



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1993

PRINTER'S NO. 3435

PRIME SPONSOR: Benham

COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
Insurance Regulation and Oversight Fund	\$0	(\$240,500) See Fiscal Impact

SUMMARY:

Amends the Pharmacy Audit Integrity and Transparency Act to establish requirements for Pharmacy Benefit Manager (PBM) contracts with the PBM's network pharmacies and establishes certain prohibited acts.

ANALYSIS:

House Bill 1993, Printer's Number 3435 amends Act 169 of 2016, known as the Pharmacy Audit Integrity and Transparency Act, and adds Chapter 6 Pharmacy Benefits Manager Contract Requirements and Prohibited Acts to provide for contract provisions between PBMs and pharmacies. It establishes that the PBM is prohibited from:

- Using spread pricing, a practice of charging insurance companies a higher price for drugs than paid to the pharmacy and keeping the difference.
- Steering PBM patients to affiliated pharmacies or encouraging patients to utilize their own affiliated pharmacy.
- Clawing back funds from the pharmacy and not allowing the patient to be charged a higher amount for the drug compared to what PBM or insurance plan pays.

This legislation also increases the maximum initial and renewal application fee for a PBM from \$1,000 to \$10,000.

Additionally, the PBMs must establish an adequate network of pharmacies subject to federal requirements. Each licensed PBM is required to submit a yearly transparency report containing data from the prior calendar year to the Department of Insurance beginning July 1, 2026. Within 60 days of the receipt of the report, the department shall publish the transparency report on its Internet website.

The department also has the responsibility to ensure both health insurance companies and PBMs comply with the requirements in this legislation. This includes the examination of health insurance company or PBM records, books, and other necessary information. 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:

Assuming this legislation is enacted in June 2024, it will take effect in September 2024. Therefore, there is no fiscal impact to the commonwealth for fiscal year 2023/24.

For fiscal year 2024/25, 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 increased 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.

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 to ensure the PBMs' 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 \$452,500 for the additional personnel and operating costs.

The net fiscal impact to the commonwealth, as a result of this legislation, results in increased revenue to the commonwealth totaling \$240,500 with the added increase for collection of fines and penalties which cannot be determined at this time.

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House Appropriations Committee (D)

DATE: June 27, 2024

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