

## 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)
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