

HOUSE BILL 607

P4, C3

~~EMERGENCY BILL~~

1lr1579

By: ~~Delegate Kipke~~ **Health and Government Operations Committee**

Introduced and read first time: January 20, 2021

Assigned to: Health and Government Operations and Appropriations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2021

CHAPTER _____

1 AN ACT concerning

2 ~~State Health and Welfare Benefits Program – Requirements for Selection of~~

3 ~~Pharmacy Benefits Manager~~

4 ~~Judges’ Retirement System – Retiree Health Benefits – Mandatory Retirement~~

5 FOR the purpose of ~~requiring that the terms of a certain participant bidding agreement for~~
6 ~~participation in a reverse auction for the selection of a pharmacy benefits manager~~
7 ~~for the Maryland Rx Program include a requirement that the bidder, if selected as a~~
8 ~~pharmacy benefits manager for the Program through the auction, pay a certain~~
9 ~~dispensing fee to certain pharmacists; requiring the Department of Budget and~~
10 ~~Management to require that the fee be stated by the bidders in certain bids;~~
11 ~~providing for the retroactive application of this Act; making this Act an emergency~~
12 ~~measure; making technical corrections; and generally relating to pharmacy benefits~~
13 ~~managers and the State Health and Welfare Benefits Program~~ establishing the
14 eligibility for State retiree health benefits for a retiree of the Judges’ Retirement
15 System and the retiree’s spouse and dependent children when a retiree of the Judges’
16 Retirement System retired at a mandatory retirement age with less than a certain
17 number of years of creditable service; providing for the calculation of a certain State
18 subsidy; and generally relating to retiree health benefits.

19 ~~BY repealing and reenacting, with amendments,~~

20 ~~Article – State Personnel and Pensions~~

21 ~~Section 2 – 502.2~~

22 ~~Annotated Code of Maryland~~

23 ~~(2015 Replacement Volume and 2020 Supplement)~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
 2 Article – State Personnel and Pensions
 3 Section 2–508(a)(1), (2)(ii), and (4)(ii)
 4 Annotated Code of Maryland
 5 (2015 Replacement Volume and 2020 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – State Personnel and Pensions
 8 Section 2–508(b)
 9 Annotated Code of Maryland
 10 (2015 Replacement Volume and 2020 Supplement)

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

13 **Article – State Personnel and Pensions**

14 2–508.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) “Creditable service” means:

17 (ii) service while a member of the Judges’ Retirement System under
 18 Title 27 of this article;

19 (4) “State service” means service with the State by:

20 (ii) a member of the Judges’ Retirement System under Title 27 of
 21 this article;

22 (b) (1) This subsection applies to a retiree who:

23 (i) began State service on or before June 30, 2011; or

24 (ii) 1. began State service on or after July 1, 2011; and

25 2. is a retiree of the Judges’ Retirement System.

26 (2) A retiree may enroll and participate in the health insurance benefit
 27 options established under the Program if the retiree:

28 (i) ended State service with at least 10 years of creditable service
 29 and within 5 years before the age at which a vested retirement allowance normally would
 30 begin;

31 (ii) ended State service with at least 16 years of creditable service;

1 (iii) ended State service on or before June 30, 1984;

2 (iv) retired directly from State service with a State retirement
3 allowance on or after July 1, 1984, and had at least 5 years of creditable service; [or]

4 (v) retired directly from State service with a State disability
5 retirement allowance on or after July 1, 1984; OR

6 **(VI) RETIRED DIRECTLY FROM STATE SERVICE IN THE JUDGES'**
7 **RETIREMENT SYSTEM AT THE MANDATORY RETIREMENT AGE REQUIRED BY**
8 **ARTICLE IV, § 3 OF THE MARYLAND CONSTITUTION WITH LESS THAN 5 YEARS OF**
9 **CREDITABLE SERVICE.**

10 (3) (i) The surviving spouse or dependent child of a deceased retiree
11 who was eligible to enroll may enroll and participate in the health insurance benefit options
12 established under the Program as long as the spouse or child is receiving a periodic
13 allowance under Division II of this article or the Maryland Transit Administration
14 Retirement Plan under § 7-206 of the Transportation Article.

15 (ii) Subparagraph (i) of this paragraph does not apply to a deceased
16 retiree's spouse or dependent child who receives an Option 1, Option 4, or Option 7 benefit
17 under Division II of this article or a lump-sum payment of benefits under the Maryland
18 Transit Administration Retirement Plan under § 7-206 of the Transportation Article.

19 (4) (i) If a retiree receives a State disability retirement allowance or has
20 16 or more years of creditable service, the retiree or the retiree's surviving spouse or
21 dependent child is entitled to the same State subsidy allowed a State employee.

