NCOIL MODEL ACT SUMMARY

Link to NCOIL Model ACT

SECTION 1 – Title

This Act shall be known as and may be cited as the "[State] Pharmacy Benefits Manager Licensure and Regulation Act."

SECTION 2 – Purpose

Section 2 establishes the standards and criteria for the regulation and licensure of PBMs providing claims processing services or other prescription drug or device services for health benefit plans. The purpose is to promote, preserve, and protect the public health, safety, and welfare through effective regulation and licensure of pharmacy benefits managers; Provide for powers and duties of the Insurance Commissioner, the State Insurance Department; and prescribes penalties and fines for violations of this Act.

SECTION 3 - Definitions

Section 3 includes the following definitions: Claims Processing Services; Health Benefit Plan; Healthcare Insurer; Independent Pharmacy; Maximum Allowable Cost; Other Prescription drug or device services; Pharmaceutical Wholesaler; Pharmacist; Pharmacy; Pharmacists Services; Pharmacy Acquisition Costs; Pharmacy Benefits Manager; Pharmacy Benefits Manager Affiliate; Pharmacy Benefits Manager Network; Pharmacy Benefits Plan or program; Pharmacy Services Administrative Organization; Rebate; and Third Party.

SECTION 4 – Licensure

Section 4 requires a PBM to be licensed and gives the Commissioner of Insurance the authority to develop the application, application fees and renewal fees. Section 4 also requires the Commissioner to issue rules establishing the licensing, fees, application, financial standards and reporting requirements.

SECTION 5 – Network Adequacy

Section 5 requires a PBM to provide "a reasonably adequate and accessible network" for *"convenient patient access to pharmacies within a reasonable distance from a patient's residence".* A mail order pharmacy shall not be included in the calculations. The PBM must submit a network adequacy report.

SECTION 6 – Compensation and Prohibited Practices

Section 6 allows the Insurance Commissioner to review and approve the compensation a PBM receives from a health benefit plan to ensure that the reimbursement paid for pharmacist services are fair and reasonable and will provide an adequate network of pharmacies. The legislation provides for the confidentiality of the information and prevents it from being subject to open records.

Section 6 prohibits a PBM from knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading.

Section 6 prohibits a PBM, unless approved by the Commissioner, from charging a pharmacy a fee related to the adjudication of a claim or participation in a network.

Section 6 prohibits a PBM from reimbursing a pharmacy in an amount less than the amount the PBM reimburses an affiliate pharmacy. The amount shall be calculated on a per-unit basis using certain identifiers.

Section 6 prohibits a PBM from retroactively denying or reducing a claim after adjudication unless: the original claim was submitted fraudulently; the claim was incorrect because the pharmacists had already been paid for the services; or the claim was incorrect because the services were not properly rendered.

Section 6 obligates a PBM to pay a pharmacy for a properly rendered service even if the pharmacy is terminated.

Section 6 allows the Commissioner to issue rules establishing prohibited practices of PBMs.

SECTION 7 – Gag Order

Section 7 prohibits PBMs from restricting pharmacies ability to disclose to patients *"any healthcare information that the participating provider deems appropriate regarding the nature of treatment, risk, or alternatives*" and the Pharmacies may provide information *"regarding the insured's total cost for pharmacist services"* and cannot be prohibited from discussing *"the total cost"* or selling a more affordable alternative.

Section 7 prohibits a PBM from restricting, or limiting disclosure of information to the Insurance Commissioner, law enforcement, or state and federal governmental officials investigating or examining a complaint or conducting a review of a PBM.

SECTION 8 – Enforcement

Section 8 gives the Insurance Commissioner enforcement authority. In addition, the Commissioner may examine and audit the books and records of the PBM. The information obtained is proprietary and confidential and not subject to open records.

SECTION 9 – Rules

Section 9 gives the Insurance Commissioner the authority to adopt rules, without limitations, relating to the following: licensing; application fees; financial solvency requirements; pharmacy network adequacy; prohibited market conduct practices; data reporting requirement; compliances and enforcement requirements concerning MAC; rebates; compensation; and the lists of health benefit plans administered by PBMs.

Section 9 requires that the rules adopted under this subchapter shall also set penalties or fines, including and without limitation monetary fines, suspension of licensure, and revocation of licensure.

SECTION 10 – Applicability

Section 10 allows the state to determine the date that the act will apply to contracts or health benefit plan issued, renewed, re-credentialed, amended, or extended.

Section 10 requires that a contract existing on the date of licensure of the pharmacy benefits manager shall comply with the requirements of this Act as a condition of licensure for the PBM.

Section 10 states *"This Act is not applicable to health benefit plans that are self-funded and specifically exempted from regulation by this State by The Employee Retirement Income Security Act of 1974 (ERISA)."*

SECTION 11 – Annual Report

Section 11 requires all PBMs to file an annual report containing information by individual claim, the amount actually paid or to be paid to the pharmacy, the identity of the pharmacy paid, and the prescription number or other identifier of the pharmacist services. The annual report will be considered proprietary and confidential information.

SECTION 12 – Maximum Allowable Costs Lists

Section 12 sets the standards for developing and implementing a MAC lists.

Section 12 requires the drugs on the MAC list shall be A, B, NR or NA rated; available for purchase in the state; and not obsolete. The PBM shall provide access to the MAC list and update its MAC lists *"on a timely basis, but in no event longer than seven (7) calendar days from an increase of ten percent (10%) or more in the pharmacy acquisition cost from sixty percent (60%) or more of the pharmaceutical wholesalers doing business in the state or a change in the methodology on which the MAC List is based or in the value of a variable involved in the methodology".*

Section 12 requires the PBM to provide access to the MAC lists and a reasonable administrative appeal procedure for the pharmacy to appeal if the PBM did not meet the requirements of this section or the

reimbursement fell below the acquisition costs. The appeal process must include a dedicated phone number and email address or website for submitting the appeals. The PBM must accept the appeals from the pharmacy or the PSAO and must accept the appeal if it is filed in 7 days.

Section 12 requires the PBM to respond to the appeal within 7 days. If the PBM upholds the appeal then they must make the change to the MAC lists and allow the challenging pharmacy to reverse and rebill the claim and provide the pharmacy with the NDC number that the increase or change is based on and make the change for all similarly situated pharmacies. If the appeal is denied, the PBM must provide the challenging pharmacy the NDC number and the name of the national or regional pharmaceutical wholesalers operating in this State that have the drug currently in stock at a price below the Maximum Allowable Cost List; or If the National Drug Code number provided by the PBM is not available below the pharmacy acquisition cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale, then the PBM shall adjust the Maximum Allowable Cost List above the challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the previously challenged maximum allowable cost.

Section 12 prohibits a PBM from reimbursing a pharmacy in an amount less than the amount the PBM reimburses an affiliate pharmacy. The amount shall be calculated on a per-unit basis using certain identifiers.

Section 12 allows a pharmacy or pharmacist to decline to provide the pharmacist services to a patient or PBM if, as a result of a MAC List, a pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the pharmacy providing pharmacist services.

Section 12 provides for the exclusion of a state run Medicaid Program and the State Employee Benefits program. However, the MAC provisions apply if the state uses a PBM for the Medicaid program or the state employee benefits program.

Section 12 makes a violation of this section a deceptive trade practice.

SECTION 13 – Severability Clause

Section 13 provides that in the event any provision of the Licensure Act is deemed invalid, the other provisions are severable and may continue to be enforced.

SECTION14 – Effective Date

Section 14 requires the provisions of the Act to go into effect immediately.