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Auditor General DePasquale Says Audit Finds PACE/PACENET Oversight Board Nonexistent, Notes Problems with Contracting

Lack of PACE/PACENET oversight could be reducing programs' ability to help low-income seniors

HARRISBURG – Auditor General Eugene DePasquale today said the recent audit of the commonwealth's PACE/PACENET programs showed that the years-long lack of an active, independent oversight board could be preventing more low-income senior citizens from having access to critical financial assistance for prescription medications.

The audit also found that the Department of Aging awarded no-bid contracts and suffers from a lack of accountability of subcontractors and pharmacies.

PACE and PACENET are operated by the Department of Aging and are to be overseen by the Pharmaceutical Assistance Review Board (PARB), according to state law. PARB is to meet at least twice annually and, among its other tasks, it is to “ensure the continuing efficiency and effectiveness” of the programs.

“The statutory language detailing PARB’s responsibilities is very clear,” DePasquale said. “It is meant to be an active, independent oversight board that makes sure these programs are being run efficiently to help the greatest number of the commonwealth’s seniors receive the financial help they need.”

However, the audit — which covers July 1, 2013, to Nov. 9, 2015 — showed that the PARB met only twice in three years, both times in 2014. No meetings were held in 2013 or 2015.

At its two 2014 meetings, PARB members took none of the action that is statutorily required of them. In addition, the meetings violated the Sunshine Act because they were not advertised publicly in advance.

“The lack of transparency we found in these two programs is a disservice to seniors,” DePasquale said. “Pennsylvania residents — in this case, especially its senior citizens — have a right to know when their public officials are meeting to discuss matters that will affect them.”

The PARB is required to have eight members, five of whom are to be appointed by elected officials. As of June 25, 2015, three of the five public positions were unfilled.

“If they care about Pennsylvania’s seniors, the elected officials here in Harrisburg who are legally mandated to appoint members to the PARB

PACE/PACENET background

Established in 1983, PACE — which stands for Pharmaceutical Assistance Contract for the Elderly — is designed to help low-income seniors pay for their prescription drugs.

Its partner program, PACENET — the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier — was established in 1996.

Both carry income restrictions to qualify. These income levels have not been adjusted for at least 10 years.

For PACE, it's \$14,500 for a single person and \$17,700 for married people.

For PACENET, it's \$14,501 to \$23,500 for a single person and \$17,701 to \$31,500 for married people.

Both are funded by the Pennsylvania Lottery Fund.

PACE and PACENET serve more than 300,000 seniors each year in Pennsylvania.

need to immediately start searching to find the right people to fill those roles,” DePasquale said. “That is the only way the PARB can begin functioning again in the manner the 1983 law intended.”

As a result of the PARB not performing its duties, the audit found, department officials have been able to sidestep known best practices in the areas of contract bidding and subcontractor accountability.

PARB make-up

According to the Pennsylvania State Lottery Law, PARB — which stands for Pharmaceutical Assistance Review Board — is to have eight members. Three are appointed cabinet officials:

- Secretary of Department of Aging (chairperson)
- Secretary of Revenue
- Secretary of Health

Five public members are to be appointed as follows:

- One by Senate president pro tempore
- One by the Senate minority leader
- One by the Speaker of the House
- One by the House minority leader
- One by the governor

The appointees are to include the following:

- A physician appointed by the governor
- Two senior citizens who have not been part of the pharmaceutical industry (to serve as consumer advocates)
- One representative of the pharmaceutical industry
- One practicing PA pharmacist

For example, in 2011, the Department of Aging signed a six-year deal with a prime contractor that required the prime contractor to use six specific subcontractors to provide critical program support activities, such as pharmacy audits, without requiring bidding for these services. This action clearly circumvents the competitive bidding process.

In response, department officials said that “these unique core activities ... were not likely to result in any (credible) bids from any other entity.”

However, one subcontractor indicates in its 2014 annual report that there are “formidable competitors” for its services, saying, “We cannot provide assurance that we will be able to compete successfully against existing or new competitors.”

“This behavior is unconscionable,” DePasquale said. “By demanding the prime contractor subcontract with six specific businesses, PACE/PACENET officials must know that they are not necessarily paying the lowest possible amount for at least some of these services.

“Deliberately not bidding out these subcontracts is likely costing PACE and PACENET money — which means program officials are not ensuring that every available dime is being spent to help low-income seniors.”

The Department of Aging also admitted to making verbal changes to a subcontract without even being party to the contract, an action that is clearly not in line with best business practices.

In addition, until this audit, PACE/PACENET officials were unaware that a subcontractor they thought was averaging 34 pharmacy audits per month was averaging only 22 to 24. The subcontractor stated “it does not have the manpower to complete 34 audits per month.”

The same subcontractor also lacks adequate written procedures for how it conducts its pharmacy audits. During one part of its pharmacy audit, the subcontractor requests drug manufacturer invoices from the pharmacy for drugs dispensed for a sample of

20 PACE/PACENET claims. In 17.9 percent of these cases between July 1, 2013, and June 3, 2015, audited pharmacies could produce no documentation to support the purchase of the selected prescription drugs dispensed and charged to PACE/PACENET.

“Clearly, requiring pharmacies to reimburse the cost when they cannot produce documentation during the audit is not helping to correct the problem,” DePasquale said. “I am pleased the Department of Aging agreed with our recommendation to increase the sample size during pharmacy audits.”

DePasquale's audit also found the Department of Aging does not require pharmacies to submit corrective action plans if problems are found during the subcontractor's audit. This is a vital process that should be occurring when you consider that pharmacies are audited only about every 10 years.

"Because pharmacies are audited only about once every 10 years and the audit covers only the previous 18 to 20 months, each of the 3,000 pharmacies in Pennsylvania could have up to eight years' worth of deficiencies that are never detected and corrected.

"Again, the issues identified in our audit may have been prevented if the PARB was fulfilling its roles overseeing all of PACE and PACENET's actions," DePasquale said, noting that two of the audit's five findings were positive.

"I want to commend the Department of Aging's commitment to helping qualifying seniors sign up for Medicare Part D," DePasquale said. "Medicare Part D is a federal program that also offsets prescription costs for seniors and, by helping seniors register for that program, PACE and PACENET have been able to decrease expenditures by 60 percent since 2006.

"That decrease means a savings of hundreds of millions of dollars each year," DePasquale continued. "I want to ensure that savings is being used to support programs that benefit seniors."

PACE/PACENET also has a well-designed system to ensure that its program is the payer of last resort, which means that other programs, such as Medicare Part D, help cover a prescription's cost first, the audit found.

The Department of Aging — PACE/PACENET audit report is available online at: www.paauditor.gov.

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