

## DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Family and Medical Leave Insurance

### REGULATIONS CONCERNING PROGRAM INTEGRITY

7 CCR 1107-6

#### 6.1 Statements of Authority, Purpose, and Incorporation by Reference

1. This regulation is adopted pursuant to the authority in section C.R.S. § 8-13.3-501 et seq. and is intended to be consistent with the requirements of the State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. (the “APA”), and the Paid Family and Medical Leave Insurance Act, C.R.S. § 8-13.3-501 through 524 (the “Act” or “FAMLI”).
2. The general purpose of these rules is to exercise authority of this Division to enforce and implement the Paid Family and Medical Leave Insurance Act (C.R.S. § 8-13.3-501 et seq.) with regard to program integrity.
3. Article 13.3, Title 8 (2023), Article 42, Title 8 (2023), Article 70, Title 8 (2023), and Article 12, Title 5 (2023) are hereby incorporated by reference. Earlier versions of such laws may apply to events that occurred in prior years. Such incorporation excludes later amendments to or editions of the statutes. These statutes and regulations are available for public inspection at the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance, 633 17th Street, Denver, CO 80202. Copies may be obtained from this Division at a reasonable charge, or can be accessed electronically from the website of the Colorado Secretary of State. Pursuant to C.R.S. § 24-4-103(12.5)(b), the agency shall provide certified copies of the statutes and regulations incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency originally issuing the statutes. All Division Rules are available to the public at [famli.colorado.gov](http://famli.colorado.gov). Where these Rules have provisions different from or contrary to any incorporated or referenced material, the provisions of these Rules govern so long as these are consistent with Colorado statutory and constitutional provisions.
4. If any part of these rules is held invalid, the remainder shall remain valid, and if any part is held not wholly invalid, but in need of narrowing, it will be retained in narrowed form.

#### 6.2 Definitions and Clarifications

1. Unless otherwise indicated, terms used here that are defined in the Act have the same definition as they do under the Act.
2. “Benefit Overpayment” means a payment in excess of the amount authorized by the Act and its implementing regulations.
3. “Claimant” has the same definition as 7 CCR 1107-3 Section 3.2.7.
4. “Correct Address” has the same definition as 7 CCR 1107-8 Section 8.2.5.
5. “Determination Letter” has the same definition as 7 CCR 1107-8 Section 8.2.F.
6. “Equity and Good Conscience” means fairness as applied to each individual case after considering the totality of the circumstances. When determining whether an individual or entity shall pay an amount owed to the Fund (e.g. benefit overpayment, fines or interest), the Division

may consider the following factors to determine equity and good conscience, including, but not limited to:

- A. The individual's financial condition required that the amount owed be spent on reasonable and necessary living expenses;
- B. The individual's household income is below 200% of the federal poverty income guidelines;
- C. The individual or entity lacks the ability to pay the amount owed based on prior income level, current income and assets, and future earnings potential;
- D. Requiring repayment will cause extraordinary financial hardship by depriving the individual of the ability to provide for basic necessities that cannot be deferred such as food, shelter, clothing, utilities, and medical costs;
- E. The individual detrimentally changed their position in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a financial and/or contractual obligation that he or she would not have entered except for the receipt of the overpaid benefits; and/or
- F. The individual relinquished a valuable right in reliance on the receipt of the overpaid benefits, including the receipt of other governmental benefits for which he or she would have been entitled except for the receipt of the overpaid benefits. Although the individual is not required to apply for governmental benefits and be rejected from receiving them, he or she may be required to prove eligibility for such benefits by establishing their economic situation at the time family and medical leave insurance benefits were received as well as the requirements for receiving said benefits.

7. "Fees" means any additional charge by a private plan added to an outstanding amount owed.

8. "Good cause" has the same definition as 7 CCR 1107-3 Section 3.2.12.

9. "Party" or "Parties" means a claimant, employee, employer, or individual electing coverage involved in a proceeding.

10. "Qualifying Condition" means a reason for leave described at C.R.S. § 8-13.3-504(2).

### **6.3 Benefits Overpayments**

1. A claimant who receives family and medical leave insurance benefits they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to section 6.2. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):

- A. Division miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;
- B. Determination by the Division that the claimant does not qualify for family and medical leave insurance benefits because they are not localized in Colorado, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving family and medical leave insurance benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;

- C. Claimant's failure to notify the Division of an event that causes benefit payments to change pursuant to 7 CCR 1107-3 Section 3.9.1;
  - D. Claimant who has not taken a leave of absence from the employment from which they are receiving family and medical leave insurance benefits;
  - E. Claimant who is receiving family and medical leave insurance benefits, continuous or intermittent, during a period of unemployment, except as described in 7 CCR 1107-3 Section 3.4.1.A;
  - F. Claimant receiving family and medical leave insurance benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4 Section 4.3;
  - G. Claimant receiving family and medical leave insurance benefits for an absence from work that is caused by circumstances that would entitle the claimant to benefits provided under the Colorado Employment Security Act in violation of 7 CCR 1107-4 Section 4.4;
  - H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;
  - I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide;
  - J. Self-employed individual who reports inflated wages on their own behalf, causing the claimant to receive family and medical leave insurance benefits in an amount greater than their actual wages would provide; or
  - K. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the individual's need for paid family and medical leave.
2. Benefit overpayments may be identified through any lawful means, including but not limited to Division audits, Division investigations, or external tips. Benefit overpayment determinations are appealable pursuant to 7 CCR 1107-8 Section 8.8.
  3. The Division will notify claimants of any determination of benefit overpayment by sending the claimant a determination letter to the claimant's correct address.
  4. The claimant may appeal a determination of benefit overpayment as detailed in 7 CCR 1108 Section 8.8.
  5. Any outstanding benefit overpayment owed to the Fund by the claimant is subject to recovery pursuant to 7 CCR 1107-8 Section 8.9.
  6. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8 Section 8.10.
  7. At its discretion, the Division may waive, in whole or in part, any amount of benefit overpayment owed to the Fund where such recovery would be against equity and good conscience.

