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By: **Senator Middleton**

Introduced and read first time: February 9, 2001

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Seniors Prescription Drug Act of 2001**

3 FOR the purpose of creating, within the Maryland Pharmacy Assistance Program, the  
4 Maryland Seniors Prescription Drug Plan; establishing eligibility levels and  
5 co-payments for the Plan; requiring members of the Plan to pay a processing fee  
6 for prescription drugs purchased; requiring the Department of Health and  
7 Mental Hygiene to issue membership identification and eligibility cards that  
8 comply with certain laws to members in the Plan; requiring the Program to  
9 reimburse eligible pharmacies for Program drugs not covered by the  
10 co-payments; creating a Maryland Seniors Prescription Drug Benefits Task  
11 Force; providing for the duties of the Task Force; providing for the membership,  
12 organization, and compensation of the Task Force and the termination of the  
13 Task Force; requiring the Task Force to develop a catastrophic prescription drug  
14 costs plan for needy seniors, an expansion for needy seniors of the Maryland  
15 Pharmacy Assistance Program, or an appropriate alternative plan on or before a  
16 certain date; requiring the Secretary of Health and Mental Hygiene to report the  
17 plan developed by the Task Force to the Governor and the General Assembly;  
18 requiring the approval of the General Assembly for the implementation of the  
19 plan; requiring the Task Force to make additional annual recommendations;  
20 requiring the Department to implement certain system changes; requiring the  
21 Department to study certain drug utilization information and report to the Task  
22 Force on drug utilization patterns and the feasibility of implementing a State  
23 therapeutic drug case management program; requiring the Department to adopt  
24 certain regulations and develop certain legislation under certain circumstances;  
25 defining a certain term; making provisions of this Act severable; and generally  
26 relating to the Maryland Seniors Prescription Drug Plan in the Maryland  
27 Pharmacy Assistance Program.

28 BY repealing and reenacting, with amendments,  
29 Article - Health - General  
30 Section 15-124  
31 Annotated Code of Maryland  
32 (2000 Replacement Volume)

33 BY adding to

1 Article - Health - General  
2 Section 15-124.1  
3 Annotated Code of Maryland  
4 (2000 Replacement Volume)

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

7 **Article - Health - General**

8 15-124.

9 (a) (1) The Department shall maintain a Maryland Pharmacy Assistance  
10 Program [for low] FOR:

11 (I) LOW income individuals whose:

12 [(i)] 1. Assets are not more than 1.5 times the amount of  
13 accountable resources according to the asset schedule of the Maryland Medical  
14 Assistance Program; and

15 [(ii)] 2. Gross annual income does not exceed:

16 [1.] A. \$4,600 plus \$500 for each individual over 1 in a  
17 family unit; and

18 [2.] B. An annual increase set by the Secretary under  
19 paragraph (2)(ii)4 of this subsection; AND

20 (II) OTHER INDIVIDUALS QUALIFIED TO PARTICIPATE UNDER  
21 SUBSECTION (A-1) OF THIS SECTION, IN THE MARYLAND SENIORS PRESCRIPTION  
22 DRUG PLAN.

23 (2) (i) 1. In this paragraph the following words have the meanings  
24 indicated.

25 2. "Income disregard" means the exclusion of up to \$1,000 of  
26 annual income earned by an individual as a client of a sheltered workshop if the  
27 individual's sole other income is derived from a Social Security payment.

28 3. "Sheltered workshop" means a workshop licensed by the  
29 Developmental Disabilities Administration under Title 7, Subtitle 9 of this article.

30 (ii) For the purpose of paragraph (1) of this subsection, the  
31 Secretary shall:

32 1. In order to determine eligibility for the Maryland  
33 Pharmacy Assistance Program, deduct any income disregards from the countable  
34 gross income of a unit that contains a disabled individual;



1 (4) (I) AFTER A PHARMACIST AT AN ELIGIBLE PHARMACY  
2 DETERMINES AN INDIVIDUAL TO BE AN ENROLLEE IN THE MARYLAND SENIORS  
3 PRESCRIPTION DRUG PLAN, THE ENROLLEE SHALL PAY DIRECTLY TO THE  
4 PHARMACIST AT THE POINT OF SALE FOR ANY MARYLAND PHARMACY ASSISTANCE  
5 PROGRAM DRUG PURCHASED UNDER THE PLAN:

6 1. 85 PERCENT OF THE MEDICAL ASSISTANCE PRICE FOR  
7 THAT DRUG; AND

8 2. A \$2 PROCESSING FEE.

9 (II) 1. THE DEPARTMENT SHALL ISSUE A MARYLAND SENIORS  
10 PRESCRIPTION DRUG PLAN MEMBERSHIP IDENTIFICATION AND ELIGIBILITY CARD  
11 TO INDIVIDUALS COVERED UNDER THIS SUBSECTION.

