

Chapter 28

(House Bill 1095 of the 2020 Regular Session)

AN ACT concerning

Public Health – Prescription Drug Affordability Board and Fund

FOR the purpose of repealing certain provisions of law requiring the Prescription Drug Affordability Board to determine a certain funding source on or before a certain date, consider using certain methods in making a certain determination, and report to certain committees of the General Assembly on a certain recommendation; requiring the Board to assess and collect a certain fee from certain persons in a certain manner; requiring the Board to calculate a certain fee in a certain manner; requiring certain entities to pay a certain fee on or before a certain date each year; requiring the Board to allow certain persons to make certain payments; providing that certain fees may be subject to a certain interest penalty; prohibiting a certain amount of fees collected within a certain period of time from exceeding a certain amount; requiring the Board to pay certain fees into the Prescription Drug Affordability Fund; establishing the Fund as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the Board to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; requiring any interest earnings of the Fund to be credited to the Fund; specifying the contents of the Fund; specifying the purpose for which the Fund may be used; providing for the investment of money in and expenditures from the Fund; requiring the Fund to be subject to a certain audit; adding special funds to the types of funds that are required to be used to establish the Board; requiring the Board to repay certain funds from the Fund to the Maryland Health Care Commission under certain circumstances and over a certain period of time; exempting the Fund from a certain provision of law requiring interest earnings on State money to accrue to the General Fund of the State; providing for the construction of certain provisions of this Act; defining a certain term; making conforming changes; and generally relating to the Prescription Drug Affordability Board and Fund.

BY repealing and reenacting, without amendments,

Article – Health – General

Section 19–132(a) and (c)

Annotated Code of Maryland

(2019 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Health – General

Section 21–2C–11

Annotated Code of Maryland

(2019 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Health Occupations
Section 12–6C–01(a) and (v)
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,

Article – Insurance
Section 15–1601(a) and (m)
Annotated Code of Maryland
(2017 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,

Article – State Finance and Procurement
Section 6–226(a)(2)(i)
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
Section 6–226(a)(2)(ii)121. and 122.
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

BY adding to

Article – State Finance and Procurement
Section 6–226(a)(2)(ii)123.
Annotated Code of Maryland
(2015 Replacement Volume and 2019 Supplement)

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

Article – Health – General

19–132.

(a) In this Part III of this subtitle the following words have the meanings indicated.

(c) “Carrier” means:

(1) An insurer or nonprofit health service plan that holds a certificate of authority and provides health insurance policies or contracts in the State in accordance with the Insurance Article; or

(2) A health maintenance organization that holds a certificate of authority in the State.

21-2C-11.

[(a) On or before December 31, 2020, the Board shall determine a funding source for the Board.

(b) In determining a funding source, the Board shall consider:

(1) Assessing and collecting a fee on manufacturers, pharmacy benefits managers, health insurance carriers, wholesale distributors, or other entities;

(2) Using rebates the State or local government receives from manufacturers; and

(3) Any other method it determines appropriate for funding the Board.

(c) On or before December 31, 2020, in accordance with § 2-1257 of the State Government Article, the Board shall report back to the Senate Finance Committee and the House Health and Government Operations Committee with a recommendation on legislation necessary to establish a funding source for the Board.]

(A) IN THIS SECTION, “FUND” MEANS THE PRESCRIPTION DRUG AFFORDABILITY FUND.

(B) (1) THE BOARD SHALL ASSESS AND COLLECT AN ANNUAL FEE ON:

(I) MANUFACTURERS THAT SELL OR OFFER FOR SALE PRESCRIPTION DRUG PRODUCTS TO PERSONS IN THE STATE;

(II) PHARMACY BENEFITS MANAGERS, AS DEFINED IN § 15-1601 OF THE INSURANCE ARTICLE;

(III) CARRIERS, AS DEFINED IN § 19-132 OF THIS ARTICLE; AND

(IV) WHOLESALE DISTRIBUTORS, AS DEFINED IN § 12-6C-01 OF THE HEALTH OCCUPATIONS ARTICLE; ~~AND, THAT SELL OR OFFER FOR SALE PRESCRIPTION DRUG PRODUCTS TO PERSONS IN THE STATE.~~

~~(V) ANY OTHER ENTITY IDENTIFIED IN REGULATIONS ADOPTED BY THE BOARD.~~

(2) THE BOARD SHALL:

(I) ASSESS AND COLLECT THE ANNUAL FEE UNDER PARAGRAPH (1) OF THIS SUBSECTION IN ACCORDANCE WITH CRITERIA ESTABLISHED IN REGULATIONS ADOPTED BY THE BOARD; AND

(II) CALCULATE THE ANNUAL FEE UNDER PARAGRAPH (1) OF THIS SUBSECTION IN A FAIR AND EQUITABLE MANNER.

