

SENATE BILL 349

P6, P4

4lr1071

By: **Senator McKay**

Introduced and read first time: January 15, 2024

Assigned to: Budget and Taxation

A BILL ENTITLED

AN ACT concerning

State Prescription Drug Benefits – Retirees

FOR the purpose of authorizing certain retirees who began State service before a certain date to be eligible for prescription drug benefits in the State Employee and Retiree Health and Welfare Benefits Program; specifying that prescription drug benefits shall be discontinued for certain Medicare–eligible retirees who began State service on or after a certain date and their Medicare–eligible spouses and dependent children; repealing the Maryland State Retiree Prescription Drug Coverage Program, the Maryland State Retiree Catastrophic Prescription Drug Assistance Program, and the Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program; repealing a requirement that the Secretary of Budget and Management provide a certain notice; repealing a requirement for the Department of Budget and Management to submit certain reports and ensure Medicare–eligible retirees have access to certain services; and generally relating to State prescription drug benefits for retirees from State employment.

BY repealing and reenacting, with amendments,
Article – State Personnel and Pensions
Section 2–509.1
Annotated Code of Maryland
(2015 Replacement Volume and 2023 Supplement)

BY repealing
Chapter 767 of the Acts of the General Assembly of 2019
Section 2, 4, and 5

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



2–509.1.

(a) (1) Except as provided in subsection (b) of this section, the State shall continue to include a prescription drug benefit plan in the health insurance benefit options established under the Program and available to retirees under §§ 2–508 and 2–509 of this subtitle notwithstanding the enactment of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 or any other federal law permitting states to discontinue prescription drug benefit plans to retirees of a state.

(2) Except as provided in subsection (b) of this section:

(i) a retiree may elect to cover the retiree’s spouse or dependent child under the State prescription drug benefit plan under §§ 2–508 and 2–509 of this subtitle; and

(ii) if a surviving spouse or surviving dependent child of a retiree is eligible to enroll in the State prescription drug benefit plan under § 2–508 or § 2–509 of this subtitle, the surviving spouse or surviving dependent child may elect to enroll in the State prescription drug benefit plan.

(b) (1) **THIS SUBSECTION APPLIES ONLY TO A RETIREE WHO BEGAN STATE SERVICE ON OR AFTER JULY 1, 2011.**

(2) Except as provided in [subsection (c) of this section] **PARAGRAPH (3) OF THIS SUBSECTION**, on January 1, 2019, the State shall discontinue prescription drug benefits for:

[(1)] (I) a Medicare–eligible retiree;

[(2)] (II) the Medicare–eligible spouse or surviving spouse of a retiree; and

[(3)] (III) a Medicare–eligible dependent child or surviving dependent child of a retiree.

[(c) (1)] (3) (I) If a retiree is eligible to participate in the prescription drug benefit plan under Medicare, but the retiree’s spouse or dependent child is not eligible to participate in a Medicare prescription drug benefit plan, the retiree may elect to cover the retiree’s spouse or dependent child under the State prescription drug benefit plan.

[(2)] (II) If the surviving spouse or surviving dependent child of a retiree is eligible to enroll in the State prescription drug benefit plan under § 2–508 or § 2–509 of this subtitle, but is not eligible to participate in the prescription drug benefit plan under Medicare, the surviving spouse or surviving dependent child may elect to enroll in the State prescription drug benefit plan.

[(d) (1)] This subsection applies only to a retiree, a retiree’s spouse or surviving

spouse, and a retiree's dependent child or surviving dependent child:

(i) who is enrolled in a prescription drug benefit plan under Medicare;

(ii) if the retiree is retired on or before December 31, 2019; and

(iii) if the retiree is eligible under § 2-508 or § 2-509 of this subtitle to enroll and participate in the health insurance benefit options established under the Program.

(2) (i) Subject to subparagraph (ii) of this paragraph, on or before January 1, 2020, the Department shall establish a Maryland State Retiree Prescription Drug Coverage Program that reimburses a participant for out-of-pocket costs that exceed the limits established for non-Medicare-eligible retirees in § 2-508(d)(2)(iii) of this subtitle.

(ii) The Department may establish an out-of-pocket limit higher than the limits established in subparagraph (i) of this paragraph for a retiree who qualifies for a partial State subsidy.

(3) The Maryland State Retiree Prescription Drug Coverage Program established under paragraph (2) of this subsection may include:

(i) a health reimbursement account established in accordance with § 105(h) of the Internal Revenue Code; or

(ii) another program that provides assistance with prescription drug costs.

(4) A retiree, a retiree's spouse or surviving spouse, and a retiree's dependent child or surviving dependent child may enroll in the Maryland State Retiree Prescription Drug Coverage Program during the open enrollment period or any special enrollment period for retiree health insurance benefit options.

