

**Department of Legislative Services**  
Maryland General Assembly  
2001 Session

**FISCAL NOTE**

House Bill 587 (Delegate Pitkin, *et al.*)  
Economic Matters and Environmental Matters

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**Maryland Prescription Drug Fair Pricing Act**

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This bill changes the eligibility criteria for participation in the Maryland Pharmacy Assistance Program (MPAP) to include individuals whose household income is up to 300% of the federal poverty level (FPL). In addition, the bill creates an 11-member Maryland Prescription Drug Fair Pricing Board that will set maximum prescription drug prices in Maryland. The bill also establishes the Maryland Prescription Drug Fair Pricing Fund within the Department of Health and Mental Hygiene (DHMH) to distribute special funds to MPAP and the Short-Term Prescription Drug Subsidy Plan.

The bill's provisions establishing maximum prices for prescription drugs do not apply to prices set under legally binding contracts entered into before October 1, 2001.

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**Fiscal Summary**

**State Effect:** DHMH general fund expenditures could increase by an estimated \$371 million in FY 2002. Future year estimates reflect annualization and inflation. Special fund revenues for the Maryland Prescription Drug Fair Pricing Fund could increase based on any savings realized by the State Employees Health Benefit Plan for prescription drug costs in FY 2002.

(\$ in millions)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
SF Revenue	-	-	-	-	-
GF Expenditure	371.0	578.6	677.9	795.0	933.0
Net Effect	(\$371.0)	(\$578.6)	(\$677.9)	(\$795.0)	(\$933.0)

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

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill increases MPAP income eligibility to include an individual whose household income is at or below 300% of the FPL and abolishes current asset tests. If sufficient funds are provided in the State budget, the program can provide additional drugs and medications that are not currently covered by MPAP.

The bill also creates an 11-member prescription drug fair pricing board. Beginning January 10, 2003, the board must adopt regulations establishing the maximum manufacturer price for prescription drugs sold in the State by manufacturers located in the State. The board must conduct a survey of prescription drug prices on or before January 1 and July 1 of each year. Manufacturers can appeal to the board regarding the price set for a particular drug. The board must develop emergency measures to be implemented by the Governor in the event that there is a severe shortage of or loss of access to prescription drugs in the State.

The Attorney General must determine whether a wholesale price for prescription drugs is set at a level that constitutes an unfair or deceptive act or practice, after review of a complaint. A retail price for a drug cannot be set at a level that constitutes an unfair or deceptive act or practice.

A manufacturer, wholesaler, or retailer located in Maryland that sells prescription drugs in Maryland and charges more than the maximum price set by the board has engaged in an unfair or deceptive trade practice and is subject to the remedies and penalties provided under the Commercial Law Article.

The bill creates a prescription drug fair pricing fund within DHMH. By February 1 of each year, the Department of Budget and Management (DBM) must transfer an amount equal to any savings that are realized as a result of the implementation of the bill's requirements due to a decrease in the costs of the prescription drug benefit plan provided to State employees and retirees. DHMH must distribute these monies to MPAP and the Short-Term Prescription Drug Subsidy Plan as determined by the Governor and DHMH.

**Current Law:** MPAP covers an individual whose annual household income is \$10,000 (approximately 117% of FPL) and who has assets that do not exceed \$3,750.

## **State Expenditures:**

*Maryland Pharmacy Assistance Program.* Medicaid general fund expenditures could increase by an estimated \$346 million in fiscal 2002, which accounts for the bill's October 1, 2001 effective date. This estimate reflects prescription drug costs for 292,000 enrollees, the cost of 20 positions to enroll eligible individuals, computer programming and electronic transmission costs, and rebate administration costs. This estimate is based on the following facts and assumptions:

- 205,000 (185,000 seniors and 20,000 disabled individuals) Medicare beneficiaries under 300% FPL are eligible for coverage;
- 380,000 other individuals under 300% FPL are eligible for coverage;
- 50% (or 292,000) of those eligible will participate;
- MPAP prescription drug costs are \$1,846 per enrollee in fiscal 2002;
- future year enrollment remains constant; and
- prescription drug costs increase by 18% annually.

Future year expenditures reflect: (1) full salaries with a 6.5% increase in fiscal 2003, 4.5% annual increases each year thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

*Community Public Health Administration (CPHA).* CPHA general fund expenditures could increase by an estimated \$25 million in fiscal 2002, which reflects the bill's October 1, 2001 effective date. CPHA administers the Primary Care Program (PCP), which provides basic primary care health services to individuals enrolled in MPAP. An MPAP enrollee is automatically eligible to participate in this program. Approximately 20% of those enrolled in MPAP are also enrolled in the Primary Care Program. This estimate reflects the cost of seven positions to enroll an estimated 38,000 eligible individuals. This estimate is based on the following facts and assumptions:

- 380,000 other individuals under 300% FPL are eligible for coverage;
- 50% (or 190,000) of those eligible will participate in the expanded MPAP;
- 20% (or 38,000) of those newly enrolled in MPAP will participate in the Primary Care Program;

- future year enrollment will remain constant; and
- the annual medical inflation rate is 6%.

### **State Revenues:**

*Maryland Prescription Drug Fair Pricing Fund.* There are insufficient data at this time to reliably estimate any prescription drug savings realized by the State Employees Health Benefit Plan. To the extent that the State plan realizes savings, special fund revenues would increase. Special funds could then be transferred to MPAP and the Short-Term Prescription Drug Subsidy Fund as determined by the Governor and DHMH.

**Small Business Effect:** There are approximately 1,300 pharmacies in Maryland, 230 of which are small businesses. Small business pharmacies that participate in Medicaid may be required to sell prescription drugs to Medicare beneficiaries at a loss. The bill's requirements would require these pharmacies to sell prescription drugs at the Medicaid payment rate. In general, Medicaid's payments to pharmacies are only about 75% of the pharmacies' usual and customary charges. If pharmacies incur substantial losses, they may discontinue participation in the Medicaid program. Because one in three Medicare beneficiaries who do not have prescription drug coverage live in rural areas, pharmacy pull-outs may disproportionately affect the rural areas of Maryland.

### **Additional Comments:**

<b>2001 Federal Poverty Level (FPL) Guidelines*</b>	
<b>Number of Family Members</b>	<b>Annual Income at 300% FPL</b>
Family of 1	\$25,770
Family of 2	\$34,830
Family of 3	\$43,890
Family of 4	\$52,950
Family of 5	\$77,550

*\*Federal Register, Vol. 66, No. 33, February 16, 2001, pp. 10695-10697.*

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene (Medicaid, Community Public Health Administration), Department of Legislative Services

**Fiscal Note History:** First Reader – February 23, 2001  
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