

# PERFORMANCE AUDIT

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## PACE and PACENET

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April 2016



Commonwealth of Pennsylvania  
Department of the Auditor General  
Eugene A. DePasquale • Auditor General

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EUGENE A. DEPASQUALE  
AUDITOR GENERAL

April 12, 2016

The Honorable Tom Wolf  
Governor  
Commonwealth of Pennsylvania  
Harrisburg, PA 17120

Dear Governor Wolf:

This report contains the results of the Department of the Auditor General's special performance audit of the Pharmaceutical assistance Contract for the Elderly (PACE) and the PACE Needs Enhancement Tier (PACENET) programs administered by the Pennsylvania Department of Aging (Department). This audit covered the period July 1, 2013, through November 9, 2015, unless otherwise indicated, with updates through December 21, 2015. This audit was conducted under the authority of Sections 402 and 403 of The Fiscal Code, 72 P.S. §§ 402-403, and in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our special performance audit had two objectives, from which we report five findings and 14 recommendations. Our objectives included (1) determine the effectiveness of the PACE and PACENET programs in fulfilling their purpose of providing pharmaceutical financial assistance for qualified state residents that are in need of such assistance now and in the long term; and (2) evaluate the PACE and PACENET programs' compliance with the requirement of being the payor of last resort in providing pharmaceutical financial assistance.

We found that the Department did not allow critical program support activities to be competitively bid by pre-designating six subcontractors to perform functions for the programs' prime contractor and allowed verbal changes to a subcontract. We also found that the Department failed to adequately monitor the performance of pharmacy audits conducted by the pharmacy auditing services' subcontractor. In addition, we also found that the Pharmaceutical Assistance Review Board (PARB), which was established by the same

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April 12, 2016

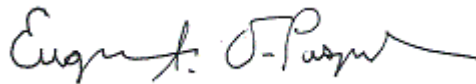
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State Lottery Law that established the PACE program and was designed to help ensure the continuing efficiency and effectiveness of the PACE program, was not being utilized as designed and that several seats on the board have not been filled for an indeterminate amount of time. Therefore, the Department permitted the PACE and PACENET programs to operate without the oversight of the PARB.

On a positive note, we found that annual PACE/PACENET program expenditures have decreased approximately 60 percent over the past decade by facilitating program cardholders' enrollment in federal Medicare Part D prescription plans, thereby transferring the majority of the financial burdens of the program from the state to the federal government; however, as noted in the prior paragraph, we have identified other related areas that could potentially further save the Department additional monies. In addition, we found that the PACE/PACENET programs are in compliance with the State Lottery Law requirement for being the payor of last resort.

In closing, I want to thank the Department and the PACE/PACENET employees for their assistance during the audit. The Department is generally in agreement with the findings and recommendations. We will follow up at the appropriate time to determine whether and to what extent all recommendations have been implemented.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Eugene A. DePasquale  
Auditor General

**PACE and PACENET**

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## Executive Summary

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**T**he Pennsylvania Department of Aging (Department) through its Bureau of Pharmaceutical Assistance is responsible for assisting qualified state residents who are 65 years of age or older in paying for their prescription medications. The Pharmaceutical Assistance Contract for the Elderly (PACE) program was enacted in 1983 and expanded to include the PACE Needs Enhancement Tier (PACENET) program in 1996. With the Pennsylvania General Assembly's enactment of Act 111 of 2006, on July 7, 2006, "PACE Plus Medicare" was created whereby PACE and PACENET cardholders could take advantage of both the federal Medicare Part D prescription programs and the state PACE/PACENET prescription programs.

Our special performance audit had two audit objectives: to determine the programs' effectiveness in fulfilling their purpose of providing pharmaceutical financial assistance for qualified state residents that are in need of such assistance both now and in the long term; and to evaluate the programs' compliance with the requirement of being the payor of last resort in providing pharmaceutical financial assistance. Our audit contains five findings and makes 14 recommendations. Overall, the Department agrees with the audit report and its recommendations.

***Finding 1: Annual PACE/PACENET expenditures have decreased about 60 percent over the past decade due to cardholders' enrollment in Medicare Part D.***

We found that the Department utilized the implementation of the federal Medicare Part D plans available in the Commonwealth and facilitated PACE and PACENET cardholders to enroll in one of these federal prescription plans. By doing this, the Department essentially shifted approximately 60% of annual prescription costs from the PACE and PACENET programs to the federal government. This significant savings should allow the Department to properly fund the PACE/PACENET programs into the future.

***Finding 2: The Department of Aging did not allow critical program support activities to be competitively bid and allowed verbal changes to a subcontract.***

The Department is statutorily required to obtain the services of a prime contractor to handle the day-to-day operations of the PACE/PACENET programs. We found that in the Request for Proposal for this contract, the Department necessitated the prime contractor to subcontract with six specific entities without competitively bidding for these subcontracted services. In addition, we found that the Department made verbal changes to the pharmacy auditing services' subcontract without being party to the contract. We offer four recommendations to rectify these deficiencies.

**PACE and PACENET**

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***Finding 3: The Department failed to adequately monitor the pharmacy audits conducted by the pharmacy auditing services' subcontractor.***

We found that the Department takes a hands off approach to overseeing and monitoring the pharmacy audit process. Specifically, we found that PACE/PACENET officials were unaware that for nearly two consecutive years the subcontractor was only averaging 22 to 24 audits per month when the contract requires 34 pharmacy audits per month. We also found that the subcontractor lacks adequate written procedures for conducting the pharmacy audits and needs to improve its auditing process. We also found inadequate procedures in place at the Department for requiring pharmacies to produce corrective action plans to correct the types of errors noted during their pharmacy audits. We offer five recommendations to alleviate these deficiencies.

***Finding 4: The Department permitted the PACE and PACENET programs to operate without the oversight of the Pharmaceutical Assistance Review Board.***

Per the Pennsylvania State Lottery Law, the Pharmaceutical Assistance Review Board (PARB) is to have a total of eight members, meet twice annually, and perform various roles. Some of the various PARB roles include helping ensure the continuing efficiency and effectiveness of the PACE/PACENET programs, conducting an annual review of the PACE/PACENET programs, and directing the Department to enter into discussions with the private contractor concerning amendments to the contract. We found that due to PARB vacancies, the PARB met only twice in the past three calendar years. PACE/PACENET officials referred to the PARB as a passive advisory board, but we disagree and believe the PARB was designed to function as an active oversight board. We offer five recommendations to improve oversight.

***Finding 5: The Department has designed a process to ensure compliance with the payor of last resort requirement.***

We found the PACE/PACENET programs utilized the services of a subcontractor to review all PACE/PACENET prescription claims for compliance with the payor of last resort requirement. This subcontractor maintains a database of individuals and their prescription insurance and queries every PACE/PACENET prescription claim to identify possible claims where PACE or PACENET was not the payor of last resort. For claims identified by the subcontractor where PACE or PACENET was not the payor of last resort, the subcontractor performs collection procedures to obtain appropriate settlement on behalf of PACE/PACENET. We also found that the PACE/PACENET office has procedures in place to track, reconcile, deposit, and post these receipts.

**PACE and PACENET****Introduction  
and  
Background**

This report presents the results of our special performance audit of the Pennsylvania Department of Aging's (Department) administration of the Pharmaceutical Assistance Contract for the Elderly<sup>1</sup> (PACE) and the PACE Needs Enhancement Tier<sup>2</sup> (PACENET) programs.