(e) (1) This subsection applies only to a retiree, a retiree's spouse or surviving spouse, and a retiree's dependent child or surviving dependent child:

(i) who is enrolled in a prescription drug benefit plan under Medicare; and

(ii) if the retiree:

1. began State service on or before June 30, 2011;

2. retired on or after January 1, 2020; and

3. is eligible under § 2–508 or § 2–509 of this subtitle to enroll and participate in the health insurance benefit options established under the Program.

(2) (i) Subject to subparagraph (ii) of this paragraph, on or before January 1, 2020, the Department shall establish a Maryland State Retiree Catastrophic Prescription Drug Assistance Program that reimburses a participant for out-of-pocket costs after the participant has entered catastrophic coverage under a prescription drug benefit plan under Medicare.

(ii) The Department may establish a maximum reimbursement amount for a retiree who qualifies for a partial State subsidy.

(3) The Maryland State Retiree Catastrophic Prescription Drug Assistance Program under paragraph (2) of this subsection may provide reimbursements through:

(i) a health reimbursement account established in accordance with § 105(h) of the Internal Revenue Code; or

(ii) another program that provides assistance with prescription drug costs.

(4) A retiree, a retiree's spouse or surviving spouse, and a retiree's dependent child or surviving dependent child may enroll in the Maryland State Retiree Catastrophic Prescription Drug Assistance Program during the open enrollment period or any special enrollment period for retiree health insurance benefit options.

(f) (1) This subsection applies only to a retiree, a retiree's spouse or surviving spouse, and a retiree's dependent child or surviving dependent child:

(i) who is enrolled in:

1. the Maryland State Retiree Prescription Drug Coverage Program established under subsection (d) of this section; or

2. the Maryland State Retiree Catastrophic Prescription Drug Assistance Program established under subsection (e) of this section; and

(ii) if the retiree is eligible under § 2–508 or § 2–509 of this subtitle to enroll and participate in the health insurance benefit options established under the Program.

(2) (i) On or before January 1, 2020, the Department shall establish a Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program that reimburses a participant for out-of-pocket costs for a life-sustaining prescription drug that is:

1. covered by the prescription drug benefit plan in the health

insurance benefit options established under the Program; and

2. not covered by the prescription drug benefit plan under Medicare in which the participant is enrolled.

(ii) The Department shall develop a list of the prescription drugs that qualify for reimbursement under subparagraph (i) of this paragraph.

(iii) The Department may establish maximum reimbursement amounts for a retiree who qualifies for a partial State subsidy.

(3) The Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program established under paragraph (2) of this subsection may provide reimbursements through:

(i) a health reimbursement account established in accordance with § 105(h) of the Internal Revenue Code; or

(ii) another program that provides assistance with prescription drug costs.

(4) A retiree, a retiree's spouse or surviving spouse, and a retiree's dependent child or surviving dependent child shall be automatically enrolled in the Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program on enrollment in:

(i) the Maryland State Retiree Prescription Drug Coverage Program established under subsection (d) of this section; or

(ii) the Maryland State Retiree Catastrophic Prescription Drug Assistance Program established under subsection (e) of this section.

(g) (1) Subject to paragraph (2) of this subsection, not later than July 1 of each year, the Secretary shall provide written certified notice of the change in the State prescription drug benefit plan under this section to the individuals who will become eligible in the next calendar year to enroll in the:

(i) Maryland State Retiree Prescription Drug Coverage Program;

(ii) Maryland State Retiree Catastrophic Prescription Drug Assistance Program; or

(iii) Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program.

(2) The notice shall include information regarding:

(i) coverage options available in the Medicare prescription drug benefit plan, including options that are similar to the prescription drug benefit plan in the health insurance benefit options established under the Program;

(ii) the potential for significant penalties if an individual does not promptly choose a Medicare prescription drug benefit plan immediately on termination of the individual's participation in the State prescription drug benefit plan;

(iii) the programs available under subsections (d), (e), and (f) of this section; and

(iv) any additional resources made available by the Department in accordance with this section.

(h) (1) The Department shall ensure Medicare-eligible retirees have access to one-on-one counseling services to assist retirees in selecting a Medicare prescription drug benefit plan.

(2) The Department shall develop a plan to communicate to Medicare-eligible retirees the availability of:

(i) the programs under subsections (d), (e), and (f) of this section; and

(ii) services and information regarding prescription drug benefit plans under Medicare.

(3) On or before December 31, 2019, the Department shall submit a report to the Senate Budget and Taxation Committee and the House Appropriations Committee, in accordance with § 2-1257 of the State Government Article, on the plan developed under paragraph (2) of this subsection.

