SENATE BILL 578

STATE PRESCRIPTION DRUG BENEFITS - RETIREES

Senate Budget and Taxation Committee
March 2, 2022

Testimony of
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retired State employee
MD Secretary of General Services, Jan 1999 – Jan 2003
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Recommended: Favorable

Senate Bill 578 should receive a favorable report, reinstating the prescription drug benefit earned by State Medicare-eligible retirees hired before July 1, 2011. Doing so would be consistent with the most recent ruling (12/30/2021) in the *Fitch v. State of Maryland* case: Judge Peter Messitte has found the contract between the State and those retirees hired before July 1, 2011 to be "unilateral" and that those retirees "have a contractual right to prescription drug benefits."

State retirees have been pressing hard over the last three years to have their prescription drug benefit (the State Plan) reinstated. When hired, and throughout their employment by the State, employees were told and left to believe that the benefits provided to employees would continue into retirement as, in effect, deferred compensation exacted by the State. And in compensation for lower salaries, numerous rounds of furloughs and other dilatory impacts to employee compensation. This contractual obligation to retired state employees should be honored on both moral and legal grounds.

*What about the legislation that provided for this termination? The one that was buried in the 145-page Budget and Reconciliation Financing Act (BRFA) of 2011? Chapter 397 (Laws of Maryland, 2011) at 57-64? **UNLESS** they were closely following that year's legislation and **UNLESS** they read that year's BRFA – and most State employees were not/did not/do not – they would not have known about the decision to strip away the prescription drug benefit for all Medicare-eligible retirees. Significantly, until they received a May 2018 letter from the Department of Budget and Management, affected retirees had not been advised that this termination of the prescription drug benefit was planned.*

While the three state reimbursement programs to be overlaid on Medicare Part D by Senate Bill 946 (Chapter 767, Laws of Maryland 2019) would provide some relief to retirees, these programs hardly come close to the level of benefits that had been promised.

The Formulary

A key component of the value of the State Plan to retirees relates to its comprehensive formulary, the extensive catalogue of covered drugs made available to State employees and to retirees before they tun 65. Since the legislature changed the law in 2011, no one has opined, nor could they, that Medicare Part D plans are as comprehensive as the State Plan formulary. All that any so-called expert can tell you is whether a particular Part D plan covers all or just some of the medications an enrollee takes today. Whether any selected plan will cover a drug needed and prescribed after enrollment is unknowable. The cost and cash flow implications can be catastrophic. Especially for retirees on fixed incomes who have budgeted their retirement lives based upon the promise that their prescription drug coverage would continue, along with the other OPEB benefits of health, vision and dental care promised to them. And the retirees who would suffer the most are among the oldest since the change specified “Medicare-eligible,” i.e. those retirees 65 and older. In 2019, DLS calculated that 40% of Medicare-eligible retirees could face **additional** out-of-pocket costs of up to $10,000. Chapter 397 would offer some buffer, at considerable cost of time and energy. But it is not the benefit that was promised. For Medicare-eligible retirees, most 70 and older and long-past their earning years, there is no way to “make up” these unplanned, unbudgeted costs.

Part D Plan Selection

Currently, there are 21 Medicare Part D plans available to Maryland residents, with 21 different formularies and 21 different combinations and permutations of premiums, deductibles, co-payments and co-insurance.

This maze of options is what one must navigate to enroll and re-enroll in Medicare Part D every year. Medicare provides a website that is very cumbersome and time-consuming to use but can provide a little help. Create an account, enter the drugs you are currently taking and up to five preferred pharmacies, and the site will identify the plans that cover your current medications, at the selected pharmacies, as well as the associated premiums and out-of-pockets costs for those particular plans. In recognition of the complexities of Part D plan selection, the Department of Legislative Services (DLS) estimated the price tag to administer the three 2019 supplemental “overlay” programs and provide the acknowledged-as-necessary, one-on-one counseling services was $2.15 million, just for FY 2021.

There is no way to compare the comprehensiveness of the Part D plans and their formularies so that one can judge whether a particular Part D plan is good enough to protect against lack of coverage for future prescriptions. Over the last three years, retirees have provided numerous examples of the anticipated negative health and financial impacts from the loss of the benefit in comparison with the superiority of the State Plan, notwithstanding the 2019 overlay.

