Evolution of Federal Paid Family and Medical Leave Policy

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Advocates and lawmakers in Congress have been working intensively on paid leave policy for years. In 2021, federal legislation to establish a permanent, national paid family and medical leave program secured House passage for the first time. The legislation was part of a larger bill known as the Build Back Better (BBB) Act. However, negotiations over the act stalled after months of debate.[1] Congress later passed the Inflation Reduction Act of 2022, which included some of the health and climate proposals in the BBB Act but omitted new investments in paid leave; child care; preK, home- and community-based services; family-focused tax credits; and other critical family-supporting provisions. Despite the omission of these provisions in final legislation, the House passage of the BBB Act and the committee process that led to it marked a significant advancement in paid family and medical leave policy. BBB negotiations resulted in fully developed proposals for a new federal paid family and medical leave program. These proposals provide policymakers, advocates, and researchers an opportunity to better understand how a new national paid family and medical leave program could work and its potential impact on workers, families, businesses, and the economy. They also set the stage for future legislative action and innovation.

In this brief, we provide a summary of the proposals to establish a paid family and medical leave program that emerged in 2021. In general, we find that the proposals advanced by the White House, House, and Senate prioritize expanded coverage and eligibility for workers, providing benefits that replace a larger share of earnings for lower-wage workers, and integration with existing state paid family and medical leave programs and employer benefits. Policy constraints imposed by the BBB Act negotiations and limitations on imposing mandates under the budget reconciliation process resulted in trade-offs in the length of leave, maximum benefit level, and job protections. Research, including microsimulation modeling, is needed to understand and compare the impact of these new, more detailed proposals on workers, families, business, and other benefit programs. Microsimulation modeling can provide estimates that allow policymakers to compare the cost of proposals, impact on access and take-up rates, benefit levels, poverty reduction, and participation in other benefit programs resulting from federal or state paid family and medical leave proposals. In addition, more research is needed to understand and estimate the impact of provisions governing the coordination of benefits between employers, states, and the federal program.

Background

Paid family and medical leave provides wage replacement benefits to working people when they need to care for a new child or a loved one with a serious health condition, or attend to their own serious health issue. Paid family and medical leave is connected to higher rates of employment for new mothers and family caregivers, higher earnings over time for new parents, better health, and lower costs to other programs, including the Supplemental Nutrition Assistance Program (also known as SNAP) and Medicaid.[2] Today, workers in the United States have no federally guaranteed paid family and medical leave. As a result, workers' access to paid leave is limited: just 24 percent of private-sector workers have dedicated paid family leave through their jobs and only about 4 in 10 have personal medical leave through an employer's short-term disability insurance policy (US Bureau of Labor Statistics 2022). Access is also skewed toward higher-wage workers and workers in professional jobs, which means that the workers who can least afford leave without pay are often those who do not have access to paid family or medical leave at work (Boyens, Karpman, and Smalligan 2022) .

Access to *unpaid* family and medical leave is also limited. Approximately 56 percent of workers have job-protected unpaid leave under the Family and Medical Leave Act (FMLA; Brown et al. 2020). The FMLA's protections for workers taking unpaid family and medical leave exclude worksites with fewer than 50 employees within a 75-mile radius, workers who have been at their worksite for less than one year and people who have worked fewer than 1,250 hours at their employer in the past year. Workers excluded from federally guaranteed job-protected leave tend to be lower paid, younger, and single parents.[3] In addition, excluded workers are more likely to have only a high school education, live in rural communities, and be immigrants, Latine people, and women (Jones and Tasneem 2022).

Support for establishing a federal paid family and medical leave program—modeled on state paid leave social insurance programs—has been gaining traction. While no permanent paid family and medical leave program currently exists at the federal level, a growing number of states have enacted

and implemented programs. There are now 11 states plus the District of Columbia that have enacted paid family and medical leave programs; eight of these are currently in operation and four others will begin to pay benefits between 2023 and 2026 (Shabo 2021a, 2021b).

Early state progress in California helped spur federal lawmakers to consider national paid family and medical leave, beginning in 2007, with the introduction of the Dodd-Stevens paid leave bill; both California and New Jersey were catalysts for another proposal introduced by Representative Pete Stark in 2009.[4] It took several years to build momentum, however, and it was not until 2013 that a widely supported comprehensive proposal covering virtually all workers—the Family And Medical Insurance Leave (FAMILY) Act—was introduced.[5] The FAMILY Act was the primary legislative vehicle for paid leave until updated proposals were put forward in 2021, when the president included paid family and medical leave in his American Families Plan (AFP) and US House Ways and Means Chairman Richard Neal put forward his own proposal.