22 (ii) In all other cases, if a retiree has at least 5 years of creditable
23 service, the retiree or the retiree's surviving spouse or dependent child is entitled to 1/16 of
24 the State subsidy allowed a State employee for each year of the retiree's creditable service
25 up to 16 years.

26 (iii) Notwithstanding subparagraph (ii) of this paragraph and
27 subsection (a)(4)(i) of this section, if a retiree is an additional employee or agent of the State
28 Racing Commission, for the purposes of determining a retiree's State subsidy, creditable
29 service shall be determined with respect to service as an additional employee or agent
30 beginning from the initial date of employment or January 1, 1986, whichever is later.

31 **(IV) 1. THIS PARAGRAPH APPLIES ONLY TO A RETIREE OF**
32 **THE JUDGES' RETIREMENT SYSTEM WHO RETIRED DIRECTLY FROM STATE SERVICE**
33 **AT THE MANDATORY RETIREMENT AGE REQUIRED BY ARTICLE IV, § 3 OF THE**
34 **MARYLAND CONSTITUTION WITH LESS THAN 5 YEARS OF CREDITABLE SERVICE.**

1 ~~(i) evaluate the qualifications of prospective pharmacy benefits~~
2 ~~managers for the Program;~~

3 ~~(ii) automatically adjudicate prescription drug claims; and~~

4 ~~(iii) collect data on pharmacy reimbursement.~~

5 ~~(2) The platform procured under paragraph (1) of this subsection shall have~~
6 ~~the capability to:~~

7 ~~(i) host and conduct an online automated reverse auction;~~

8 ~~(ii) automate repricing of diverse and complex pharmacy benefits~~
9 ~~manager prescription drug pricing proposals to enable direct comparisons of the price of~~
10 ~~bids using all annual claims data available for state-funded health plans or multiple health~~
11 ~~plan prescription drug purchasing groups using code-based classification of prescription~~
12 ~~drugs from nationally accepted drug sources;~~

13 ~~(iii) produce an automated report and analysis of bids, including the~~
14 ~~ranking of bids based on the comparative costs and qualitative aspects of the costs within~~
15 ~~48 hours after the close of each round of reverse auction bidding;~~

16 ~~(iv) after the close of a reverse auction, perform electronic, line by~~
17 ~~line, claim by claim review of all invoiced pharmacy benefits manager claims within 12~~
18 ~~hours of receipt and identify all deviations from the specific terms of the services contract~~
19 ~~resulting from the reverse auction process; and~~

20 ~~(v) if available, after the close of a reverse auction, perform~~
21 ~~comparisons of the financial effects on the State of alternative drug pricing metrics, such~~
22 ~~as the national average drug acquisition cost and average wholesale price.~~

23 ~~(3) A responsive offeror under paragraph (2) of this subsection may not~~
24 ~~subcontract any part of the reverse auction or a review described under paragraph (2)(iv)~~
25 ~~of this subsection.~~

26 ~~(4) The Department shall consult with the Department of Information~~
27 ~~Technology and Department of General Services in conducting the procurement required~~
28 ~~under paragraph (1) of this subsection.~~

29 ~~(5) The Department may not award a contract under paragraph (1) of this~~
30 ~~subsection to:~~

31 ~~(i) a pharmacy benefits manager;~~

32 ~~(ii) a subsidiary or affiliate of a pharmacy benefits manager; or~~

~~(iii) a vendor that is managed by a pharmacy benefits manager or receives, directly or indirectly, remuneration from a pharmacy benefits manager for aggregating clients into a contractual relationship with a pharmacy benefits manager.~~

~~(6) The Department may structure a contract awarded under this subsection to require the pharmacy benefits manager selected under [subsection (e) of] this section to pay the cost of the technology platform and associated professional services contracted under this subsection by assessing a per-prescription fee paid by the pharmacy benefits manager directly to the technology platform vendor.~~

~~(d) (1) In consultation with the vendor selected under subsection (e) of this section, and with consideration of recommendations that may be offered by the Maryland Prescription Drug Affordability Board, the Department shall specify the terms of a participant bidding agreement that all bidders must accept as a prerequisite for participation in the reverse auction, including:~~

~~(i) common definitions;~~

~~(ii) prescription drug classifications;~~

~~(iii) rules that may include retail pricing rules such as maximum allowable cost price lists and, SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, dispensing fees;~~

~~(iv) whether the vendor will be assessed a platform vendor fee described under subsection (e)(6) of this section; and~~

~~(v) any other contract terms the Department determines are necessary to further the intent of the General Assembly as established in subsection (b) of this section.~~

