

SENATE BILL 3409

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 3;
Title 4; Title 56 and Title 71, relative to TennCare.

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

SECTION 1. Tennessee Code Annotated, Section 4-3-101, is amended by adding the following language as a new, appropriately designated subdivision:

() Department of TennCare;

SECTION 2. Tennessee Code Annotated, Section 4-3-111, is amended by adding the following language as a new, appropriately designated subdivision:

() Commissioner of TennCare, for the department of TennCare;

SECTION 3. Tennessee Code Annotated, Title 4, Chapter 3, is amended by adding the following language as a new part 27:

§ 4-3-2701.

There is created the department of TennCare.

§ 4-3-2702.

(a) The department of TennCare shall be in the charge of a commissioner, who shall be appointed by the governor in the same manner as are other commissioners and who shall have the same official status as other commissioners.

(b) The commissioner shall hold office at the pleasure of the governor, and the commissioner's compensation shall be fixed by the governor and paid from the appropriation available to such department.

(c) The commissioner shall be appointed without regard to residence on the basis of merit as measured by administrative abilities and a demonstrated quality of leadership, and shall hold a recognized bachelors degree.

(d) No person shall be eligible to appointment as commissioner unless such person is at least thirty (30) years of age and has five (5) years of administrative experience, including at least three (3) years of full time management experience in private enterprise, private practice or public service.
§ 4-3-2703.

The general functions of the department are to coordinate, set standards for, plan for, monitor, and promote the development and provision of services for the TennCare program as set out in title 71, chapter 5, and the CoverKids program as set out in title 71, chapter 3, part 11, and as otherwise provided by law.

§ 4-3-2704.

(a) In order to discharge the functions of this department, there are hereby created within the department the following divisions:

- (1) The TennCare program division;
- (2) The CoverKids program division;
- (3) The Prescription Drug programs division;
- (4) The TennCare pharmacy advisory committee;
- (5) TennCare advisory commission; and
- (6) The Office of Inspector General.

(b) The commissioner shall assign to the divisions the functions and duties imposed upon the department. The commissioner may combine,

consolidate or abolish any of the divisions, or create such new divisions as are necessary to carry out the duties imposed upon the department.

§ 4-3-2705.

(a) The department of TennCare is authorized to develop prescription drug programs and to contract with one (1) or more pharmacy benefit managers (PBMs) or other appropriate third party contractors to administer all or a portion of such prescription drug programs for the TennCare program. It is the legislative intent that, insofar as practical, any such pharmacy programs shall be developed and implemented in a manner that seeks to minimize undue disruption in successful drug therapies for current TennCare enrollees.

(b) Under such a contract, a PBM may be directed by the department of TennCare to:

(1) Provide information to the state TennCare pharmacy advisory committee for making recommendations related to a state preferred drug list (PDL);

(2) Provide claims processing and administrative services for the TennCare program;

(3) Provide data on utilization patterns to TennCare managed care organizations, the University of Tennessee Health Science Center, and other entities determined by the department of TennCare;

(4) Conduct prospective and retrospective drug utilization review as directed by the department of TennCare;

(5) Establish procedures for determining potential liability of third party payers, including, but not limited to, Medicare and private insurance

companies, for persons receiving pharmacy services through the state of Tennessee;

(6) Maintain a retail pharmacy network to provide prescription drugs through state programs;

(7) Set pharmacy reimbursement rates and dispensing fee schedules necessary to maintain an adequate retail pharmacy network and increase the cost-effectiveness of state pharmacy purchases;

(8) Negotiate supplemental rebates with pharmaceutical manufacturers for prescription drug expenditures;

(9) Propose other initiatives to the department of TennCare to maintain or improve patient care while reducing prescription drug costs; and

(10) Provide other services as directed by the department of TennCare.

(c) The state TennCare program shall be authorized to receive one hundred percent (100%) of all rebates and any other financial incentives directly or indirectly resulting from the state's contract with any PBM.

(d) The PBM contract may include performance goals and financial incentives for success or failure in attaining those goals. It is the legislative intent that such goals and incentives shall include the reliable and timely performance of any system of prior authorization that may be implemented pursuant to pharmacy programs authorized by this section.