(3) (I) ON OR BEFORE OCTOBER 1 EACH YEAR, EACH ENTITY ASSESSED A FEE UNDER THIS SUBSECTION SHALL PAY THE FEE ASSESSED BY THE BOARD.

(II) THE BOARD SHALL ALLOW ENTITIES TO MAKE PARTIAL PAYMENTS WHEN PAYING THE FEE ASSESSED UNDER THIS SUBSECTION.

(III) ANY FEE NOT PAID WITHIN 30 DAYS AFTER THE PAYMENT DUE DATE MAY BE SUBJECT TO AN INTEREST PENALTY TO BE DETERMINED AND COLLECTED BY THE BOARD.

(4) THE TOTAL AMOUNT OF FEES THAT THE BOARD COLLECTS IN EACH CALENDAR YEAR UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT EXCEED \$2,000,000.

(5) THE BOARD SHALL PAY ALL FEES COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION INTO THE FUND.

(C) (1) THERE IS A PRESCRIPTION DRUG AFFORDABILITY FUND.

(2) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDING FOR THE BOARD AND TO CARRY OUT THE PURPOSE OF THIS SUBTITLE.

(3) THE BOARD SHALL ADMINISTER THE FUND.

(4) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(II) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(5) THE FUND CONSISTS OF:

(I) REVENUE DISTRIBUTED TO THE FUND UNDER SUBSECTION (B) OF THIS SECTION;

(II) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;

(III) INTEREST EARNINGS; AND

(IV) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(6) THE FUND MAY BE USED ONLY TO PROVIDE FUNDING FOR THE BOARD AND FOR THE PURPOSES AUTHORIZED UNDER THIS SUBTITLE, INCLUDING ADMINISTRATIVE EXPENSES AND ANY COSTS EXPENDED BY ANY STATE AGENCY TO IMPLEMENT THIS SUBTITLE.

(7) (I) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

(II) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.

(8) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.

(9) THE FUND IS SUBJECT TO AUDIT BY THE OFFICE OF LEGISLATIVE AUDITS AS PROVIDED FOR UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

(10) THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT THE FUND FROM RECEIVING FUNDS FROM ANY OTHER SOURCE.

(d) (1) The Board shall be established using **SPECIAL OR general funds, which shall be repaid to the State with the funds from the [funding source determined by the Board under subsection (a) of this section] **FUND**.**

(2) IF THE BOARD RECEIVES FUNDING FROM THE MARYLAND HEALTH CARE COMMISSION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL REPAY THE FUNDS TO THE COMMISSION FROM THE FUND OVER A 3-YEAR PERIOD BEGINNING JUNE 1, 2021.

Article – Health Occupations

12-6C-01.

(a) In this subtitle the following words have the meanings indicated.

(v) (1) “Wholesale distributor” means a person that is engaged in the wholesale distribution of prescription drugs or prescription devices.

(2) “Wholesale distributor” includes:

(i) A manufacturer;

(ii) A repackager;

(iii) An own-label distributor;

(iv) A private-label distributor;

(v) A jobber;

(vi) A broker;

(vii) A warehouse, including a manufacturer’s or distributor’s warehouse;

(viii) A manufacturer’s exclusive distributor or an authorized distributor of record;

(ix) A drug wholesaler or distributor;

(x) An independent wholesale drug trader;

(xi) A third party logistics provider;

(xii) A pharmacy that conducts wholesale distribution, if the wholesale distribution business accounts for more than 5% of the pharmacy’s annual sales; and

(xiii) A pharmacy warehouse that conducts wholesale distribution.

Article – Insurance

15–1601.

(a) In this subtitle the following words have the meanings indicated.

(m) “Pharmacy benefits manager” means a person that performs pharmacy benefits management services.

Article – State Finance and Procurement

6-226.

(a) (2) (i) Notwithstanding any other provision of law, and unless inconsistent with a federal law, grant agreement, or other federal requirement or with the terms of a gift or settlement agreement, net interest on all State money allocated by the State Treasurer under this section to special funds or accounts, and otherwise entitled to receive interest earnings, as accounted for by the Comptroller, shall accrue to the General Fund of the State.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to the following funds:

121. the Markell Hendricks Youth Crime Prevention and Diversion Parole Fund; [and]

122. the Federal Government Shutdown Employee Assistance Loan Fund; AND

123. THE PRESCRIPTION DRUG AFFORDABILITY FUND.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2020.

Gubernatorial Veto Override, February 12, 2021.