

# HOUSE BILL 1100

J1, C3

0lr2869

---

By: **Delegate Pendergrass**

Introduced and read first time: February 6, 2020

Assigned to: Health and Government Operations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Prescription Drug Affordability Board – Meetings, Legal Advisor, and Technical**  
3 **Changes**

4 FOR the purpose of altering the frequency at which the Prescription Drug Affordability  
5 Board is required to meet; repealing the requirement that the Board hire general  
6 counsel; providing that the Attorney General is the legal advisor for the Board;  
7 requiring the Attorney General to designate a certain attorney as counsel to the  
8 Board; authorizing the Attorney General to assign certain attorneys to the Board  
9 under certain circumstances; establishing certain duties for the counsel to the Board;  
10 requiring the counsel of the Board to perform certain duties under certain control  
11 and supervision; prohibiting the Attorney General from reassigning the counsel to  
12 the Board except under certain circumstances; clarifying that on or after a certain  
13 date the Board may set certain upper payment limits in accordance with a certain  
14 plan of action; repealing a certain termination provision; and generally relating to  
15 the Prescription Drug Affordability Board.

16 BY repealing and reenacting, with amendments,  
17 Article – Health – General  
18 Section 21–2C–03(c)(1) and (e)(1)(i)  
19 Annotated Code of Maryland  
20 (2019 Replacement Volume)

21 BY adding to  
22 Article – Health – General  
23 Section 21–2C–03(i)  
24 Annotated Code of Maryland  
25 (2019 Replacement Volume)

26 BY repealing and reenacting, without amendments,  
27 Article – Health – General  
28 Section 21–2C–13

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2019 Replacement Volume)

3 BY repealing and reenacting, with amendments,  
4 Chapter 692 of the Acts of the General Assembly of 2019  
5 Section 9

6 BY repealing and reenacting, with amendments,  
7 Article – Health – General  
8 Section 21–2C–13 through 21–2C–15  
9 Annotated Code of Maryland  
10 (2019 Replacement Volume)  
11 (As enacted by Chapter 692 of the Acts of the General Assembly of 2019)

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

14 **Article – Health – General**

15 21–2C–03.

16 (c) (1) The chair shall hire an executive director[, general counsel,] and staff  
17 for the Board.

18 (e) (1) (i) Subject to subparagraphs (ii) and (iv) of this paragraph, the  
19 Board shall meet in open session at least [once every 6 weeks] **FOUR TIMES A YEAR.**

20 **(I) (1) THE ATTORNEY GENERAL IS THE LEGAL ADVISER TO THE BOARD.**

21 **(2) THE ATTORNEY GENERAL SHALL DESIGNATE AN ASSISTANT**  
22 **ATTORNEY GENERAL AS COUNSEL TO THE BOARD.**

23 **(3) AS NEEDED, THE ATTORNEY GENERAL MAY ASSIGN ADDITIONAL**  
24 **ASSISTANT ATTORNEYS GENERAL TO THE BOARD TO GIVE EFFECTIVE LEGAL**  
25 **ADVICE AND COUNSEL.**

26 **(4) THE COUNSEL TO THE BOARD MAY NOT HAVE A DUTY OTHER**  
27 **THAN TO:**

28 **(I) GIVE THE LEGAL AID, ADVICE, AND COUNSEL REQUIRED BY**  
29 **THE BOARD;**

30 **(II) SUPERVISE THE OTHER ASSISTANT ATTORNEYS GENERAL**  
31 **ASSIGNED TO THE BOARD, IF ANY; AND**

1                   **(III) PERFORM FOR THE DEPARTMENT THE DUTIES THAT THE**  
2 **ATTORNEY GENERAL ASSIGNS.**

3                   **(5) THE COUNSEL SHALL PERFORM THESE DUTIES SUBJECT TO THE**  
4 **CONTROL AND SUPERVISION OF THE ATTORNEY GENERAL.**

5                   **(6) AFTER THE ATTORNEY GENERAL DESIGNATES THE COUNSEL TO**  
6 **THE BOARD, THE ATTORNEY GENERAL MAY NOT REASSIGN THE COUNSEL WITHOUT**  
7 **CONSULTING THE BOARD.**

8 21-2C-13.

