HB 1230

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1230 (Delegate Boteler, *et al.*)
Appropriations

State Prescription Drug Benefits - Retirees

This bill (1) restores State-sponsored prescription drug coverage for Medicare-eligible State retirees who began State service before July 1, 2011, and (2) repeals reimbursement programs for out-of-pocket (OOP) prescription drug costs for specified Medicare-eligible State retirees, and other related provisions, enacted by Chapter 767 of 2019. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Long-term health liabilities increase by an estimated $4.8 billion over 30 years. No initial effect on State expenditures until the pending federal lawsuit is resolved; if the State prevails in the lawsuit, State expenditures to provide prescription drug benefits to current State retirees increase significantly, potentially by $82.4 million in FY 2022. Those costs increase annually according to medical inflation and expanded coverage, and they are assumed to be allocated 60% general funds, 20% special funds, and 20% federal and other funds. Any delay in the resolution of the pending federal lawsuit, assuming the State prevails, delays the bill's fiscal effect. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: The State Employee and Retiree Health and Welfare Benefits Program (the State plan) is established in statute to provide health insurance 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.

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

Eligibility for Coverage and Subsidies

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.

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 Retiree Prescription Drug Benefits

As noted earlier, Chapter 397 made changes to OPEB coverage provided to State retirees, particularly in the area of prescription drug coverage. Most notably, it eliminated State prescription drug coverage for Medicare-eligible retirees beginning 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 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 court challenging the State's action on the grounds that it is an unconstitutional breach of contract. On October 16, 2018, the federal court issued a temporary restraining order and preliminary injunction preventing the State from terminating coverage until the lawsuit is resolved. As a result, State prescription drug coverage is currently in effect.

State and federal courts have not consistently recognized a contractual obligation that protects retiree health benefits from diminution or infringement when they are established in statute. In the absence of relevant case law in Maryland, a 2005 opinion of the Maryland Attorney General concluded that "the statute does not create a contractual obligation and the General Assembly remains free to amend the law that provides such benefits." It also found that cases in other states had reached various conclusions, including, in some cases, recognizing a vested right to health benefits for retirees. But the Attorney General advised that such cases had limited application in Maryland because they were based on particular state constitutions, collective bargaining agreements, or circumstances in other states. In 2014, a federal district court in California ruled against retired employees of Orange County, finding that county ordinances, resolutions, and other documents did not create an implied vested right to a specific health benefit.

Medicare Part D Coverage Model

The standard Medicare Part D coverage model includes a $415 deductible that must be paid before coverage begins. The plan then requires a participant to pay a 25% coinsurance on all prescription drugs until OOP costs reach the catastrophic coverage threshold of $5,100 in a calendar year (including the deductible). However, because participants get credit for prescription drug rebates negotiated by Medicare, *actual* OOP costs are about $3,000 before reaching the catastrophic coverage threshold. Under catastrophic coverage, participants pay a 5% coinsurance indefinitely.

Reimbursement Plans Under Chapter 767

In an effort to defray some of the OOP costs incurred by State retirees who elect to enroll in a Medicare Part D prescription drug plan, Chapter 767 required the Department of Budget and Management (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.

- The Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program 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.

Implementation of Chapter 767

The bill required DBM to launch the new programs by July 1, 2020, but added a contingency provision in the event that the federal lawsuit was not resolved by that date. If the final resolution of the federal injunction occurs less than nine months before the beginning of the State's next open enrollment period:

- State-funded prescription drug benefits for Medicare-eligible retirees that were in effect prior to January 1, 2019, continue until the beginning of the *second* State health benefit plan year following the resolution of the injunction;
- the bill's three new prescription drug coverage programs take effect on the same day that existing coverage ends; and
- required notices must be provided to State retirees.

If the final resolution of the federal resolution occurs nine or more months before the beginning of the State's next open enrollment period, existing coverage ends and the new plans take effect on the first day of the *next* plan year following the resolution of the injunction.

As the federal lawsuit is still pending, the State continues to provide full prescription drug coverage to all Medicare-eligible retirees and the reimbursement programs are not operational.

State Expenditures: The bill increases long-term State OPEB liabilities and ultimately may increase State expenditures for prescription drug coverage for State retirees. However, the bill has no material effect on State expenditures as long as the federal lawsuit remains unresolved because the State is currently providing full prescription drug coverage to all State retirees who meet the eligibility criteria in current law.

The bill allows most (if not all) current retirees to retain their prescription drug benefits under the State plan, regardless of the outcome of the federal lawsuit. However, it is possible that a small number of current retirees lose prescription drug coverage under the bill because any current retiree who was originally hired on or after July 1, 2011, loses prescription drug coverage. Generally, State employees hired on or after July 1, 2011, are not yet retired, but a small number may be retired already. This small group, if any, likely consists of some retirees of the Judges' Retirement System, State employees hired within nine years of the age of retirement eligibility, and those who retired with a disability retirement. The Department of Legislation Services has no information on how many of these retirees, if any, there may be. Otherwise, the bill allows current retirees to retain their State-provided prescription drug benefits.

OPEB Liabilities

The bill's provisions have opposing effects on the State's long-term OPEB liabilities, but the net effect is a significant increase in overall OPEB liabilities. The extension of current coverage due to the federal lawsuit, combined with the coverage and administrative costs associated the reimbursement programs established by Chapter 767, caused the State's OPEB liabilities to increase by $2.5 billion in fiscal 2019. The bill's repeal of the reimbursement programs reduces the liabilities associated with them, but the bill's restoration of full coverage for all employees who began State service before July 1, 2011, causes liabilities to increase, more than offsetting the initial reduction. The net effect is an increase of $4.8 billion in OPEB liabilities, from $14.3 billion to $19.1 billion.

Cost of Maintaining Prescription Drug Coverage

As noted above, the bill has no immediate effect on State expenditures because the State has maintained prescription drug coverage for current retirees due to the federal injunction, and the State will continue to provide that coverage as long as the injunction remains in effect. Similarly, if the State does not prevail in the pending lawsuit, the bill has no effect as it is assumed that the State will have to maintain retiree health coverage for all retirees, regardless of when they were hired. If the State prevails in the lawsuit, however, the cost of providing prescription drug benefits to State retirees who began State service before July 1, 2011, will increase State expenditures to provide that coverage instead of the reimbursement plans enacted by Chapter 767.

For fiscal 2022, the projected annualized prescription drug claims costs for Medicare-eligible retirees are $313.1 million. After accounting for retiree premiums, manufacturer rebates, and other offsetting revenues, the State share of those costs is projected to be $119.4 million on an annualized basis. By comparison, the reimbursement plans enacted by Chapter 767 (and repealed by this bill) are projected to cost $37 million annually. Accordingly, if the federal lawsuit is resolved by fiscal 2022, State expenditures may increase by approximately $82.4 million beginning in fiscal 2022, which represents the difference between the cost of the reimbursement programs and the cost of maintaining full prescription drug coverage for current retirees. Those costs would increase annually thereafter according to medical inflation rates and expanded participation by retirees, and they are assumed to be allocated 60% general funds, 20% special funds, and 20% federal and other funds.

Any delay in the resolution of the federal lawsuit delays the bill's fiscal effect.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 9, 2020
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