

THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7a]

[EXECUTIVE ORDER NO. 2010-04]

Consumer-Directed Home Care Providers

September 14, 2010

Whereas, the Commonwealth is committed to ensuring Pennsylvania residents have access to high quality home care services; and

Whereas, the Commonwealth, through its Office of Long-Term Living, presently administers various home and community based services, including the Attendant Care Waiver, the Attendant Care Services Act 150 Program, Options and the Aging Waiver; and

Whereas, under these home and community based waiver programs, consumers of home care services have the ability to self-direct their own care and to employ individual providers (providers) through the use of Financial Management Services agencies retained by the Commonwealth and selected by consumers to assist them with payroll and other supportive services; and

Whereas, there is a continuing workforce shortage in recruiting and retaining providers who support Pennsylvania citizens in their homes and the community; and

Whereas, successful home care programs for seniors and persons with disabilities require efforts and strategies to recruit and retain a qualified and trained workforce; and

Whereas, Pennsylvania is rebalancing its long-term living to increase the opportunities for seniors and persons with disabilities to live independently for as long as their health permits them to do so; and

Whereas, the Commonwealth, through its Office of Long-Term Living, is in the process of establishing a statewide rate structure for the payment of certain home and community based services; and

Whereas, consumers of home care services who desire to self-direct and employ providers are best served by an experienced, well-trained, stable provider workforce; and

Whereas, providers work throughout the Commonwealth in the homes of consumers and therefore without representation have no effective means of voicing their collective concerns about the terms of their provision of services; and

Whereas, the Commonwealth has a substantial public interest in protecting the rights of workers to join, form and assist organizations to negotiate on their behalf; and

Whereas, it is essential for the Commonwealth to hear the common concerns of consumers and providers employed by consumers in order to effectively and efficiently administer its home and community based waiver programs and to achieve its goals of rebalancing the system of long-term living and improving access to quality home care; and

Whereas, the Commonwealth is committed to developing a strategy that will address these concerns without interfering with a consumer's right to select, hire, schedule, supervise and terminate an individual provider employed by the consumer.

Now, Therefore, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby direct the following:



Governor

Fiscal Note: 2010-07. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

Subchapter C. CONSUMER-DIRECTED HOME CARE PROVIDERS

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§ 7a.21. Selection of a provider representative.

To assist the Commonwealth in addressing the concerns and interests of individual providers, the Commonwealth will recognize a labor organization as the exclusive representative for individual providers, designated in the manner as follows:

(1) *Providers defined.* For the purpose of this subchapter, providers are defined as those providers who are consumer-directed and not employed by a private agency and who provide, under the jurisdiction of the Office of Long-Term Living, ongoing Medicaid or Commonwealth reimbursed non-medical, direct care services to older Pennsylvanians and Pennsylvanians with disabilities, including but not limited to, the Attendant Care Waiver, the Attendant Care Services Act 150 Program, Options and the Aging Waiver.

(2) *Eligible voters.* The Commonwealth will create a list of providers who will constitute eligible voters for the purpose of determining a showing of interest justifying an election and for the election should the showing of interest occur. The list will be composed of providers reimbursed for services from the most recent 3-month period available.

(3) *Showing of interest justifying an election.* For an election to occur, a labor organization must demonstrate to the satisfaction of the Secretary of Labor and Industry, by either authorization cards or petition, that at least 10% of the providers on the eligible voter list request an election. The Secretary of Labor and Industry will designate the American Arbitration Association or another organization with experience in conducting representation elections as election monitor for purposes of showing of interest and conducting the election if a showing of interest occurs. The election shall be conducted by secret mail ballot and commence no later than 30 calendar days from the determination that a showing of interest has been demonstrated. Any other labor organization seeking to intervene or appear on the ballot must demonstrate a 10% showing of interest.

(4) *Majority vote required.* For any labor organization to be recognized as the provider representative of the providers, it must receive at least a majority of the votes cast. After the results are certified, the Commonwealth will recognize the labor organization as the exclusive representative of all

consumer-directed providers covered under this subchapter working within this Commonwealth, for the purpose of negotiation of matters over which the Commonwealth has control.

(5) *Decertification or selection of different provider representative.* A petition to decertify an existing exclusive representative or select a different provider representative may be filed by providers in the same manner as a petition for election, provided the petition is no sooner than 12 months after the representative election has been conducted. In the event a valid agreement is reached that, by its terms, does not exceed 3 years in duration, a decertification petition may be filed by providers in the same manner as a petition for election during the period from 90 calendar days until 60 calendar days immediately preceding the expiration of the agreement.

§ 7a.22. Meeting with the provider representative.

