KEY PROVISIONS: COMPREHENSIVE STATE PBM REGULATION

I. Require PBM registration/licensure
   a. Define “pharmacy benefit manager,” including their role as both a drug benefits manager and a pharmacy.
   b. Enforcement of PBM regulations
      i. Insurance Commissioner
         1. Authority to promulgate rules
         2. Authority to impose penalties, levy fines, and revoke/suspend license
      ii. Establish a private right of action for pharmacies/pharmacists to ensure compliance

II. Reimbursement transparency
    a. Make transparency laws applicable to all reimbursement methods (e.g., MAC, GER, etc.)
    b. Require disclosure of basis of methodology to determine reimbursements
    c. Establish an appeals process
       i. Permit PSAO to file appeal on behalf of pharmacy
       ii. If appeal is denied, disclose source where drug can be acquired at or below cost
       iii. If upheld, price adjustment should be retroactive and should apply to all network pharmacies.
    d. Prohibit arbitrary, retroactive claim adjustments and adjudication fees

III. Fair audit
    a. Establish procedures
       i. Require notice
       ii. Limit the time period or number of prescriptions covered by the audit
       iii. Require an appeals process
       iv. Audits involving clinical or professional judgment must be conducted by or in consultation with a pharmacist
    b. Recoupments
       i. Establish requirements for the calculation of overpayments (e.g., clerical errors, dispensing fees, no extrapolation)
       ii. Prohibit auditor compensation based on percentage of amount recovered
       iii. Prohibit recoupments unless made pursuant to an audit

IV. Network adequacy and patient access
    a. Require a PBM to secure the participation in its network of a sufficient number of retail pharmacies to ensure convenient access
    b. Require a PBM to contract with any willing pharmacy
    c. Prohibit the requirement that a patient receive prescription drugs from a mail-order pharmacy
    d. Ensure patients may access “specialty” medications at the pharmacy of their choice
    e. Prohibit arbitrary accreditation standards as a condition of network participation

V. Make all PBM regulations applicable to Medicaid managed care organizations’ PBMs (may require amendment of existing statutes)