Affordability

The 30-year cost of the State Plan, calculated as the present value of estimated future costs of the

State Plan, has been the primary argument made against legislative fixes over the last three years. This estimated future value appears on the State's balance sheet as an unfunded liability. However, this liability discloses nothing about the State's annual cost.

Posted yesterday around 11am, the Fiscal and Policy Note for SB 578 does not clearly address the State's cost for retirees' prescriptions. Nor does the Note contain any information on the difference in cost between maintaining retirees on the State Plan versus the State's cost for Medicare Part D with 2019's three-program overlay. The Note only projects increases in retirees' prescription drug claims and even these are uncertain.

Previously, in 2021 when House Bill 1230 was filed, the fiscal impact of continuing to include pre-2011 hires in the State Plan was included.

We do know that less than 40 percent of the dollar value of retirees prescription drug claims are a cost to the State. We know this from the Fiscal Note to that 2020 House Bill 1230, which stated, of the $313.1 million in projected 2022 retirees' prescription claims, the State's share would be $119.4 million (the State Plan remaining in effect). According to that Note's analysis, **the State's cost would be only 38 percent of total claims**. (Also noted: approximately 40% of the cost of retirees' prescription drug plan is **paid for by the retirees themselves** plus federal funds paid to the State.) At the time, DLS projected that the State would be paying $37 million if the three 2019 programs superimposed on Medicare Part had been implemented.

The Senate Bill 578 Fiscal Note contains actuarially projected claims increases of $40.5 million in calendar year 2023 and 51.0 million in calendar 2024. Using the experienced rate for the cost to the State of 38%, the State's projected cost increase would be $15.4 million and $19.4 million, respectively. So, if the State could have dropped its pre-2011 hires, the State would expect to have saved $82.4 million in 2022, $97.8 million in 2023, and $101.8 million in 2024. In future years, this saving would fluctuate depending upon inflation and the cost of prescription drugs, population increases that result from retirements, and population decreases because of retiree deaths. **Due to the latter, the State's cost will ultimately go to zero.** The annual cost for the State is, in fact, quite small. In the context of a General Fund budget proposed at $58.2 billion, $82.4 million represents **0.014 percent of State expenditures.** Thus, continuing this benefit by passing SB 578 would have a negligible and decreasing impact on State budget priorities.

Maryland's Bond Rating

The other argument made against continuing the prescription drug benefit for Medicare-eligible retirees has been the claim that doing so would create such an increase to the state's Other Post-Employment Benefits (OPEB) burden as to threaten the state's valuable AAA bond rating. There are a number of problems with this "red herring" argument:

1. The rating agencies have never downgraded a state's bonds based solely on an unfunded OPEB liability. (And prescription drugs are only one part of OPEB costs.)

2. States with greater OPEB liabilities than Maryland have continued to maintain their triple-A bond ratings.
3. The State has disproved its own claim over the last three years: it has covered the State Plan benefit for the last three years (and for seven years before that), has **not** contributed to the Trust Fund, but has **not** had its bond rating downgraded. In fact, **in the most recent Standard & Poor's rating summary, there is no mention of OPEB costs at all**.[1]

Despite much expressed concern about the OPEB burden, the State has failed to do anything about it, This is not the retirees' fault. The State has failed to fund the OPEB Trust Fund for over a decade, even though the State created the Fund to manage the problem in the first place, and even though pre-funding of the Trust Fund is what Government Accounting Standards Board (GASB) guidelines require. The problem of OPEB liability, as it exists, has been substantially caused and exacerbated by the State's own choices.

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Finally, the preliminary injunction in the ongoing federal case (*Fitch v. State of Maryland*) does **not** preclude the General Assembly from remedying the State's breach of its promise of prescription drug benefits to its Medicare-eligible retirees. Enacting Senate Bill 578 would constitute a fair and appropriate settlement of the case.

Therefore, I respectfully urge the Committee to give SB 578 a favorable report.

[1] August 2, 2021, Standard & Poor's Global Ratings: Maryland - AAA
https://www.treasurer.state.md.us/media/152396/s&p_2021_2nd.pdf