



LARRY HOGAN  
*Governor*

BOYD K. RUTHERFORD  
*Lieutenant Governor*

DAVID R. BRINKLEY  
*Secretary*

MARC L. NICOLE  
*Deputy Secretary*

January 15, 2022

The Honorable Larry Hogan  
Governor of Maryland  
State House  
100 State Circle  
Annapolis MD 21401

Senator Guy Guzzone  
Chair  
Senate Budget and Taxation Committee  
3 West Miller Senate Office Building  
11 Bladen Street  
Annapolis MD 21401

Senator Sarah Elfreth  
Chair  
Joint Committee on Pensions  
220 James Senate Office Building  
11 Bladen Street  
Annapolis MD 21401

Delegate Maggie McIntosh  
Chair  
House Appropriations Committee  
121 House Office Building  
6 Bladen Street  
Annapolis MD 21401

Delegate Ben Barnes  
Chair  
Joint Committee on Pensions  
151 House Office Building  
6 Bladen Street  
Annapolis MD 21401

Dear Governor Hogan, Senator Guzzone, Delegate McIntosh, Senator Elfreth, and Delegate Barnes:

Chapter 767 of 2019 (State Prescription Drug Benefits – Retiree Benefits – Revisions) requires the Department to submit quarterly reports to the Governor, House Appropriations Committee, Senate Budget and Taxation Committee, and the Joint Committee on Pensions on the:

1. status of establishing the Maryland State Retiree Prescription Drug Coverage Program, Maryland State Retiree Catastrophic Prescription Drug Assistance Program, and Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program, including:
  - a. the status of procuring any contracts necessary to operate the programs, and
  - b. the prescription drugs determined to qualify for reimbursement under the Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program;

2. availability of one-on-one counseling services for Medicare-eligible retirees to assist retirees in selecting a Medicare prescription drug benefit plan;
3. details of the health reimbursement accounts (HRA) or other programs to help with prescription drug costs in the three prescription drug assistance programs, including
  - a. the specific out-of-pocket costs eligible for reimbursement,
  - b. the required process for receiving reimbursement,
  - c. the method of reimbursement,
  - d. the timing of reimbursement, and
  - e. a plan to use debit cards to process reimbursements in a convenient and efficient manner, and
4. in total and by category for the previous quarter, the number of issues and concerns reported to the hotline.

As you know, the Department is enjoined from terminating State prescription drug benefits coverage for Medicare-eligible retirees and implementing the provisions of Chapter 767 of 2019 until further order of the U.S. District Court in *Fitch v. State of Maryland, et al.*

#### **Litigation Update.**

On December 30, 2021, the Court issued a ruling granting in part and denying in part the State's Motion to Dismiss. The Court's injunction remains in place for the time being.

The chief question for the Court was whether SPP §§ 2-508 and 2-509.1 conferred a contractual right to prescription drug benefits on any retirees or employees. The Court ruled that SPP §§ 2-508 and 2-509.1 *did not* confer a contractual right upon those who retired after 12/31/18 and active employees. As a result, the claims of the active employees and those who retired after 12/31/18 were dismissed.

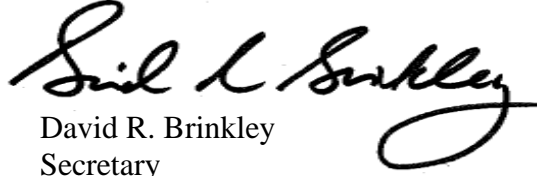
In contrast, the Court found that SPP §§ 2-508 and 2-509.1 *did* confer a contractual right upon those who retired on or before 12/31/18. As a result, retirees who retired on or before 12/31/2018, may continue to pursue their breach of contract and related claims. The subsequent proceedings will be focused on whether Medicare Part D and the supplemental plans offered under Ch. 767 of 2019 together constitute a 'reasonable modification' of these retirees' contractual right to benefits.

As a result of the Court's rulings, the current status of the case is as follows:

- (i) The preliminary injunction remains in place for at least 30 days from December 30<sup>th</sup> to allow the parties to consult with one another and report their views to the Court about the appropriate status of the injunction.
- (ii) The parties have 30 days to consult with one another about how the litigation should proceed in the Federal District Court and report back to the Court.
- (iii) The parties have 30 days to file a motion to stay enforcement of the Court's rulings in order to seek an appeal to the Fourth Circuit, or to transition the prescription drug program to a reasonable alternative.

The parties to the litigation are currently consulting with one another and are preparing to make filings by the end of January in compliance with the Court's order, which will inform next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Brinkley". The signature is fluid and cursive, with a large, sweeping flourish at the end.

David R. Brinkley  
Secretary

cc: Victoria Gruber, Department of Legislative Service