The Commonwealth, acting through the Office of Long-Term Living or joint designee of the Secretaries of Aging and Public Welfare, will engage in negotiations with the provider representative concerning terms and conditions which directly impact providers and which are within the Commonwealth's control, including the maximum unit rate paid for services, minimum portion of Commonwealth payments passed through to providers, training standards and requirements, health care, payroll deductions such as dues and co-premiums, and the creation of a voluntary registry. The negotiation must begin within 30 calendar days after certification of the provider representative. The negotiation may not intrude upon or interfere with a consumer's right to select, hire, directly train, schedule, supervise and terminate any individual provider employed by the consumer.

§ 7a.23. Agreement memorialized.

When agreement is reached, it shall be memorialized in writing. The agreement shall be signed by the Governor, or a representative, and by the provider representative. The terms of the agreement which require State and Federal regulatory or legislative action shall be contingent upon the successful completion of the action. To the extent practical, if any provisions of the agreement require legislative action or the appropriation of funds, the parties will jointly seek the enactment of the legislative or regulatory action.

§ 7a.24. Consumer Workforce Council.

The Consumer Workforce Council (CWC) is established as the unified voice for consumer-employers for the purpose of engaging in discussions regarding common concerns of consumers and providers covered under this subchapter.

(1) *Selection and terms of the CWC.* The CWC will consist of 18 members, diverse by geography and age, selected by the Governor. The Pennsylvania Council for Independent Living, Centers for Independent Living, AARP and the P4A (representing the area agencies on aging) are invited to submit regionally diverse nominations. Each member will be appointed for a 2-year term, renewable for two additional terms if nominated by the Governor. The Chairperson will serve at the pleasure of the Governor and, other than the first Chairperson, must have served for at least 1-year prior to selection as the Chairperson. Other than the first Chairperson, the CWC will provide its recommendations to the Governor regarding selection of the Chairperson.

(2) *Role of the CWC.* To ensure a strong voice for the rights of consumers, the CWC will advise the Office of Long-Term Living or the joint designee of the Secretaries of Aging and Public Welfare designee with respect to any issues or concerns related to this subchapter.

§ 7a.25. Procedure if the parties fail to reach agreements.

Nothing in this subchapter permits providers to engage in a strike or collective cessation of the delivery of services. In the event the parties in the judgment of the Secretary of Labor and Industry reach impasse during negotiations, they will employ the services of a third-party neutral who will make a nonbinding recommendation as to contract provisions. The costs for the services of the arbitrator will be shared equally by the parties.

§ 7a.26. Relationship between provider and consumer will not change.

This subchapter in no way alters the unique relationship between the individual provider and individual consumer. Consumers retain the absolute right to select, hire, terminate and supervise their providers.

§ 7a.27. Relationship between provider and the Commonwealth will not change.

Nothing in this subchapter is intended to grant providers the status of Commonwealth employees.

§ 7a.28. State action exemption.

In affording providers the right to select an exclusive representative, engage in negotiations with the Commonwealth under the terms of this subchapter, the Commonwealth intends that the "State Action" exemption to Federal antitrust laws be fully available to the Commonwealth, to the providers, their provider representative and to the Consumer Workforce Council. The exempt conduct will be actively supervised by the Department of Labor and Industry.

§ 7a.29. Cooperation by State agencies.

Agencies under the Governor's jurisdiction shall take whatever steps necessary to implement this subchapter.

§ 7a.30. Term.

This subchapter shall be effective immediately and remain in effect until rescinded by the Governor.

[Pa.B. Doc. No. 10-1990. Filed for public inspection October 22, 2010, 9:00 a.m.]

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CH. 7a]

[EXECUTIVE ORDER NO. 2010-03]

Pennsylvania-Produced Agricultural Products Program

September 14, 2010

Whereas, Pennsylvania is the most productive agricultural state in the Northeast, with more than 63,000 farms and 7.7 million acres of crop and pasture land; and

Whereas, Pennsylvania farmers are a vital component of the Commonwealth's economy, a leading economic enterprise in the Commonwealth, generating more than \$6.1 billion annually in cash receipts, supporting a \$45 billion a year economic activity, and employing nearly one in seven members of Pennsylvania's workforce; and

Whereas, Pennsylvania-produced agricultural products provide a potential local source for those Commonwealth agencies that purchase agricultural products; and

Whereas Pennsylvania-produced agricultural products are available at costs that are competitive with agricultural products that are produced outside the Commonwealth; and

Whereas, the Department of Agriculture has developed the Pennsylvania Preferred[®] program to increase sales of Pennsylvania-produced agricultural products; and

Whereas, the purchase and use of Pennsylvania-produced agricultural products by Commonwealth agencies will benefit both Pennsylvania agriculture industry and the agencies that purchase these products.

