

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
 - c. Require that a PBM be a fiduciary of the plan sponsor
- II. MAC transparency
 - a. Require disclosure of basis of methodology to determine MAC price
 - b. Establish conditions for inclusion of a drug on a MAC list
 - 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, MAC adjustment should be retroactive and should apply to all network pharmacies.
- III. Fair audit
 - a. Establish procedures
 - i. Require reasonable notice
 - ii. Limit the time period or number of prescriptions covered by the audit
 - iii. Require a final appeals process not under the direct control of the PBM (outside party)
 - 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. Prohibit recoupments of drug costs (dispensing fees only) when a prescription is legally dispensed except in instances of fraud
- 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
- V. Make all PBM regulations applicable to Medicaid managed care organizations’ PBMs (may require amendment of existing statutes)

VI.

NCPA CONTACTS:

- Scott Brunner, CAE, SVP of Communications and State Governmental Affairs: scott.brunner@ncpanet.org
- Matthew Magner, JD, Director of State Governmental Affairs: matthew.magner@ncpanet.org
- Allie Jo Shipman, PharmD, Associate Director of State Governmental Affairs: alliejo.shipman@ncpanet.org