~~(2) (1) THE TERMS OF A PARTICIPANT BIDDING AGREEMENT THAT ALL BIDDERS MUST ACCEPT AS A PREREQUISITE FOR PARTICIPATION IN THE REVERSE AUCTION SHALL INCLUDE A REQUIREMENT THAT A BIDDER, IF SELECTED AS A PHARMACY BENEFITS MANAGER FOR THE MARYLAND RX PROGRAM, PAY A FEE FOR SERVICE PROFESSIONAL DISPENSING FEE TO A PHARMACIST THAT IS BASED ON AN IN-STATE COST TO DISPENSE MARKET SURVEY.~~

~~(H) THE DEPARTMENT SHALL REQUIRE THAT THE FEE FOR SERVICE PROFESSIONAL DISPENSING FEE REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH BE STATED BY THE BIDDER IN THE BID SUBMITTED IN THE REVERSE AUCTION.~~

~~[(2)](3) The terms of a participant bidding agreement specified under paragraph (1) of this subsection may not be modified except by affirmative approval by the Department.~~

1 ~~(e) (1) (i) The Department may perform annual market checks of~~
2 ~~pharmacy benefits manager services during the term of a pharmacy benefits manager~~
3 ~~contract to ensure continuing competitiveness of prescription drug pricing over the life of~~
4 ~~the contract.~~

5 ~~(ii) A market check performed under this paragraph shall include an~~
6 ~~evaluation of the effect of alternative drug pricing metrics, such as the national average~~
7 ~~drug acquisition cost and average wholesale price, on the cost of prescription drugs and~~
8 ~~savings to the State.~~

9 ~~(2) The Department shall make regular, periodic payment of invoices~~
10 ~~within the time periods specified in a contract based on the automated adjudication of~~
11 ~~invoiced claims using the technology platform to validate that claims payments comply with~~
12 ~~the terms of the contract.~~

13 ~~(f) (1) The following health plans in the State may use the reverse auction~~
14 ~~process established under this section individually or collectively as a joint purchasing~~
15 ~~group with the Program:~~

16 ~~(i) a State-funded health plan other than the Program;~~

17 ~~(ii) a self-funded county, municipal, or other local government~~
18 ~~employee health plan;~~

19 ~~(iii) a public school employee health plan; and~~

20 ~~(iv) a health plan of a public institution of higher education.~~

21 ~~(2) A health plan that participates in a reverse auction purchasing group~~
22 ~~under paragraph (1) of this subsection shall:~~

23 ~~(i) retain full autonomy over determination of the entity's~~
24 ~~prescription drug formulary and pharmacy benefit designs; but~~

25 ~~(ii) agree, before participating in the reverse auction, to accept the~~
26 ~~prescription drug pricing plan that is selected through the reverse auction process.~~

27 ~~(g) A pharmacy benefits manager that submits a bid under [subsection (c) of] this~~
28 ~~section or enters into a contract with the Department or a health plan described under~~
29 ~~subsection [(g)(1)] (F)(1) of this section shall provide the Department and health plan~~
30 ~~access to complete pharmacy claims data necessary for the Department and health plan to:~~

31 ~~(1) conduct the reverse auction; and~~

32 ~~(2) carry out administrative and management duties.~~

1 ~~(h) (1) A prospective bidder or offeror, a bidder, or an offeror may submit a~~
2 ~~protest as provided under Title 15, Subtitle 2 of the State Finance and Procurement Article.~~

3 ~~(2) If the prescription benefits manager selected under [subsection (c) of]~~
4 ~~this section asserts that the Department has underpaid on a claim, the prescription benefits~~
5 ~~manager may submit a contract claim as provided under Title 15, Subtitle 2 of the State~~
6 ~~Finance and Procurement Article.~~

7 ~~(i) (1) If the Department and the Department of General Services determine~~
8 ~~that the implementation of this section is not administratively feasible for the benefit year~~
9 ~~beginning after December 31, 2020, the Department may delay implementation of this~~
10 ~~section to the benefit year beginning after December 31, 2021.~~

11 ~~(2) For purposes of carrying out the provisions of subsections (c) and (d) of~~
12 ~~this section before January 1, 2021, the Board of Public Works may approve a request from~~
13 ~~the Department for an exemption from specific provisions of Division II of the State Finance~~
14 ~~and Procurement Article.~~

15 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to~~
16 ~~apply retroactively and shall be applied to and interpreted to affect any participant bidding~~
17 ~~agreements and reverse auction bids submitted under § 2-502.2 of the State Personnel and~~
18 ~~Pensions Article.~~

19 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency~~
20 ~~measure, is necessary for the immediate preservation of the public health or safety, has~~
21 ~~been passed by a yea and nay vote supported by three fifths of all the members elected to~~
22 ~~each of the two Houses of the General Assembly, and shall take effect from the date it is~~
23 ~~enacted.~~

24 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June~~
25 ~~1, 2021.~~

Approved:

_____ Governor.

_____ Speaker of the House of Delegates.

_____ President of the Senate.