

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 892  
Appropriations

(Delegate Boteler, *et al.*)

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State Prescription Drug Benefits - Retirees

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This bill restores eligibility for State prescription drug coverage under the State Employee and Retiree Health and Welfare Benefits Program (the State plan) for Medicare-eligible State retirees who began State service before July 1, 2011. It also repeals three supplemental prescription drug reimbursement plans for specified State retirees and makes conforming changes. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** No material effect on State finances if the State's pending appeal of a federal lawsuit is not successful, as discussed below. If the appeal is successful, State net liabilities for other postemployment benefits (OPEB) increase by \$5.7 billion, and claims costs for the State plan increase by an estimated \$25.5 million for half of a fiscal year in FY 2024 *at the earliest*; out-year costs increase based on annualization and actuarial assumptions. A reliable estimate of the State contribution necessary to cover its share of the increase in claims costs is not available at this time, as discussed below, but is likely significant. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** The State plan is established in statute to provide health insurance and other benefit options to State employees and retirees. The Secretary of Budget and Management is charged with developing and administering the program, including

selecting the insurance options to be offered. Upon their retirement, and provided they receive a retirement allowance from the State Retirement and Pension System, retired State employees may enroll and participate in any of the health insurance options provided by the State plan. Until the enactment of Chapter 397 of 2011, this had allowed retired State employees to retain the same health coverage they had as active employees. In addition, active State employees earn eligibility for a partial State subsidy of the cost of health insurance coverage when they retire.

Health benefits provided to retirees are often referred to as “other postemployment benefits” to distinguish them from pension benefits.

### *State Retiree Prescription Drug Benefits*

Chapter 397 made changes to OPEB coverage provided to State retirees, particularly in the area of prescription drug coverage. First, it authorized the State to establish health insurance benefit options for retirees that differ from those for active State employees. In addition, Chapter 397 increased the share of the premium for prescription drug coverage paid by retirees from 20% to 25% (it remained 20% for active State employees) and raised out-of-pocket (OOP) limits for retirees to \$1,500 for a single retiree and \$2,000 for family drug coverage (previously, the limit had been \$750 for single or family coverage for both active employees and retirees). Finally, it eliminated State prescription drug coverage for Medicare-eligible retirees in fiscal 2020. Fiscal 2020 was the year that improvements to Medicare Part D prescription coverage enacted by the federal Patient Protection and Affordable Care Act (ACA) were to be fully phased in, allowing Medicare-eligible retirees to get comparable prescription coverage through Medicare instead of from the State.

In response to the new authority to establish separate coverage for retirees, the Department of Budget and Management (DBM) established a new Employer Group Waiver Plan, effective January 1, 2014, to provide prescription drug coverage to Medicare-eligible retirees. Employer Group Waiver Plans are authorized under the 2003 Medicare Prescription Drug Modernization Act and essentially “wrap” employer coverage around the Medicare Part D prescription drug coverage. Participating retirees do not have to actively make any change in their coverage because all interactions between the State plan and Medicare are handled administratively.

In accordance with Chapter 397, State prescription drug coverage for Medicare-eligible retirees was to end July 2019. However, because the improvements to Medicare Part D coverage under the ACA were accelerated, and because the State plan year begins on January 1 of each year, Chapter 10 of 2018 (the Budget Reconciliation and Financing Act) accelerated the date coverage would end to January 1, 2019. Chapter 10 also clarified that a non-Medicare-eligible spouse, surviving spouse, dependent child, or surviving dependent child of a Medicare-eligible retiree may remain enrolled in the State prescription drug plan

even if the retiree is no longer eligible. Finally, it required the Secretary of Budget and Management to provide written notice to individuals affected by the change in the State prescription drug plan.

### *Federal Lawsuit*

In response to the notice of the impending expiration of the State prescription drug benefits, several retirees filed a lawsuit in federal District Court challenging the State's action on the grounds that it is an unconstitutional breach of contract. On October 16, 2018, the court issued a temporary restraining order and preliminary injunction preventing the State from terminating coverage until the lawsuit is resolved. As a result, State prescription drug coverage remained in effect for eligible retirees.