9           (a) If, under § 21-2C-07 of this subtitle, the Board finds that it is in the best  
10 interest of the State to establish a process for setting upper payment limits for prescription  
11 drug products that it determines have led or will lead to an affordability challenge, the  
12 Board, in conjunction with the Stakeholder Council, shall draft a plan of action for  
13 implementing the process that includes the criteria the Board shall use to set upper  
14 payment limits.

15           (b) The criteria for setting upper payment limits shall include consideration of:

16                   (1) The cost of administering the prescription drug product;

17                   (2) The cost of delivering the prescription drug product to consumers; and

18                   (3) Other relevant administrative costs related to the prescription drug  
19 product.

20           (c) The process for setting upper payment limits shall:

21                   (1) Prohibit the application of an upper payment limit for a prescription  
22 drug product that is on the federal Food and Drug Administration prescription drug  
23 shortage list; and

24                   (2) Require the Board to:

25                           (i) Monitor the availability of any prescription drug product for  
26 which it sets an upper payment limit; and

27                           (ii) If there becomes a shortage of the prescription drug product in  
28 the State, reconsider or suspend the upper payment limit.

29           (d) (1) If a plan of action is drafted under subsection (a) of this section, on or  
30 before July 1, 2021, the Board shall submit the plan of action to the Legislative Policy  
31 Committee of the General Assembly, in accordance with § 2-1257 of the State Government  
32 Article, for its approval.



1 **OF ACTION APPROVED UNDER § 21-2C-13 OF THIS SUBTITLE**, may set upper payment  
2 limits for prescription drug products that are:

3 (1) Purchased or paid for by a unit of State or local government or an  
4 organization on behalf of a unit of State or local government, including:

5 (i) State or county correctional facilities;

6 (ii) State hospitals; and

7 (iii) Health clinics at State institutions of higher education;

8 (2) Paid for through a health benefit plan on behalf of a unit of State or  
9 local government, including a county, bicounty, or municipal employee health benefit plan;  
10 or

11 (3) Purchased for or paid for by the Maryland State Medical Assistance  
12 Program.

13 (b) The upper payment limits set under subsection (a) of this section shall:

14 (1) Be for prescription drug products that have led or will lead to an  
15 affordability challenge; and

16 (2) Be set in accordance with the criteria established in regulations  
17 adopted by the Board.

18 (c) (1) The Board shall:

19 (i) Monitor the availability of any prescription drug product for  
20 which it sets an upper payment limit; and

21 (ii) If there becomes a shortage of the prescription drug product in  
22 the State, reconsider whether the upper payment limit should be suspended or altered.

23 (2) An upper payment limit set under subsection (a) of this section may not  
24 be applied to a prescription drug product while the prescription drug product is on the  
25 federal Food and Drug Administration prescription drug shortage list.

26 **[21-2C-14.] 21-2C-15.**

27 (a) A person aggrieved by a decision of the Board may request an appeal of the  
28 decision within 30 days after the finding of the Board.

29 (b) The Board shall hear the appeal and make a final decision within 60 days  
30 after the appeal is requested.

1 (c) Any person aggrieved by a final decision of the Board may petition for judicial  
2 review as provided by the Administrative Procedure Act.

3 **[21-2C-15.] 21-2C-16.**

4 On or before December 1, 2023, the Board, in consultation with the Stakeholder  
5 Council, shall report to the Senate Finance Committee and the House Health and  
6 Government Operations Committee, in accordance with § 2-1257 of the State Government  
7 Article, on:

8 (1) The legality, obstacles, and benefits of setting upper payment limits on  
9 all purchases and payor reimbursements of prescription drug products in the State; and

10 (2) Recommendations regarding whether the General Assembly should  
11 pass legislation to expand the authority of the Board to set upper payment limits to all  
12 purchases and payor reimbursements of prescription drug products in the State.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
14 1, 2020.