

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1993

**PRINTER NO.** 3497

**AMOUNT**

See Fiscal Impact

**FUND**

Insurance Regulation and Oversight Fund

**DATE INTRODUCED**

April 3, 2024

**PRIME SPONSOR**

Representative Benham

**DESCRIPTION**

House Bill 1993 amends the Pharmacy Audit Integrity and Transparency Act to further regulate Pharmacy Benefit Manager (PBM) activities and services provided by pharmacies.

The bill amends scrivener errors that allow a PBM to recoup the dispensing fee associated with the erroneous dispensing of a drug. Under the new language in House Bill 1993, a PBM can only recoup the dispensing fee when the error is not attributable to waste, fraud or abuse associated with the erroneous dispensing of the drug.

The bill amends the current law regarding the registration of regulated entities under the act to include a Pharmacy Service Administrative Organization (PSAO). Fees are increased for the biannual registration of PBMs and auditing entities from \$1,000 to \$10,000. In addition, the legislation establishes a new fee for a PSAO registration at \$500.

The bill requires that PBMs comply with the following:

- Parity in reimbursement between affiliated pharmacies of a PBM and unaffiliated pharmacies in the network;
- Prohibition of federal aid under the 340(b) program from being used as a reason to reduce or alter reimbursement to a pharmacy in the program;
- Prevention of unilateral altering of a contract by a PBM beyond its original terms with a pharmacist or PSAO;
- Prohibition of a PBM from designating prescription drugs that do not meet the definition of specialty drug under section 103 as a specialty drug; and
- Requirement to pass through to a health benefit plan no less than 95% of any rebate from a prescription drug manufacturer.

The bill prohibits a PBM, health benefit plan or health insurer from the following activities regarding consumer choice of pharmacies:

- Requiring a covered individual to use a mail-order pharmacy for purchasing prescription drugs;

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- Prohibiting or limiting a covered individual in choosing an in-network pharmacy or pharmacist of their choice for any pharmacy or pharmacist who has entered into a network participation agreement with the PBM;
- Requiring a covered individual to use an affiliated pharmacy of the PBM, health benefit plan or health insurer;
- Transferring a prescription from an in-network pharmacy to another pharmacy unless requested by the covered individual;
- Using financial incentives to the exclusive benefit of a PBM-affiliated retail pharmacy; and,
- Auto-enrolling a covered individual in mail-order pharmacy.

House Bill 1993 prohibits pharmacists, pharmacy interns or pharmacy technicians from charging a patient an amount that exceeds the lesser of the net reimbursement paid to the pharmacy or the amount the individual would pay for the drug without coverage.

The bill also requires PBMs to meet network adequacy requirements regarding inclusion of retail pharmacies established under Medicare Part D. These requirements are as follows:

- A retail pharmacy within 2 miles of 90% of urban health benefit plan participants;
- A retail pharmacy within 5 miles of 90% of suburban health benefit plan participants; or
- A retail pharmacy within 15 miles of 70% of all rural health benefit plan participants.

As of July 1, 2026, PBMs will be required to submit a transparency report that reflects specified information. The Insurance Department (department) is required to post that information on its website in a manner that protects the confidential information of PBMs. The information shall include:

- Aggregate rebates obtained from a manufacturer for all clients, broken down by client;
- Rebates that were not passed onto a health benefit plan, broken down by variance; and
- Aggregate administrative fees charged by a PBM to a prescription drug manufacturer.

The bill provides the department with the explicit authority to review and examine a PBM or health insurer including the PBM's affiliate's books, records or other information along with the authority to order the production of the same records. In addition, the department is authorized to study and review the impact of PBM business practices when it comes to patient steering, spread pricing and the impact of reimbursement of national average drug acquisition cost and a professional dispensing fee of \$10.49.

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The department may hire and retain experts on PBM contracts. The cost associated with the expert is to be paid by the PBM under review.

The bill amends Section 9.2 of the Pharmacy Act to reauthorize the expiring authority for pharmacists, pharmacy interns and technicians under the federal PREP Act. These changes include:

- Authorizing pharmacists to administer vaccines approved by the Centers for Disease Control and Prevention (CDC) to individuals aged 8 and older and influenza and COVID-19 immunizations to individuals aged 5 and older. Under the PREP Act, a pharmacist may administer CDC-approved vaccines for individuals aged 3 and older;
- Authorizing pharmacy interns to administer vaccines approved by the CDC to individuals aged 8 and older and influenza and COVID-19 immunizations to individuals aged 5 and older. Administration of vaccines must be done under the direct, immediate and personal supervision of a pharmacist. This is the standard under current law. Under the PREP Act, a pharmacy intern may vaccinate an individual aged 3 and older with CDC-approved vaccines; and
- Authorizing pharmacy technicians to administer flu and COVID vaccines to individuals aged 13 and older. Technicians under the federal PREP Act are permitted to administer flu and COVID-19 to individuals aged 3 and older.

The bill requires pharmacists, pharmacy interns and technicians to follow CDC guidelines for administering authorized vaccines along with the necessary education and certifications required under the PREP Act. Additionally, each pharmacist, pharmacy intern or technician administering a vaccine under the section must have liability insurance of at least \$1,000,000.

Following the vaccination, a patient must be reminded about the need for a well-visit and must be referred to their primary care provider. The pharmacy must also notify the primary care provider, if known, within 48 hours of administering the vaccine. Additionally, the pharmacy must update records, in accordance with current law, no later than 72 hours after administering the vaccine.

The bill requires the Department of Health to issue a report on pharmacy-administered vaccines that will include:

- The number of injectable medications, biologicals and immunizations administered to individuals under the age of eighteen, broken down by age;
- The number of injectable medications, biologicals and immunizations administered to individuals under the age of eighteen, broken down by type of injectable medications, biologicals and immunizations.
- The number of injectable medications, biologicals and immunizations administered to individuals under the age of eighteen, broken down by age;
- An assessment on whether there is a change in the number of well visits for children with their primary pediatric care provider attributable to pharmacist services; and

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- Changes in the immunization rates for individuals under the age of 18.

This act shall take effect in 180 days.

### **FISCAL IMPACT:**

Enactment of House Bill 1993 will result in a net cost of \$1.3 million that will accrue to the Insurance Regulation and Oversight Fund.

There are currently 72 Pharmacy Benefit Managers and five Auditing Entities that the department expects to submit an application along with the increased registration fee of \$10,000. The increase in revenue received by the department from this provision will total \$693,000. In addition, there will be an additional \$3,000 in revenue from the six Pharmacy Service Administrative Organizations' fee of \$500.

The Insurance Department is responsible to ensure the PBMs' compliance with requirements included in this legislation. The department anticipates the additional oversight requirements will increase the administrative costs of the department by \$2 million for additional personnel and operating costs.