

Memo

To: Members, Michigan House Oversight Committee
From: Neil MacVicar, Vice President, MHA Unemployment Compensation Program
Sean Sorenson-Abbott, Manager, Government Relations
Date: Jan. 13, 2021
Re: House Bills (HB's) 5549-5556 – Unemployment Compensation Package

HB's 5549-5556 would make several changes to Michigan's unemployment insurance and compensation program to streamline the process for claimants and employers. The package aims to increase transparency and shorten the wait times for Unemployment Insurance Agency (UIA) determinations. The Michigan Health and Hospital Association (MHA) is supportive of the concept of the package but wanted to provide potential amendments we believe will improve the bills and limit the need for future judicial interpretation.

These comments and recommendations were developed by the staff at MHA's Compensation Program, which helps hospitals and health systems navigate and manage unemployment compensation for their employees. Any questions about the language or requests for more explanation can be directed to Sean Sorenson-Abbott at ssorenson@mha.org.

HB 5549: MHA suggests that the report created in this bill also include data on the number of appeals filed by the UIA.

- §32f(1)(a)(i): This report should also include data on the number of appeals filed by the UIA.

HB 5551: The one-year timeline established in this bill could cause issues in certain circumstances and prevent the UIA from pursuing restitution. MHA suggests that the language be amended to ensure that employer appeal information is included in restitution determinations. The MHA is happy to provide specific examples of the potential timeline issues upon request.

- §62(a) — Page 2, Lines 21-23: We perceive a problem here with the “one year” limitation on issuing fraud “restitution” determinations. A claimant may collect an improper benefit payment (via fraudulent means, Lines 18-19) on the 52nd week of their claim. That 52nd week is about one (1) year from the “date the claimant first received benefits in the benefit year” (assuming they received a benefit payment for Week #1). The UIA may not have enough time to issue a restitution determination, or the issue may not come to light until after the “one year” mark. *For example: The improper payment (due to fraud) of benefit week payment #20 may occur on the 52nd week of the claim and might not be identified as a fraud issue until after an employer's review of the “weekly benefit charge determination” (UIA Form 1136), which is issued a few weeks after benefit week payment #20.* **RECOMMENDATION:** Change lines

Brian Peters, Chief Executive Officer

22-23 to read that the UIA has one (1) year after “either: (a) the improper payment was received by the claimant, or (2) notice from the employer pursuant to a timely appeal of a determination”.

- §62(c) — Page 6, Lines 1-12: This language seems to eliminate the “redetermination” appeal level in these types of matters — see: MCL 421.32a(1). Based on the language in HB 5551, the proposed notice indicates that the claimant can go directly from the determination level to an ALJ hearing, which may not be correct. **PROPOSED SOLUTION:** Change “determination” to “redetermination.”
- §62(c)(i) and (ii), Lines 13-21: The word “both” in Line 14 may lead to a problem in the case that there was never an email address for the claimant [(ii)(B)], and/or the UIA can’t reach the claimant via phone or in-person [(ii)(A)]. Is there then insufficient notice to the claimant and therefore the matter can’t move forward?

HB 5552: MHA is proposing clarification amendments to ensure that a complaint does not impact the employer’s appeal period, and to allow employer representatives to also provide feedback to the advocate’s office that is established by the bill.

- §3(d) — Pg. 2, Lines 8-9: Clarification needed. Does “person” include “employer” and/or “employer’s representative”? **RECOMMENDATION:** Add “employer or employer’s representative.”
- §29 — Pg. 7, Lines 4-14: **PROPOSED ADDITION:** We suggest that there be specific language in HB 5552 that indicates that filing a complaint under this section [ie: Section 3(d)] does not toll the appeal period for pursuing an appeal from an adverse determination, redetermination, or other decision. In other words, an individual can file a complaint, but they would also need to file an appeal in the normal course of the statutory appellate process to preserve their right to contest an adverse decision.

HB 5553: The 10-day timeline established in this bill should be extended to ensure the UIA has ample time to obtain and review all of the available information.

- §32g(1) — Pg. 6, Lines 10-14: Ten (10) business days is not enough time for the UIA to fully consider a matter and this proposed amendment seems impracticable due to other provisions within the Michigan Employment Security Act. Our concern comes from the fact that employers statutorily have 10 days to respond to a new claim notice (MCL 421.32). Generally, employers don’t get notice of the claim for at least 2-3 days after the claim is filed. By the time the employer gathers its information, prepares a response (which may need review by counsel) to the UIA, submits its response via fax on its 10-day deadline, and the UIA receives and reviews the employer’s response, the “10 business days after it (UIA) receives the claim for benefits” will likely have passed. So then, the UIA will need to issue a determination indicating that it doesn’t have all the information.

HB 5554: The MHA is offering these amendments to simply increase transparency of information.

- 3§2e(1) — Pg. 1: The interested parties to a hearing should have access to the same information that the ALJ has access to concerning the claim. The UIA should be required to place all of this information onto the employer and claimant’s respective MiWAM accounts prior to the hearing. **RECOMMENDATION:** Add this language to the end of Section 32e(1) on Page 1: “and make this same information available to the interested parties at least two (2) business days prior to the hearing via mail, fax or other electronic means”.
- §32e(1)(a) — Pg. 2: **ADD:** “the appealing party’s appeal document or record of appeal including the date the appeal was received by the unemployment agency.”