



LARRY HOGAN  
*Governor*

BOYD K. RUTHERFORD  
*Lieutenant Governor*

DAVID R. BRINKLEY  
*Secretary*

MARC L. NICOLE  
*Deputy Secretary*

July 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 Ben Barnes  
Chair  
House Appropriations Committee  
151 House Office Building  
6 Bladen Street  
Annapolis MD 21401

Delegate Brooke Lierman  
Chair  
Joint Committee on Pensions  
410 House Office Building  
6 Bladen Street  
Annapolis MD 21401

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

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

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- 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.

Multiple parties attempted to appeal the Court's December 30, 2021, rulings to the Court of Appeals for the Fourth Circuit. The State and AFSCME moved for permission to appeal the matter immediately. The Court denied that request. This means that the litigation will move forward to address the "reasonable modification" question described above. The Court has not set a schedule for proceedings.

Separately, AFSME is pursuing an appeal as of right before the Court of Appeals for the Fourth Circuit. It is appealing the ruling that active employees did not have a contractual entitlement to prescription benefits. Briefing in this matter commences at the end of July.

The injunction that has remained in place through the duration of the litigation will continue until further notice. The Court will determine whether to lift the injunction during the proceedings involving the State. We find it less likely than not, but there is a possibility that the Court will lift the injunction in the coming weeks or months.

Sincerely,



David R. Brinkley  
Secretary

for