BOX 1

Paid Leave Tax Credits

In addition to the FAMILY Act, Congress took incremental steps to provide paid leave tax credits to employers. For example, voluntary tax credits for businesses passed was enacted in the 2017 tax reform bill;[6] paid parental leave for federal employees passed as part of the National Defense Authorization Act at the end of 2019;[7] and emergency paid sick and child care leave legislation that was responsive to the COVID-19 crisis (and only available on a temporary basis) was enacted in 2020.[8] The paid sick and child care leave provided under the Families First Coronavirus Response Act included a requirement that employers provide paid leave for COVID-19-related reasons, but the mandate was dropped when the legislation was extended and modified under subsequent legislation, effective January 2021.[9] The remaining voluntary tax credits for employers who offered COVID-19-related paid sick and child care leave expired on September 30, 2021. The tax credits were also available to the self-employed.

On April 27, 2021, Chairman Neal circulated the Building an Economy for Families Act, often referred to as a "discussion draft," that proposed a comprehensive, federal paid family and medical leave program modeled largely on the FAMILY Act. The discussion draft added updates to key features, such as progressive wage replacement rate for paid leave benefits, an expanded range of family members for whom one can provide care, and coordination of federal benefits with existing state programs and private employer benefits. On April 28, 2021, the Biden Administration also proposed the creation of a federal paid family and medical leave program in the American Families Plan. The plan included key objectives for the program and was also modeled on the FAMILY Act.

Chairman Neal took input from stakeholders over the spring, revised the draft, and held a markup in September 2021. The Ways and Means committee voted out a bill that included many provisions from the Neal discussion draft and would have established a comprehensive, permanent 12-week paid family and medical leave program. As negotiations over the legislative package known as BBB progressed, paid

family and medical leave became a sticking point—with news reports indicating that some senators' support for the provision was in question and its inclusion in a final House legislative package uncertain.[10]

Ultimately, however, on November 19, 2021, the House passed a modified version of the Ways and Means bill, pared down in various ways to reduce the program's cost, but ultimately reflecting most of the key elements of a comprehensive paid family and medical leave program. The program passed by the House would have guaranteed four weeks of paid family and medical leave to the vast majority of US workers with some earnings and work history. The benefits provided would have replaced a meaningful share of income for low- and middle-wage workers. The policy changes adopted by the House as paid leave fell generally into three major categories:

- Technical modifications to the FAMILY Act structure to reflect changes in the national environment and research base since the FAMILY Act was originally drafted
- Policy elements left unresolved in the FAMILY Act
- Policy compromises to satisfy policy constraints or the procedural limitations of the congressional reconciliation process

The table below summarizes key provisions in the FAMILY Act, American Families Plan (AFP), the Ways and Means committee mark and the BBB Act as passed by the House.

TABLE 1

Summary of Proposals to Establish a Federal Paid Family and Medical Leave Benefit Program

	Family and Medical Insurance Leave (FAMILY) Act (H.R. 804/S. 248)	American Families Plan	Building an Economy for Families Act (H.R. 5376)	Build Back Better (BBB) Act (H.R. 5376)
Inception	Introduced February 4, 2021 (same bill scope introduced in each Congress since 2013)	Proposed April 2021	Ways and Means committee mark, September 27, 2021	House-passed, November 19, 2021
Administrative				
Lead agency	Social Security Administration	N/A	Treasury	Social Security Administration
Funding	Dedicated payroll tax of 0.4% of payroll split between employees and employers and deposited into a new trust fund	Mandatory funding, no dedicated payroll tax; costs of entire reconciliation bill offset by taxes on corporations and high-income individuals	Mandatory funding, no dedicated payroll tax; costs of entire bill offset by taxes on corporations and high-income individuals	Mandatory funding, no dedicated payroll tax; costs of bill proposal offset by taxes on corporations and high-income individuals
Cost	$547 billion over 10 years	$225 billion over 10 years	No official cost; roughly same as FAMILY Act	$205 billion over 10 years
Implementation timing	18 months after enactment	N/S	Approximately 18 months after expected enactment	Approximately 2 years after expected enactment
Benefits				
Duration (weeks of leave)	12 weeks	Phased in over 10 years, beginning with leave durations that varied by leave type and reaching 12 weeks for all types of leave by year 10; 3 days of bereavement leave beginning in year 1 and staying constant throughout	12 weeks; 3 days of bereavement leave for a full-time worker (prorated for others)	4 weeks

