

## 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