



SPONSOR: Rep. Seigfried & Sen. Poore & Rep. Longhurst &
Rep. Michael Smith & Sen. Pettyjohn

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 287

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PHARMACEUTICAL PURCHASING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 63A, Title 29 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 6317A. Interagency Pharmaceutical Purchasing Collaborative.

4 (a)(1) The Interagency Pharmaceutical Purchasing Collaborative (“Collaborative”) is established to fully leverage
5 the State’s purchasing power and regulatory authority to maximize savings for all agencies and departments that contract
6 for or directly purchase pharmaceuticals.

7 (2) The Collaborative will maintain a working relationship between agencies that purchase pharmaceuticals,
8 including the State Employee Benefits Committee, the Division of Medicaid and Medical Assistance, and the
9 Department of Correction.

10 (b)(1) The Collaborative is comprised of the following voting members, or a designee selected by the member
11 serving by virtue of position:

12 a. A State Representative, appointed by the Speaker of the House of Representatives.

13 b. A State Senator, appointed by the President Pro Tempore of the Senate.

14 c. Controller General.

15 d. Insurance Commissioner.

16 e. Director, Office of Management and Budget.

17 f. Secretary, Department of Health & Social Services.

18 g. Commissioner, Department of Correction.

19 h. Secretary, Department of Human Resources.

20 (2) The Collaborative is comprised of the following non-voting members, or a designee selected by the
21 member serving by virtue of position:

22 a. Director, Division of Medicaid and Medical Assistance.

23 b. Chief Pharmacist.

24 (c) A member of the Collaborative with the ability to designate another individual to attend a Collaborative
25 meeting under subsection (b) of this section must provide the designation in writing to the chair. An individual attending a
26 meeting for a member as a designee has the same duties and rights as the member.

27 (d)(1) The Director of the Office of Management and Budget, or the Director's designee, is the chair of the
28 Collaborative and must provide the Collaborative with administrative support, including the preparation and distribution of
29 meeting notices, agendas, minutes, correspondence, and reports.

30 (2) In the absence of the chair, the vice-chair shall fulfill the duties of the chair. The vice-chair of the
31 Collaborative is as follows:

32 a. The member appointed by the Speaker of the House of Representatives is the vice-chair during even-
33 numbered years.

34 b. The member appointed by the President Pro Tempore of the Senate is the vice-chair during odd-
35 numbered years.

36 (3)a. A quorum of the Collaborative is a majority of its voting members.

37 b. Official action by the Collaborative requires the approval of a quorum of the Collaborative.

38 c. The Collaborative may adopt rules necessary for its operation and may create working subcommittees.

39 d. The chair of the Collaborative may invite individuals with relevant expertise to participate in the
40 Collaborative's discussions, including an executive session.

41 (4)a. The Collaborative may go into executive session to discuss information that is not a public record under
42 Chapter 100 of Title 29.

43 b. Any document received or generated by the Collaborative is not a public record under Chapter 100 of
44 Title 29.

45 c. Notwithstanding paragraphs (d)(4)a. through (d)(4)b. of this section, documents received from the
46 public at, agendas for, or minutes of the Collaborative's public meetings are a public record under Chapter 100 of
47 Title 29, unless determined not to be public record under § 10002(l) of Title 29.

48 (e) The Collaborative must do all of the following:

49 (1) Perform data analysis of the prices paid by each State agency for the purchase of pharmaceutical drugs and
50 services and create a data analytic profile.

51 (2) Build and maintain a market database by doing all of the following:

52 a. Assessing the value, as determined by evidence-based cost and patient outcome, of individual drugs.

53 b. Calculating the volume of individual drug purchases by all State agencies.

54 (3) No later than October 1, 2021, use the market database developed under paragraph (e)(2) of this section to
55 identify opportunities to leverage inter-agency pharmaceutical purchasing that may include joining any of the
56 following:

57 a. A consortium with 1 or more states.

58 b. A group purchasing agreement under § 6987 of this title.

59 (4) No later than October 1, 2021, an agency must use the market database when purchasing pharmaceutical
60 drugs and services.

61 (5) Explore the creation of a public pharmaceutical program.

62 (f) The Collaborative may enter into a contract to complete the work required under subsection (e) of this section.
63 The Collaborative directs the work of a contractor hired under this subsection.

64 (g) In connection with the duties of the Collaborative, the Director of the Office of Management and Budget, or
65 the Director's designee, may issue subpoenas for witnesses or documents, financial records or any other source of
66 information needed to perform the work required under subsection (e) of this section. If a person subpoenaed fails to
67 comply, the Office of Management and Budget may compel compliance with the subpoena by filing a motion to compel in
68 the Superior Court, which has jurisdiction to compel compliance.