	Family and Medical Insurance Leave (FAMILY) Act (H.R. 804/S. 248)	American Families Plan	Building an Economy for Families Act (H.R. 5376)	Build Back Better (BBB) Act (H.R. 5376)
Purposes	Own serious health condition; birth or adoption of a child; care for a family member with a serious health condition; deployment-related and military family caregiving needs	Own serious health condition; birth or adoption of a child; care for a family member with a serious health condition; deployment-related and military family caregiving needs; bereavement for the loss of a parent, child, or spouse	Own serious health condition; birth or adoption of a child; care for a family member with a serious health condition; deployment-related or military family caregiving needs; bereavement for the loss of a parent, child, or spouse	Own serious health condition; birth or adoption of a child; family caregiving
Wage replacement	66% of wages up to $4,000/month and a minimum of $580, adjusted annually	At least two-thirds of average weekly wages replaced, rising to 80% for the lowest wage workers	85% of average weekly earnings (AWE) below $290 plus 75% of AWE between $290 and $650 plus 55% of AWE between $659 and $1,385 plus 25% of AWE between $1,385 and $1,923 plus 5% of AWE between $1,923 and $4,808; adjusted annually	85% of AWE below $290 plus 69% of AWE between $290 and $659 plus 50% of AWE between $659 and $1,192; adjusted annually (rates are post-sequester, see note below)
Maximum benefits	$4,000 per month (adjusted annually)	N/S	Approx. $1,201 per week/$5,205 per month (adjusted annually)	Approx. $768 per week/$3,071 per month (adjusted annually)

	Family and Medical Insurance Leave (FAMILY) Act (H.R. 804/S. 248)	American Families Plan	Building an Economy for Families Act (H.R. 5376)	Build Back Better (BBB) Act (H.R. 5376)
Job protection	Antiretaliation provisions; additional job protections included in separate legislation	N/S	None for workers covered through the federal benefit program; employers who are reimbursed for providing benefits directly to employees through a private plan and recipients of small business grants must guarantee workers the right to job reinstatement	Same as Building an Economy for Families Act (Ways and Means committee mark)
Eligibility				
Eligibility	Meet criteria to be insured for purposes of the Social Security Disability Insurance (SSDI) program and have earned income from employment in the past 12 months	N/S	Have earned income in any amount from: wages, self-employment income or unemployment benefits at any time during a specified several-month period prior to the start of the benefit period	Have earned income in any amount from: wages, self-employment income or unemployment benefits at any time during a specified several-month period prior to the start of the benefit period *and* have at least $2,000 in earned income (including unemployment benefits) during a designated two-year period
Coverage	Same as Social Security (OASDI)—covers most employees and self-employed people; excludes many state and local government employees	N/S	All employees and self-employed people	All employees and self-employed people

	Family and Medical Insurance Leave (FAMILY) Act (H.R. 804/S. 248)	American Families Plan	Building an Economy for Families Act (H.R. 5376)	Build Back Better (BBB) Act (H.R. 5376)
Family definition	Parent, child (under 18 or adult child unable to care for self because of physical or mental disability), spouse, domestic partner	N/S	Parent, child (of any age), spouse, registered domestic partner, sibling, grandparent, grandchild, or other person whose relationship to the worker is like family	Same as Building an Economy for Families Act (Ways and Means committee mark)
Coordination with existing state programs and employer plans				
Federal coordination with state paid family and medical leave programs	State laws are specifically not preempted; requires that state paid family and medical leave benefits be coordinated with the federal program	N/S	Allows states with already enacted paid family and medical leave programs as of the date of enactment of the federal program to apply to be designated as "legacy states" and receive federal reimbursement for equivalent benefits; legacy states must have benefits at least as generous as the federal program; states have 3 years to revise state laws in order to qualify for reimbursement	Same as Building an Economy for Families Act (Ways and Means committee mark)

