

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. STEVEN REICK  
REP. CURTIS J. TARVER, II  
REP. DAVE VELLA

## MINUTES

July 18, 2023

### MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, July 18, 2023, at 11:00 a.m. in Room C600 of the Bilandic Building, Chicago. Co-Chair Cunningham called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

### ATTENDANCE ROLL CALL

X Senator Cristina Castro	X Representative Eva-Dina Delgado
X Senator Bill Cunningham	X Representative Jackie Haas
X Senator Donald DeWitte	X Representative Steven Reick
X Senator Dale Fowler	X Representative Ryan Spain
Senator Kimberly A. Lightford	X Representative Curtis J. Tarver, II
X Senator Sue Rezin	X Representative Dave Vella

### APPROVAL OF THE MINUTES OF THE JUNE 13, 2023 MEETING

Rep. Reick moved, seconded by Sen. Rezin, that the minutes of the June 13, 2023 meeting be approved. The motion passed unanimously (11-0-0).

### REVIEW OF AGENCY RULEMAKINGS

*Department of Financial and Professional Regulation – Rules for the Licensed Certified Professional Midwife Practice Act (68 Ill. Adm. Code 1345; 46 Ill. Reg. 20475)*

Craig Cellini, Rules Coordinator, represented DFPR.

Sen. Castro: I know you're just a messenger, so I'm not going to beat you up too much. I appreciate the withdrawal of the rules and starting over again. What I'm going to tell the department, and I think you're going to hear a pattern today of conversation, is one of the things when I met with the department I asked for more engagement in the rules process with stakeholders, right? And when

IDFPR came out with the initial rules I had questions and concerns about the costs and some of the roll-out. The fact of the matter is I thought after that meeting the Department would engage in much more robust conversation with the advocates. That has not been the case. I had an advocate who represents black midwives stop at my office yesterday and they really don't feel that the conversation was collaborative—more of a hindrance—especially when it comes to midwives of color who want to become licensed. In rolling out some of the new rules and procedures that they have to do I will say this: when you're talking about and you're saying stories about a maternal health and especially around black woman and I'm looking at the department, if we're going to start addressing this crisis that they actually come with solutions to talk to partners, so I wanted to relay that message if you can relate it back. I will not be as kind the second time around.

Mr. Cellini: Absolutely will.

Rep. Tarver: Thank you and thank you for being here today. I'll just piggyback because I'm 99% positive that the individual that Senator Castro spoke to is a constituent of mine. She's been in my office very frequently. She's very passionate about the issue, not just because of the issue but because of personal experience. And so, it's not just a matter of insuring individuals who are individuals of color—that is important—but particularly individuals who have lived experiences and seen these things go wrong—it's important to engage them in conversation. I won't pile on too much. I anticipate if there's not engagement there'll be a lot of piling on. I would just ask you to take that back up the ladder please.

Mr. Cellini: I absolutely will.

Rep. Tarver moved, seconded by Sen. Castro, that JCAR object to this rulemaking because it does not align with the statutory authority and legislative intent of which it is implementing and the Department has not considered the economic effects the rulemaking will impose upon the regulated public. Specifically, the adverse reporting requirements within this proposed rule differ significantly, without adequate justification, from the statutory reporting requirements within Section 90 of the Licensed Certified Professional Midwife Practice Act [225 ILCS 64]. Additionally, this rulemaking proposes an initial licensure fee of \$2,500 and a biennial renewal fee of \$2,000. 1 Ill. Adm. Code 220.900(a)(2)(B) requires an agency to consider the economic effects of a rulemaking upon those being regulated. These proposed fees would create a barrier to entry into the profession and are drastically higher than any other profession licensed by the Department. The Department has indicated its intent to withdraw this rulemaking and to restart the rulemaking process. JCAR supports this intention to withdraw and further recommends the Department address these concerns and any additional concerns raised by the rulemaking's commenters before proposing a second rulemaking on this topic. The motion passed unanimously (11-0-0).