12 2. THE CARD SHALL COMPLY WITH APPLICABLE STATE AND  
13 FEDERAL LAWS MANDATING UNIFORMITY IN THE FORMAT OF PRESCRIPTION DRUG  
14 MEMBERSHIP IDENTIFICATION AND ELIGIBILITY CARDS.

15 (III) PHARMACY REIMBURSEMENT UNDER THE MARYLAND SENIORS  
16 PRESCRIPTION DRUG PLAN SHALL BE AN AMOUNT THAT IS NOT LESS THAN THE  
17 REMAINDER OF THE AMOUNT PAID FOR THE SAME ITEMS OR SERVICES UNDER THE  
18 PHARMACY PROGRAM OF THE MARYLAND MEDICAL ASSISTANCE PROGRAM THAT IS  
19 NOT PAID BY THE ENROLLEE AT THE POINT OF SALE.

20 (b) (1) [(i)] Reimbursement under the Maryland Pharmacy Assistance  
21 Program shall be limited to maintenance drugs, anti-infectives, and AZT as specified  
22 in regulations to be issued by the Secretary after consultation with the Maryland  
23 Pharmacists Association.

24 [(ii) 1.] (2) (I) For any drug on the Program's interchangeable  
25 drug list, the Program shall reimburse providers in an amount not more than it would  
26 reimburse for the drug's generic equivalent, unless the individual's physician states,  
27 in his or her own handwriting, on the face of the prescription, that a specific brand is  
28 "medically necessary" for the particular patient.

29 [2.] (II) If an appropriate generic drug is not generally  
30 available, the Department may waive the reimbursement requirement under  
31 sub-subparagraph 1 of this subparagraph.

32 [(2) The reimbursement shall be up to the amount paid for the same  
33 items or services under the pharmacy program of the Maryland Medical Assistance  
34 Program and shall be subject to a copayment of not more than \$5.00 for each covered  
35 item or service.]

36 (c) (1) Except as provided under paragraph (4) of this subsection and unless  
37 the change is made by an emergency regulation, the Maryland Pharmacy Assistance  
38 Program shall notify all pharmacies under contract with the Program in writing of  
39 changes in the Pharmaceutical Benefit Program rules or requirements at least 30  
40 days before the change is effective.

1 (2) Changes that require 30 days' advance written notice under  
2 paragraph (1) of this subsection are:

3 (i) Exclusion of coverage for classes of drugs as specified by  
4 contract;

5 (ii) Changes in prior or preauthorization procedures; and

6 (iii) Selection of new prescription claims processors.

7 (3) If the Maryland Pharmacy Assistance Program fails to provide  
8 advance notice as required under paragraph (1) of this subsection, it shall honor and  
9 pay in full any claim under the Program rules or requirements that existed before the  
10 change for 30 days after the postmarked date of the notice.

11 (4) Notwithstanding any other provision of law, the notice requirements  
12 of this subsection do not apply to the addition of new generic drugs authorized under  
13 § 12-504 of the Health Occupations Article.

14 (d) (1) The Secretary shall adopt rules and regulations that authorize the  
15 denial, restriction, or termination of eligibility for recipients who have abused  
16 benefits under the Maryland Pharmacy Assistance Program.

17 (2) As a condition of participation, the Department may require  
18 Maryland Pharmacy Assistance Program participants to apply for eligibility in the  
19 Maryland Medical Assistance Program within 60 days of notification to do so by the  
20 Department.

21 (3) The rules and regulations shall require that the recipient be given  
22 notice and an opportunity for a hearing before eligibility may be denied, restricted, or  
23 terminated under this subsection.

24 (e) The Secretary shall develop a program, in consultation with appropriate  
25 agencies, that will provide information to ineligible Maryland Pharmacy Assistance  
26 Program applicants regarding other programs that they may be eligible for including  
27 free programs offered by drug manufacturers.

28 15-124.1.

29 (A) THERE IS A MARYLAND SENIORS PRESCRIPTION DRUG BENEFITS TASK  
30 FORCE.

31 (B) (1) THE TASK FORCE SHALL DEVELOP THE PARAMETERS FOR  
32 COVERAGE, ELIGIBILITY, AND ADMINISTRATION OF:

33 (I) A PLAN TO PROVIDE ASSISTANCE TO NEEDY SENIORS WITH  
34 CATASTROPHIC PRESCRIPTION DRUG COSTS;

1 (II) A PLAN TO EXPAND ELIGIBILITY UNDER THE MARYLAND  
2 PHARMACY ASSISTANCE PROGRAM TO COVER NEEDY SENIORS NOT CURRENTLY  
3 COVERED UNDER THE PROGRAM; OR

4 (III) ANY OTHER PLAN THE TASK FORCE FINDS APPROPRIATE TO  
5 ASSIST NEEDY SENIORS IN MEETING PRESCRIPTION DRUG COSTS.