	Family and Medical Insurance Leave (FAMILY) Act (H.R. 804/S. 248)	American Families Plan	Building an Economy for Families Act (H.R. 5376)	Build Back Better (BBB) Act (H.R. 5376)
Federal coordination with employer plans	N/S	N/S	Employer plans that meet specified requirements, including offering all types of leave offered in the federal program can qualify for reimbursement of up to 90% of projected national average cost per employee of providing paid family and medical leave benefits, up to a cap	Same as Building an Economy for Families Act (Ways and Means committee mark)

Source: Unless otherwise noted, information on legislative proposals and the American Families Plan are derived from the FAMILY Act, H.R.804, 117th Congress (2021–22), https://www.congress.gov/bill/117th-congress/house-bill/804; Inflation Reduction Act of 2022, H.R.5376, 117th Congress (2021–22), reported in the House: https://www.congress.gov/bill/117th-congress/house-bill/5376/text/rh and engrossed in the House: https://www.congress.gov/bill/117th-congress/house-bill/5376/text/eh; "Fact Sheet: American Families Plan," White House, April 28, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/; and "Fact Sheet: The American Families Plan Will Support Children, Teachers, and Working Families in Rural America," White House, April 29, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/29/fact-sheet-the-american-families-plan-will-support-children-teachers-and-working-families-in-rural-america/. Congressional Budget Office estimates for the Family Act and Build Back Better Act can be found at https://www.cbo.gov/publication/56129 and https://www.cbo.gov/publication/57626, respectively.

Notes: Wage replacement is the benefit formula shown for the BBB Act reflects the replacement rates post-sequester. The rates in the legislative text of the bill are higher in anticipation of sequestration being applied to mandatory spending. The rates shown here reflect legislative intent as described in the section-by-section summary issued by the Ways and Means committee. Maximum benefits are the author's calculations based on legislative text and AFP proposal. To be insured for SSDI, a worker must have earned at least 20 quarters of coverage (QCs) during the most recent 40 calendar quarters; individuals younger than age 31 generally need QCs of at least one-half of the calendar quarters elapsed since attainment of age 21 with a minimum of six QCs. The amount of earnings required for a QC in 2022 is $1,510.

Key Issues and Considerations

Below we highlight key policy parameters that evolved as federal paid leave policy developed, some of which were the subject of debate and negotiations in 2021. We also discuss their implications for future action on federal paid family and medical leave policy.

Program Cost, Financing, and Administration

Throughout 2021, proposals to establish a comprehensive, permanent paid family and medical leave program varied in how they addressed issues of cost, financing, and administration of the proposed program. The variations reflected trade-offs made among competing pressures at play during legislative negotiations, which were subject to a special rule known as budget reconciliation.[11]

COST

Both the FAMILY Act and the Ways and Means committee mark provided funding for up to 12 weeks of benefits for the birth, adoption, or foster placement of a child, family caregiving, and medical leave. The FAMILY Act was estimated to cost approximately $547 billion,[12] and the Ways and Means committee mark was expected to have roughly similar costs.[13] However, the AFP, anticipating cost constraints from the reconciliation process and negotiations, proposed a less costly program that phased in the number of weeks available for each type of leave over the 10-year budget window. The House ultimately passed legislation that cost even less than the AFP proposal, estimated at $205 billion[14] versus $225 billion for AFP,[15] but instead of using a phase-in, it limited the number of weeks of leave available for all reasons to four weeks, which would be permanently authorized, appropriated, and fully available beginning in the first year of the program. It also provided more time for program start-up, anticipating that developing and running a new program would take approximately two years, which further reduced 10-year costs.

FINANCING

The AFP and the House bills made a significant change in their approach to financing paid family and medical leave benefits and administration compared with existing state programs and the FAMILY Act. The FAMILY Act proposed a program financed with a payroll tax shared between employees and employers, similar to the one used to finance Social Security benefits and state paid family and medical leave programs.

Unlike the FAMILY Act, the president's and House's proposals would not have relied on a dedicated payroll tax. Instead, benefits would have been funded through a permanent, indefinite, mandatory appropriation. To fund new investments in paid leave and other policies and programs, the AFP and House bills proposed paid family and medical leave benefits as part of a larger package of legislative changes that included measures intended to offset the costs of the entire package. In general, the spending offsets included measures aimed at increasing taxes on corporations and high-income individuals, while avoiding new taxes on individuals making less than $400,000 a year, a policy priority for President Biden. This approach would increase the overall progressivity of a paid leave program.

