



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 1993

PRINTER'S NO. 3499

PRIME SPONSOR: Benham

### COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
Insurance Regulation and Oversight Fund	\$1,300,000 See Fiscal Impact	\$1,300,000 See Fiscal Impact

### SUMMARY:

Amends the Pharmacy Audit Integrity and Transparency Act to re-establish this act as the Pharmacy Benefit Reform Act which includes requirements for Pharmacy Benefit Manager (PBM) contracts with network pharmacies and establishes certain prohibited activities.

### ANALYSIS:

House Bill 1993, Printer's Number 3499 amends Act 169 of 2016, known as the Pharmacy Benefit Reform Act, and adds Chapter 6 Pharmacy Benefits Manager Contracts to provide for contract provisions between PBMs and pharmacies and Chapter 10 Pharmacy Services.

The legislation requires a Pharmacy Services Administration Organization (PSAO) to register with the Department of Insurance. This legislation also increases the maximum initial and renewal application fee for a PBM from \$1,000 to \$10,000 and establishes the application fee for the PSAO in the amount of \$500.

### Chapter 6 Pharmacy Benefits Manager Contracts

It establishes that the PBM is prohibited from:

- Reimbursing a retail pharmacy an amount less than the amount that the PBM reimburses a PBM-affiliated pharmacy located in this commonwealth.
- Reimbursing a federally qualified health center, health care facility, or other entity participating in the program who is participating in the Public Health Service Act an amount less than similar entities participating in the program.
- Authorizing the PBM to unilaterally alter the terms of the original contract.
- Designating a prescription drug as a specialty drug or require a prescription drug to be dispensed exclusively at a specialty pharmacy.

A PBM is required by this legislation to pass through to the health benefit plan no less than 95% of the prescription drug manufacturer rebate obtained by the PBM on behalf of the health insurer client.

Health insurers and their contracted PBMs are prohibited from:

- Requiring covered individuals to purchase prescription drugs exclusively through a mail-order pharmacy or PBM-affiliated retail pharmacy.
- Prohibiting or limiting a covered individual from selecting an in-network pharmacy of the individual's choice.
- Requiring covered individuals to use a PBM-affiliated retail pharmacy.

- Using financial incentives to the exclusive benefit of a PBM-affiliated retail pharmacy.
- Auto-enrolling covered individuals into a mail order pharmacy.

A pharmacist, pharmacy intern or technician may not charge a patient an amount for a cover prescription that exceeds the lesser of:

- The net reimbursement paid to the pharmacy by the health insurer or PBM.
- The amount the individual would have paid for the prescription drug if the prescription were purchased without health insurance coverage.

A PBM will establish a reasonably adequate and accessible retail pharmacy network for convenient access to pharmacies within a reasonable distance. This network cannot be limited to affiliated pharmacies only and must meet or exceed the federal requirements to access covered drugs.

Each licensed PBM is required to submit an annual network adequacy report to the department beginning April 1, 2026. The department shall publish the report on its Internet website.

Each registered PBM will submit to the department an annual transparency report beginning July 1, 2026. This report will include the aggregate amount of all rebates received, the aggregate amount of administrative fees, the aggregate-retained rebates, and the highest, lowest, and mean aggregate retained rebate percentage. PBMs that control affiliated pharmacies must also provide a description of the difference between what the PBM reimburses or charges affiliated and nonaffiliated pharmacies. The department will publish the transparency report on its Internet website.

PSAOs must provide the following information to the department and each contracted pharmacy:

- Changes in ownership of the PSAO.
- Whether the change in ownership includes a company or organization that provides pharmaceutical, prescription drug, or device services.
- Whether the change in ownership includes a company that sells or manufactures prescription drugs, biologics, or medical devices.

### Chapter 10 Pharmacy Services

The State Board of Pharmacy will establish education and training standards and practice guidelines that allow pharmacists to be authorized to administer injectable medications, biologicals, and immunizations to individuals 8 years of age or older and influenza and COVID-19 immunizations to individuals 5 years of age or older. Department of Health, in consultation with the Board, will provide a report on activities authorized through this legislation.

### Penalties

Violation of the requirements in this legislation may result in fines or penalties imposed by the department. Penalties and fines include a fine of not more than \$100,000 for each violation that a licensee knew or should have known, and a fine of not more than \$50,000 for each violation that the licensee did not know or could not have reasonably known. The legislation imposes limits on the total amount of fines that can be assessed within a single calendar year to \$1,000,000 when the licensee knew or should have known, and \$500,000 when the licensee did not know or could not have reasonably known.

### **FISCAL IMPACT:**

#### Department of Insurance

The Department of Insurance will collect initial and renewal application fees not to exceed \$10,000 upon the effective date of this legislation. Currently, there are 72 Pharmacy Benefit Managers and 5 Auditing Entities that the department expects to submit an application along with the increased registration fee of \$10,000.

Therefore, the revenue received by the commonwealth will increase by a maximum of \$9,000 for each initial or renewal application received for a total increase of \$693,000.

In addition, the Department of Insurance will collect initial and renewal application fees for PSAOs not to exceed \$500. Currently, there are 10 PSAOs that the department expects to submit an application along with the registration fee of \$500. Therefore, the revenue received by the commonwealth will increase by a maximum of \$5,000.

The department also has the responsibility to collect penalties and fines, which may result in increased revenue received. However, the number of PBMs that would be found to be out of compliance with these requirements and have fines assessed is unknown at this time. Therefore, any increased revenue to the commonwealth, as a result of fines imposed by this legislation is currently indeterminate.

Finally, the department is responsible for the health insurers' and PBM's compliance with requirements included in this legislation. This may require the department to investigate any potential noncompliance issues. The department anticipates the additional oversight requirements to increase the administrative costs of the department by \$2 million for the additional personnel and operating costs.

The net fiscal impact to the commonwealth, as a result of this legislation, results in increased operating costs to the commonwealth totaling \$1.3 million with the added increase for collection of fines and penalties, which cannot be determined at this time.

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**DATE:** July 11, 2024

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