6 (2) IN PERFORMING ITS DUTIES UNDER PARAGRAPH (1) OF THIS  
7 SUBSECTION, THE TASK FORCE SHALL:

8 (I) EVALUATE AND MAKE RECOMMENDATIONS TO THE  
9 SECRETARY ON THE DESIRABILITY AND FEASIBILITY OF APPLYING FOR A WAIVER  
10 UNDER § 1115 OF THE FEDERAL SOCIAL SECURITY ACT TO OFFSET COSTS UNDER THE  
11 MARYLAND SENIORS PRESCRIPTION DRUG PLAN CREATED UNDER § 15-124(A-1) OF  
12 THIS SUBTITLE OR THE COSTS OF THE PLAN DEVELOPED BY THE TASK FORCE  
13 UNDER PARAGRAPH (1) OF THIS SUBSECTION;

14 (II) EVALUATE AND MAKE RECOMMENDATIONS TO THE  
15 SECRETARY ON:

16 1. THE DESIRABILITY, FEASIBILITY, AND COSTS OF  
17 CREATING A PLAN TO PROVIDE ASSISTANCE TO SENIORS WITH CATASTROPHIC  
18 PRESCRIPTION DRUG COSTS OR TO EXPAND ELIGIBILITY IN THE MARYLAND  
19 PHARMACY ASSISTANCE PROGRAM TO NEEDY SENIORS;

20 2. THE AVAILABILITY OF FEDERAL MONEYS TO FUND A  
21 CATASTROPHIC PRESCRIPTION DRUG COSTS PLAN FOR SENIORS OR TO EXPAND  
22 ELIGIBILITY IN THE MARYLAND PHARMACY ASSISTANCE PROGRAM TO NEEDY  
23 SENIORS; AND

24 3. THE DESIRABILITY AND FEASIBILITY OF APPLYING FOR A  
25 WAIVER UNDER § 1115 OF THE FEDERAL SOCIAL SECURITY ACT TO FUND A  
26 CATASTROPHIC PRESCRIPTION DRUG COSTS PLAN FOR SENIORS OR TO EXPAND  
27 ELIGIBILITY IN THE MARYLAND PHARMACY ASSISTANCE PROGRAM TO NEEDY  
28 SENIORS;

29 (III) USING INFORMATION PROVIDED BY THE DEPARTMENT,  
30 REPORT TO THE SECRETARY ON THE COSTS AND LEVELS OF UTILIZATION OF  
31 PRESCRIPTION DRUGS BY LOW-INCOME AND SENIOR RESIDENTS OF THE STATE AND  
32 THE FEASIBILITY OF ESTABLISHING A THERAPEUTIC DRUG CASE MANAGEMENT  
33 PROGRAM FOR ELIGIBLE INDIVIDUALS COVERED UNDER § 15-124(A-1) OF THIS  
34 SUBTITLE OR UNDER ANY DRUG BENEFITS PLAN DEVELOPED FOR NEEDY SENIORS;

35 (IV) EVALUATE AND RECOMMEND TO THE SECRETARY  
36 ALTERNATIVES FOR PROVIDING ACCESS TO LOW-COST PRESCRIPTION DRUGS FOR  
37 NEEDY SENIORS IN THE STATE THAT MAXIMIZE STATE RESOURCES AND ALLOCATE  
38 COSTS TO THE PRIVATE SECTOR IN A FAIR AND EQUITABLE MANNER; AND

39 (V) EVALUATE THE FISCAL IMPACT AND THE IMPACT ON THE  
40 HEALTH OF ELIGIBLE INDIVIDUALS OF CREATING THE MARYLAND SENIORS

1 PRESCRIPTION DRUG PLAN, INCLUDING THE IMPACT ON THE COSTS OF DISPENSING  
2 DRUGS UNDER THE MARYLAND PHARMACY ASSISTANCE PROGRAM.

3 (3) (I) ON OR BEFORE DECEMBER 1, 2001, THE TASK FORCE SHALL  
4 PRESENT THE PLAN TO THE SECRETARY FOR IMPLEMENTATION.

5 (II) THE TASK FORCE SHALL MAKE ANY SUBSEQUENT  
6 RECOMMENDATIONS TO THE SECRETARY ON OR BEFORE OCTOBER 1, 2002 AND  
7 ANNUALLY THEREAFTER.

