

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 669

(The President)(By Request - Prescription Drug  
 Affordability Board)

Finance

Health and Government Operations

Public Health - Prescription Drug Affordability Board and Fund

This bill repeals the requirement that the Prescription Drug Affordability Board determine a funding source and report to specified committees of the General Assembly with a recommendation on legislation necessary to establish a funding source by December 31, 2020. Instead, the bill requires the board to assess and collect an annual fee on specified entities to fund the board. All fees must be paid to the newly established Prescription Drug Affordability Fund. If the board receives funding for its initial establishment from the Maryland Health Care Commission (MHCC), the board must repay the funds over a three-year period beginning June 1, 2021. **The bill takes effect June 1, 2020.**

Fiscal Summary

**State Effect:** Board special fund revenues increase by \$2.0 million annually beginning in FY 2021, under the assumptions discussed below. The Governor’s proposed FY 2021 budget includes \$750,000 in special funds and five positions in the MHCC budget for the board. Board special fund expenditures increase by \$250,000 in FY 2021 through 2023 to repay MHCC; MHCC special fund revenues increase accordingly.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$2,250,000	\$2,250,000	\$2,250,000	\$2,000,000	\$2,000,000
SF Expenditure	\$250,000	\$250,000	\$250,000	-	-
Net Effect	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000

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

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The board must assess and collect an annual fee on manufacturers that sell or offer for sale prescription drug products to persons in the State, pharmacy benefits managers (PBMs), carriers, and wholesale distributors that sell or offer for sale prescription drug products to persons in the State. The fee must be calculated in a fair and equitable manner and assessed and collected in accordance with criteria established in board regulations. Each entity assessed a fee must pay the fee by October 1 each year, but the board must allow entities to make partial payments. Any fee not paid within 30 days may be subject to an interest penalty. Total fees collected in each calendar year may be capped at \$2,000,000.

The purpose of the Prescription Drug Affordability Fund is to provide funding for the board. The board must administer the fund. The fund consists of fee revenue, money appropriated in the State budget, interest earnings, and any other money from any other source accepted for the benefit of the fund.

The fund may be used only to provide funding for the board and related purposes, including administrative expenses and any costs expended by any State agency to implement the board's duties. The fund is subject to audit by the Office of Legislative Audits.

**Current Law:** Chapter 692 of 2019 established the Prescription Drug Affordability Board. The board must make specified determinations, collect data, and identify specified prescription drug products that may cause affordability issues, may conduct a cost review of each identified drug product, and, if warranted, must draft a plan of action that includes the criteria to set upper payment limits for prescription drug products. The plan of action must be approved either by the Legislative Policy Committee or by the Governor and the Attorney General. If approved, the board may set upper payment limits for specified populations beginning January 1, 2022. The Act also established a Prescription Drug Affordability Stakeholder Council.

The board comprises five members, one each appointed by the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Attorney General, and one, appointed jointly by the President of the Senate and the Speaker of the House of Delegates, who must serve as chair. The board must also have three alternate members to participate when a member is recused. At least one member of the board must have specified expertise.

The chair of the board must hire an executive director, general counsel, and staff for the board, who must receive a salary as provided in the budget of the board. The chair must develop a five-year budget and staffing plan for the board's approval.

The board must be established using general funds, which must be repaid to the State. By December 31, 2020, the board must determine a funding source. The board must consider (1) assessing and collecting a fee on manufacturers, PBMs, 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.

**Background:** The board has conducted two meetings (January 13 and February 24), with a third meeting scheduled for April 20, 2020. By December 31, 2020, the board, in consultation with the stakeholder council, must study (1) the entire pharmaceutical distribution and payment system in the State and (2) policy options being used in other states and counties to lower the list price of pharmaceuticals, including setting upper payment limits, using a reverse auction marketplace, and implementing a bulk purchasing process. The board must report its findings and recommendations (and any legislation required to implement the recommendations) to specified committees of the General Assembly.

Also by December 31, 2020, the board must (1) collect and review publicly available information regarding prescription drug product manufacturers, health insurance carriers, health maintenance organizations, managed care organizations, wholesale distributors, and PBMs; (2) identify states that require reporting on the cost of prescription drug products; and (3) initiate a process of entering into memoranda of understanding with the states to aid in the collection of transparency data for prescription drug products.

Based on the information collected and the data obtained from other states, the board, in consultation with the stakeholder council, must adopt regulations to (1) establish methods for collecting additional data necessary to carry out its duties and (2) identify circumstances under which the cost of a prescription drug product may create or has created affordability challenges for the State health care system and patients.

**State Revenues:** The bill requires the board to assess and collect a fee on manufacturers, PBMs, carriers, wholesale distributors, and any other entity identified in board regulations. Fees must be paid annually, by October 1, and as much as \$2.0 million in total fees may be collected. Because the bill includes a repayment provision beginning in June 2021 (which is in fiscal 2021), this analysis assumes that the regulations can be adopted and the fee can be calculated, assessed, and collected by October 1, 2020 (just four months after the bill takes effect). Assuming the fee is set to reach the maximum revenue attainment allowed, board special fund revenues increase by \$2.0 million annually beginning in fiscal 2021.

MHCC special fund revenues increase by \$250,000 each year from fiscal 2021 through 2023 due to repayment of initial funding provided to the board.

To the extent fee assessment and collection are delayed to October 1, 2021, board special fund fee revenues are similarly delayed until fiscal 2022, which necessitates a one-year delay in repaying MHCC, with the final payment in fiscal 2024.

**State Expenditures:** Although general funds were anticipated to be used when the board was established, that funding was ultimately not provided. Instead, the Governor's proposed fiscal 2021 budget includes \$750,000 in special funds and five positions for the board in the MHCC budget. Accordingly, this analysis does not reflect a reduction in general fund expenditures under the assumption that MHCC would otherwise continue to provide funding until the board could sustain itself. The bill requires the board to repay any funds received from MHCC over the three-year period beginning June 1, 2021. (Chapter 692 also included a repayment provision for initial support from the general fund.) Thus, board special fund expenditures increase by \$250,000 annually from fiscal 2021 through 2023 to repay MHCC; board special fund expenditures also increase to cover board costs (which have not been quantified in this analysis). As noted above, to the extent fee assessment and collection are delayed, special fund expenditures for repayment to MHCC are likewise delayed.

The Office of Legislative Audits can conduct any required audits of the fund using existing budgeted resources.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1095 (The Speaker, *et al.*) (By Request - Prescription Drug Affordability Board) - Health and Government Operations.

**Information Source(s):** Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services – Office of Legislative Audits

**Fiscal Note History:** First Reader - March 3, 2020  
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