Now, Therefore, be it resolved that I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order:

Edward G. Rendell

Governor

Fiscal Note: 2010-08. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

Subchapter D. PENNSYLVANIA-PRODUCED AGRICULTURAL PRODUCTS PROGRAM

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7a.45.	Definitions.
7a.46.	Resolving conflicts with other jurisdictions.
7a.47.	Effective date.

§ 7a.41. Commonwealth agency purchases.

All agencies under the jurisdiction of the Governor that purchase agricultural products shall, to the extent permitted by the laws and agreements of the United States and the Commonwealth and so as not to trigger the reciprocal preference laws of other states, purchase Pennsylvania-produced agricultural products when available at competitive prices.

§ 7a.42. Identification of sources.

Agencies shall, prior to purchasing agricultural products, research potential sources of these agricultural products to determine whether there are potential vendors of Pennsylvania-produced agricultural products. At a minimum, agencies shall contact the Department of Agriculture or review Department of Agriculture published lists of producers of Pennsylvania Preferred® agricultural products or licensees of the Pennsylvania Preferred® trademark to identify potential bidders and vendors. The Department of Agriculture will assist agencies in identifying other potential vendors of Pennsylvania-produced agricultural products.

§ 7a.43. Soliciting vendors.

If there are vendors of Pennsylvania-produced agricultural products that would be responsive to the particular needs of the agency, the agency shall solicit a quote, price or proposal from those vendors.

§ 7a.44. Report.

Commonwealth agencies that purchase agricultural products shall, on or before January 1 of each year, provide a report to the Department of Agriculture describing the types, quantities, and costs of each agricultural product purchased and each Pennsylvania-produced agricultural product purchased. The report shall be completed on a form provided by the Department of Agriculture.

§ 7a.45. Definitions.

For purposes of this subchapter, Pennsylvania-produced agricultural products shall consist of any of the following:

(1) Fresh, unprocessed agricultural products with respect to which the Department of Agriculture has granted a license allowing the use of the Pennsylvania Preferred® trademark for marketing purposes.

(2) Processed agricultural products with respect to which the Department of Agriculture has granted a license allowing the use of the Pennsylvania Preferred® trademark for marketing purposes.

(3) Fresh, unprocessed agricultural products with respect to which the vendor provides written certification that the following conditions apply:

(i) One hundred percent of the products are harvested in a raw state (for plant products) or a live state (for animal products) from within this Commonwealth.

(ii) If inspected by the Department of Agriculture, the United States Department of Agriculture, the Food and Drug Administration or an independent certifying organization, the products have met the quality standards of that inspecting body.

(4) Fresh, unprocessed agricultural products with respect to which the vendor provides written certification that the following conditions apply:

(i) The products have been grown within this Commonwealth for at least 75% of the products' production cycle.

(ii) If inspected by the Department of Agriculture, the United States Department of Agriculture, the Food and Drug Administration or an independent certifying organization, the products have met the quality standards of that inspecting body.

(5) Processed agricultural products with respect to which the vendor provides written certification that:

(i) One hundred percent of the final processing and packaging occurred within this Commonwealth.

(ii) If the primary ingredients are grown in this Commonwealth, at least 60% of the processor's annual production is sourced using products meeting the criteria for "Fresh, unprocessed products" described in paragraphs (1)—(4).

(iii) If the primary ingredients are grown in this Commonwealth (these ingredients are "grown in Pennsylvania" if they are listed as being grown in this Commonwealth at a commercial level in the most recent annual report prepared by the Pennsylvania Agricultural Statistics Service), but at a low level of production which means the processor cannot buy enough to meet the 60% criteria at the time of application to the Pennsylvania Preferred Program, the processor buys the maximum amount of Pennsylvania product available to it.

(iv) If the primary ingredients are not grown in this Commonwealth (these ingredients are "not grown in Pennsylvania" if they are not listed as being grown in this Commonwealth at a commercial level in the most recent annual report prepared by the Pennsylvania Agricultural Statistics Service), the processor performs at least 75% of the product's processing operations within this Commonwealth.

(v) The processing is in compliance with all State and Federal food safety and sanitary requirements and has not incurred a major violation of these requirements within the most recent calendar year.

§ 7a.46. Resolving conflicts with other jurisdictions.

It is not the intention of this subchapter to violate or conflict with any international treaty or reciprocal preference statute of another jurisdiction. This subchapter shall be interpreted and applied to avoid any violation or conflict.

§ 7a.47. Effective date.

This order shall take effect immediately.

[Pa.B. Doc. No. 10-1991. Filed for public inspection October 22, 2010, 9:00 a.m.]