Prepared October 2023
*Annotated in December 2023 (in italics) by a group of retired USM professors and other senior state retirees.**

The Department of Legislative Services (DLS) has prepared this informational document in response to concerns raised by retirees about forthcoming changes to the drug benefits offered to State government retirees. *This is one of several documents retirees have seen that attempt to explain the State's position regarding changes to Medicare-eligible retirees prescription drug coverage but which we find incomplete and misleading as our annotations demonstrate.*

Key Points

- A federal court recently dismissed a lawsuit seeking to block the State from implementing statutory changes *(canceling drug benefits and implementing SB 946, passed in 2019)* to the prescription drug benefit for *Medicare-eligible* retirees.

- The statutory changes would end coverage for prescription drug costs under the State health plan for Medicare-eligible State retirees but also reimburse retirees who enroll in Medicare Part D for out-of-pocket expenses they incur in a Part D plan that exceed current limits under the State plan. *SB 946 covers only those retirees who retired on or before January 1, 2020. All other employees and retirees hired before July 1, 2011 but retiring after Jan 1, 2020 will lose even the enacted SB 946 benefits. Reimbursement applies only for the costs of drugs covered by the retiree's Part D plan that exceed $1,500/$2,000 for an individual/family. Drugs not covered by that plan, no matter how essential, are not reimbursable. (https://dbm.maryland.gov/benefits/pages/SB946.aspx)*

- The changes are not effective until January 1, 2025. Under current law, retiree drug benefits will remain unchanged for calendar 2024.

Background

Chapter 397 of 2011 provided that Medicare-eligible State retirees would no longer receive State-funded prescription drug coverage effective in fiscal 2020. *1.This cancellation of coverage changed a 2004 law that specifically stated retirees would keep their state prescription drug coverage regardless of what the federal government did regarding prescriptions. 2.Maryland is the only public employer found to have made changes to "other post-retirement benefits (OPEB)* ***retroactive****.* Chapter 10 of 2018 made the change effective January 1, 2019. This was done in the expectation that Medicare-eligible State retirees could enroll in prescription drug coverage programs under Medicare Part D *(and obtain 'comparable' prescription drug insurance)*, thereby reducing State costs. *But Medicare Part D is inferior to the State plan.* Chapter 767 of 2019 *(SB 946)* established reimbursement programs that covered out-of-pocket costs for retirees enrolled in Part D coverage. *1."Out-of-pocket costs" refers only to the amount paid by the enrollee as cost sharing for the prescription drugs covered under their Medicare Part D plan formulary that exceed $1,500/$2,000. There are many prescription costs that will* ***not*** *be included in the calculation of OOP. 2. The nature of these "reimbursement programs" has never been defined, nor has a plan for implementation.* In response to a lawsuit filed by State retirees claiming that termination of prescription drug benefits was an unconstitutional breach of contract between the State and retirees, the federal Fourth Circuit Court of Appeals ultimately ruled that no such contract existed. As a result, the lawsuit was dismissed. *The Plaintiffs have appealed the case to the Fourth Circuit Court of Appeals; Briefs are scheduled to begin 12/27/2023.* No changes to current prescription drug coverage for retirees will take effect until the plan year beginning January 1, 2025.

Any questions regarding prescription drug benefits for State retirees can be directed to the Department of Budget and Management (DBM).

Supplemental Programs Enacted by the General Assembly in 2019 Ensure That Out-of-pocket Prescription Drug Costs for Retirees are Capped at the Same Level as Under the State Plan

- Effective January 1, 2025, the federal Inflation Reduction Act **caps out-of-pocket (OOP) costs for all Medicare Part D prescription drug plans at $2,000**. This is a significant reduction from existing caps, which often exceed $7,000 (varies by plan), and will substantially lower the cost of the State's supplemental programs described below. *Not mentioned: the formulary requirement. A drug must be on the formulary of the Part D plan in which the retiree is enrolled; if it is* ***not*** *covered, the retiree must pay in full and the cost* ***will not*** *count toward the out-of-pocket cap.*