**6.4 Premium Underpayments, Fines, and Interest.**

1. An employer or individual electing coverage shall be liable for a premium underpayment. Circumstances giving rise to a premium underpayment include, but are not limited to a(n):
  - A. Mistake in billing by the Division caused by a technical error;
  - B. Employer who has incorrectly identified employees localized in Colorado, underreported the number of employees they have, misclassified employees as non-employees, or failed to register with FAMLI and pay premiums; or
  - C. Individual electing coverage who has under reported their income or has failed to report their income.
2. A fine may be imposed for any violation, including a failure to undertake an action specifically required by the Act and its implementing rules, or by engaging in any activity specifically prohibited by the Act and its implementing rules.
3. Premium underpayments are identified through any lawful means including Division audits, investigations, and external tips.
4. The Division will notify an individual electing coverage or employer of any determination of premium underpayment or fine by sending a determination letter to the individual electing coverage or employer's correct address.
5. The party may appeal a determination of premium underpayment or fine pursuant to 7 CCR 1107-8 Section 8.8.
6. Any outstanding premium underpayment fine or interest owed to the Fund by the party is subject to recovery pursuant to 7 CCR 1107-8 Section 8.9.
7. Any outstanding balance past due shall accrue interest pursuant to 7 CCR 1107-8 Section 8.10.
8. At its discretion, the Division may waive, in whole or in part, any fine or interest owed to the Fund where such recovery would be against equity and good conscience.

#### **6.5 Private Plans and Benefit Overpayments**

1. A claimant who receives benefits under a private plan that they are not entitled to receive shall be liable for repayment of the amount overpaid, unless otherwise relieved pursuant to this section. Circumstances giving rise to a benefits overpayment include, but are not limited to a(n):
  - A. Private plan miscalculation that occurs without any fault from the claimant or is caused by a claimant's omission, willful misrepresentation, or fraud;
  - B. Determination by the private plan that the claimant does not qualify for benefits because they are not localized in Colorado, are not a covered individual, do not have a qualifying condition, or are disqualified from receiving benefits because of a willful false statement or misrepresentation pursuant to C.R.S. § 8-13.3-513;
  - C. Claimant's failure to notify the private plan of an event that causes benefit payments to change pursuant to 7 CCR 1107-3 Section 3.9.1;
  - D. Claimant who has not taken a leave of absence from the employment from which they are receiving benefits;

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- E. Claimant who is receiving benefits, continuous or intermittent, during a period of unemployment, except as provided by 7 CCR 1107-3 Section 3.4.1.A;
  - F. Claimant receiving benefits for an absence from work that is caused by circumstances that would entitle the claimant to temporary indemnity benefits under the Colorado Workers' Compensation Act in violation of 7 CCR 1107-4 Section 4.3;
  - G. Claimant receiving benefits for an absence from work that is caused by circumstances that would entitle the claimant to benefits provided under the Colorado Employment Security Act in violation of 7 CCR 1107-4 Section 4.4;
  - H. Claimant receiving family and medical leave insurance benefits when their family and medical insurance leave benefits have been exhausted;
  - I. Employer who incorrectly reports wages for the claimant, causing the claimant to receive benefits in an amount greater than their actual wages would provide; or
  - J. Health care provider who fails to meet the definition of "health care provider" as defined by C.R.S. § 8-13.3-503(13), has provided a diagnosis or treatment outside of their licensed scope of practice, or has a license that has been suspended or revoked at the time the provider completes documentation regarding the claimant's need for paid family and medical leave.
2. The private plan administrator shall notify the claimant of any determination of benefit overpayment by sending a determination letter to the claimant's correct address. When a determination of benefit overpayment totals \$100 or more, the private plan administrator shall additionally notify the Division by sending a copy of the determination letter to the Division's correct address.
  3. The claimant may appeal a determination of benefit overpayment by a private plan as detailed in 7 CCR 1107-8 Section 8.8.
  4. Any outstanding benefit overpayment owed to the private plan by the claimant is subject to recovery by any legal means available to the private plan.
  5. A private plan shall exercise its discretion to waive, in whole or in part, any amount of benefit overpayment owed where recovery would be against equity and good conscience.
  6. Any outstanding benefit overpayment owed to the private plan is subject to interest pursuant to C.R.S. § 5-12-101.
  7. A private plan shall not subject an employee to any additional fees in addition to any outstanding benefit overpayment amounts owed.