Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1042 (Delegate Krimm, *et al.*)
Appropriations

State Prescription Drug Benefits - Retiree Benefits - Revisions

This bill expands eligibility for three prescription drug reimbursement programs for State retirees: the Maryland State Retiree Prescription Drug Coverage Program (coverage program); the Maryland State Retiree Catastrophic Prescription Drug Assistance Program (catastrophic program); and the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program (life-sustaining drug program). **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: State liability for other postemployment benefits (OPEB) increase by an estimated $339.3 million over 30 years. State expenditures (all funds) to expand coverage under the three reimbursement programs increase, beginning in FY 2022 at the earliest (with additional costs estimated at $40.4 million for calendar 2022) and increasing annually thereafter according to actuarial assumptions. If resolution of the pending federal lawsuit is delayed beyond the current calendar year, those costs are delayed. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Eligibility for the Maryland State Retiree Prescription Drug Coverage Program is extended to individuals who began State service on or before June 30, 2011, and retire before the beginning of the second State open enrollment period following the resolution of a pending court challenge to the State's termination of prescription drug benefits for Medicare-eligible retirees. Under current law, individuals had to *retire by*

December 31, 2019, and enroll in a Medicare prescription drug plan to be eligible for the coverage program.

Eligibility for the Maryland State Retiree Catastrophic Prescription Drug Assistance Program is extended to Medicare-eligible retirees who began State service on or after July 1, 2011. Under current law, only State employees who began State service before July 1, 2011, *and retire on or after January 1, 2020*, are eligible for the catastrophic program when they retire and reach Medicare eligibility.

Under the bill, eligibility for the life-sustaining drug program remains open to any retiree enrolled in a Medicare prescription drug plan who also participates in either of the two other reimbursement programs. However, as eligibility for those programs is expanded under the bill, eligibility for the life-sustaining drug program is similarly expanded.

The bill makes conforming and technical changes to reflect the expanded eligibility.

Current Law/Background: Chapter 767 of 2019 required, by January 1, 2020, that the Department of Budget and Management (DBM) establish three new prescription drug benefit programs for specified current and future retirees who are enrolled in a Medicare prescription drug benefit plan. The programs generally reimburse participating retirees for out-of-pocket (OOP) costs associated with prescription drug purchases.

- The Maryland State Retiree Prescription Drug Coverage Program is available only to an individual who (1) retired from the State on or before December 31, 2019; (2) is enrolled in a prescription drug benefit plan under Medicare; and (3) is eligible to enroll and participate in the State Employee and Retiree Health and Welfare Benefit Program (State plan). It reimburses a participant for OOP prescription drug costs that exceed limits established in the State plan, which are currently $1,500 for an individual and $2,000 for a family.

- The Maryland State Retiree Catastrophic Prescription Drug Assistance Program is available to an individual who (1) began State service on or before June 30, 2011; (2) retired on or after January 1, 2020; and (3) is eligible to enroll and participate in the State plan. It reimburses a participant for OOP costs after the participant enters catastrophic coverage under the Medicare drug benefit plan.

- The Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program is provided automatically to an individual who (1) is eligible to enroll and participate in the State plan and (2) is enrolled in either of the two prescription drug cost reimbursement plans described above. It reimburses a participant for OOP costs for a life-sustaining drug that is covered under the State plan but is not covered under the individual's Medicare prescription drug plan.

Under Chapter 767, however, implementation of the three programs is delayed pending the resolution of a federal injunction (discussed below).

Eligibility for Coverage and Subsidies

Upon their retirement, and provided they receive a retirement allowance from the State Retirement and Pension System, retired State employees may enroll and participate in any of the health insurance options provided by the State plan. Until the enactment of Chapter 397 of 2011, this had allowed retired State employees to retain the same health coverage they had as active employees. In addition, active State employees earn eligibility for a partial State subsidy of the cost of health insurance coverage when they retire.

Chapter 397 established new eligibility requirements for retirees to enroll in the State plan and qualify for the premium subsidy if they are hired on or after July 1, 2011. Therefore, the eligibility requirements to enroll in the State plan are different for those who began employment with the State before July 1, 2011, and those who began employment with the State on or after that date.