However, it is a departure from current practice in the states and also meant that in the context of a revenue-neutral budget reconciliation bill, the paid family and medical leave proposal did not have its own dedicated revenue source to offset the costs of the program. As a result, the proposal had to compete with other policy priorities within the BBB legislative package.

ADMINISTRATION

The paid family and medical leave proposals debated during 2021 also varied in which agency they would designate as the lead agency responsible for implementing and administering the new program. The FAMILY Act assigned responsibility for administering the program to the Social Security Administration (SSA). The Ways and Means committee mark provided the Treasury Department with the responsibility, and the AFP did not specify a lead agency. Ultimately, the House-passed BBB Act housed the program at the SSA.

Both the SSA and Treasury Department have expertise in areas critical to implementing a paid family and medical leave program on a national scale. SSA administers Social Security retirement and disability benefits, as well as Supplemental Security Income benefits, providing benefits and direct services to over 60 million individuals every month. SSA has deep expertise in administering large-scale benefit programs, including determining disability claims, which has many similarities to claims for paid family and medical leave claims, including the need to document and review medical evidence and adjudicate appeals. SSA also houses and accesses multiple types of data on earnings and income needed to establish benefit levels. This includes annual wage data, earnings data from the National Directory of New Hires, and third-party payroll processors. SSA maintains a large number of field offices across the United States serving the public, including individuals who need special assistance applying for benefits and individuals with disabilities.

The Treasury Department enjoys cabinet-level status, unlike SSA. It has recent experience establishing large and complex programs as part of the Affordable Care Act and the American Rescue Plan. This includes leading major technology and systems investments, engaging in significant interagency coordination and hiring and managing large numbers of new staff. In addition, its core functions include processing income tax and earnings data, as well as issuing payments for many large programs, including Social Security.

Both agencies also would also have hurdles to overcome in establishing a new national paid family and medical leave program. Treasury does not directly administer large benefit programs or have a claims process for benefits. SSA has received less administrative funding than requested by the agency, which has led to staffing shortages, increased wait times, and backlogs in claims, as well as antiquated technology in portions of the program.

Any agency tasked with establishing a new paid family and medical leave program would be under intense pressure to deliver new benefits quickly, while avoiding technology and implementation challenges that could undermine support for the program. The FAMILY Act provided 18 months from enactment to delivery of first benefits, while the House-passed bill allowed two years. Most entirely new state programs phased in implementation of their programs over a two-and-a-half-year to three-

year period or more, starting with the building of new technology, outreach and education, the collection of taxes, and benefit delivery. At the federal level, the implementation timeline could be facilitated by flexible authorities for hiring and procurement, as well as clear authorities for sharing data and partnering with other federal agencies to administer the new program.

Benefit Levels and Duration

The FAMILY Act provides 12 weeks of paid family and medical leave, in keeping with the FMLA. Both the AFP and the Ways and Means committee draft envisioned programs that would also provide 12 weeks of leave on a permanent basis. However, while the committee draft included 12 weeks of leave from the start of the program, the AFP guaranteed that 12 weeks of leave would be available by year 10 of enactment. Although not specified in public documents, informal conversations with administration staff indicate that the number of weeks of leave would be phased in over the budget window, with different initial durations for each type of leave and possibly with different phase-in schedules. The phase-in of benefits is consistent with the lower estimated cost of the AFP proposal. The other way that lawmakers sought to minimize costs focused on limiting the duration of the program over the entire 10-year window. The cost of paid family and medical leave in the House passed BBB Act was considerably lower than prior proposals, reflecting a decision by House leadership to reduce the duration of benefits to four weeks to conform to funding constraints in the overall bill.[16]

Although the number of weeks of leave were reduced in the final House-passed bill, the BBB proposal prioritized the adequacy of benefits for the lower- and middle-income workers. The FAMILY Act would provide a benefit that replaces approximately 67 percent of a worker's benefits with a maximum benefit of roughly $1,000 per week. The Ways and Means committee draft adopted a more generous benefit formula that also increased the replacement rate for lower-wage workers, aimed at increasing take-up of the benefit for those who can least afford to miss out on earnings while on leave. The committee draft would have provided a maximum benefit of roughly $1,200 per week and used a progressive benefit formula that replaces 85 percent of wages for those earning the federal minimum wage. Higher wages are replaced at lower rates. Ultimately, the House-passed bill retained the 85 percent replacement rate for the lowest earners, but reduced the replacement rate for higher earners and limited the maximum benefit to approximately $768 per week.