8 (C) (1) THE MEMBERS OF THE TASK FORCE ARE AS FOLLOWS:

9 (I) THE FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

10 1. ONE REPRESENTATIVE OF THE POPULATION OF  
11 INDIVIDUALS ELIGIBLE FOR THE MARYLAND SENIORS PRESCRIPTION DRUG PLAN;

12 2. ONE REPRESENTATIVE OF PHARMACISTS PRACTICING IN  
13 THE STATE;

14 3. ONE REPRESENTATIVE OF THE PHARMACEUTICAL  
15 INDUSTRY;

16 4. ONE REPRESENTATIVE OF A PHARMACY BENEFITS  
17 MANAGER;

18 5. ONE REPRESENTATIVE OF A LOCAL AREA OFFICE ON  
19 AGING; AND

20 6. ONE REPRESENTATIVE OF PHYSICIANS PRACTICING IN  
21 THE STATE;

22 (II) THE SECRETARY OF HEALTH AND MENTAL HYGIENE OR THE  
23 SECRETARY'S DESIGNEE;

24 (III) THE SECRETARY OF AGING OR THE SECRETARY'S DESIGNEE;

25 (IV) THE SECRETARY OF BUDGET AND MANAGEMENT OR THE  
26 SECRETARY'S DESIGNEE;

27 (V) TWO MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY  
28 THE PRESIDENT OF THE SENATE; AND

29 (VI) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY  
30 THE SPEAKER OF THE HOUSE.

31 (2) THE SECRETARY OF HEALTH AND MENTAL HYGIENE SHALL SERVE  
32 AS THE CHAIRMAN OF THE TASK FORCE.

33 (D) A MEMBER OF THE TASK FORCE:

1 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE ADVISORY  
2 COMMITTEE; BUT

3 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE  
4 STANDARD STATE TRAVEL REGULATIONS AS PROVIDED IN THE STATE BUDGET.

5 (E) THE TASK FORCE SHALL TERMINATE AT THE END OF DECEMBER 31, 2004.

6 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,  
7 2001, the Department of Health and Mental Hygiene shall implement necessary  
8 system changes in the Maryland Pharmacy Assistance Program to ensure that:

9 (1) enrollee eligibility under the Maryland Seniors Prescription Drug Plan  
10 created by this Act under § 15-124(a-1) of the Health - General Article can be  
11 verified electronically at point of sale by the pharmacist at an eligible pharmacy  
12 filling the prescription for a Maryland Medical Assistance Program drug; and

13 (2) the pharmacist can transmit and the Department receive electronic  
14 transmissions of pharmacist claims for the reimbursement payments required to be  
15 made under this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That the members of the  
17 Maryland Seniors Prescription Drug Benefits Task Force created under § 15-124.1 of  
18 the Health - General Article by this Act shall be appointed on or before July 1, 2001.  
19 The terms of the members terminate at the end of December 31, 2004.

20 SECTION 4. AND BE IT FURTHER ENACTED, That the Department of  
21 Health and Mental Hygiene shall collate and review the information on drug  
22 utilization currently maintained by the State's Pharmacy Assistance Program and, on  
23 or before September 1, 2001, report back to the Maryland Seniors Prescription Drug  
24 Benefits Task Force created under § 15-124.1 of the Health - General Article by this  
25 Act on drug utilization patterns and the feasibility of:

26 (1) developing a State therapeutic drug case management program for  
27 participants in the Maryland Seniors Prescription Drug Plan created under this Act  
28 or under another plan recommended by the Task Force to assist needy seniors in  
29 meeting prescription drug costs; and

30 (2) mandating that participants in the plans undergo a drug utilization  
31 assessment as a condition of eligibility for enrollment in the plans.

32 SECTION 5. AND BE IT FURTHER ENACTED, That, on or before January 15,  
33 2002, the Secretary shall report the plan developed by the Maryland Seniors  
34 Prescription Drug Benefits Task Force under § 15-124.1 of the Health - General  
35 Article, as enacted by this Act, to the Governor and, subject to § 2-1246 of the State  
36 Government Article, to the appropriate committees of the General Assembly. The  
37 Secretary shall recommend a timetable for the implementation of the plan. The plan  
38 may not be implemented unless the General Assembly gives legislative approval.

1 SECTION 6. AND BE IT FURTHER ENACTED, That if federal block grant  
2 moneys are made available to the State while the General Assembly is not in session  
3 and the block grant moneys can be used to expand eligibility for Medicare recipients  
4 in the Maryland Pharmacy Assistance Program, the Department shall:

5 (1) adopt emergency regulations to implement the appropriate expansion in  
6 eligibility; and

7 (2) develop legislation for introduction in the next session of the General  
8 Assembly to incorporate that expansion into statute.

9 SECTION 7. AND BE IT FURTHER ENACTED, That if any provision of this  
10 Act or the application thereof to any person or circumstance is held invalid for any  
11 reason in a court of competent jurisdiction, the invalidity does not affect other  
12 provisions or any other application of this Act which can be given effect without the  
13 invalid provision or application, and for this purpose the provisions of this Act are  
14 declared severable.

15 SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 June 1, 2001.