Pennsylvania is one of the "oldest" states in the nation with 21.4% of the population aged 60 or older.<sup>3</sup> There are growing concerns about meeting the needs of older Pennsylvanians as the projected aging population increases with the leading edge of the baby boom population already entering their retirement years. Also, prescription drug prices continue to increase nation-wide, leaving some older Pennsylvanians with tough decisions to make about their health due to affordability.<sup>4</sup>

We conducted our work under the authority of Sections 402 and 403 of The Fiscal Code<sup>5</sup> and in accordance with applicable *Government Auditing Standards* as issued by the Comptroller General of the United States.<sup>6</sup>

As discussed further in Appendix A, *Objectives, Scope, and Methodology*, our audit serves as an independent assessment of the Department and its administration of the PACE and PACENET programs. Our audit objectives were as follows:

- Determine the effectiveness of the PACE and PACENET programs in fulfilling their purpose of providing pharmaceutical financial assistance for qualified state residents that are in need of such assistance both now and in the long term.

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<sup>1</sup> Chapter 5 of the State Lottery Law, 72 P.S. § 3761-501 *et seq.*

<sup>2</sup> 72 P.S. § 3761-519.

<sup>3</sup> As noted in the Department's 2012-2016 *State Plan on Aging*, "[c]urrently, Pennsylvania is the fourth 'oldest' state in the nation, with nearly 2.7 million individuals aged 60 and older and more than 300,000 individuals aged 85 and older. By the year 2030, it is estimated to exceed 3.6 million Pennsylvanians will be aged 60 and older." See Executive Summary, p. 2. <http://www.aging.pa.gov/Migration/Documents/2012-2016%20PA%20State%20Plan%20on%20Aging%20w.pdf> Accessed on January 28, 2016.

<sup>4</sup> <http://www.mcall.com/health/mc-why-are-prescription-drug-prices-so-high-in-the-us-20150925-story.html> Accessed on February 29, 2016.

<sup>5</sup> 72 P.S. §§ 402-403.

<sup>6</sup> *Government Auditing Standards*, December 2011 revision, issued by the Comptroller General of the United States, United States Government Accountability Office, Washington D.C.



**PACE and PACENET**

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- Evaluate the PACE and PACENET programs' compliance with the requirement of being the payor of last resort in providing pharmaceutical financial assistance.

**Background Information  
for the Department of Aging**

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The Department was created in 1978 by the General Assembly as the lead agency for the coordination of the commonwealth's administration of federal and state programs for older Pennsylvanians.<sup>7</sup> According to the Department's website:

The Pennsylvania Department of Aging's mission is dedicated to enhancing the quality of life of older Pennsylvanians by empowering diverse communities, the family, and the individual.

The Department accounts for the PACE/PACENET programs' revenues and expenditures in the PACE Fund. The PACE Fund receives most of its revenues from the Pennsylvania Lottery Fund. For fiscal year ended June 30, 2014, the PACE/PACENET program expenditures totaled approximately \$182 million. For fiscal year ended June 30, 2015, the PACE/PACENET program expenditures totaled approximately \$186 million.

**Background Information  
for PACE/PACENET**

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The PACE program,<sup>8</sup> established in 1983,<sup>9</sup> and the PACENET program, established in 1996,<sup>10</sup> are Pennsylvania's prescription assistance programs for older adults, offering financial assistance for prescription medication to qualified residents. These programs

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<sup>7</sup> 71 P.S. § 581-1 *et seq.* (Act 70 of 1978, as amended).

<sup>8</sup> 72 P.S. § 3761-501 *et seq.*

<sup>9</sup> Act 63 of 1983 with operations beginning on July 1, 1984. The original and subsequent PACE provisions are now Repealed at 62 P.S. § 2901 *et seq.* (Act 36 of 1991) and 72 P.S. 3762-301 *et seq.* (Act 128 of 1992). See also 35 P.S. § 5701.2301 (relating to "PACE reinstatement and PACENET expansion") of the Tobacco Settlement Act (Act 77 of 2001, as amended).

<sup>10</sup> 72 P.S. § 3761-519 (Act 134 of 1996, as amended).

## PACE and PACENET

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were created under the State Lottery Law.<sup>11</sup> The Department administers PACE/PACENET through its Bureau of Pharmaceutical Assistance. Additionally, the Department contracts with a vendor to administer many of the day-to-day operations.<sup>12</sup>

To be eligible for PACE/PACENET, residents must be 65 years of age or older and a Pennsylvania resident for at least 90 days prior to the date of application.<sup>13</sup> There are also income eligibility limits which must be met based on the applicant's income in the previous calendar year. Enrollment in 2014 was 125,801 for PACE and 192,351 for PACENET.

The PACE program is available for older Pennsylvanians whose income is at or below \$14,500 for single persons and \$17,700 for married persons. The PACENET program is available for older Pennsylvanians whose annual income is between \$14,501 and \$23,500 for single persons and between \$17,701 and \$31,500 for married persons.

PACE/PACENET can be used with Medicare Part D plans, retiree/union coverage, employer plans, and veterans' benefits. PACE/PACENET is considered the "payor of last resort," meaning PACE/PACENET will only pay benefits after all other applicable prescription plans are considered and applied.

As of the date of this report, the PACE copayments are \$6 for generic drugs and \$9 for brand name drugs. PACENET copayments are \$8 for generic drugs and \$15 for brand name drugs.

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<sup>11</sup> Act 91 of 1971, as amended and renumbered by Act 134 of 1996, *see* 72 P.S. § 3761-101 *et seq.*

<sup>12</sup> Contract #4400007944 with Magellan Medicaid Administration.

<sup>13</sup> Notably, Act 12 of 2014 "established [a] moratorium expiration date for December 31, 2015, preserving the enrollment for 28,000 older adults. This Act also instituted the exclusion of Medicare Part B premium costs from the definition of total income used for income eligibility determination. As of May 2014, 46,000 cardholders retained their enrollment in the Program due to these two provisions of Act 12." See p. 4 <http://www.aging.pa.gov/publications/annual-reports/Documents/2014%20PACE%20Annual%20Report.pdf> Accessed on January 28, 2016.

## PACE and PACENET

## Finding

## 1

**Annual PACE/PACENET program expenditures have decreased approximately 60 percent over the past decade by facilitating program cardholders' enrollment in Medicare Part D prescription plans.**

The federal Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003<sup>14</sup> created a new outpatient prescription drug benefit, Part D of Medicare.<sup>15</sup> Full implementation began in January 2006 when Pennsylvanians were able to enroll in Medicare Part D plans to assist them in paying for prescription medications. Medicare Part D plans have no income eligibility restrictions, but require enrollees to pay monthly premiums.

With the Pennsylvania General Assembly's enactment of Act 111 of 2006, on July 7, 2006,<sup>16</sup> "PACE Plus Medicare" was created whereby PACE and PACENET cardholders could take advantage of both the federal Medicare Part D program and the state PACE/PACENET programs. The Department currently has agreements with 18 Medicare Part D plans available in Pennsylvania in 2016. The following table describes who pays for Medicare Part D monthly premiums (up to the monthly benchmark premium amount of \$35.30 for 2016) for PACE and PACENET cardholders:

#### Who Pays the Medicare Part D Monthly Premiums?

Type of Medicare Part D Plan	PACE Cardholder	PACENET Cardholder
Department has an agreement with a Plan.	Premium paid by PACE.	PACENET initially pays the premium, but seeks reimbursement from the cardholder at the pharmacy, referred to as the Medicare Part D "clawback."
Department does not have an agreement with a Plan.	Premium paid by the cardholder directly to the Medicare Part D plan.	Premium paid by the cardholder directly to the Medicare Part D plan.
Not enrolled	Not applicable	Cardholder pays monthly benchmark premium amount to PACENET at the pharmacy, referred to as a "deductible."