- Also effective January 1, 2025, the Maryland State Retiree Prescription Drug Coverage Program, enacted by Chapter 767 of 2019, reimburses a State retiree who retired on or before December 31, 2019 *(DBM clarified the date as "on or before January 1, 2020")*, and is enrolled in a Medicare Part D plan for OOP prescription drug costs that exceed limits established in the State plan. Currently, those limits are $1,500 for an individual and $2,000 for a family (i.e., comparable to the new caps under Part D). *Also not made clear: under Medicare Part D,* ***each*** *retiree* ***and*** *their spouse and/or dependent must sign up for their own Part D plan which would double their premium, double the cap to $4,000, and likely increase other drug costs.*

- The Maryland State Retiree Life-Sustaining Prescription Drug Assistance Program will reimburse a Part D recipient for OOP costs for a life-sustaining medication that is covered by the State plan but is not covered under the individual's Medicare prescription drug plan. *The Fiscal Policy note for SB946 stated that "DBM advises that many of the life-sustaining drugs not covered by Medicare Part D are covered by Part B" and therefore not a prescription cost the State ever incurs.*

- The Maryland State Retiree Catastrophic Prescription Drug Assistance Program, which is available to specified retirees who have retired or will retire on or after January 1, 2020, will need to be revisited by the General Assembly. It currently references features of Medicare Part D (*i.e.*, "catastrophic coverage") rendered obsolete by the Inflation Reduction Act.

The Cost of Not Implementing Changes to Prescription Drug Coverage Approaches $100 Million Annually

- In 2020, DLS, using fiscal 2019 prescription drug cost data provided by DBM, projected the fiscal 2022 net annual cost of restoring full prescription drug coverage for retirees to be $82.4 million *(even though restoring full prescription drug coverage for all state retirees has never been contemplated since the 2011 change in the law; only retirees hired **before** 7/1/2011 were promised these benefits.)* This accounted for savings associated with repealing the supplemental programs described above and other off-setting factors. *(See Fiscal and Policy Note for HB 1230 of 2020.)* With the number of retirees continuing to grow and the costs of prescription drugs continuing to escalate, that figure would likely exceed $100 million in a short time. *The State's assumptions and calculations appear to diverge from GASB recommendations for public employers. While state employees will continue to retire, those hired **after** July 1, 2011 will not have state drug coverage after they turn 65 and become eligible for Medicare Part D. Those hired on or before June 30, 2011 and are Medicare-eligible are a dying breed: those associated costs and liabilities are moving toward zero. Notably, retirees' prescription drug costs represent less than 1% of the total OPEB liability.*

Restoring Full State-funded Prescription Drug Coverage Increases State Other Post Employment Benefits Liabilities by Billions of Dollars, with Potentially Negative Implications for the State's AAA Bond Ratings

- In 2020, DBM's actuary estimated that restoring full State-funded prescription drug coverage for retirees would increase the State's Other Post Employment Benefits (OPEB) liabilities by $4.8 billion (from $14.3 billion to $19.1 billion).

*1.The retiree prescription drug benefit is not the biggest component of OPEB; the Medicare-eligible retiree portion of that component is an even smaller percentage of OPEB and thus a smaller contributor to OPEB liabilities. Many retired before the 2011 law. These oldest of state employees/retirees planned for their "golden years" and built their retirement portfolios on the basis of what they were told by the State. 2. According to the State's own actuarial firm, total OPEB liability **declined** $2,422,212,765 from June 30 2022 to June 30, 2023. Net OPEB liability **declined** $2,353,721,296 during the same period. For the same period, Total Payroll **increased** by $256,654,141.*

- Increasing OPEB liabilities by more than 30% would undoubtedly draw negative attention from rating agencies. *The bond rating agencies, and the State's own actuarial consultant (Segal Group) point out that pre-funding the OPEB Trust Fund, which the State has failed to do, is a Best Practice that **reduces** OPEB liabilities and **enhances** a state's bond rating.*

