HB 670

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 670 (Delegate Grammer, *et al.*)
Appropriations

State Prescription Drug Benefits - Retirees

This bill restores eligibility for State prescription drug coverage under the State Employee and Retiree Health and Welfare Benefits Program (the State plan) for Medicare-eligible State retirees who began State service before July 1, 2011. It also repeals three supplemental prescription drug reimbursement plans for specified State retirees and makes conforming changes. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: State expenditures (all funds) increase by $96.15 million in FY 2025, by $173.35 million in FY 2026, and by comparable amounts in the out-years according to actuarial assumptions; a reliable estimate of the fund split is not feasible. No effect on revenues.

($ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	$0	$0	$0	$0	$0
GF/SF/FF Exp.	96.15	173.35	161.15	174.08	187.10
NonBud Exp.	-	-	-	-	-
Higher Ed Exp.	-	-	-	-	-
Net Effect	($96.15)	($173.35)	($161.15)	($174.08)	($187.10)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State plan is established in statute to provide health insurance and other benefit options to State employees and retirees. The Secretary of Budget and Management is charged with developing and administering the program, including selecting the insurance options to be offered. 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.

Health benefits provided to retirees are often referred to as "other postemployment benefits" (OPEB) to distinguish them from pension benefits.

State Retiree Prescription Drug Benefits

Chapter 397 made changes to OPEB 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 out-of-pocket (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, the Department of Budget and Management (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 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 District Court challenging the State's action on the grounds that it is an unconstitutional breach of contract. Subsequently, the American Federation of State, County, and Municipal Employees (AFSCME) Maryland Council 3 filed a similar suit on behalf of active State employees. On October 16, 2018, the court issued a temporary restraining order and preliminary injunction preventing the State from terminating prescription drug coverage for Medicare-eligible retirees until the lawsuit was resolved. As a result, State prescription drug coverage remained in effect for eligible retirees.

On December 30, 2021, the federal District Court judge ruled that State law creates a contractual right to prescription drug benefits for State retirees who retired before January 1, 2019. The ruling further provided that retirees who retired on or after that date, and current active employees, do not have a contractual right to prescription drug benefits under State law. AFSCME appealed the ruling on behalf of active employees to the Fourth Circuit Court of Appeals. In February 2023, the Fourth Circuit Court of Appeals ruled that State law did not create a contractual arrangement between the State and current or future retirees. Following the Fourth Circuit Court of Appeal's decision, in July 2023, the District Court rescinded the injunction against the State affecting coverage for retirees.

Supplemental Prescription Reimbursement Plans

Chapter 767 of 2019 established three prescription drug OOP reimbursement or catastrophic coverage programs for specified State retirees, dependents, or surviving dependents who are enrolled in a Medicare prescription drug benefit plan. The Act provided supplemental reimbursement for OOP prescription drug costs for specified retirees in the event that the State prevailed in the lawsuit and terminated prescription drug coverage for retirees. In accordance with the provisions of Chapter 767, implementation of the programs begins January 2025, following the rescission of the federal injunction. *The bill* repeals all of the provisions described in this section.

Chapter 767 required DBM to establish three new prescription drug benefit programs for specified current and future retirees who are enrolled in a Medicare prescription drug benefit plan:

- 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 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; and
- the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program, which 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.

For all three programs, a participating retiree may elect to cover a spouse and dependent children; surviving spouses and children of retirees are also eligible to participate in the three programs. The three programs may include a health reimbursement account established in accordance with the Internal Revenue Code or another program that provides assistance with prescription drug costs. All three programs may set different OOP limits or reimbursement amounts for retirees or beneficiaries who qualify for a partial State premium subsidy (rather than a full subsidy). Eligible participants may enroll in the Prescription Drug Coverage Program or the Catastrophic Prescription Drug Assistance Program during the open enrollment period or any special enrollment period; if they enroll in either of those programs, they are automatically enrolled in the Life-Sustaining Prescription Drug Assistance Program.

Chapter 767 expressed the intent of the General Assembly that DBM establish the reimbursement programs in a manner that allows retirees to receive reimbursement at the time when they purchase a prescription drug, through a mechanism such as debit cards.

By July 1 of each year, the Secretary of Budget and Management must notify specified individuals of their eligibility to enroll in the programs and provide other specified information. DBM must provide specified one-on-one counseling to Medicare-eligible retirees and provide specified reports to the budget committees.

Eligibility for Coverage and Subsidies

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. Employees hired *before* July 1, 2011, are eligible to enroll and participate in the group coverage when they retire if they have:

- retired directly from the State with at least 5 years of service;
- retired directly from State service with a disability;
- ended State service with at least 16 years of service;
- ended State service with at least 10 years of creditable service and within 5 years of retirement age; or
- ended State service on or before June 30, 1984.

Employees who began employment with the State *on or after* July 1, 2011, are eligible to enroll in the State plan if they:

- retire directly from the State with at least 10 years of service;
- retire directly from State service with a disability;
- end State service with at least 25 years of service; or
- end State service with at least 10 years of creditable service and within 5 years of normal retirement age.

Similarly, eligibility for the premium subsidy differs depending on when the retiree began employment with the State. A retiree hired *before* July 1, 2011, must have at least 16 years of service to receive the same subsidy of health insurance premiums that is provided to active employees:

- 80% of preferred provider organization premiums;
- 83% of point of service premiums; and
- 85% of premiums for exclusive provider organizations and integrated health models.

If a retiree has fewer than 16 years of State service (but at least 5 years), the benefit is prorated. A retiree hired *on or after* July 1, 2011, must have 25 years of service to receive the same subsidy as that provided to active employees. If a retiree has fewer than 25 years (but at least 10), the benefit is prorated.

State Expenditures: The bill maintains – beyond December 2024 – State-subsidized prescription drug coverage for all retirees and current employees hired before July 1, 2011. DBM advises that approximately 53,000 Medicare-eligible retirees and beneficiaries participate in the prescription drug plan and approximately 40% of active employees were hired before July 1, 2011.

The State share of costs related to retiree health care is charged against each agency's budget through a line item that is adjusted annually by DBM based on actual costs. Therefore, this analysis assumes that costs are reflected as increases in State agency budgets and are allocated to all funds (*i.e.*, general funds, special funds, federal funds, higher education funds, and nonbudgeted funds). DBM advises that the amounts charged in each agency's budget are not necessarily proportional to each fund type's share of State personnel costs, so a reliable estimate of the eventual fund split cannot be made.

Following the court's lifting of the injunction, DBM plans to terminate State prescription drug coverage for Medicare-eligible retirees and beneficiaries and launch the prescription drug cost reimbursement plans beginning January 1, 2025. Therefore, the bill's fiscal effect begins on that date and affects expenditures for half of fiscal 2025. Actuarial projections of the bill's fiscal effect account for the State (1) continuing fully subsidized retiree prescription drug coverage for current retirees and for active employees hired before July 1, 2011 (when they retire) and (2) not implementing the three prescription drug cost reimbursement plans described above.

Based on projections by DBM's health care actuary, total State expenditures increase by $96.15 million in fiscal 2025, which accounts for the effect beginning halfway through fiscal 2025, and by $173.35 million in fiscal 2026. Out-year costs reflect actuarial assumptions. As discussed above, these costs are assumed to be allocated to all funds, but a reliable estimate of the fund split is not feasible.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 578 of 2022.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 8, 2024
km/ljm

Analysis by: Michael C. Rubenstein

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