On December 30, 2021, the federal District Court judge ruled that State law creates a contractual right to prescription drug benefits for State retirees who retired before January 1, 2019. The ruling further provided that retirees who retired on or after that date, and current active employees, do not have a contractual right to prescription drug benefits under State law. The State has informed the court that it intends to appeal the ruling with respect to individuals who retired before January 1, 2019; however, it is not seeking to lift the current injunction or to stay the court's proceedings while the appeal is pending. Therefore, State prescription drug coverage under the State plan for *all* eligible retirees remains in effect.

### *Supplemental Prescription Reimbursement Plans*

Chapter 767 of 2019 established three prescription drug OOP reimbursement or catastrophic coverage programs for specified State retirees, dependents, or surviving dependents who are enrolled in a Medicare prescription drug benefit plan. The Act provided supplemental reimbursement for OOP prescription drug costs for specified retirees in the event that the State prevailed in the lawsuit and terminated prescription drug coverage for retirees, as required by current law. Although Chapter 767 required DBM to establish the programs by January 1, 2020, implementation of the programs is pending the outcome of the federal lawsuit. If the State ultimately prevails in the case, the programs will take effect as required by Chapter 767. This bill repeals all of the provisions described in this section.

Chapter 767 required DBM to establish three new prescription drug benefit programs for specified current and future retirees who are enrolled in a Medicare prescription drug benefit plan:

- the Maryland State Retiree Prescription Drug Coverage Program is available only to an individual who (1) retired from the State on or before December 31, 2019;

- (2) is enrolled in a prescription drug benefit plan under Medicare; and (3) is eligible to enroll and participate in the State plan. It reimburses a participant for OOP prescription drug costs that exceed limits established in the State plan, which are currently \$1,500 for an individual and \$2,000 for a family;
- the Maryland State Retiree Catastrophic Prescription Drug Assistance Program is available to an individual who (1) began State service on or before June 30, 2011; (2) retired on or after January 1, 2020; and (3) is eligible to enroll and participate in the State plan. It reimburses a participant for OOP costs after the participant enters catastrophic coverage under the Medicare drug benefit plan; and
  - the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program, which is provided automatically to an individual who (1) is eligible to enroll and participate in the State plan and (2) is enrolled in either of the two prescription drug cost reimbursement plans described above. It reimburses a participant for OOP costs for a life-sustaining drug that is covered under the State plan but is not covered under the individual's Medicare prescription drug plan.

For all three programs, a participating retiree may elect to cover a spouse and dependent children; surviving spouses and children of retirees are also eligible to participate in the three programs. The three programs may include a health reimbursement account established in accordance with the IRC or another program that provides assistance with prescription drug costs. All three programs may set different OOP limits or reimbursement amounts for retirees or beneficiaries who qualify for a partial State premium subsidy (rather than a full subsidy). Eligible participants may enroll in the Prescription Drug Coverage Program or the Catastrophic Prescription Drug Assistance Program during the open enrollment period or any special enrollment period; if they enroll in either of those programs, they are automatically enrolled in the Life-Sustaining Prescription Drug Assistance Program.

Chapter 767 expressed the intent of the General Assembly that DBM establish the reimbursement programs in a manner that allows retirees to receive reimbursement at the time when they purchase a prescription drug, through a mechanism such as debit cards.

By July 1 of each year, the Secretary of Budget and Management must notify specified individuals of their eligibility to enroll in the programs and provide other specified information. DBM must provide specified one-on-one counseling to Medicare-eligible retirees and provide specified reports to the budget committees.