- Rating agencies have noted that Maryland is a high-debt state. Moody's U.S. State Liability Report estimates Maryland's total liabilities to State revenues to be 12.6%, which is twice the State median (6.3%) and the highest among AAA-rated states. *As the state with the highest median income, Maryland should not have one of the lowest OPEB funding ratios. The major reason why its OPEB liability is growing is the State's failure to pre-fund its OPEB Trust fund.*

- In the most recent rating in March, Fitch ranked Maryland's long-term liabilities as "AA," noting that a "material increase in long-term liabilities, particularly those associated with retiree benefits" could lead to a downgrade. Standard and Poor's also noted that increasing liabilities could lead to a ratings downgrade. *According to a recent Pew Trusts report, unfunded **pension** liabilities grew more than debt or unfunded retiree health care costs as a share of 50-state personal income, 2007-20.*

Prefunding Future Liabilities Does Not Significantly Improve the State Balance Sheet *GASB, Segal Group, and other experts say that pre-funding the OPEB Trust **reduces** long term OPEB liability thus improving the State's balance sheet.*

- Under the Governmental Accounting Standards Board Statement 75, which was issued in 2017 and replaced Statement 45, **the State must record the full OPEB unfunded liability** on its balance sheet, regardless of whether it prefunds some or all of it. *The State's method of calculating this number artificially increases the unfunded liability and does not align with recommended practices.*

- Therefore, the cost of not implementing changes to prescription drug coverage is an increase of at least $4.8 billion directly to the State's reported liabilities, which could endanger the State's AAA bond ratings. *1. The reported liabilities are exaggerated by using 30 years to calculate these liabilities as the State has done: 15-20 years is recommended. 2. The State's balance sheet would be improved and its bond rating enhanced by prefunding as the following two charts illustrate:*

	Net OPEB Liability (NOL)		
Year	Pay-as-You Go	If Maryland Pre-Funded OPEB	Difference
2017	$11,085,209,784	$6,624,436,930	($4,460,772,854)
2018	$10,571,278,842	$6,503,658,444	($4,067,620,398)
2019	$14,289,984,429	$8,221,535,060	($6,068,449,369)
2020	$16,424,510,232	$7,831,450,697	($8,593,059,535)
2021	$14,798,634,168	$7,113,265,189	($7,685,368,979)
2022	$12,444,912,872	$7,975,026,600	($4,469,886,272)
Average:	**$13,433,923,491**	**$7,258,869,264**	**($6,175,054,227)**

	State OPEB Contribution		
Year	Pay-as-You Go	If Maryland Pre-Funded OPEB	Difference
2017	$526,535,311	$532,286,583	$5,751,272
2018	$562,478,668	$521,910,610	($40,568,058)
2019	$499,502,066	$644,918,764	$145,416,698
2020	$601,486,709	$611,709,393	$10,222,684
2021	$629,553,761	$551,442,656	($78,111,105)
2022	$673,695,362	$610,967,342	($62,728,020)
		Total:	**($20,016,529)**

** Annotations offered by the following retired USM professors and other senior state retirees:*

Michael Bachman, Retired Director of IT Services, Towson University
Jane E. Clark, Ph.D., Professor Emerita, University of Maryland; former Dean, UM School of Public Health
William A. Kahn, former Director, Contract Litigation Unit, Office of the Attorney General
Kathlyn Miller, Board Member, UMBC's Association for Retirees (Wisdom Institute)
Tracy Miller, former Assistant to the President, Towson University
James C. Roberts, Ph.D., Professor Emeritus, Towson University; President Elect, Towson University Retired Faculty Association (TURFA)
Peta N. Richkus, Secretary, Department of General Services (1999-2003); Port Commissioner, MD Port Administration (2008 - 2014); Member, Intergovernmental Policy Advisory Committee on Trade for President Obama's US Trade Representative's Office (2010 - 2014)
Jane L. Wolfson, Ph.D., Professor Emerita, Towson University.