<sup>14</sup> Pub. L. No. 108-173, 117 Stat. 2066 (2003).

<sup>15</sup> 42 U.S.C. § 1395w-102 *et seq.*

<sup>16</sup> Act 111 added Subchapter C to Chapter 5 (PACE Program) of the State Lottery Law and took immediate effect.

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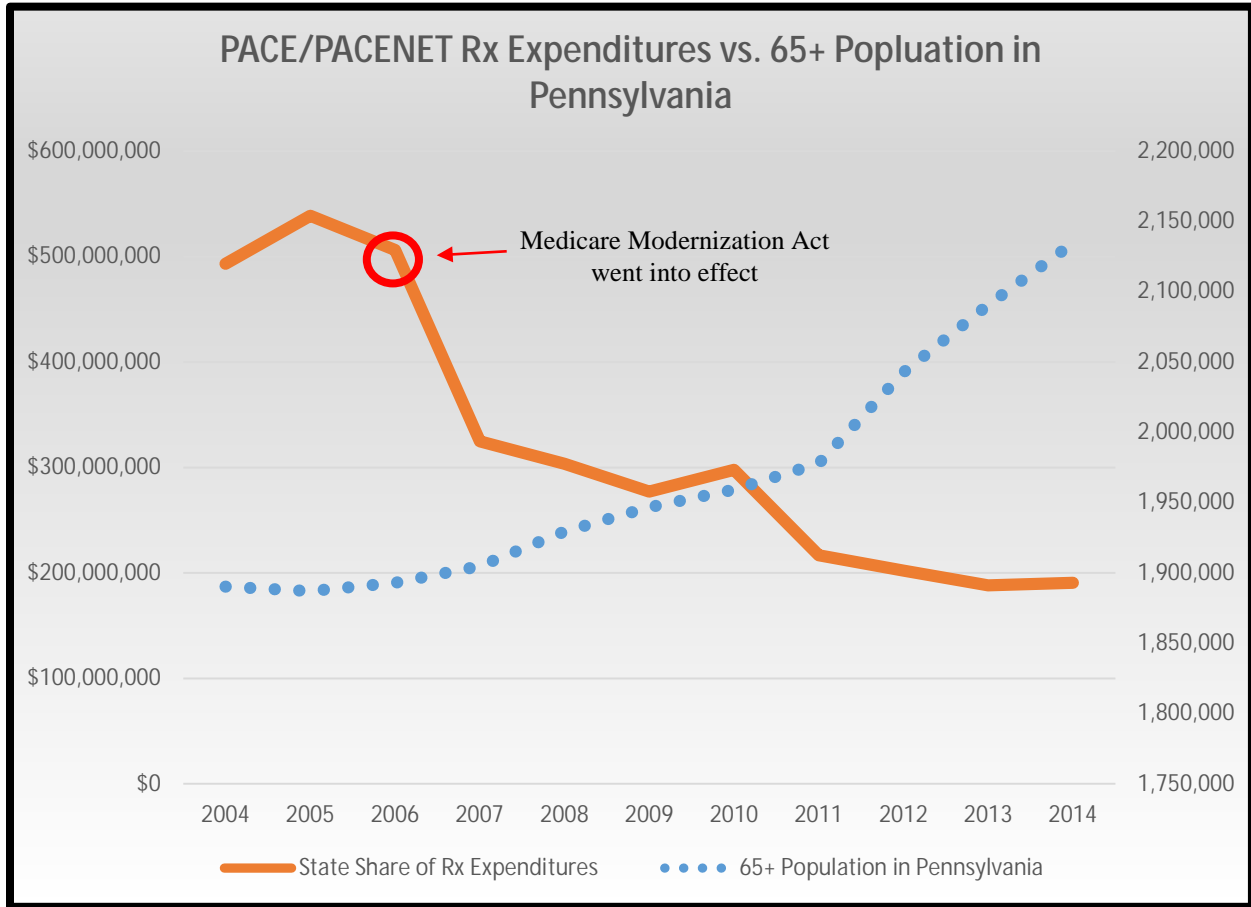
By assisting and enrolling PACE and PACENET cardholders into Medicare Part D prescription plans, the Department shifted the majority of the financial burden for prescription drug coverage from Pennsylvania to the federal government. This has resulted in significant savings for the PACE and PACENET programs because, per the Pennsylvania State Lottery Law, PACE or PACENET coverage is required to be the payor of last resort.<sup>17</sup> In other words, PACE/PACENET coverage begins only after consideration of an enrollee's Part D coverage and/or any private insurance maintained by the enrollee.

According to unaudited expenditure amounts in the PACE annual reports to the general assembly, since the enactment of the Medicare Modernization Act of 2003, approximately 60% of PACE/PACENET's annual costs have been shifted to the federal government. PACE/PACENET expenditures went from a high of \$538.7 million in calendar year 2005 to \$190.7 million in 2014. The graph below illustrates the decrease in PACE/PACENET's expenditures and the increasing 65 and older population in Pennsylvania during the past decade, particularly with the leading edge of the 18-year long baby boom generation turning 65 beginning in 2011:

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<sup>17</sup> 72 P.S. § 3761-531 *et seq.* and particularly, 72 P.S. § 3761-534 (relating to Coordination of benefits).

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Source: PACE Annual Reports 2004-2014 and the United States Census Bureau. The PACE annual reports were not audited.

In conclusion, it is our belief that these efficiencies will allow the Department to properly fund the PACE/PACENET programs into the future even with the continuation of more and more baby boomers turning 65 and potentially becoming eligible for the PACE/PACENET programs. However, it is important for the Department to monitor ongoing PACE/PACENET expenditures as well as Lottery Fund revenues, which are used to fund these programs, to ensure the PACE/PACENET programs have sufficient resources to operate as designed.

Further, as part of our audit, we have identified other related areas that could potentially further save the Department additional monies. These areas are contracting, pharmacy audits, and lack of oversight by the Pharmaceutical Assistance Review Board. We present our concerns related to these areas in Finding #2, Finding #3, and Finding #4, respectively.

## PACE and PACENET

## Finding 2

**The Department of Aging did not allow critical program support activities to be competitively bid and allowed verbal changes to a subcontract.**

**RFP identified which entities the prime contractor had to subcontract with for critical program support activities**

The Department of Aging (Department), through its Bureau of Pharmaceutical Assistance, is statutorily<sup>18</sup> required to prepare a request for proposal (RFP), as needed, for the purpose of providing pharmaceutical assistance for the elderly of the commonwealth. From this RFP process, the commonwealth's Department of General Services (DGS) bid and negotiated the contract with a prime contractor (contractor) for the period of July 1, 2011 through June 30, 2017 and then turned the contract administration back over to the Department.<sup>19</sup> The RFP stated that the Department "has arrangements with entities that provide critical program support activities" and necessitated the prime contractor to enter into agreements (subcontracts) with these entities for the same time period. The six entities and their functions are shown in Table 1:

**Table 1**

Subcontractor Name	Subcontract Purpose	Stated Per Year Contract Amount
AuditMaxx	Pharmacy Audits	\$710,000 <sup>20</sup>
Harvard Medical School	Academic Detailing <sup>21</sup>	\$1.5 million
University of PA Medical School	Cardholder behavioral health assessment <sup>22</sup>	\$716,190
Health Management Systems (HMS)	Third-party liability recovery	\$1,284,000 <sup>23</sup>
Benefits Data Trust (BDT)	Outreach and enrollment	\$2,398,359
Dr. Roger Cadieux	Physician Consultant Services	\$25,000

<sup>18</sup> 72 P.S. § 3761-508. Section 508(b) of the Act states "(b) Additional requests for proposals.--To provide for the continued operation of the program, the department shall prepare, **as needed**, requests for proposals, in addition to that set forth in subsection (a), for the purpose of providing pharmaceutical assistance for the elderly within this Commonwealth." [Emphasis added.]

