

Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE

Third Reader - Revised

Senate Bill 186

(Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Health)

Education, Health, and Environmental Affairs

Health and Government Operations

Maryland AIDS Drug Assistance Program Fund

This departmental bill establishes a Maryland AIDS Drug Assistance Program (MADAP) Fund to support the administration, operation, and activities of MADAP. The Maryland Department of Health (MDH) must administer the special, nonlapsing fund, which consists of (1) rebates received by MDH from MADAP; (2) money appropriated in the State budget to the fund; (3) interest earnings of the fund; and (4) any other money from any other source accepted for the benefit of the fund. MDH must deposit any rebates from a source other than a federal source received from MADAP into an account within the fund to be used only to fund State-identified priorities for HIV prevention, surveillance, and care services. The Secretary of Health must adopt regulations establishing income and other eligibility criteria for receipt of such services. The fund may only be used to fund MADAP, MADAP Plus, and any other services to eligible individuals as authorized under Part B of the federal Ryan White HIV/AIDS Program. Expenditures from the fund may only be made in accordance with the State budget. The fund must have its own program code within the State budget. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund revenues decrease, while MADAP special fund revenues and expenditures increase correspondingly, beginning in FY 2023.

Local Effect: None.

Small Business Effect: MDH has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law/Background: Under federal law, states receive rebates on medications purchased at a price higher than a federally set rate. These rebates can then be used by state AIDS drug assistance programs to provide health care and support services to people living with HIV/AIDS, implement prevention programs, and fund other HIV/AIDS-related activities. MADAP rebates can be generated from the medications purchased with federal Ryan White Part B grants or general funds. Rebates generated from general fund spending do not have the same restrictions on the use of funds as the rebates generated from federal fund sources. In Maryland, HIV/AIDS services provided by programs funded with MADAP rebates include the purchase of pharmaceuticals, insurance premiums or copayments, oral health care, housing stability, syringe services, and preexposure prophylaxis clinics.

Generally, any rebates received by MDH from MADAP must be distributed to a special fund to be used only to fund MADAP, MADAP-Plus, and any other services to eligible individuals as allowable under Part B of the federal Ryan White HIV/AIDS Program. Rebates received as a result of general fund expenditures must be distributed to a special fund and used only to fund State-identified priorities for HIV prevention, surveillance, and care services.

While responding to findings in an August 2020 Office of Legislative Audits (OLA) report, MADAP learned that the State has been investing the MADAP Rebates Fund into interest bearing accounts and the interest has been accruing to the general fund. This is out of compliance with federal Health Resources and Services Administration requirements that note that all rebates and any interest must be used for Ryan White-approved activities. Thus, MDH advises that the bill is intended to ensure that any interest earned on the MADAP Rebates Fund is deposited into a nonlapsing, special fund rather than the general fund. As MADAP predicated the practice of establishing special funds and, therefore, has never had an official special fund (although it has operated as though it did), the bill also establishes a nonlapsing MADAP special fund.

The August 2020 OLA audit report found that, in fiscal 2017 through 2019, MDH did not submit certain MADAP drug utilization data to manufacturers, resulting in the untimely collection of approximately \$20.6 million in rebates, including lost investment income totaling approximately \$187,800. OLA also found that MDH did not ensure that drug manufacturers provided timely and proper MADAP drug rebate payments and, as a result, did not pursue collection of \$7.3 million in outstanding rebates.

State Fiscal Impact: MDH advises that, under the bill, interest income shifts from general to special funds and is made available for use by MADAP. Thus, general fund revenues decrease beginning in fiscal 2023, while special fund revenues and expenditures for

MADAP increase accordingly. The amount of interest income depends on timely collection of rebates and the value of those rebates. However, the amount is likely more than \$100,000 annually, based on the lost investment income for the three-year period in the OLA audit (which does not account for investment income from timely rebates).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES
Maryland Department of Health Session 2022

BILL TITLE: Maryland AIDS Drug Assistance Program – Rebates

BILL NUMBER: SB 186

PREPARED BY: Jody Sheely, MPH

(Program\Unit): Prevention and Health Promotion Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This proposal has no economic impact.