Maryland extends drug coverage after judge rules state retirees don't have to switch plans

A federal judge ruled Wednesday that Maryland can't force state retirees to switch to a federal prescription drug plan during this enrollment period. On Thursday, Gov. Larry Hogan announced that the state would extend its coverage through December 2019.

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After a federal judge ruled that Maryland can't force state retirees to switch to a federal prescription drug plan during this enrollment period, Gov. Larry Hogan announced Thursday that the state would extend its coverage through December 2019.

Hogan's office and lawmakers previously said they would work out a long-term solution during the General Assembly session in January.

“This means impacted retirees DO NOT have to enroll in a Medicare Part D plan for 2019 and may continue the coverage they have now into 2019 and at the same premium they are paying now,” the administration said in a post to the website of the Department of Budget and Management. “Details will follow in a notice mailed to retirees' homes.”

A group of four Maryland government retirees sued the state and Hogan last month on behalf of fellow retirees seeking to stop Maryland from moving them from a state prescription drug plan to a Medicare Part D plan.

The four retirees asked the court to issue a temporary restraining order and preliminary injunction against the state forcing them to enroll in a federal plan when open enrollment starts Oct. 15. Coverage would start Jan. 1.

District Judge Peter J. Messitte issued the injunction Wednesday saying a switch could not happen until a decision came on the lawsuit.

Attorneys Deborah Holloway Hill and Breon Johnson, who represent the retirees, applauded the judge’s ruling.

“We had a great victory,” Hill said. “After years of service the retirees were promised these benefits by the state.”

Mary Frye, a retired social worker named in the lawsuit, said she felt her voice had finally been heard.

“I am very happy with the judge's decision,” Frye said. “He clearly saw the wrong and made it right. Our attorneys did an amazing job and fought so hard for us. The state made no attempt to help us.”

The state does not plan to appeal the decision, said Shareese Deleaver-Churchill, a Hogan spokeswoman.

She said the governor agreed with the judge’s decision because he always wanted the change in plans to happen at a later date.

"The governor deeply sympathizes with retired state employees who have been directly affected by this potential change and the uncertainty that came along with it,” Deleaver-Churchill said in a statement. “Our administration always opposed the January implementation timeline, and we are extremely comfortable with the court's decision today. We are hopeful that this will now enable our administration to work with the legislature to achieve a permanent solution for affordable prescription coverage for state retirees."

The General Assembly and Hogan had battled over when to switch retirees over to the new plan. Both had argued for later dates, but couldn't come to an agreement.

The move to the federal prescription drug plan is part of state pension reform passed in 2011 during Gov. Martin O'Malley's administration at the suggestion of a bipartisan state-appointed committee. But many retirees said they heard nothing about it until they received letters from the state budget office last spring. They flooded lawmakers' phones and started a Facebook page criticizing the plan.

The original 2011 legislation called for moving retirees to Medicare Part D by July 2019 to coincide with the federal government's plan to close what is known as the doughnut hole — a gap in Medicare's prescription drug coverage. But then the federal government closed the doughnut hole early and state officials searched for a new date.

Hogan's budget officials testified twice against moving the switch to Jan. 1 and instead pushed to keep state coverage through June 2019.

Lawmakers thought that making people enroll in a state plan for six months and then switch to Medicare in the middle of a Medicare plan year could be chaotic and confusing. Switching in July also might be more expensive for retirees. They might spend the state plan's out-of-pocket maximum of $1,500 before July, then face a new deductible with a Medicare Part D plan for the rest of the year, according to the nonpartisan Department of Legislative Services.

Another effort in the General Assembly to extend state coverage until Jan. 1, 2020, giving retirees more time to adjust to the change, failed to make it out of committee because of opposition from the Hogan administration, who said it would be too expensive. State lawmakers instead moved the date to this Jan. 1 to coincide with open enrollment for all health plans.

To ease the transition, Hogan and key General Assembly leadership had put in place a plan to help retirees with costs in the first year and said they would revisit the issue during the next General Assembly session. They set aside $33 million to reimburse retirees for out-of-pocket drug costs exceeding $1,500, the out-of-pocket cap under the current state prescription plan.

It wasn't enough to appease many retirees who said they wanted the governor and state lawmakers to step in sooner, whether through an emergency session or executive order.

The retirees' lawsuit argues that they are entitled to the prior drug coverage because it was promised to them as part of their employment and that the state is breaking a contract by denying these benefits. Changing plans would also cause "irreparable harm" to the retirees because of the costs, the lawsuit argued.

The state, on the other hand, contended in court documents that the prescription program did not constitute a contract and that the case should be dismissed. Not all retirees will feel a financial hit, the state said. The transition could increase costs for some retirees but decrease it for others. The retirees also would be allowed a longer enrollment period that lasts through February.

The switch in plans was needed to keep the state's benefits program financially viable, state officials said in laying out their case. The transition to Medicare Part D saves $5.5 billion in costs for benefits other than pensions provided to state retirees.

Several lawmakers said in a joint statement Thursday that they will introduce legislation in the General Assembly session in January to remedy the issue. Sen. Kathy Klausmeier, a Baltimore County Democrat; Sen. Jim Mathias, a lower shore Democrat; and Del. Eric Bromwell, a Baltimore County Democrat and Del. Ned Carey, an Anne Arundel County Democrat issued a statement applauding Messitte's judgement.

"The Department of Budget & Management's mis-management of this transition caused a great deal of confusion and anger among state retirees, and we applaud Judge Messitte for putting the brakes on this change," the statement said. "When the General Assembly convenes in January, we will introduce a bill to repeal the law which kicked state retirees off of the State's prescription drug plan and required them to transition to Medicare Part D."

The labor union that represents state employees said it will be watching closely to see what happens.

"AFSCME retirees will continue to organize to make sure that there is a long-term agreement by the Governor and the Legislature to keep the promise and maintain current benefits," said Ida Ward, president of Maryland AFSCME Retiree Chapter 1, in a statement. "Hundreds of members have called the governor and continue to sound the alarm of the dangers of taking away this benefit from Maryland's retirees. The bottom line is that this elimination of benefits would be unaffordable to some retirees and confusing to many."

Retired Maryland state employee Jeffrey Israel, who worked 34 years in probation and parole, said the judge's decision gave him hope. The judge listened to them when the politicians didn't, he said.

"The decision was as good as we could get," he said.

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