

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 162 (Delegate Ivey)  
Health and Government Operations

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Prescription Drug Affordability Board – Upper Payment Limits and Reports

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This bill repeals the requirement that the Prescription Drug Affordability Board find that it is in the best interest of the State before it may draft a plan of action to set upper payment limits. The date by which the plan of action must be submitted to the Legislative Policy Committee (LPC) for approval is delayed from July 1, 2021, to October 1, 2021. By February 1, 2022, in accordance with the approved plan of action, the board *must* (rather than may) set upper payment limits for specified prescription drug products. If the board has not received approval of the plan of action by that date, statutory provisions relating to upper payment limits are null and void. The bill also alters the dates by which the board must complete two reports and repeals the requirement that the board submit a specified report. **The bill takes effect June 1, 2021.**

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Fiscal Summary

**State Effect:** To the extent upper payment limits are implemented and reduce prescription drug prices, State expenditures (a combination of general, federal, and special funds) decrease by a potentially significant amount beginning as early as FY 2022. Revenues are not affected.

**Local Effect:** Any impact on local government expenditures was already accounted for under prior legislation, as discussed below. Revenues are not affected.

**Small Business Effect:** Minimal, as any impact was already accounted for under prior legislation.

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## Analysis

**Bill Summary:** The bill accelerates, from December 31, 2021, to October 1, 2021, the date by which the board must (1) study and report on the entire pharmaceutical distribution and payment system in the State and policy options being used in other states and countries to lower the list price of pharmaceuticals and (2) collect and review publicly available information regarding prescription drug product manufacturers, health insurance carriers, health maintenance organizations, managed care organizations, wholesale distributors, and pharmacy benefits managers.

The bill repeals the requirement that the board, by December 1, 2023, report to specified committees of the General Assembly on (1) the legality, obstacles, and benefits of setting upper payment limits on all purchases and payor reimbursements of prescription drug products in the State and (2) recommendations regarding whether the General Assembly should pass legislation to expand the authority of the board to set upper payment limits to all purchases and payor reimbursements of prescription drug products in the State.

**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 LPC 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.

If the board finds that it is in the best interest of the State to establish a process for setting upper payment limits for prescription drug products that it determines have led or will lead to an affordability challenge, the board, in conjunction with the stakeholder council, must draft a plan of action for implementing the process that includes the criteria the board must use to set upper payment limits. The criteria for setting upper payment limits must include consideration of (1) the cost of administering the prescription drug product; (2) the cost of delivering the prescription drug product to consumers; and (3) other relevant administrative costs related to the prescription drug product.

If a plan of action is drafted, by July 1, 2021, the board must submit the plan of action to LPC for approval. LPC must have 45 days to approve the plan of action. If LPC does not approve the plan of action, the board must submit the plan of action to the Governor and the Attorney General for approval. The Governor and the Attorney General must have 45 days to approve the plan of action. The board may not set upper payment limits unless the plan is approved by either (1) LPC or (2) the Governor and the Attorney General.

If the plan of action is approved by LPC or the Governor and the Attorney General, then beginning January 1, 2022, the board may set upper payment limits for prescription drug products that are:

- purchased or paid for by a unit of State or local government or an organization on behalf of a unit of State or local government, including State or county correctional facilities, State hospitals, and health clinics at State institutions of higher education;
- paid for through a health benefit plan on behalf of a unit of State or local government, including a county, bi-county, or municipal employee health benefit plan; or
- purchased for or paid for by the Maryland Medicaid program.

The upper payment limits must be for prescription drug products that have led or will lead to an affordability challenge and be set in accordance with the criteria established in board regulations. The board must monitor the availability of any prescription drug product for which it sets an upper payment limit. If there becomes a shortage of a prescription drug product in the State, the board must reconsider whether the upper payment limit should be suspended or altered. An upper payment limit may not be applied to a prescription drug product while the prescription drug product is on the U.S. Food and Drug Administration's prescription drug shortage list.

If the board has not received approval of the plan of action by January 1, 2023, these provisions are null and void.

**State Expenditures:** Under the bill, if the board's plan of action is approved by LPC or the Governor and the Attorney General, then beginning February 1, 2022, the board *must* set upper payment limits for specified prescription drugs. Conversely, under current law, the board *may* set upper payment limits beginning January 1, 2022.

The fiscal and policy note for House Bill 768 of 2019 (Chapter 692), which established the board) stated that, to the extent the board reduces the cost of prescription drugs in the State, State expenditures (a combination of general, special, and federal funds for Medicaid, the State Employee and Retiree Health and Welfare Benefits Program, and other State health care programs) decline by a potentially significant amount. However, the amount and timing of any such savings were not reflected in the analysis.

With respect to this bill, assuming approval of the board's plan of action, to the extent upper payment limits are implemented and reduce the cost of prescription drugs in the State, State expenditures (a combination of general, special, and federal funds for Medicaid, the State Employee and Retiree Health and Welfare Benefits Program, and other State health care programs) decline by a potentially significant but still indeterminate amount beginning as early as fiscal 2022.

**Local Expenditures:** The fiscal and policy note for House Bill 768 (Chapter 692) stated that, to the extent the board reduces drug prices, local government health care expenditures decrease by a potentially significant amount. Under the bill, such savings could occur as early as fiscal 2022.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of Counties; Maryland Municipal League; Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - January 24, 2021  
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