

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

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, the Maryland State Retiree Catastrophic Prescription Drug Assistance
10 Program, and the Maryland State Retiree Life–Sustaining Prescription Drug
11 Assistance Program; repealing a requirement that the Secretary of Budget and
12 Management provide a certain notice; repealing a requirement for the Department
13 of Budget and Management to submit certain reports and ensure Medicare–eligible
14 retirees have access to certain services; and generally relating to State prescription
15 drug benefits for retirees from State employment.

16 BY repealing and reenacting, with amendments,
17 Article – State Personnel and Pensions
18 Section 2–509.1
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2023 Supplement)

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

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

26 **Article – State Personnel and Pensions**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2-509.1.

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

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

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

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

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

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

21 [(1)] (I) a Medicare-eligible retiree;

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) a health reimbursement account established in accordance with
19 § 105(h) of the Internal Revenue Code; or

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

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

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

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

30 (ii) if the retiree:

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

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

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

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

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

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

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

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

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

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

22 (i) who is enrolled in:

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

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

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

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

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

1 insurance benefit options established under the Program; and

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

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

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

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

11 (i) a health reimbursement account established in accordance with
12 § 105(h) of the Internal Revenue Code; or

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

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

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

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

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

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

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

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

32 (2) The notice shall include information regarding:

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

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

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

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

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

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

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

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

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

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

- 26 (i) options for providing one-on-one counseling, including:
- 27 1. in-person, over-the-phone, or web-based counseling;
 - 28 2. the times at which one-on-one counseling will be
29 available;
 - 30 3. a plan to ensure equitable geographic access to
31 one-on-one counseling; and
 - 32 4. entering into a statewide contract with an employee
33 benefits administrator or similar entity to provide one-on-one counseling services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Chapter 767 of the Acts of 2019

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

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

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

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

27 (iii) the provision of written certified notice to individuals under §
28 2-509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act;
29 or

30 (2) 9 months or more before the first day of the next State health benefits
31 open enrollment period, the following shall begin on the first day of the State health
32 benefits plan year immediately following the resolution following the next open enrollment
33 period:

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

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

10 (iii) the provision of written certified notice to individuals under §
11 2-509.1(g) of the State Personnel and Pensions Article, as enacted by Section 1 of this Act.]

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2024.