State Retiree Prescription Drug Benefits

As noted earlier, Chapter 397 made changes to medical coverage provided to State retirees, particularly in the area of prescription drug coverage. First, it authorized the State to establish health insurance benefit options for retirees that differ from those for active State employees. In addition, Chapter 397 increased the share of the premium for prescription drug coverage paid by retirees from 20% to 25% (it remained 20% for active State employees) and raised OOP limits for retirees to $1,500 for a single retiree and $2,000 for family drug coverage (previously, the limit had been $750 for single or family coverage for both active employees and retirees). Finally, it eliminated State prescription drug coverage for Medicare-eligible retirees in fiscal 2020. Fiscal 2020 was the year that improvements to Medicare Part D prescription coverage enacted by the federal Patient Protection and Affordable Care Act (ACA) were to be fully phased in, allowing Medicare-eligible retirees to get comparable prescription coverage through Medicare instead of from the State.

In response to the new authority to establish separate coverage for retirees, DBM established a new Employer Group Waiver Plan, effective January 1, 2014, to provide prescription drug coverage to Medicare-eligible retirees. Employer Group Waiver Plans are authorized under the 2003 Medicare Prescription Drug Modernization Act and essentially "wrap" employer coverage around the Medicare Part D prescription drug coverage. Participating retirees do not have to actively make any change in their coverage because all interactions between the State plan and Medicare are handled administratively.

In accordance with Chapter 397, State prescription drug coverage for Medicare-eligible retirees was to end July 2019. However, because the improvements to Medicare Part D coverage under the ACA were accelerated, and because the State plan year begins on January 1 of each year, Chapter 10 of 2018 (the Budget Reconciliation and Financing Act) accelerated the date that coverage would end to January 1, 2019. Chapter 10 also clarified that a non-Medicare-eligible spouse, surviving spouse, dependent child, or surviving dependent child of a Medicare-eligible retiree may remain enrolled in the State prescription drug plan even if the retiree is no longer eligible. Finally, it required the Secretary of Budget and Management to provide written notice to individuals affected by the change in the State prescription drug plan.

Federal Lawsuit

In response to the notice of the impending expiration of the State prescription drug benefits, several retirees filed a lawsuit in federal court challenging the State's action on the grounds that it is an unconstitutional breach of contract. On October 16, 2018, the federal court issued a temporary restraining order and preliminary injunction preventing the State from terminating coverage until the lawsuit is resolved. As a result, State prescription drug coverage is currently in effect and implementation of the three new programs is delayed until after the lawsuit is resolved (and only if the State prevails in the lawsuit).

Maintaining existing prescription drug coverage for Medicare-eligible retirees as a result of the injunction was the primary factor in causing the State's net OPEB liability over 30 years to increase from $10.6 billion in calendar 2018 to $14.3 billion in calendar 2019. The cost of maintaining the existing coverage due to the lawsuit is projected to reach an estimated $139.2 million in calendar 2021, with those costs increasing each year due to actuarial assumptions, including health care inflation.

State Expenditures: Two factors complicate efforts to calculate increases in State expenditures under the bill. First, the plan year for the State health plan is based on calendar years, not fiscal years, so all cost estimates reflect calendar years. Second, it is not known when the federal lawsuit will be finally resolved, especially if a party that does not prevail in the lower court opts to appeal the decision, which is likely to occur.

DBM advises that, if the lawsuit is resolved in the current calendar year and, thus, affects coverage for the calendar 2022 plan year, the State's net OPEB liability increases by an additional $339.3 million. In calendar 2022, the expansion of eligibility for the reimbursement programs increases State claims costs and administrative charges by $40.4 million. According to DBM, these costs are initially offset in calendar 2022 by federal subsidies, resulting in a net decrease in State expenditures of $17.3 million. However, the subsidies are projected to end in calendar 2023, when State costs are projected to increase by $42.4 million, and then continue to grow annually according to actuarial assumptions. To the extent that resolution of the lawsuit is delayed beyond the current calendar year, these costs are delayed.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 884 (Senator Klausmeier) - Budget and Taxation.

Information Source(s): Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2020
rh/vlg

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510