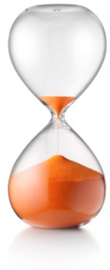

All State of Maryland Retirees hired before 7/1/2011 will lose their State prescription benefits after 2024 unless the Maryland State Legislature acts NOW!

Time is running out to reinstate State of Maryland retiree prescription coverage for employees hired before July 1, 2011

Prescription Drug Update

By Kathy Miller
UMBC Wisdom Institute

It is time to contact your representatives and the governor! Please ask Governor Wes Moore to ensure his mantra to *Leave No One Behind* applies to State retirees as we need him to convince the State legislature to reinstate retiree prescription drug coverage!

MAKE A DIFFERENCE! MAKE CONTACT!

For your Maryland representatives, visit https://mgaleg.maryland.gov/mgawebsite/Members/District

- Under "find my representative" click "lookup"
- Enter your address and zipcode
- Click "find"
- Click the representatives' names to find their email addresses and phone numbers

For Gov. Moore, send an email by using this link: https://md.accessgov.com/governor/Forms/Page/cs/contact-the-governor/1

On Wednesday, July 19, 2023, U. S. District Court Judge Peter Messitte ruled to dissolve the injunction that has provided prescription benefits to Medicare-eligible retirees since January 2019. On September 29, 2023, the judge dismissed the case. These actions affect all Medicare-eligible State retirees. No one was grandfathered in. The State's attorney said if the judge ruled in favor of the State, Medicare-retirees would transition to Medicare Part D effective January 1, 2025, and SB 946, which was passed in the 2019 session, will take effect. Deborah Hill, attorney for Ken Fitch (United We Matter) promised to appeal, so the court case is not over yet.

It's time to raise your voices to every senator and delegate. Phone them at their local offices and their Annapolis offices. Ask your representatives to keep Maryland's promise to its retirees by grandfathering in all those who began their employment before July 2011 – both retirees and current employees

Let the governor know you want the State to keep its promise. Let them know that retirees and employees who began working before July 2011 should be grandfathered in and keep the prescription drug benefits they've earned. The State made a promise to retirees and has not kept it, and they are in court arguing vigorously to cancel the prescription drug benefit.

Fitch v Maryland continues. If the court rules for the State, Fitch will appeal. If the court rules for Fitch, the State will appeal. Details about the Prescription Drug Issue and its impact follow.

PREDICTED IMPACT

Anticipated prescription coverage changes for Retirees under Medicare Part D - only:

- Retirees must review their plan each year. Many plans change premiums, deductibles, formularies (drug lists), tiers and coinsurance each year. On the State plan retirees have one plan to choose from, it's the same plan each year, or any changes are handled by DBM. Under Part D some will pay less, some will pay more.
- The State plan charges copays. You pay either a copay of $20, $50, or $80 for the drug. if the drug is less than the copay, you pay the cost of the drug. Many Part D plans charge a coinsurance, 25-50% of the cost of the drug. That's a big difference.
- Part D is an individual plan, the State plan is a family plan. This affects out-of-pocket costs. Each Medicare-eligible retiree must choose a plan. A married couple must choose their plans separately.
- Under Part D in 2025, each individual has an out-of-pocket cap of $2,000. Before 2025 there was no cap. Under the State plan, out-of-pocket costs are capped at $1,500 for a retiree and $2,000 for a married couple/family. Under Part D a married couple may pay up to $2,000 each out-of-pocket, or $4,000. **Only *covered* drugs count toward the cap.**
- Part D has a deductible. The State plan has no deductible. A couple will have two deductibles (unless the retiree chooses a plan with a higher premium without a deductible).
- Each plan has a formulary. Retirees list drugs they are taking when choosing a plan, but their doctor might prescribe a drug that is not on the formulary of the plan the retiree chose. Retirees would have to pay for the drug for the rest of that year, until they can choose a plan that covers it the following year. This is not an issue with the State plan. State coverage is better. The Silver Script Plan that retirees use now may not be available as an individual plan. **Only drugs on the formulary count toward the $2,000 out-of-pocket cap.**
- Retirees must use the preferred pharmacy for the plan they choose. There is in network and out of network and then there is the preferred pharmacy. (The preferred pharmacy might be a chain). You must use the preferred pharmacy for the best price. The State plan does not require retirees to use a preferred pharmacy.

Added costs have the potential to affect those in poor health the most. The State promised retiree prescription benefits to employees when they were hired before July 2011. Employees have fulfilled their part of the promise and worked the required years to earn the benefits. Why would the State require a certain amount of work years to earn prescription drug coverage if the State had no intention to fulfill the promised benefits?

Retirees want the State to keep its promise to them. All retirees (and those who have yet to retire) who began working before July 2011, when the State decided to stop offering retiree prescription benefits to new employees, should be grandfathered in and continue to receive benefits.