<sup>19</sup> Magellan Medicaid Administration. Contract #4400007944.

<sup>20</sup> Contract amount is understood to be maximum. Subcontractor is paid \$2,500 per completed audit.

<sup>21</sup> Provides for prescriber education about the drugs they prescribe.

<sup>22</sup> Phone-based research of cardholders starting a new psychiatric medicine.

<sup>23</sup> Contract amount is understood to be maximum. Subcontractor is paid 6.75% of recoveries made.

**PACE and PACENET**

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However, requiring the prime contractor to subcontract with specific entities circumvents the competitive bidding process. In response to our question as to why the Department preselected the subcontractors and why the prime contractor was not required to issue an RFP to allow for entities to competitively bid for the critical program support activities, PACE/PACENET officials stated the following:

These unique core activities were features requiring specialized services which were not likely to result in any creditable bids from any other entity. Furthermore there were no protests following the 2010 rebid of the [prime] contract and no entity has ever come forward to express interest in providing PACE with any of these services.

We disagree with the Department's reasoning. For example, in the 2014 annual report of the third-party liability recovery subcontractor, the subcontractor indicated that there were new and existing competitors that can competitively compete for business. The report stated:

Many of the cost containment services we provide are being targeted by formidable competitors with national reputations, and their success in attracting business or winning contract bids could significantly and/or adversely affect our business...We cannot provide assurance that we will be able to compete successfully against existing or new competitors.

We also asked how long each of the subcontractors in Table 1 has been providing these services for PACE/PACENET and how the contract dollar amounts were determined. PACE/PACENET officials responded that five of the six subcontractors (excluding the physician consultant services minor contract) have been providing these services since as early as 2004 and as late as 2008. Regarding how the contract dollar amounts were determined, officials stated the following:

Each organization submitted reasonable budgets that were evaluated and negotiated...a collective determination was made by all parties involved...that these budgets were in conformity with best practices and of benefit to PACE...

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However, negotiating with only one entity to perform a specific service is not the same as competing with other entities for the same service. In the first situation, the entity needs to convince the Department that the entity's price is reasonable. In the second situation, the entity has to propose a price that, in most circumstances, is the lowest of the competitive bidders; then, when a potential subcontractor has been selected, there may be additional price negotiations that occur. This competitive process should ensure that the services are provided at the best price available.

Additionally, continuing to use the same subcontractors for several years, without a regular process to check pricing, may not ensure that the commonwealth is receiving the best services or the most competitive price. New entities or other existing entities may have developed new methodologies, technology, etc. that was not available 10 years ago. However, because the Department required the prime contractor to subcontract with the same entities that were already providing these services, there was no opportunity to explore whether there was anything better. Therefore, the Department should have ensured that the RFP required the prime contractor to competitively bid for these critical program support activities.

### **Questionable contract management practices involving the subcontract for pharmacy audit services**

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As noted above, pharmacy auditing services is one of the six critical program support activities of the PACE/PACENET programs. Pharmacy audits provides a limited view of whether pharmacies are complying with industry regulations and PACE/PACENET guidelines, as well as provides some assurance that PACE/PACENET cardholders are receiving the pharmaceuticals that PACE/PACENET programs are paying for.

We obtained a copy of the contract between the auditing services subcontractor and the prime contractor. The original contract, dated August 4, 2004, was extended until June 30, 2017, per a contract amendment dated August 22, 2011. The original contract specified that pharmacy audits be simultaneously conducted for a total of four groups of prescription programs, including PACE/PACENET as one program. In other words, when the subcontractor audited a pharmacy, they would conduct auditing



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procedures to encompass the PACE/PACENET programs along with programs from other Commonwealth agencies. However, effective May 30, 2012, this subcontractor was no longer required to perform audit procedures for two of the four groups that were not related to the PACE/PACENET programs, but the price per pharmacy audit was not reduced, as shown in Table 2.

**Table 2**

Program Group Name	Cost of Audit performed per contract	Audit performed after May 30, 2012?	Presumed audit cost after May 30, 2012
PACE/PACENET	\$850	Yes	\$850
Medicaid-Fee for Services	\$950	No	\$0
Medicaid-Healthchoice	\$350	No	\$0
PEBTF, SPBP, and CRDP <sup>24</sup>	\$350	Yes	\$350
Total	\$2,500	-	\$1,200
Total Paid by PACE Per Pharmacy Audit	\$2,500	-	\$2,500

According to the PACE/PACENET officials, the total cost per pharmacy audit was not reduced after May 30, 2012, and continued at \$2,500 because these programs were audited by the subcontractor “at no additional cost.” However, as noted in Table 2, according to the original contract, the cost of the Medicaid-Fee for Services’ program group audit procedures was \$950 each and the cost of the Medicaid-Healthchoice’s program group audit procedures was \$350 each, or \$1,300 for both. Therefore, we do not believe that the “no additional cost” statement is reasonable.

Further, and potentially more concerning, was that this reduction in the number of program groups audited was agreed to verbally and not formally documented in an amendment to the contract. According to PACE/PACENET officials, “written documentation is not available as this change was discussed and agreed to in a previous audit task force meeting.” However, changing contracts verbally is a very poor business practice and is inconsistent with the intent of the Commonwealth Procurement Code and the DGS’ *Procurement Handbook*. We also confirmed with DGS officials that verbal changes to the contract are never acceptable.

<sup>24</sup> The Pennsylvania Employees Benefit Trust Fund (PEBTF) audits are no longer performed but the Special Pharmaceutical Benefits Program (SPBP) and the Chronic Renal Disease Program (CRDP) audits are still performed.

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### **Recommendations**

We recommend that the Department and PACE/PACENET officials:

1. In conformity with the DGS' *Procurement Handbook*, require a competitive bidding process be used to contract for the six critical program support activities either by the Department or the prime contractor during the next contract period.
2. Consider removing the requirement for the prime contractor to subcontract for critical program support activities from the RFP for the prime contractor for the next contract period and then contracting directly for the critical program support activities, including pharmacy auditing services.
3. Immediately discontinue making verbal changes to any contract or subcontract and ensure that all contract and subcontract changes are formally documented in writing and consistent the DGS' *Procurement Handbook* in an amendment.
4. Negotiate with the prime contractor to amend the auditing services subcontract to reflect the reduction in the number of prescription program groups audited as part of each pharmacy audit, including reducing the \$2,500 cost per pharmacy audit based on fewer programs audited.

**PACE and PACENET****Finding 3****The Department of Aging failed to adequately monitor the performance of pharmacy audits conducted by the auditing services' subcontractor.**

As noted in Finding 2, pharmacy auditing services is one of the critical program support activities of the PACE/PACENET programs. The prime contractor subcontracts for these services; however, based on our inquiries, the Department of Aging (Department) has taken on the responsibility for overseeing and monitoring the pharmacy auditing services' subcontractor (subcontractor).

We found that the Department takes a hands-off approach to overseeing and monitoring the subcontractor. Based on the Department's responses to our inquiries, the PACE/PACENET officials do not concern themselves with the details related to how the audits were performed or whether they were performed correctly. Instead, PACE/PACENET officials mainly focus on the amount of money that is recovered by each audit as reported to PACE/PACENET officials in bi-monthly meetings with the subcontractor. This passive approach to monitoring does not ensure that the audits are being performed as intended or the results are accurate.