***Department of the Lottery – General (11 Ill. Adm. Code 1770; 47 Ill. Reg. 1206)***

Rep. Haas moved, seconded by Sen. Rezin, that JCAR, with the consent of the Department of the Lottery, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (11-0-0).

***Department of Public Health – Birth Center Licensing Code (77 Ill. Adm. Code 264; 47 Ill. Reg. 1846)***

Rep. Delgado moved, seconded by Sen. DeWitte, that JCAR, with the concurrence of the Department of Public Health, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (11-0-0).

***Pollution Control Board – Permits and General Provisions (35 Ill. Adm. Code 201; 46 Ill. Reg. 20627), Alternative Control Strategies (35 Ill. Adm. Code 202; 46 Ill. Reg. 20638), and Visible and Particulate Matter Emissions (35 Ill. Adm. Code 212; 46 Ill. Reg. 20644)***

Marie Tipsord, General Counsel, Daniel Pauley, Staff Attorney and Legislative Liaison, Chloe Salk, Attorney Advisor to Member Gibson, Richard McGill, Senior Attorney for Research and Writing, and Anand Rao, Chief Environmental Scientist, represented PCB. James Jennings, Deputy Director, represented the Illinois EPA.

Sen. Rezin: So last month before this committee we had several questions and concerns regarding this rule from the Pollution Control Board. Can you go back and just refresh our memory how long that you have had to implement this rule before the federal deadline?

Mr. Jennings: Is your question how long between now and the window where sanctions would be potentially imposed or how long has it been since the initial SIP call?

Sen. Rezin: How long has it been since the initial?

Mr. Jennings: It's been several years but the initial SIP call was 2015 and so, and as we discussed last time, there were a variety of factors that intervened between now and then but ultimately the initial SIP call was in 2015.

Sen. Rezin: So, to refresh our memory could you go through briefly the challenges from 2015 to where we are with this deadline that's looming next month?

Mr. Jennings: Beginning in 2015 there was a SIP call, and the baseline of it was that portions of our existing SSM rules were no longer considered consistent with applicable federal law. Thereafter, the agency began to work to determine the most appropriate means by which we would file with the Pollution Control Board and between there was independent guidance from USEPA that varied over what exactly that would look like and that was over the course of a series of administration changes. There wasn't always a consistent message as to what exactly we needed to put out in order for our rules to be determined to be consistent with federal law. Ultimately, in 2021 there has been some determination as to what that would be which was what was consistent with our filing with the Board. I understand from our conversation last month as well as some feedback from stakeholders and conversations the Agency's had since then that there were some significant concerns within the regulated community, both in terms of the substance of our rulemaking as well as the process by which we came to file with the Board. Recognizing that, while we can't go back and address what's already occurred, we are going to ensure that the steps are in place so that the next time there is a rule like this—which there will be because of the nature of our federally implemented programs—that we have a structure that doesn't lend itself to that the type of concerns that brought us here last month.

Sen. Rezin: Thank you for acknowledging that, which brings me to my next question. Our concerns

when we met last month is that the stakeholders have not been actively engaged and listened to regarding their concerns with this rule. What has happened from last month to today?

Mr. Jennings: Between last month and this morning, the agency has met with each of the three stakeholders that had raised their hand with some concerns about how the proposed rule would impact them. As part of those discussions, we went over individual proposals they had for alternative effluent limits and discussed with them both some of the substance of that but then also what additional information might be necessary in order for us to make an evaluation, for the Board to make an evaluation, as well as USEPA. It's my understanding as well that USEPA has also been in touch with at least one of the stakeholders to provide some background and one of the provisions we have outlined as part of the response to these is that we're open to continuing to meet. We're also open to continuing to me with those stakeholders and USEPA as needed. At this point it does appear from what we understand that those conversations been productive and we hope that is part of the rulemaking process for which there's an August 7th filing deadline that they'll be able to continue that.

Sen. Rezin: Can you expand on the filing deadline and the impact if we do not reach a resolution?