PRESCRIPTION DRUG ISSUE - HIGHLIGHTS & HISTORY

DONATE!

Deborah Hill, attorney for Ken Fitch, is the reason that retirees have had their continued prescription benefits. Please consider mailing a check to support Ms. Hill and the court effort:

Retirees Matter Incorporated
PO BOX 44102
Nottingham, MD. 21236

Write in the memo line:
Appeal costs

In 2011 Congress planned to eliminate the Part D donut hole in 2020. The donut hole is a coverage gap or a temporary limit on what the drug plan will pay for drugs. Also in 2011, the Maryland General Assembly (MGA) made plans to eliminate prescription drug benefits in 2020 for State retirees who were age 65 or disabled, as those retirees could enroll in Part D.

Ultimately, the donut hole was eliminated early, so the Maryland Department of Budget and Management (DBM) advised retirees in May 2018 that prescription drug benefits would be canceled effective January 2019. In September 2018, a group led by Ken Fitch sued the State. One person makes a difference, and he deserves much credit for this. In response to the lawsuit, U.S. District Court Judge Peter Messitte granted an injunction in October 2018 to continue retiree prescription benefits. The injunction is the only reason retirees have had prescription drug benefits beginning January 2019. The injunction was canceled in July 2023, meaning retirees will sign up for Part D in the fall of 2024.

The 2019 MGA session passed SB946, which would take effect upon the State's successful resolution of the court case.

In December 2021, Judge Messitte determined there were four groups who began employment before July 2011:

1. Retired before July 1, 2011;
2. Retired between July 1, 2011 and December 31, 2018;
3. Retired on or after January 1, 2019; and
4. Active employees.

The judge allowed a breach of contract claim to proceed for groups 1 and 2, (those who retired by December 31, 2018), but he dismissed groups 3 and 4 (those retiring on or after January 1, 2019). The rationale was that prescription drug benefits were not being offered to retirees beginning January 1, 2019, and active employees had not yet vested (the judge said retirees vest upon retirement).

At this point, AFSCME appealed for groups 3 and 4.

In February 2023, the United States Court of Appeals (Judge Stephanie Thacker et al.) ruled against the Union representing groups 3 and 4, but the decision was for a different reason – the court determined that there was no contract.

So, now we have two different courts, with two different decisions. The District Court says there was a contract for groups 1 and 2, but the U.S. Court of Appeals says there was NOT a contract for groups 3 and 4.

On June 29, 2023, the District Court Judge Messitte heard arguments regarding the State's motion for summary judgment (dismiss the case) and to dissolve the preliminary injunction. Deborah Hill, the attorney for Fitch, promised to appeal. The judge deferred his decision that day and asked for more information to be submitted by the end of July. On July 19, 2023, Judge Messitte decided the injunction should end, and dismissed the case on September 29, 2023.

SB946 takes effect upon the State's successful resolution of the case. Under SB-946, retirees would be removed from the State plan and enrolled in Part D.

Due to the Inflation Reduction Act (IRA), in 2025 the Part D out-of-pocket limit will be reduced to $2,000 per retiree. That is a significant reduction. Prior to the IRA, there was no out-of-pocket limit. But, the Part D plan is an individual plan, and the 2025 out-of-pocket limit of $2,000 applies to each individual, so for a couple the limit would be $2,000 each, or $4,000. Also, only *covered* drugs on the retiree's formulary (drug list) will count toward the out-of-pocket cap. If the drug is not on the retiree's formulary, the retiree must pay full cost for the drug and it will not count toward the $2,000 cap.

However, the current State plan is a family plan. Individual retirees' out-of-pocket costs are limited to $1,500, and families' out-of-pocket costs are limited to $2,000.

Under SB946 the State will reimburse retirees for out-of-pocket prescription costs *exceeding* $1,500 for retiree only/ $2,000 for retiree and family. The method for reimbursement has not been disclosed yet, but SB946 only protects some retirees from the loss of prescription benefits. The out-of-pocket limit in SB946 only applies to those who retired *on or before* January 1, 2020. Those who retired *after* January 1, 2020, are left out, even though some have worked for the State for 40 or 50 years. If both spouses in a family have the misfortune of getting sick and needing costly prescriptions, they may need up to $4,000 in out-of-pocket funds per year under Part D for their *covered* drugs. That's a big change and a lot of money!
https://dbm.maryland.gov/benefits/pages/SB946.aspx

MGA legislators have stated all along that they couldn't do anything until the court case was settled. With the injunction removed, this is our last chance to convince legislators to reinstate the State retiree's prescription drug benefit.

Retirees should contact their representatives now. The MGA should fix this the right way, and that would be to grandfather in all those who began their employment before July 2011 – retirees and current employees. Contact your representatives today!