We found several deficiencies related to overseeing and monitoring pharmacy audits as described below.

**PACE/PACENET officials were not aware that the number of pharmacy audits conducted did not meet contract requirements**

According to the pharmacy auditing services subcontract, it is estimated that 34 pharmacy audits will be completed each month. The PACE/PACENET officials confirmed in writing that 34 audits were, in fact, being performed each month. However, when we counted the number of audits completed for the fiscal year ended June 30, 2014, there was an average of only 22 audits completed per month. Additionally, we found that for the period July 1, 2014 through June 3, 2015, there was an average of only 24 audits completed per month.

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We inquired further regarding the number of audits performed per month in a meeting with both PACE/PACENET officials and the subcontractor. PACE/PACENET officials initially disagreed with us on the average number of audits performed by the two person subcontractor being far short of the expected 34 audits per month. However, when the officials confronted the subcontractor, it confirmed our counts, stating that it does not have the manpower to complete 34 audits per month.

Basic contract monitoring procedures should include ensuring that the Department is receiving the deliverables defined in the contract. In this case, the subcontractor was estimated to complete 408 pharmacy audits per year (34 times 12). However, only 268 audits were completed during the fiscal year ended June 30, 2014, and only 264 audits were completed during the period July 1, 2014 through June 3, 2015. Given that there are approximately 3,000 pharmacies in Pennsylvania, not conducting the estimated number of audits each year would add additional years to the cycle of having all pharmacies audited.

Further, when we inquired if the PACE/PACENET officials kept track of which pharmacies have been audited, PACE/PACENET officials stated the subcontractor “assumes the responsibility of tracking and maintaining a database of all providers that have been audited.” However, PACE/PACENET officials should be overseeing this process to ensure that the selection process is appropriate and that all pharmacies are eventually selected for audit.

### **Subcontractor lacks adequate written procedures for conducting the pharmacy audits and needs to improve its auditing process**

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The pharmacy auditing services subcontract did not include specific information regarding how audits were to be conducted. As a result, we requested the subcontractor’s written procedures on its audit process. Although PACE/PACENET officials and the subcontractor agreed that there are no written procedures identifying the audit procedures used to conduct the pharmacy audits and no written procedures as to how claims are selected for testing, the subcontractor provided an untitled booklet that

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contained a brief history of the subcontractor, the current regions of the state where pharmacies were being selected for audit, and sample documents used during a provider audit. It would have been a good business practice for the Department to require the subcontractor to document its auditing procedures and to provide those procedures to the Department for review and approval. Without such review and approval by the Department, the Department lacked assurance that the audits were designed to meet the objectives and expectations of the Department.

In order to better understand the pharmacy auditing process, we observed the subcontractor performing an audit of a pharmacy. An average pharmacy audit requires only a few hours to complete on-site and is usually performed by only one or two auditors. The subcontractor generally performs two pharmacy audits in a day. We noted the following two deficiencies in the audit procedures performed by the subcontractor:

- Ø Although the subcontractor tests 200 prescription claims for compliance with laws and regulations, we found that the subcontractor only verified the patient signature for 14 of the 200 prescription claims. According to PACE/PACENET officials, the practice of only verifying 14 signatures has been in place for several years and the audit process to review 200 signatures is too time consuming, particularly if the signatures are not electronic.

However, our observation revealed that the review of 14 signatures only took a few minutes because pharmacy representatives simply printed the signatures from their database for the subcontractor. Therefore, testing of 200 patient signatures can easily be performed in a timely manner when electronic signatures are maintained, which is becoming much more commonplace.

By not reviewing the patient signature for each of the 200 prescriptions selected, we believe there is an increased risk of fraud or abuse by the pharmacy. This is because currently accepted pharmacy billing practices allow the pharmacy to bill for prescriptions immediately when filled without waiting for the patient to sign and pick up the prescription. Therefore, verifying that the patient signature is available and appears reasonable is a crucial audit procedure for determining compliance and potentially uncovering fraud or abuse.

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- Ø About two weeks prior to the audit services subcontractor's arrival at a pharmacy to perform the audit, the subcontractor sends the pharmacy a list of 20 prescriptions and the related drug manufacturer that had been submitted as a PACE or PACENET claim and requests the pharmacy to have the associated invoices available for review when the subcontractor arrives to conduct the audit. Our review of the subcontractor's results of this audit procedure for the audits conducted during the period July 1, 2013 through June 3, 2015, disclosed that 17.9% of these reviews had a 100% error rate.

According to PACE/PACENET officials, in most cases these "errors" are simply because the pharmacy could not locate the drug manufacturers' invoices to support the drug purchases matching the prescription claim. The resolution of these errors is that PACE/PACENET recovers the entire amount of the corresponding prescription claims from the pharmacy. In response to our inquiry regarding why this is a systemic problem, PACE/PACENET officials stated that the problem is mostly with the large chain pharmacies and that they believe that it is a corporate issue that they can do nothing about.

We disagree and believe steps, such as increasing the sample size, would eventually force the large pharmacy chains to remedy the situation because PACE/PACENET would be recovering the entire amount of a larger number of prescription claims from the pharmacies that do not provide the documentation requested.

**Inadequate corrective action procedures for addressing errors identified in the pharmacy audits**

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We noted a deficiency with regard to PACE/PACENET's procedures for requesting corrective action from pharmacies that had errors identified during their on-site pharmacy audit. After the audit is complete and any related errors validated, PACE/PACENET officials send a letter summarizing the results of the audit and the dollar amount, if any, to be recovered by PACE/PACENET. The letter gives the provider three options for responding:

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- Option 1** – Provider agrees with findings and is to include a statement of corrective action to correct the deficiencies.
- Option 2** – Provider disagrees with the finding and can provide an explanation and documentation to support the disagreement.
- Option 3** – Provider does not respond within 30 days; therefore, the provider is presumed to agree with the findings.

Based on unaudited summary information provided by the PACE/PACENET office, only about one percent of providers chose option #1 during our audit period. We requested and obtained the documentation and correspondence for one sample provider that chose option #1 and found that their response letter simply states that they intend to take corrective action, but does not provide details as required. In a response letter back to the provider, PACE/PACENET officials do not request the provider to give details of their corrective actions, but simply thanks the provider for informing PACE/PACENET that they will take corrective action. At this point, PACE/PACENET considers the case closed.

Over 60 percent of providers choose option 3, which does not require them to provide a statement of corrective action. It appears that PACE/PACENET officials prioritize recovering the dollar money identified in the audit and are less concerned about the providers correcting identified deficiencies. However, failing to require a written corrective action statement and failing to follow up may be costing PACE/PACENET money, since the average time between audits at individual pharmacies is over 10 years. In other words, if the identified deficiencies continue and are not corrected, PACE/PACENET would be losing money for the next 10 years. Also, since an audit is only looking back at activity for the past 18 to 20 months, there could be over eight years of deficiencies never detected and recovered.