#### *Eligibility for Coverage and Subsidies*

Chapter 397 established new eligibility requirements for retirees to enroll in the State plan and qualify for the premium subsidy if they are hired on or after July 1, 2011. Therefore,

the eligibility requirements to enroll in the State plan are different for those who began employment with the State before July 1, 2011, and those who began employment with the State on or after that date. Employees hired *before* July 1, 2011, are eligible to enroll and participate in the group coverage when they retire if they have:

- retired directly from the State with at least 5 years of service;
- retired directly from State service with a disability;
- ended State service with at least 16 years of service;
- ended State service with at least 10 years of creditable service and within 5 years of retirement age; or
- ended State service on or before June 30, 1984.

Employees who began employment with the State *on or after* July 1, 2011, are eligible to enroll in the State plan if they:

- retire directly from the State with at least 10 years of service;
- retire directly from State service with a disability;
- end State service with at least 25 years of service; or
- end State service with at least 10 years of creditable service and within 5 years of normal retirement age.

Similarly, eligibility for the premium subsidy differs depending on when the retiree began employment with the State. A retiree hired *before* July 1, 2011, must have at least 16 years of service to receive the same subsidy of health insurance premiums that is provided to active employees:

- 80% of preferred provider organization premiums;
- 83% of point of service premiums; and
- 85% of premiums for exclusive provider organizations and integrated health models.

If a retiree has fewer than 16 years of State service (but at least 5 years), the benefit is prorated. A retiree hired *on or after* July 1, 2011, must have 25 years of service to receive the same subsidy as that provided to active employees. If a retiree has fewer than 25 years (but at least 10), the benefit is prorated.

**State Fiscal Effect:** The bill's fiscal effect is contingent on the outcome of the federal lawsuit. If the State's appeal is not successful, the bill has limited practical effect because prescription drug coverage will be maintained for all Medicare-eligible retirees who retired before January 1, 2019, including those hired before and after July 1, 2011. However,

individuals hired on or after July 1, 2011, will not have been able to accrue the 10 years of service necessary to qualify for prescription drug benefits before the court's ruling that provided that they be retired by January 1, 2019, unless they retire with a disability benefit. This is expected to have only a minimal effect on State OPEB liabilities and expenditures, and it may be offset by the loss of prescription drug benefits for individuals who (1) retire on or after January 1, 2019; (2) are Medicare-eligible and have prescription drug benefits under the State plan according to the terms of the injunction; and (3) are not protected by the court's ruling.

If the State is successful on its appeal, the bill restores prescription drug coverage for Medicare-eligible retirees who began State service before July 1, 2011, and retired on or before January 1, 2019 (based on the portion of the court decision that the State is not appealing). DBM advises that its current actuarial valuation, dated June 30, 2021, assumes an end to current State coverage and the implementation of the supplemental reimbursement plans beginning January 1, 2023 (assuming a successful appeal); under the terms of Chapter 767, however, DBM advises that, given the passage of time since the completion of the valuation, any change in coverage would not take effect until January 1, 2024, at the earliest.

Under current actuarial assumptions, the DBM actuary advises that enactment of the bill following a successful State appeal increases the State's net OPEB liabilities by \$5.7 billion, which represents the total increase in liabilities over the next 30 years. The actuary further advises that annual claims costs increase by \$40.5 million in calendar 2023 and by \$51.0 million in calendar 2024 and continue increasing based on actuarial assumptions. Given that the earliest possible start date is January 2024, there is likely no effect in fiscal 2023; if the coverage takes effect January 1, 2024, only half of the calendar year effect is recognized in fiscal 2024. Therefore, claims costs increase by an estimated \$25.5 million in fiscal 2024 *at the earliest*; out-year costs increase to reflect a full fiscal year and actuarial assumptions. This estimate includes any offsetting savings from not having to implement the supplemental reimbursement plans. A precise estimate of the increase in annual contributions necessary to cover the increase in claims costs is not available from the actuary at this time, but any increase is shared 75% by the State and 25% by retirees (through higher premiums).

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 578 (Senator Klausmeier, *et al.*) - Budget and Taxation.

**Information Source(s):** Department of Budget and Management; *Daily Record*;  
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