(4) The report required under paragraph (3) of this subsection shall include:

(i) options for providing one-on-one counseling, including:

1. in-person, over-the-phone, or web-based counseling;

2. the times at which one-on-one counseling will be available;

3. a plan to ensure equitable geographic access to one-on-one counseling; and

4. entering into a statewide contract with an employee benefits administrator or similar entity to provide one-on-one counseling services;

(ii) plans for holding seminars in every county of the State to provide information regarding eligibility for and available benefits under the programs established under subsections (d), (e), and (f) of this section;

(iii) plans for providing access to a web-based overview and interactive website that provide information on:

1. Medicare prescription drug benefit plans; and
2. subsidy and financial assistance programs for low-income individuals; and

(iv) plans for providing a toll-free hotline for reporting issues and concerns regarding the services provided in accordance with this paragraph.

(i) Subject to the requirements of § 13-108 of the State Finance and Procurement Article, the Department may make an emergency procurement for:

- (1) staff required to carry out the provisions of this section; and
- (2) a third party to administer health reimbursement accounts established under this section.

(j) The Department shall submit quarterly reports to the Governor and, in accordance with § 2-1257 of the State Government Article, the House Appropriations Committee, the Senate Budget and Taxation Committee, and the Joint Committee on Pensions, on:

(1) the status of establishing the programs under subsections (d), (e), and (f) of this section, including:

(i) the status of procuring any contracts necessary to operate the programs; and

(ii) the prescription drugs determined to qualify for reimbursement under the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program under subsection (f) of this section;

(2) the availability of one-on-one counseling services required under subsection (h) of this section;

(3) the details of the health reimbursement accounts or other programs to provide assistance with prescription drug costs for individuals enrolled in the programs under subsections (d), (e), and (f) of this section, including:

(i) the specific out-of-pocket costs eligible for reimbursement;

- (ii) the required process for receiving reimbursement;
 - (iii) the method of reimbursement;
 - (iv) the timing of reimbursement; and
 - (v) a plan to use debit cards to process reimbursements in a convenient and efficient manner; and
- (4) in total and by category for the previous quarter, the number of issues and concerns reported to the hotline.
- (k) The Department shall adopt regulations to implement the provisions of this section.]

Chapter 767 of the Acts of 2019

[SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any other provision of law, if the final resolution of the injunction issued in the U.S. District Court for the District of Maryland in *Fitch v. State of Maryland et al*, Case No. 1:18 CV-0287-PM (D. Md.) occurs on a date that is:

(1) less than 9 months before the first day of the next State health benefits open enrollment period, the following shall begin on the first day of the second State health benefits plan year immediately following the resolution:

(i) the elimination of the State prescription drug benefits for Medicare-eligible retirees, Medicare-eligible spouses or surviving spouses of retirees, and Medicare-eligible dependent children or surviving dependent children of retirees under § 2-509.1(b) of the State Personnel and Pensions Article;

(ii) the establishment of the Maryland State Retiree Prescription Drug Coverage Program, the Maryland State Retiree Catastrophic Prescription Drug Assistance Program, and the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program in § 2-509.1(d), (e), and (f) of the State Personnel and Pensions Article, respectively, as enacted by Section 1 of this Act; and

(iii) the provision of written certified notice to individuals under § 2-509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act; or

(2) 9 months or more before the first day of the next State health benefits open enrollment period, the following shall begin on the first day of the State health benefits plan year immediately following the resolution following the next open enrollment period:

(i) the elimination of the State prescription drug benefits for Medicare–eligible retirees, Medicare–eligible spouses or surviving spouses of retirees, and Medicare–eligible dependent children or surviving dependent children of retirees under § 2–509.1(b) of the State Personnel and Pensions Article;

(ii) the establishment of the Maryland State Retiree Prescription Drug Coverage Program, the Maryland State Retiree Catastrophic Prescription Drug Assistance Program, and the Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program in § 2–509.1(d), (e), and (f) of the State Personnel and Pensions Article, respectively, as enacted by Section 1 of this Act; and

(iii) the provision of written certified notice to individuals under § 2–509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act.]

[SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Department of Budget and Management establish the Maryland State Retiree Prescription Drug Coverage Program, the Maryland State Retiree Catastrophic Prescription Drug Assistance Program, and the Maryland State Retiree Life–Sustaining Prescription Drug Assistance Program in § 2–509.1(d), (e), and (f) of the State Personnel and Pensions Article, respectively, in a manner that allows retirees to access reimbursement at the time of prescription drug purchase, through a mechanism such as debit cards.]

[SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Department of Budget and Management attend at least one meeting each year of the Joint Committee on Pensions to update the Committee on implementation of the provisions of this Act.]

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2024.