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### **Recommendations**

We recommend that the Department and PACE/PACENET officials:

1. Negotiate with the prime contractor and the auditing services' subcontractor to amend the subcontract to require the subcontractor to develop written audit procedures, including the methodology for selecting pharmacies to audit, and to submit them for approval by the Department and PACE/PACENET officials.
2. Pro-actively monitor the pharmacy audits conducted by the auditing services' subcontractor. This would include, but not be limited to, the following:
  - a. Reviewing and approving the subcontractor's written audit procedures used to conduct the pharmacy audits.
  - b. Reviewing the approval of the methodology for selecting pharmacies to be audited and ensuring that all pharmacies are audited on a cyclical basis.
  - c. Ensuring that the required number of audits are routinely being conducted in accordance with the subcontract.
  - d. On a sample basis, review the auditing documentation to ensure that the audits are being conducted in accordance with the written procedures and the results are accurate.
3. Require the subcontractor to review the patient signature for each of the 200 sample claims reviewed during the pharmacy audits.
4. Work with the subcontractor to develop procedures to address the high error rates identified during the drug manufacturer invoice review audit procedure.
5. Implement procedures as soon as possible to have pharmacies submit corrective action procedures in response to their audit findings and follow-up with these pharmacies to ensure the corrective action has been implemented.



**PACE and PACENET****Finding 4****The Department of Aging permitted the PACE and PACENET programs to operate without the oversight of the Pharmaceutical Assistance Review Board.**

The Pennsylvania State Lottery Law<sup>25</sup> that established the Pharmaceutical Assistance Contract for the Elderly program (PACE) also created the Pharmaceutical Assistance Review Board (PARB).<sup>26</sup> The PARB was “established by the act in order to help ensure the continuing efficiency and effectiveness of the PACE Program.”<sup>27</sup> The PARB was designed to be a valuable asset to the Pennsylvania Department of Aging (Department) in their administration of the PACE program and the subsequently created PACE Needs Enhancement Tier (PACENET) program.

Per the Pennsylvania State Lottery Law, the PARB is to have a total of eight members: The Secretary of the Department of Aging (PARB chairperson), the Secretary of Revenue, the Secretary of Health, and five public members.<sup>28</sup> Additionally, the PARB is required to meet at least two times per year.<sup>29</sup>

**Virtually no PARB oversight or involvement in the past three years**

With regard to the requirement for PARB meetings to occur two times a year, we found the following:

Calendar Year	No. of meetings held
2013	0
2014	2
2015	0

<sup>25</sup> Chapter 5 of the State Lottery Law, 72 P.S. § 3761-501 *et seq.* (Act 134 of 1996, as amended.)

<sup>26</sup> 72 P.S. § 3761-520. Act 63 of 1983 PACE provision pertaining to PARB within 62 P.S. § 2901 *et seq.* (Act 36 of 1991) and 72 P.S. 3762-301 *et seq.* (Act 128 of 1992) were replaced and repealed by Act 134.

<sup>27</sup> 6 Pa. Code § 22.2.

<sup>28</sup> The five public members are to be appointed as follows: “... one appointed by the President pro tempore of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the House of Representatives and one appointed by the Governor. Those appointed by the legislative officers shall include two senior citizens who have not been a part of the pharmaceutical industry to serve as consumer advocates, one representative of the pharmaceutical industry and one practicing PA pharmacist. The Governor appointee must be a physician.” *See* 72 P.S. § 3761-520(b).

<sup>29</sup> *See* 72 P.S. § 3761-520(d).

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Department personnel indicated that due to PARB vacancies meetings were not held in 2013 and 2015. The only meetings that occurred in 2014 were held on April 16 and December 3. The 2014 meetings’ minutes indicated that the meetings appeared to be mostly a presentation of the PACE Annual Report highlights and other program initiatives by the Director of the PACE/PACENET programs with little or no input by PARB members. However, as described in the next section, the PARB has several important statutorily-required roles to include operational and oversight roles with regard to the PACE/PACENET programs that have not occurred for at least the last three years.

**The Department is not complying with statutory requirements for ensuring the efficiency and effectiveness of the PACE/PACENET programs**

PACE/PACENET officials represented to us that in administering the programs they do not routinely consult with the PARB and referred to the PARB as a “passive advisory board.” We disagree with this interpretation that the PARB is simply a passive advisory board.

According to the Pennsylvania State Lottery statute and implementing regulations, some of the PARB’s roles include the following:

Ensure the PACE/PACENET programs are providing and continue to provide the assistance intended in a fiscally responsible manner.
Help ensure the continuing efficiency and effectiveness of the PACE/PACENET programs.
Conduct an annual review of the PACE/PACENET program.
Develop recommendations about copayments, deductibles, or fees.
Regularly review the Department’s therapeutic drug utilization review program.
Direct the Department to enter into discussions with the private contractor concerning amendments to the contract.
Consult with the Department about changes to the national drug pricing system now in use.

These roles are significant to ensuring the PACE/PACENET programs are operating efficiently and effectively. Providing

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such oversight would be fiscally responsible and well beyond what would constitute a “passive advisory board.” Conducting an annual review of the PACE/PACENET program would be very beneficial to ensuring the program is functioning as designed and would allow an ongoing avenue for improving operations.

Rather than allowing PACE/PACENET officials to consider the PARB to be “passive,” the Department secretary/PARB chairperson should be proactive in encouraging the filling of the PARB vacancies and ensuring that the PARB meetings commence as required or even more often, if appropriate. More importantly, the Department secretary/PARB chairperson should ensure that the PARB properly fulfills its roles and duties. Further, the Department should be consulting and discussing issues with the PARB. For example, it would be to the Department’s benefit to discuss contracting for pharmacy auditing services for the PACE/PACENET programs with the PARB because of the issues reported in Finding 1.

As a result of the PARB not performing its duties, there is a lack of independent oversight and monitoring that should be taking place. The issues identified in this audit report may have been prevented if the PARB was fulfilling its roles.

**The PARB’s meetings have violated the Sunshine Act**

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The Pennsylvania General Assembly created the Sunshine Act<sup>30</sup> in order to ensure the public had access to government forums and decision making. The General Assembly found:

. . . the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of the agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.<sup>31</sup>

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<sup>30</sup> 65 Pa.C.S. § 701 *et seq.*

<sup>31</sup> 65 Pa.C.S. § 702(a).

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Under the Sunshine Act, a Commonwealth agency, including a public board such as the PARB, is required, in part, to:

- Give public notice in a newspaper of general circulation.<sup>32</sup>
- Post a notice about meetings at the office of the agency, or meeting location.<sup>33</sup>
- Give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of that meeting and give public notice of the schedule of its remaining regular meetings.<sup>34</sup>

We found that the Department is not following statutory requirements related to providing proper public notices under the Sunshine Act for the PARB meetings. When we requested documentation for evidence of public notices, Department officials stated “in checking with the Press Office no records exist of such notices for PARB meetings.”

Department officials did provide us with a “PARB Public Announcement List,” which contained only seven individuals representing the aging and pharmaceutical communities who were directly notified of PARB meetings by the PACE/PACENET program office. We do not consider this to be in compliance with the intent of the Sunshine Act for providing public notice. Without proper public announcements, it would not be possible for the general public to even be aware of the PARB meetings, let alone participate.

### **Similar findings came out of a 1993 Legislative Budget and Finance Committee audit report**

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We reviewed a 1993 Legislative Budget and Finance Committee (LBFC) performance audit of the PARB. While the report is more than 20 years ago, we noted that LBFC’s findings were similar to our findings. Examples of similar findings include: vacancies on the PARB, meetings not being held, and no proper public announcements. The LBFC report also expressed that the PARB should perform an important role for the PACE program.

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<sup>32</sup> 65 Pa.C.S. §§ 703, 709.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

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While we did not analyze data in the 20 years between the LBFC audit report release and our audit period, we find it alarming that similar findings were reported dating back to 1993.

### **Recommendations**

We recommend that the Department and the chairperson of the PARB:

1. Immediately take steps to ensure it meets statutory requirements by holding two PARB meetings per year.
2. Advocate to the responsible appointing parties to fill the current PARB vacancies.
3. Discuss and consult with the PARB on appropriate PACE/PACENET program matters.
4. Encourage the PARB to be actively involved in more oversight and decision-making for the PACE/PACENET programs and fulfill its roles as intended by the State Lottery Law.
5. Ensure that all requirements under the Sunshine Act are followed, including the posting of public announcements.

