SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 946

PRINTER NO. 3933

AMOUNT

No Fiscal Impact

FUND

Insurance Regulation & Oversight Fund

DATE INTRODUCED

August 18, 2015

PRIME SPONSOR

Representative Baker

DESCRIPTION AND PURPOSE OF BILL

House Bill 946 Establishes the Pharmacy Audit Integrity and Transparency Act which provides for pharmacy audit procedures, for registration of pharmacy benefits managers, and for maximum allowable cost transparency.

Creates auditing procedures and limitations for any audit of pharmacy records conducted by a managed care company, third-party payer, pharmacy benefits manager, a health program administered by a department of the Commonwealth or any entity that represents a company, group or department.

Chapter 3 - Procedures for Conducting Pharmacy Audits

- An auditing entity conducting a pharmacy audit may only have access to a pharmacy's previous audit report if the report was prepared by an auditing entity.
- Requires information collected during pharmacy audit to be confidential.
- Prohibits an auditing entity from compensating any employee or contractor solely based on the amount claimed or the actual amount recouped.
- Requires the auditing entity to provide the pharmacy with at least 14 calendar days' prior written notice before conducting an audit. The pharmacy can request delay at least 72 hours in advance of the audit.
- Prohibits the auditing entity from initiating or scheduling an audit in the first five business days of the month for any pharmacy that averages in excess of 600 prescriptions per week, without the consent of the pharmacy.
- Requires the auditing entity to accept paper or electronic signature logs that document the delivery of prescriptions to a health plan beneficiary.
- Requires the auditing entity to provide to the pharmacy a complete list of pharmacy records reviewed at the conclusion of the audit.
- Requires an audit that involves clinical judgment to be conducted in consultation with a pharmacist.
- Prohibits an audit from covering a period of more than 24 months after the date a claim was submitted or more than 250 prescriptions.

- Prohibits an auditing entity from using extrapolation to calculate penalties or amounts to be charged back or recouped unless required by Federal requirements.
- Prohibits an auditing entity from including dispensing fees to calculate overpayments unless a prescription is considered a "misfill." A "misfill" is defined as a prescription that was not dispensed, a prescription error, a prescription where the prescriber denied the authorization request or a prescription where an extra dispensing fee was charged.
- Authorizes a pharmacy, when an audit is performed, to use authentic and verifiable statements or records to validate the pharmacy record and delivery.
- Authorizes a pharmacy, when an audit is performed, to use any valid prescription to validate claims in connection with prescriptions or changes in prescriptions or refills of prescription or nonproprietary drugs.

Requires an auditing entity to provide the pharmacy with a written report of the pharmacy audit. A preliminary report must be delivered to the pharmacy within 60 days after the completion of the audit. The pharmacy is allowed 30 days following the receipt of the preliminary audit report to respond to the findings of the preliminary report. A final audit report shall be delivered to the pharmacy or its corporate parent not later than 60 calendar days after any responses from the pharmacy or corporate parent are received by the auditing entity.

Prohibits a pharmacy from being subject to charge-back or recoupment for clerical or recordkeeping error unless the error resulted in overpayment to the pharmacy. Prohibits an auditing entity from charging back or recouping or collecting penalties from a pharmacy until the time period to file an appeal of the final pharmacy audit report has passed or the appeals process has been exhausted, whichever is later.

If an identified discrepancy in an audit exceeds $25,000, future payments in excess of that amount may be withheld pending adjudication of the appeal.

Interest shall not accrue during the audit period, beginning with the notice and ending at the conclusion of the appeals process.

Requires an auditing entity to establish an appeals process.

The provisions of this chapter shall not apply in the event of fraud, waste and abuse, other intentional misconduct or when a pharmacy has engaged in criminal misconduct.

The Department of Insurance ("Department") shall have authority to take action, impose penalties and promulgate regulations necessary to carry out this act.

Chapter 5 – Pharmacy Benefits Manager ("PBM") Requirements

Requires a PBM to register with the Department in order to conduct business in this Commonwealth.

In order for a PBM to place a particular drug on a generic drug list, it must ensure the following:

- The drug is listed as "A," "B," "NR" or "NA" rated (different therapeutic equivalency codes) in the most recent version of the Food and Drug Administration's "Approved Drug Products with Therapeutic Equivalence Evaluations."
- The drug is available for purchase by all pharmacies in the State.

Requires a PBM to maintain a procedure to eliminate drugs from the lists of drugs subject to multiple source drug pricing or modify the maximum allowable cost in a timely fashion.

Provides that a PBM may not penalize a pharmacist or a pharmacy on audit if generic substitutions are performed in accordance with the Generic Equivalent Drug Law of 1976 (P.L.1163, No.259).

Requires that contracts between a PBM and a pharmacy include the following:

- The sources utilized to determine multiple source drug pricing, the maximum allowable cost or any successive pricing formula of the PBM.
- Updated pricing information every seven calendar days.
- A process by which pharmacies can access current maximum allowable cost pricing lists and successive pricing formulas in a timely fashion.
- A process to appeal, investigate and resolve disputes regarding multiple source drug pricing.

Requires the Department to promulgate regulations to implement this chapter.

The Department is responsible for enforcing the provisions of this act and shall take action to impose penalties for noncompliance.

This chapter applies to all contracts and agreements for pharmacy benefits management services executed or renewed on or after the effective date of this section.

Effective Date: Chapter 3 shall take effect in 60 days. Chapter 5 shall take effect in 90 days.

FISCAL IMPACT:

House Bill 946 will have no fiscal impact to the Commonwealth. The costs to promulgate the required regulations and registering the Pharmacy Benefits Manager to conduct business in the Commonwealth can be absorbed within the Department of Insurance's operating budget.