The House-passed BBB Act also included fewer types of qualifying reasons for taking leave than other proposals in 2021. It would allow workers to take paid leave for the birth or adoption of a child, to care for a family member with a serious health condition, or to address their own serious health condition, which cover the large majority of reasons workers take leave. It did not cover military deployment-related needs, which are contained in the FMLA. It also did not include additional reasons for leave proposed in AFP: three days of bereavement time for the loss of a loved one and dedicated safe leave for victims of domestic violence, stalking, and sexual assault. However, some safe leave would be covered by paid medical leave in cases where an individual suffers from a medical condition as a result of abuse, including trauma-related mental health conditions.

Coverage and Eligibility

For program eligibility, the FAMILY Act uses the same criteria as the SSDI program, which requires a worker to have earned at least 20 quarters of coverage (QCs) during the most recent 40 calendar quarters. Individuals younger than age 31 generally need QCs of at least one-half of the calendar quarters elapsed since attainment of age 21 with a minimum of six QCs. The amount of earnings required for a QC in 2022 is $1,510. Many state workers are not covered by SSDI, nor are workers with more limited work histories.

The Ways and Means committee draft made the program available to all workers with recent earnings from employment or self-employment, as well as income from unemployment benefits. By unlinking eligibility from the SSDI criteria, the proposal also covers workers who are not covered by the Social Security program, allowing state and local government workers not covered by Social Security to participate in the program. These changes were adopted in the House-passed legislation with one additional change to also require workers to have at least $2,000 in earned income in roughly the two years before the caregiving event.

The House bills and AFP also expanded the definition of family for determining who is eligible to take leave for family caregiving purposes. The expansion added children of any age, siblings, grandparents and grandchildren, and individuals who are like family in relationship to the worker. This definition of family is consistent with definitions used in recently enacted state programs (Shabo 2021a).

Job Protection Policies and the Limitations of the Budget Reconciliation Process

The FAMILY Act included employer antidiscrimination provisions for workers who applied for or planned to apply for benefits. This protection was separate from, and in addition to, any rights available to workers covered by the FMLA. Separate legislation, such as the Job Protection Act, seeks to extend employment protections to categories of employers and workers who are not currently covered under the FMLA, building on prior legislative efforts to expand the FMLA in every Congress since 1993. The House bills did not include job protection provisions because of anticipated concerns they would not be allowed under Sente budget reconciliation rules.[17] Advocates believed that job protection would increase program take-up by providing job security to the estimated 44 percent of workers who are not currently covered by the FMLA (Brown et al. 2020), thereby creating a substantial budgetary impact sufficient to satisfy the Byrd Rule. The parliamentarian did not get to rule on this issue.

Coordination with State Programs

The AFP was silent on whether and how benefits from a new national paid family and medical leave program would be coordinated with existing state programs. The FAMILY Act directs the SSA commissioner to develop regulations governing the coordination of state and federal benefits and explicitly states that nothing in the legislation prevents states from passing future paid family and medical leave laws. When the FAMILY Act was first introduced in late 2013, only three states had

enacted paid leave programs and the legislation contemplated state stakeholders working with federal implementers on the best way to integrate state and federal paid leave. By end of 2022, 11 states plus the District of Columbia had enacted programs, leading to the need for more clarity on federal–state coordination.

Under both the Neal draft and the paid leave program included in BBB, states with paid family and medical leave programs already in law before enactment of the federal program could elect to become "legacy states." Legacy states could administer the federal benefit through their existing states systems and receive reimbursement for benefits and certain administrative costs so long as they provided benefits at least as generous as the federal program and met data-sharing requirements in the bill. States were given approximately three years to make the required changes in state law. During the transition period, states could be reimbursed for benefits consistent with the BBB provisions.

The House bills provide a more detailed mechanism for coordinating federal and state paid family and medical leave benefits through the use of reimbursements to "legacy states" for benefits equivalent to the federal program. State practitioners, advocates, and researchers are uncertain how much time is needed to bring states into compliance and how best to coordinate data-sharing and administration of benefits. States receiving reimbursements will have discretion in how to apply those funds to future spending. States legislatures could decide to invest the funds in expansions to state paid family and medical leave benefits, reduce contributions rates for employees or employers if their programs are more generous than the federal program, or apply federal contributions to other areas of the state budget.