**PACE and PACENET****Finding 5****The Department of Aging has designed a process to ensure compliance with the payor of last resort requirement.**

Pennsylvania's State Lottery law<sup>35</sup> states that the primary payor of prescription drug assistance for the elderly shall be the Medicare Part D Plan or the Medicare Advantage Prescription Drug Plan. Also, implementing regulations<sup>36</sup> state that the PACE/PACENET programs will accept responsibility only for costs not covered by the claimant's other prescription drug benefit program, which would include any private insurance maintained by the claimant. One of our audit objectives was to evaluate whether the Department of Aging (Department) was in compliance with this requirement of the PACE/PACENET programs being the payor of last resort in providing pharmaceutical financial assistance.

We found that the Department, through its primary contractor, utilizes the services of a subcontractor<sup>37</sup> to review every transaction in which PACE or PACENET provides prescription financial assistance. The subcontractor maintains a database of individuals and their prescription insurance and queries every transaction to identify possible transactions where PACE or PACENET paid a claim when a third party insurer should have made payment before PACE or PACENET.

When the subcontractor identifies these third party liability transactions, it automatically generates and mails a third party liability claim to the insurer on behalf of PACE or PACENET. The insurer, in accordance with its signed agreement with the subcontractor, then mails a check and the related claim information directly to the PACE/PACENET office. The PACE/PACENET office personnel then perform reconciliation procedures to ensure that all checks are accounted for and properly deposited back into their accounts. The subcontractor is paid a percentage based on recoveries made and received by the PACE and PACENET programs.

We obtained an understanding of this process and performed a walkthrough of the PACE/PACENET office's process of tracking, reconciling, depositing, and posting claim

<sup>35</sup> 72 P.S. § 3761-534.

<sup>36</sup> 6 Pa. Code § 22.11(h)(6).

<sup>37</sup> Health Management Systems (HMS).

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reimbursements from third party insurers. Based on our test work, it appears that the process is designed to ensure that the programs are in compliance with the payor of last resort requirement.

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## **Agency's Response and Auditors' Conclusions**



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We provided draft copies of our audit findings and related recommendations to the Department of Aging for its review. On the pages that follow, we included the Department's response in its entirety. Following the agency's response is our auditors' conclusions.

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**Audit Response from Department of Aging**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGING

March 25, 2016

Janet B. Ciccocioppo, CPA  
Director, Bureau of Performance Audits  
Department of Auditor General  
302 Finance Building  
Harrisburg, PA 17120-0018

Dear Ms. Ciccocioppo:

As a follow-up to our March 17, 2016 exit conference regarding the special performance audit of the Pharmaceutical Assistance Contract for the Elderly (PACE/PACENET) Program, the following serves as the Department of Aging's response to the noted findings and recommendations.

We concur with findings 1 and 5 and thank you for your comments.

**Finding 2 – Recommendation 1**

Agree. However, the DGS Procurement Handbook does not prohibit the practice of the pre-designation of subcontracts. The pre-designation of the PACE subcontracts was a carefully considered business decision that was reaffirmed at the time of the 2010-11 PACE reprocurement, based upon earlier decisions resulting in amendments under 2002-11 PACE contract. As was the case in the most recent PACE reprocurement, these decisions will be re-evaluated with DGS prior to the next reprocurement.

**Finding 2 – Recommendation 2**

Agree. Due to the integrated nature of the critical program support activities with the core contract activities, it continues to be more effective and efficient to consolidate the critical program support activities with the prime contract. We will in consultation with DGS likely revisit this issue and determine if we might do things differently in the future.

**Finding 2 – Recommendation 3**

Agree. The prime contractor is in the process of amending the subcontract, accordingly.

**Finding 2 – Recommendation 4**

Agree. The prime contractor is in the process of amending the audit service subcontract to specify that the cost of pharmacy audits is not based on the number of pharmacy program groups audited; rather it's based on the number of claims audited. The \$2,500 cost per pharmacy audit has always been based on a two hundred prescription claim sample.

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**Audit Response from Department of Aging**

Finding 3 – Recommendation 1

Agree. The subcontractor has developed written audit procedures that have been approved by PACE staff. These procedures document the protocols and practices that have been followed since the subcontractor began work with PACE in 2002.

Finding 3 – Recommendation 2

Agree. PACE staff will continue to pro-actively review and evaluate the pharmacy auditing activity. In addition, the PACE Provider Audit Manual has been updated and expanded to detail the procedures used in the conduct of the pharmacy audit. Separately, a written methodology has been completed for the selection of pharmacies to be audited, as well as, a written methodology for determining the most appropriate sampling of the PACE provider network. Auditing documentation will continue to be reviewed bi-monthly to ensure that the audits are complete, accurate and in conformity with the written protocols and practices.

Finding 3 – Recommendation 3

Agree. PACE will look to increase the sample size of signatures for claims.

Finding 3 – Recommendation 4

Agree. We have doubled the sample of claims that require proof of income.

Finding 3 – Recommendation 5

Agree. Procedures have been implemented to ensure that all pharmacy audit candidates agree to corrective action steps with regards to the audit findings. Where necessary and feasible, steps will be taken to ensure compliance with the corrective action plan.

Finding 4 – Recommendation 1

Agree.

Finding 4 – Recommendation 2

Agree.

Finding 4 – Recommendation 3

Agree.

Finding 4 – Recommendation 4

Agree, in part. Please note that the statutory language (72 P.S. §3761-520 Board) establishing the board only enables the board to review and recommend and does not authorize oversight. The board shall develop recommendations (using the annual report submitted under §3761-2102) concerning any changes in the level of copayment, deductible or in the level of fees paid to participating pharmacists. The board shall review our PDA Program therapeutic drug utilization review program on an ongoing basis (when it meets as an advisory body under §3761-520(d) – at least two times per year). The board may also recommend other changes in the structure of the program and direct the PDA Program to enter into discussions with the private contractor concerning amendments to the contract, or the PDA Program may enter into such discussion if it deems necessary. The copayment or deductible schedule shall only be adjusted on an annual basis.

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**Audit Response from Department of Aging**

Finding 4 – Recommendation 5  
Agree.

Thank you for bringing the noted findings and recommendations to our attention.

Respectfully,



Teresa Osborne  
Secretary

**PACE and PACENET**

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**Auditors' Conclusions to Department of Aging's Response**

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Overall, the Department of Aging (Department) agreed with the report's findings, and it has agreed to implement most of the recommendations contained herein. We are pleased with the Department's cooperative attitude in addressing our concerns. However, with regard to the Department's response, the following items require further clarification:

- 1. The Department's pre-designation of subcontracts (Finding 2).**

The Department's response states they agree with this finding but notes that the Commonwealth's *DGS Procurement Handbook* does not prohibit the practice of pre-designation of subcontracts. Although the *Procurement Handbook* does not technically disallow this practice, our concerns, as stated in Finding 2, remain relevant and essential. These concerns are that the Department not only pre-designated six subcontracts for critical program support activities through the prime contractor, but also pre-designated the six subcontractors that were to be utilized to provide these services, thereby circumventing the competitive bidding process which is the crux of the *Procurement Handbook*. Again, we strongly encourage the Department to require a competitive bidding process to be used for these six critical program support activities.
- 2. The Department's monitoring of pharmacy audits (Finding 3).**

The Department's response states they agree with this finding and our recommendations. However, the Department's response specific to recommendation 2 states that auditing documentation will continue to be reviewed bi-monthly to ensure the audits are complete, accurate, and in conformity with the written protocols and practices. It should be noted that this bi-monthly review performed by PACE/PACENET officials only includes a big-picture summary review of the audits completed during the bi-monthly period. However, our recommendation 2.d. is intended to ensure that PACE/PACENET officials review, on a sample basis, the actual prescription claim documentation obtained by the auditing services subcontractor when they visited the pharmacy to perform the audit, to ensure the subcontractor is following written procedures and to ensure the conclusions they are reaching are accurate. This would include monitoring procedures that did not previously occur during the Department's bi-monthly review.