(e) To the extent permitted by federal law and the TennCare waiver, the department of TennCare may implement, either independently or in combination with a state preferred drug list (PDL), cost saving measures for pharmaceutical

services including, but not limited to, tiered co-payments, reference pricing, prior authorization, step therapy requirements, exclusion from coverage of drugs or classes of drugs, mandating the use of generic drugs, and mandating the use of therapeutic equivalent drugs.

(f) The department of TennCare shall be required to competitively procure an annual study designed to accurately assess the cost of dispensing a prescription in a retail or community pharmacy setting to a TennCare enrollee. The study shall be performed by a postsecondary academic institution with knowledge of pharmacy business operations and that has the expertise to conduct business cost allocation studies and shall include all nationally recognized and accepted parameters of a typical cost-to-dispense study. Additional parameters may be added by the researchers awarded the study contract, in order to accurately reflect the nature of pharmacy practice in the TennCare preferred drug list environment. The study shall include retrospective analyses designed to provide a current estimation of the cost to dispense. The contracted researchers shall report their findings to the TennCare oversight committee of the general assembly, the commissioner of TennCare, and the department of TennCare on or before January 15th of each calendar year, beginning on January 15, 2011.

SECTION 4. Tennessee Code Annotated, Section 4-3-1013, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 4-29-233(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Department of TennCare, created by §§ 4-3-101 and 4-3-2701;

SECTION 6. Tennessee Code Annotated, Section 71-3-1102(1), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(1) "Department" means the department of TennCare;

SECTION 7. Tennessee Code Annotated, Section 71-5-117(d), is amended by deleting the subsection in its entirety and by substituting instead the following:

(d) The commissioner of TennCare or individual managed care organizations under contract with the state are authorized to require certain information identifying persons covered by third parties for medical services. Third parties for medical services shall include, but not be limited to, health and liability insurers, administrators of ERISA plans, employee welfare benefit plans, workers' compensation plans, CHAMPUS and Medicare. All third parties shall, upon request from the commissioner or managed care organization, provide for a computerized data match of their respective files to identify all persons covered by both the third party and by the state's TennCare program for medical services. No third party shall be liable to a policyholder for proper release of this information to the commissioner or managed care organization. The information shall be provided pursuant to a written request from the commissioner or managed care organization, with each third party establishing confidentiality requirements.

SECTION 8. Tennessee Code Annotated, Section 71-5-118(a), is amended by deleting the language "commissioner of finance and administration" and by substituting instead the language "commissioner of TennCare".

SECTION 9. Tennessee Code Annotated, Section 71-5-134, is amended by deleting the language "commissioner of finance and administration" and by substituting instead the language "commissioner of TennCare".

SECTION 10. Tennessee Code Annotated, Section 71-5-139(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) The commissioner of TennCare is authorized to promulgate emergency rules pursuant to § 4-5-208 as necessary to implement this section.

SECTION 11. Tennessee Code Annotated, Section 71-5-143, is amended by deleting the language "department of finance and administration" and by substituting instead the language "department of TennCare".

SECTION 12. Tennessee Code Annotated, Section 71-5-1403(2), is amended by deleting the language "commissioner of finance and administration" and by substituting instead the language "commissioner of TennCare".

SECTION 13. Tennessee Code Annotated, Section 71-5-1605, is amended by deleting the language "commissioner of finance and administration" and by substituting instead the language "commissioner of TennCare".

SECTION 14. Tennessee Code Annotated, Section 71-5-1606, is amended by deleting the section in its entirety and by substituting instead the following:

The committee shall receive information and assistance from the department of TennCare, department of finance and administration, the department of health, the commission on aging and disabilities, the department of human services and other agencies of state government, as necessary.

SECTION 15. Tennessee Code Annotated, Section 71-5-2401(a), is amended by deleting the language "department of finance and administration" and by substituting instead the language "department of TennCare".

SECTION 16. Tennessee Code Annotated, Section 71-5-2402, is amended by deleting the language "commissioner of finance and administration" and by substituting instead the language "commissioner of TennCare".

