective in enforcing the Maryland legal requirement of mandatory workers compensation insurance for relevant employers, nor has it evidenced any effect in deterring employers from obtaining that insurance in many cases.

> Many of those employers identified for failure to obtain workers compensation insurance are exempted from the $10,000 fine/penalty by the WCC at the required statutory hearings.[1] There are many reasons for this, some of which are absolutely in keeping with the law's requirements and are completely appropriate. The $10,000 fine/penalty, however, is very seldom assessed by the WCC against relevant employers who have not obtained the required insurance in Maryland. The vast majority of fines issued are at or below $7,000, and are issued after an employer fails to appear at a scheduled compliance hearing and/or a "show cause" (why they are not in violation of the law) hearing. This discretion is exercised by the WCC as per the current language of Labor and Employment sections 9-407(b)(2) and (c)(2). . . .
>
> The UEF, after having examined the law of the other states as a guide for what would be an appropriate penalty for the failure to carry workers compensation insurance and considered the options therefore recommends that Maryland adopt the figure of $25,000 as an appropriate penalty amount. This is a figure which, as discussed, is utilized in other states – it is a fair and effective deterrent amount and would be an appropriate starting point for reform in this area.
>
> (UEF Report to Legislature, pp. 8-9, 10).

The UEF subsequently proposed this recommendation in bill form to the Moore Administration, which supported the legislation. In order to address concerns raised by the WCC the UEF has agreed, in a spirit of compromise and a recognition that an increase to $25,000 in any form is preferable to no increase at all, to specifically restore the language that would make the penalty a fine of up to $25,000 at the discretion of the WCC, which conducts the show-cause hearing involved in finding and assessing relevant penalties.

This legislation, SB0216, is good public policy and recognizes the need to protect Maryland workers from employers who fail to insure them as required, for decades, by Maryland law. It is an effective move towards enforcing workers' compensation law requirements in Maryland and the UEF strongly urges its approval this year.

Although this proposal should increase revenue to the UEF, it is not designed nor intended to deal with the declining assessment revenue received by the agency.

As noted in the Budget Analysis, the UEF offered the Legislature legislation in 2020 and 2021 to increase the Fund Assessment from the current long-time 2% to 3% by reallocating the current 81/2% Assessment between the UEF and the SIF, which would generate revenue which would not only stabilize the Fund but also potentially would increase the Fund balance on an ongoing basis from year to year. Such a rebalancing would also hold assessed entities harmless.

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[1] Hearings, per Labor and Employment §9-407, are often referred to as "show cause" compliance hearings. It should be noted that the UEF has no advance notice of, nor does it participate in, these hearings.

The UEF continues to offer this proposed solution as a simple and effective remedy to the issue of decreased assessment revenue.

2. Cost Per Claim Increases

As noted in the analysis, the UEF has managed claims investigations and payments in an effective manner over time.

It is critical to understand that the UEF is not an insurance company. It is a statutory payer of last resort. It does not write and issue insurance policies, set and collect premiums, assess risks and otherwise control who it insures. By statute we cover injured workers when employers fail to have legally required workers' compensation insurance coverage for those workers and when self-insured companies go insolvent. As demonstrated, the agency has a remarkable record of improving finding coverage in cases, thus avoiding serving as the payer in many cases.

The UEF does not, and cannot, however, control the claims that become its responsibility. Ensuring that uninsured employers pay their injured workers is a goal of the agency – and the enactment of SB0216 will assist with that goal – but collection from uninsured employers remains a time-consuming and difficult mission for uninsured employers' funds, here in Maryland and across the nation.

The agency manages claims and collects funds at a far more efficient and successful rate than when current agency leadership started years ago and is always working to control costs where possible and legal.

3. Audit Findings Not Yet Resolved

As stated in the Budget Analysis: "The Department of Legislative Services (DLS) recommends restricting $150,000 of UEF's administrative budget until OLA (Office of Legislative Audits) has confirmed that each of the repeat audit findings have been corrected."

In addition, the letter from the OLA noted in the Budget Analysis noted:

> "We wish to acknowledge the cooperation extended to us during the review by UEF. We also wish to acknowledge UEF's willingness to address the audit issues and implement appropriate corrective actions."

The UEF appreciates, and continues to value, our ongoing interactions with the OLA. We continue to work to respond to the findings of the Audit and to interact with the OLA as needed to comply with those Audit findings. We welcome the active assistance of the OLA in resolving these findings.

The Agency welcomes this collaboration and will continue to work with the OLA until that agency is satisfied with the UEF's responses regarding the two remaining findings and relevant recommendations. The agency appreciates the OLA's cooperation and guidance in these matters.

Therefore, the agency concurs with the Budget Analysis' recommendation herein.

Operating Budget Recommended Actions

The Agency concurs with the Governor's allowance and the Budget Analyst's recommendations as regards the Budget.

In conclusion, the agency sincerely thanks the budget analyst, Ms. Elizabeth Waibel, for her professional and collaborative work with this agency and her excellent and thorough Budget Analysis. We appreciate her efforts to work with this agency to provide the legislature with both information and various recommendations regarding the UEF. Her performance, knowledge and demeanor have made the process more successful for all involved.

It is always my pleasure to appear before legislative committees and I look forward to working with you all to continue our ongoing successful collaborative progress to make the Maryland Uninsured Employers' Fund an even more outstanding and successful State government agency - which in turn will help protect thousands of injured Marylanders and their families during difficult times.

Thank you.

Sincerely,

Michael W. Burns

Michael W. Burns, Esquire
Director

Encls.