KEY PROVISIONS: COMPREHENSIVE STATE PBM REGULATION

I. Make all PBM regulations applicable to PBMs serving all commercial and Medicaid managed care plans
   a. Repeal all exemptions for ERISA plans (in response to the Rutledge v. PCMA SCOTUS case)

II. 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 by the Insurance Commissioner
      i. Authority to promulgate rules
      ii. Authority to impose penalties, levy fines, and revoke/suspend license
      iii. Establish a private right of action for pharmacies/pharmacists to ensure compliance

III. 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 a PBM from reimbursing below acquisition cost benchmarks, such as NADAC
   e. Permit pharmacies to decline to dispense when reimbursement is below the pharmacy’s acquisition cost
   f. Prohibit arbitrary, retroactive claim adjustments and adjudication fees
   g. Prohibit a PBM from reimbursing non-affiliated pharmacies less than PBM-owned pharmacies
   h. Include pharmacy reimbursement in EOB
      i. Require PBMs to implement a pass-through pricing model

IV. 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. Recoupments must be passed to the payer

V. 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