



## HOUSE COMMITTEE ON APPROPRIATIONS

# FISCAL NOTE

HOUSE BILL NO. 946

PRINTERS NO. 4111

PRIME SPONSOR: Baker

### COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
Insurance Regulation & Oversight Fund	See "Fiscal Impact" below.	
Pharmaceutical Assistance Fund	See "Fiscal Impact" below.	

**SUMMARY:** House Bill 946 would create a freestanding act to be known as the Pharmacy Audit Integrity and Transparency Act. House Bill 946 also revises the reimbursement formula for prescriptions in the PACE/PACENET Program. Effective dates vary by provision.

**ANALYSIS:** House Bill 946 provides a framework for pharmacy benefit managers and other entities, such as managed care organizations or third-party payers to conduct audits within a pharmacy. It establishes procedures for conducting a pharmacy audit that entities performing such audits would be required to follow. It also requires an auditing entity to provide a pharmacy with a written report of the pharmacy audit that must comply with requirements established in the bill. The auditing entity must also establish a written appeals process under which a pharmacy may appeal an unfavorable final audit report to the entity.

This act does not apply to audits which are the result of a complaint to the pharmacy benefits manager or Board of Pharmacy in which fraud, waste or abuse is suspected.

The Insurance Department (PID) is given enforcement authority and the power to take action or impose penalties to bring noncomplying entities into full compliance with the provisions of this bill, including the promulgation of any regulations necessary to carry out the provisions of the bill.

House Bill 946 also requires Pharmacy Benefits Managers (PBMs), except workers compensation PBMs, to register with the Insurance Department, and establishes some minimum requirements with respect to the multiple source generic drug list for pharmaceutical drugs.

PBMs may not place a drug on the multiple source generic drug list unless:

- The drug is listed as "A", "B", "NA", or "NR" rated in the most recent version of the Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book; and
- The drug is available for purchase by all pharmacies in the state with a national or regional wholesaler and is not obsolete or temporarily unavailable.

PBM's must have a procedure to eliminate drugs from the list of drugs subject to multiple source drug pricing or modify the maximum allowable cost (MAC) in a timely fashion. A PBM may not penalize a

pharmacist or pharmacy on audit for a generic substitution pursuant to the generic equivalent drug law.

The multiple source generic drug list shall be made available to the pharmacies at the time of the contract, including the maximum allowable cost and any pricing formula. The multiple source generic drug list shall be updated at least once every 7 business days and a reasonable process for pharmacies to access relevant or current MAC pricing lists and any successive pricing formulas in a timely manner must be established.

The PBM and pharmacy are required to establish an appeals process for the multiple source generic list in the PBM/pharmacy contract including disputes regarding the listed MAC for a particular drug.

The Insurance Department must enforce the provisions of this Act and shall promulgate regulations necessary to implement the Act. This Act shall apply to all contracts and agreements executed or renewed after the effective date of the legislation.

House Bill 946 also revises the reimbursement formula for prescriptions in the PACE/PACENET Program by moving from the lower of 88% of the Average Wholesale Price (AWP), the pharmacy's usual charge, or if a generic drug, the most current Federal upper payment limits in the Medicaid Program to the lower of the National Average Drug Acquisition Cost (NADAC) or the pharmacy's usual and customary charge. If the NADAC is not available, then the Wholesale Acquisition Cost (WAC) plus 3.2% is used. In addition, the pharmacy dispensing fee is increased from \$4 to \$13.

**FISCAL IMPACT:** Enactment of this legislation could increase costs to the Insurance Department. The Department may need to hire additional staff or contract for services to implement the regulatory functions assigned to it by this legislation. However, it is difficult to estimate those costs at this time because PID must first promulgate regulations to carry out the provisions of this legislation, which will directly impact these costs.

According to the Department of Aging, revising the reimbursement formula and increasing the dispensing fee in the PACE/PACENET Program is estimated to save the Pharmaceutical Assistance Fund \$16,186,000 in FY 2016-17 and \$23,602,000 in FY 2017-18.

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*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*