69 (h)(1) The Collaborative must prepare an annual report that includes all of the following:

70 a. The analysis required under paragraph (e)(1) of this section.

71 b. The status of the requirements under paragraphs (e)(2) through (e)(4) of this section.

72 (2) By March 1, the Collaborative must submit the report required under paragraph (h)(1) of this section to the
73 President Pro Tempore of the Senate and the Speaker of the House of Representatives, with copies to all members of
74 the General Assembly, the Governor, the Director and the Librarian of the Division of Research of Legislative Council,
75 and the Delaware Public Archives.

76 Section 2. Amend § 6937, Title 29 of the Delaware Code by making deletions as shown by strike through and
77 insertions as shown by underline as follows:

78 § 6937. Special requirements for contracts to purchase pharmaceuticals.

79 (a) A contract to purchase pharmaceuticals entered into after July 14, 2021, must include a requirement that the
80 contractor provide the agency with all of the following information:

81 (1) The wholesale acquisition cost negotiated between a wholesaler and manufacturer at any point in time for
82 each drug purchased by the State.

83 (2) The dollar amount of rebates, discounts, and price concessions that a pharmacy benefit manager received
84 for each drug purchased by the State. The dollar amount of rebates must include all utilization discounts the pharmacy
85 benefit manager receives from a manufacturer.

86 (3) The nature, type, and dollar amount of all other payments that a pharmacy benefit manager receives,
87 directly or indirectly, from a manufacturer in connection with a drug switch program, a formulary management
88 program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other function
89 purchased by the State.

90 (4) The dollar amount of each reimbursement a pharmacy benefit manager pays to contracting pharmacies,
91 and the negotiated price covered entities pay the pharmacy benefit manager, for each drug purchased by the State.

92 (b) Information received or generated under this section is not a public record under Chapter 100 of Title 29.

93 Section 3. The chair shall convene the first meeting of the Interagency Pharmaceutical Purchasing Collaborative
94 before August 1, 2020.

95 Section 4. The Secretary of the Department of Health & Social Services must do all of the following:

96 (1) Before March 31, 2021, hire a consultant, under § 6317A(f) of Title 29, to perform data analysis work
97 required under § 6317A(e)(1) of Title 29.

98 (2) Before March 31, 2021, provide and purchase the data analytics required under § 6317A(e)(1) of Title 29.

99 (3) Hire a Chief Pharmacist to supervise the Interagency Pharmaceutical Purchasing Collaborative's data
100 analysis work under § 6317A(e) of Title 29.

SYNOPSIS

This Act implements recommendations of the Interagency Pharmaceuticals Purchasing Study Group created by House Concurrent Resolution No. 35.

First, this Act creates the Interagency Pharmaceutical Purchasing Collaborative (“Collaborative”) to leverage the total volume of State pharmaceutical purchases to negotiate lower prices. The Collaborative must conduct a data analysis of current pharmaceutical purchasing prices paid by State agencies to create a data analytic profile. After building the data analytic profile, the Collaborative must build a market database by assessing the value, as determined by cost and patient outcome, of individual drugs and calculating the volume of individual drug purchases by all State agencies. The Collaborative must use the market database to identify opportunities to leverage the total volume of State pharmaceutical purchases to negotiate lower prices which may include a group purchasing agreement or a consortium with other states.

Second, this Act requires that State agency contracts to purchase pharmaceuticals must contain specific transparency provisions. These transparency provisions will allow the State to monitor and control the cost of pharmaceutical purchases.

Finally, this Act clearly provides that information received or generated by the Collaborative or under contract transparency provisions is not public information under the Freedom of Information Act. However, the Collaborative must provide an annual report that summarizes the Collaborative's work.

House Substitute No. 1 for House Bill No. 287 differs from House Bill No. 287 as follows:

1. In § 6317A(e)(2)a. of Title 29, requires the Interagency Pharmaceutical Purchasing Collaborative to assess the value of individual drugs using evidence-based cost and patient outcomes instead of by the simple cost and patient outcomes.
2. Changes “pharmacy benefit manager” to “wholesaler” in § 6937(a)(1) of Title 29, because the acquisition cost is negotiated between a wholesaler and manufacturer not between a pharmacy benefit manager and manufacturer.
3. Requires the Secretary of the Department of Health and Social Services to provide and purchase the data analytics required under § 6317A(e)(1) of Title 29 by March 31, 2021.