SECTION 17. Tennessee Code Annotated, Section 71-5-2502, is amended by deleting the section in its entirety and by substituting instead the following:

There is created a division within the department of TennCare which shall be known and designated as the office of inspector general. This division shall report directly to the commissioner of TennCare. The office of inspector general shall be headed by an inspector general. The office of inspector general shall be separate and distinct from the medicaid fraud control unit (MFCU).

SECTION 18. Tennessee Code Annotated, Section 71-5-2503(6), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(6) "Commissioner" means the commissioner of TennCare;

SECTION 19. Tennessee Code Annotated, Section 71-5-2503(7), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(7) "Department" means the department of TennCare;

SECTION 20. Tennessee Code Annotated, Section 71-5-2503(10), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(10) "Inspector general" means the person who directs the office of inspector general, who shall report directly to the commissioner of TennCare;

SECTION 21. Tennessee Code Annotated, Section 71-5-2512(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) The commissioner of TennCare shall use the commissioner's rule-making authority under this chapter to promulgate rules establishing the program mandated by subsection (a).

SECTION 22. Any provision of this act, or application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

SECTION 23.

(a) Notwithstanding any law to the contrary, upon the effective date of this act, all duties of the department of finance and administration, whose duties fall within those duties required to be performed by the department of TennCare pursuant to this act, shall be transferred to the department of TennCare.

(b) Notwithstanding any law to the contrary, upon the effective date of this act all employees of the department of finance and administration, whose duties fall within those duties transferred to the department of TennCare pursuant to this act, shall be transferred to the department of TennCare created by § 4-3-101.

(c) All reports, documents, surveys, books, records, papers or other writings in the possession of the department of finance and administration with respect to administering the TennCare program and the CoverKids program shall be transferred to and remain in the custody of the department of TennCare.

(d) All leases, contracts and all contract rights and responsibilities in existence with the department of finance and administration with respect to the duties transferred by this act to the department of TennCare shall be preserved and transferred to the department of TennCare.

(e) All assets, liabilities and obligations of the department of finance and administration with respect to the duties transferred by this act to the department of TennCare shall become the assets, liabilities and obligations of the department of TennCare.

SECTION 24.

(a) Contracts or leases entered into prior to the effective date of this act, with respect to any program or function transferred to the department of TennCare with any entity, corporation, agency, enterprise or person, shall

continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on the effective date, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of TennCare, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) The provisions of this act shall not be implemented in any manner which violates the prohibition against impairment of contract obligations as contained in Article 1, Section 20, of the Constitution of Tennessee.

SECTION 25. Upon the effective date of this act, the department of TennCare, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities, or both, outlined in this act or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

SECTION 26. All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by an agency of state government whose functions have been transferred under this act shall remain in full force and effect and shall hereafter be administered and enforced by the department of TennCare. To this end, the department of TennCare, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration

of the programs or functions herein transferred. In order to comply with the effective date set forth within this act, the department of TennCare may implement its initial rulemaking authority through promulgation of emergency rules in accordance with Tennessee Code Annotated, Section 4-5-208. Upon delivering a draft of any such emergency rules to the attorney general and reporter for approval as required by such section, the department of TennCare shall simultaneously deliver a copy of such draft emergency rules to the chair of the government operations committee of the senate and to the chair of the government operations committee of the house of representatives.

SECTION 27. The Tennessee Code Commission is directed to change references to the TennCare bureau or the bureau of TennCare to references to the department of TennCare to implement the provisions of this act in Tennessee Code Annotated, Sections 3-2-111, 3-15-510, 56-7-110, 56-7-124, 56-7-2365, 56-32-126, 56-32-131, 71-5-102, 71-5-108, 71-5-116, 71-5-142, 71-5-190, 71-5-197, 71-5-2401, 71-5-2401, 71-5-2404, 71-5-2502, 71-5-2515, 71-5-2604.

SECTION 28. The commissioner of finance and administration and the commissioner of TennCare are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

SECTION 29. This act shall take effect January 1, 2011, the public welfare requiring it.