Coordination with Employer-Provided Benefits

The FAMILY Act and the AFP were silent on how employer-provided benefits would be treated under a national paid family and medical leave program. All but two state programs allow employers the ability to provide employees with paid family and medical leave benefits through their own benefit plan. Employer plans must provide equivalent or better benefits, depending on the state, and meet other rules and criteria for administering the benefits (Boyens, Smalligan, and Bailey 2021).

Under the Ways and Means committee mark, employers who provide benefits at least as generous as the federal program for the full range of allowable uses and self-pay would be reimbursed for 90 percent of their costs, up to 90 percent of the benefits paid, or 90 percent of the average weekly cost of providing the benefit, for up to four weeks of leave, whichever was less. Employers who contract with an insurance company to provide benefits would be reimbursed 90 percent of the premiums paid, or 90 percent of the "projected national average cost" of leave multiplied by the number of eligible employees, whichever was less. The BBB Act adopted this reimbursement rate. In contrast, the Neal discussion draft, which preceded the committee mark, reimbursed employers for 40 percent of either their prior year covered benefits or the total amount the federal government would have paid to the affected employees, whichever was less.

Under the House bills, employers applying for reimbursement would be required to provide their employees with job-protected leave, even if the workers were not covered by or eligible for protection under the FMLA. They would also be required to continue group health insurance while a worker takes leave and not require any cost-sharing by the employee. In addition, the bills provide that employers in legacy states could continue to operate private plans through their state programs so that the federal plan would not interfere with the status quo for employers in legacy states.

The employer reimbursement mechanism for private employer plans is distinct from the way that private plans are integrated with state paid family and medical leave programs. Research is needed to better understand how this approach to employer plans would affect participation and usage of paid leave benefits, employer choices to provide paid leave benefits, and the private disability insurance market. Some questions include whether the approach would subsidize existing employer plans or encourage the adoption of new, more generous plans, how it would affect multistate employers, and whether access and take-up is affected for those covered by private plans relative to the state or federal program. Currently, states that allow private employer plans to participate in the paid family and medical leave program vary in how they oversee administration and compliance of private plans. A previous study of state programs by Boyens, Smalligan, and Bailey (2021) find that private employer plans, which cover a small share of workers, primarily serve higher-income workers and can lead to increased costs for state programs. In addition, public data are lacking from private plans that would allow analysis of access and take-up rates, especially for lower-income workers. The study recommended strong oversight and data transparency standards for private plans.

Conclusion

Throughout 2021, legislators engaged in intense debate over whether paid family and medical leave should be included in the large tax and spending package, BBB. This debate was crystalized by four proposals over that period, the FAMILY Act, the AFP, and the Building an Economy for Families Act, which later became the BBB Act. The debate and negotiations resulted in detailed legislative proposals that would expand access to paid family and medical leave benefits for workers by creating a permanent federal program. This proposal would provide income security to tens of millions of workers and their families when they need time away from their jobs to care for a new child, a seriously ill, injured, or disabled family member, or to address their own serious health issue.

At the same time, the constraints of the reconciliation process and political environment resulted in elements of the proposed national program being scaled back in the BBB Act passed by the House. To fit within those constraints, the House-passed bill would have limited benefits to four weeks, reduced the maximum benefit while preserving higher benefits for low-wage workers and offering new job protection rights to a limited set of workers. While the program would have provided fewer weeks than earlier proposals, it would have established a national policy and program infrastructure that could be expanded on in the future. The legislative process also yielded far more detailed provisions outlining how a new federal benefit could be integrated with existing state paid leave programs and employer benefit plans. Coordination of these benefits is important as the number of state programs continues to

grow and because some workers already have access to paid medical leave benefits, most often in the form of short-term disability benefits provided by employers and underwritten by insurance carriers.

Looking ahead, more research is needed to inform the continuing debates at the state and federal level over expansions in access to paid family and medical leave benefits. Enhanced microsimulation modeling is needed to understand how the proposals would affect access and take-up of paid family and medical leave benefits, interactions with other benefits and safety net programs, as well as its impact on poverty rates, racial equity, and economic mobility. More research is also needed to understand the potential impact of newly proposed state program and employer plan coordination provisions, including implications for workers, businesses, and the disability insurance market. This research should be informed by evidence on worker and employer behavior. Additional research on states experience could inform this work as well.

Notes

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