

# HOUSE BILL 1335

K4  
HB 1230/20 – APP

11r2941

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By: **Delegate Jackson**

Introduced and read first time: February 11, 2021

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Prescription Drug Benefits – Retirees**

3 FOR the purpose of authorizing certain retirees who began State service before a certain  
4 date to be eligible for prescription drug benefits in the State Employee and Retiree  
5 Health and Welfare Benefits Program; specifying that prescription drug benefits  
6 shall be discontinued for certain Medicare–eligible retirees who began State service  
7 on or after a certain date and their Medicare–eligible spouses and dependent  
8 children; repealing the Maryland State Retiree Prescription Drug Coverage  
9 Program; repealing the Maryland State Retiree Catastrophic Prescription Drug  
10 Assistance Program; repealing the Maryland State Retiree Life–Sustaining  
11 Prescription Drug Assistance Program; repealing a requirement that the Secretary  
12 of Budget and Management provide a certain notice; repealing a requirement that  
13 the Department of Budget and Management ensure Medicare–eligible retirees have  
14 access to certain services; repealing a requirement that the Department submit  
15 certain reports; repealing a requirement that the Department adopt certain  
16 regulations; making conforming changes; repealing provisions of law made obsolete  
17 by this Act; and generally relating to State prescription drug benefits for retirees  
18 from State employment.

19 BY repealing and reenacting, with amendments,  
20 Article – State Personnel and Pensions  
21 Section 2–509.1  
22 Annotated Code of Maryland  
23 (2015 Replacement Volume and 2020 Supplement)

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

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – State Personnel and Pensions**

2 2–509.1.

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

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

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

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

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

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

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

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

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

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

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

1 prescription drug benefit plan.

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

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

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

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

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

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

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

20 (i) a health reimbursement account established in accordance with  
21 § 105(h) of the Internal Revenue Code; or

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

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

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

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

32 (ii) if the retiree:

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

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

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

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

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

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

13                                   (i)     a health reimbursement account established in accordance with  
14 § 105(h) of the Internal Revenue Code; or

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

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

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

23                                   (i)     who is enrolled in:

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

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

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

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

1 is:

2 1. covered by the prescription drug benefit plan in the health  
3 insurance benefit options established under the Program; and

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

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

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

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

13 (i) a health reimbursement account established in accordance with  
14 § 105(h) of the Internal Revenue Code; or

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

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

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

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

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

29 (i) Maryland State Retiree Prescription Drug Coverage Program;

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

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

1 (2) The notice shall include information regarding:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8                                   1.     Medicare prescription drug benefit plans; and

9                                   2.     subsidy and financial assistance programs for low-income  
10 individuals; and

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

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

15                                  (1)   staff required to carry out the provisions of this section; and

16                                  (2)   a third party to administer health reimbursement accounts established  
17 under this section.

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

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

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

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

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

31                                  (3)   the details of the health reimbursement accounts or other programs to  
32 provide assistance with prescription drug costs for individuals enrolled in the programs

1 under subsections (d), (e), and (f) of this section, including:

- 2 (i) the specific out-of-pocket costs eligible for reimbursement;
- 3 (ii) the required process for receiving reimbursement;
- 4 (iii) the method of reimbursement;
- 5 (iv) the timing of reimbursement; and
- 6 (v) a plan to use debit cards to process reimbursements in a  
7 convenient and efficient manner; and

8 (4) in total and by category for the previous quarter, the number of issues  
9 and concerns reported to the hotline.

10 (k) The Department shall adopt regulations to implement the provisions of this  
11 section.]

## 12 Chapter 767 of the Acts of 2019

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

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

20 (i) the elimination of the State prescription drug benefits for  
21 Medicare-eligible retirees, Medicare-eligible spouses or surviving spouses of retirees, and  
22 Medicare-eligible dependent children or surviving dependent children of retirees under §  
23 2-509.1(b) of the State Personnel and Pensions Article;

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

29 (iii) the provision of written certified notice to individuals under §  
30 2-509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act;  
31 or

32 (2) 9 months or more before the first day of the next State health benefits  
33 open enrollment period, the following shall begin on the first day of the State health



1 benefits plan year immediately following the resolution following the next open enrollment  
2 period:

3 (i) the elimination of the State prescription drug benefits for  
4 Medicare-eligible retirees, Medicare-eligible spouses or surviving spouses of retirees, and  
5 Medicare-eligible dependent children or surviving dependent children of retirees under §  
6 2-509.1(b) of the State Personnel and Pensions Article;

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

12 (iii) the provision of written certified notice to individuals under §  
13 2-509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act.]

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

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

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
27 1, 2021.