



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

January 20, 2022

The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 186 - Maryland AIDS Drug Assistance Program – Rebates - Letter of Support with Amendments**

Dear Chair Pinsky and Committee Members:

The Maryland Department of Health (MDH) respectfully submits this letter of support with amendments for Senate Bill (SB) 186 - “Maryland AIDS Drug Assistance Program – Rebates.” SB 186 will allow rebates received by the Maryland AIDS Drug Assistance Program (MADAP) to be held in interest bearing accounts. The proposal will also modify State Finance and Procurement Article §6-226 to allow interest earned from such accounts to be transferred to a special nonlapsing fund.

During a recent Office of Legislative Audits (OLA) review of MDH pharmacy services, OLA determined that MADAP was not receiving the interest earned on MADAP rebate funds. As noted in Policy Clarification Notice 15-03 and 15-04<sup>1</sup>, and based on the regulatory requirement contained in 45 Code of Federal Regulations 75.305(b)(5)<sup>2</sup>, interest earned must be used by the program before requesting a payment from the Department of Health and Human Services’ Payment Management Services system.

MDH recently received input from the Maryland State Treasurer’s Office that led to the proposed technical amendments of the bill. MDH respectfully suggests the attached version of the bill, which was developed at the request of the Maryland State Treasurer’s Office. The updated bill formally establishes the Maryland AIDS Drug Assistance Program Fund.

If you have any questions or comments please contact Heather Shek, Director, Office of Governmental Affairs, at 410-767-5282 or [heather.shek@maryland.gov](mailto:heather.shek@maryland.gov).

Sincerely,

Dennis R. Schrader,  
Secretary

<sup>1</sup> [https://hab.hrsa.gov/sites/default/files/hab/Global/pcn\\_15-03\\_program\\_income.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/pcn_15-03_program_income.pdf);  
[https://hab.hrsa.gov/sites/default/files/hab/Global/pcn\\_15-04\\_pharmaceutical\\_rebates.pdf](https://hab.hrsa.gov/sites/default/files/hab/Global/pcn_15-04_pharmaceutical_rebates.pdf)

<sup>2</sup> <https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-sec75-305.pdf>

A BILL ENTITLED

AN ACT concerning

**Maryland AIDS Drug Assistance Program — Rebates**

FOR the purpose of establishing the Maryland AIDS Drug Assistance Program Fund as a special, nonlapsing fund; requiring the Department to administer the Fund; requiring the State Treasurer to hold the Fund and the Comptroller to account for the Fund; specifying the contents of the Fund; specifying how monies from the Fund may be used; providing for the investment of money in and expenditures from the Fund; and requiring any interest earnings on State money to be credited to the Fund.

BY repealing and reenacting with amendments

Article – Health – General  
Section §2 – 104  
Annotated Code of Maryland  
(2019 Replacement Volume and 2021 Supplement)

BY adding to

Article – Health – General  
Section §25 – 101  
Annotated Code of Maryland  
(2019 Replacement Volume and 2021 Supplement)

BY adding to

Article – State Finance and Procurement  
Section §6 – 226  
Annotated Code of Maryland  
(2021 Replacement Volume)

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

**Article – Health General**

2 – 104.

(j) [(1)] Except as otherwise provided by law [and paragraphs (2) and (3) of this subsection], the Secretary shall pay all money collected by the Department under this article into the General Fund of this State.

[(2)] Any rebates received by the Department from the Maryland AIDS Drug Assistance Program

shall be distributed to a special nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article, to be used only to fund:

- (i) The Maryland AIDS Drug Assistance Program (MADAP);
- (ii) The Maryland AIDS Drug Assistance Program Plus (MADAP–Plus); and
- (iii) Any other services to eligible individuals as allowable under Part B of the federal Ryan White HIV/AIDS Program.

(3) Notwithstanding paragraph (2) of this subsection, any rebates received by the Department from the Maryland AIDS Drug Assistance Program as a result of supplemental rebates shall be:

- (i) Distributed to a separate special nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article; and
- (ii) Used only to fund State–identified priorities for HIV prevention, surveillance, and care services.

(4) The Secretary shall adopt regulations establishing, as appropriate, income and other eligibility criteria for the receipt of HIV prevention and care services funded under paragraph (3) of this subsection.]

## **Article – Health General**

### **25-101.**

- (A) THERE IS A MARYLAND AIDS DRUG ASSISTANCE PROGRAM FUND.**
- (B) THE PURPOSE OF THE FUND IS TO SUPPORT THE ADMINISTRATION, OPERATION, AND ACTIVITIES OF THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM.**
- (C) THE DEPARTMENT SHALL ADMINISTER THE FUND.**
- (D) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7–302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**
  - (2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**
- (E) THE FUND CONSISTS OF:**
  - (1) REBATES RECEIVED BY THE DEPARTMENT FOR THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM;**

- (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.
- (F) THE FUND MAY BE USED ONLY TO FUND:
- (1) THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM;
  - (2) THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM PLUS (MADAP-PLUS); AND
  - (3) ANY OTHER SERVICES TO ELIGIBLE INDIVIDUALS AS ALLOWABLE UNDER PART B OF THE FEDERAL RYAN WHITE HIV/AIDS PROGRAM.
- (G) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.
- (2) ANY INTEREST EARNINGS OF THE FUND SHALL BE CREDITED TO THE FUND.
- (H) (1) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN ACCORDANCE WITH THE STATE BUDGET.
- (2) THE PROGRAM SHALL HAVE ITS OWN PROGRAM CODE WITHIN THE STATE BUDGET.
- (I) NOTWITHSTANDING PARAGRAPHS (A) THROUGH (H) OF THIS SECTION, ANY REBATES RECEIVED BY THE DEPARTMENT FROM THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM FROM NON-FEDERAL SOURCES SHALL BE:
- (1) DISTRIBUTED TO A SEPARATE SPECIAL NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND
  - (2) USED ONLY TO FUND STATE-IDENTIFIED PRIORITIES FOR HIV PREVENTION, SURVEILLANCE, AND CARE SERVICES.
- (J) THE SECRETARY SHALL ADOPT REGULATIONS ESTABLISHING, AS APPROPRIATE, INCOME AND OTHER ELIGIBILITY CRITERIA FOR THE RECEIPT OF HIV PREVENTION AND CARE SERVICES FUNDED UNDER PARAGRAPH (I) OF THIS SUBSECTION.

#### **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:

144. the Health Equity Resource Community Reserve Fund; [and]

145. the Access to Counsel in Evictions Special Fund[.]; AND

**146. THE MARYLAND AIDS DRUG ASSISTANCE PROGRAM FUND.**

(b) (1) Notwithstanding any other provision of law, the Treasurer may invest separately or commingled in 1 or more pools amounts to be invested by law or regulation for State agencies.

(2) The Treasurer shall allocate net earnings on amounts commingled in a pool to the appropriate State agencies entitled to receive interest earnings under subsection (a) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