**PACE and PACENET****Auditors' Conclusions to Department of Aging's Response**

- 3. The Department's comments about the PARB's statutory roles (Finding 4).** The Department's response states that it "Agrees, in part" with our recommendation 4 to encourage the PARB to be actively involved in more oversight and decision-making for the PACE/PACENET programs by refuting that the statutory language authorizes an oversight role. However, as noted in the finding, the PARB's statutory role includes, but is not limited to, **ensuring** the PACE /PACENET programs are providing and continuing to provide the assistance intended in a fiscally responsible manner; and to help ensure the continuing efficiency and effectiveness of the PACE/PACENET programs. These critical duties should not be seen as advisory in nature but rather as an active oversight role. The word "ensure" indicates something actively to do, rather than just merely a passive "advisory" role. Additionally, the role of conducting an annual review of the PACE/PACENET programs is a monitoring or oversight function, which did not take place during the audit period. Further, the statutory language provides that the PARB may also recommend other changes in the structure of the program and **direct** the Department to enter into discussions with the private contractor concerning amendments to the contract.

Finally, we note that based on a performance audit conducted by the Legislative Budget and Finance Committee more than 20 years ago, which expressed that the PARB has an important role for the PACE program, it is high time for Department of Aging management and PACE program staff to become more proactive in:

- Ø Recommending that the PARB board member appointments be made on a regular basis.
- Ø Ensuring that all of the PARB's statutory duties are being met.

In closing, we again recommend that the Department encourage the PARB to be actively involved in more oversight and decision-making for the PACE and PACENET programs and fulfill its roles as intended by the State Lottery Law.

**PACE and PACENET****Appendix A****Objectives, Scope, and Methodology**

The Department of the Auditor General conducted this special performance audit in order to assess the Department of Aging's (Department) administration of the Pharmaceutical Contract for the Elderly (PACE) and PACE Needs Enhancement Tier (PACENET) programs.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**Objectives**

Our performance audit objectives were as follows:

- Determine the effectiveness of the PACE and PACENET programs in fulfilling their purpose of providing pharmaceutical financial assistance for qualified state residents that are in need of such assistance both now and in the long term. (See Findings 1 to 4)
- Evaluate the PACE and PACENET programs' compliance with the requirement of being the payor of last resort in providing pharmaceutical financial assistance. (See Finding 5)

**Scope**

This audit report presents information for the period of July 1, 2013, through November 9, 2015, unless otherwise indicated, with updates through December 21, 2015.

The Department's management is responsible for establishing and maintaining effective internal controls to provide reasonable assurance of compliance with applicable laws, regulations, contracts, grant agreements, and administrative policies and procedures.

## PACE and PACENET

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In conducting our audit, we obtained an understanding of the Department's internal controls, including any information system controls that we considered to be significant within the context of our audit objectives. For those internal controls that we determined to be significant within the context of our audit objectives, we also assessed the effectiveness of the design and implementation of those controls as discussed in the *Methodology* section that follows. Any deficiencies in internal controls that were identified during the conduct of our audit and determined to be significant within the context of our audit objectives are included in this report.

### Methodology

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To address our audit objectives, we performed the following procedures:

- Interviewed Department officials and staff responsible for administering the PACE and PACENET programs, including the Director of the Bureau of Pharmaceutical Assistance, the Outreach and Enrollment Manager, and Operations Manager.
- Obtained and reviewed the State Lottery law and implementing regulations to determine the Department's responsibilities related to administering the PACE and PACENET programs.
- Reviewed the contract<sup>38</sup> and related request for proposal between the Department and the PACE/PACENET prime contractor.
- Reviewed the six PACE/PACENET-related subcontracts of the prime contractor and evaluated the subcontract for pharmacy auditing services.
- Researched potential competitors for the subcontracted services through internet searches and evaluated the current subcontractors by reviewing their annual reports.
- Reviewed and evaluated the adequacy of pharmacy auditing procedures used by the auditing services subcontractor, including observing the performance of

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<sup>38</sup> Contract #4400007944 with Magellan Medicaid Administration.

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an on-site pharmacy audit.

- Discussed Commonwealth procurement procedures with Department of General Services' officials.
- Compared the 532 pharmacy audits between July 1, 2013, and June 3, 2015, to the expected number of audits to be completed for that time period.
- Reviewed and evaluated the corrective action procedures for addressing errors identified in the pharmacy audits.
- Reviewed invoices from the pharmacy auditing subcontractor to ensure the billings matched the audits performed during the audit period.
- Interviewed the prime contractor and PACE/PACENET officials to better understand the process of coordinating benefits between PACE/PACENET, Medicare Part D, and other insurance providers.
- Reviewed PACE/PACENET office procedures for ensuring third party liability recoveries were properly handled and deposited and performed a walkthrough of the process.
- Obtained and reviewed meeting minutes from the Pharmaceutical Assistance Review Board (PARB) meetings held during the audit period.
- Reviewed the Sunshine Act in order to determine if the Department and the PARB complied with the requirements for providing public announcements and meeting minute documentation.
- Reviewed the Legislative Budget and Finance Committee's 1993 audit report of the PARB, entitled *Pennsylvania Lottery Funding of Programs and Services for Older Pennsylvanians*.
- Reviewed PACE/PACENET annual expenditure data in the *Pharmaceutical Assistance Contract for the Elderly Annual Report to the Pennsylvania General Assembly* for years 2004 through 2014.



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- Reviewed age 65 and older population data in Pennsylvania for the years 2004 through 2014 as provided in U.S. Census Bureau reports.

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**Appendix B**

**Audit Distribution List**

Upon its release, this report was distributed to the following Commonwealth officials:

**The Honorable Tom Wolf**  
Governor

**The Honorable Randy Albright**  
Secretary of the Budget  
Office of the Budget

**The Honorable Timothy Reese**  
State Treasurer  
Treasury Department

**The Honorable Kathleen G. Kane**  
Attorney General  
Office of the Attorney General

**The Honorable Sharon Minnich**  
Secretary of Administration  
Office of Administration

**The Honorable Teresa Osborne**  
Secretary  
Pennsylvania Department of Aging

**The Honorable Tim Hennessey**  
Majority Chair  
House Aging and Older Adult Services  
Committee

**The Honorable Steve Samuelson**  
Democratic Chair  
House Aging and Older Adult Services  
Committee

**The Honorable Michele Brooks**  
Majority Chair  
Senate Aging and Youth Committee

**The Honorable Arthur Haywood**  
Democratic Chair  
Senate Aging and Youth Committee

**Mr. David Gingerich**  
Deputy Secretary  
Pennsylvania Department of Aging

**Mr. Thomas Snedden**  
Director  
PACE and PACENET Programs  
Pennsylvania Department of Aging

**Mr. Brian Lyman, CPA**  
Director  
Bureau of Audits  
Office of Comptroller Operations

**Ms. Mary Spila**  
Collections/Cataloging  
State Library of Pennsylvania

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