Mr. Jennings: Unfortunately, this is maybe a question for the Board just as to the procedures they would follow. But by August 7 any entity that seeks what would really amount to an alternative standard would need to file with the Board, Thereafter the Agency and other stakeholders would be in a position to comment on those, as well as the Board would do its own independent evaluation of what was filed. I'll let the Board speak to the First and Second Notice process. These are triggered by how they've teed up this rulemaking. But, absent the rule being approved today the likely next step would be that there would be the potential for sanctions on the State of Illinois if our existing SSM rule were not adopted. The first round of sanctions would be triggered on August the 12th which would tie into some independent effluent limits that would be applicable to two areas in the State: the City of Chicago and in the metro East, and then six months thereafter there would be a tier to scale of potential of highway funding issues.

Sen. Rezin: So, it's fair to say if we do not make our deadline that federal dollars will be withheld from the State of Illinois—significant federal dollars?

Mr. Jennings: There would be the potential for that. In speaking with USEPA about exactly what would happen, there is a tiered structure and there are series of funds that are specifically exempt from being withheld. And so, without having more information on what individual projects are currently teed up I couldn't say with certainty that there's funds would be withheld but the sanctions would be in place and the effect of the sections is that the federal government could withhold funding.

Sen. Rezin: So, what I just heard is there's a commitment from everyone here to continue to work with the industry regarding their concerns, and is that a commitment where you come back to us every month and give us an update as to if the talks are productive and what's going on?

Mr. Jennings: As the agency I can't speak on behalf of the Board, but the Agency is committed to continuing conversations on this as we would for any other comparable rulemaking going forward. As far as coming back to JCAR, I don't know exactly what the forum for that would be if we don't have a pending rulemaking but we can we can assure that as representatives of the General

Assembly that we're able to provide responsiveness updates, whether it's part of this or some sort of other mechanism.

Sen. Rezin: I appreciate that. Obviously with a backdrop of we have a looming deadline with potential negative impact with withheld funds at the federal government we are backed into a corner that we feel that we are. I think that you're going to hear today, not only with this particular issue with but with other issues that we've been discussing that this is a consistent problem that continues to come before JCAR that there are rules, we have deadlines, and the entities that are affected have not had sufficient ability to work or at least make their positions known, and because of the complete rulemaking authority and many of these agencies we feel are just cutting out the people who are concerned or that they affect. So going forward, not only to this Board but every board that's coming before us, and I think my colleagues will also speak to that, it is our hope that this issue will be rectified before the committees. There are people when you're creating a rule that are affected and they need to have their comments heard and be negotiated with in some capacity. So, thank you again for meeting with the people involved that have concerns, being that this process started into 2015—I think that you said you had more certainty in 2021—that we still have plenty of time to kind of work through the change or the rule that needs to be implemented before our backs are up against the wall because of this federal timeline and pending issue with the federal government.

Co-Chair Spain: Just to follow up on some of these discussions and maybe some new items that have come forward over the last month. You mentioned the deadline in August for the submission of alternative emissions plans for regulated industry. What are the corresponding next steps that take place to review those plans how are they adjudicated through the Pollution Control Board—I presume within the newly established subdocket. Just kind of walk through the next sequencing of those items please.

Ms. Tipsord: The Board has plans to take any proposals we receive directly to First Notice in August. We would do that without commenting on the merits at that time. We would hope to also go ahead and plan and set hearings at least 1-2 hearings, depending on what the proposal is. Under the Environmental Protection Act if it's considered a statewide rule, we have to hold two hearings; if it's considered a site-specific rule, we need only hold one hearing in the area where of the affected source or sources. So that would be our first steps. We'd go to First Notice, schedule our hearings, and start asking for testimony and have the Agency and the participants provide us with explanations of why they believe their alternative standard should apply. We have a 30-day notice requirement in newspapers of general circulation and because this is a Clean Air Act rule the Board traditionally notices that in 11 regions in the state, which includes many weekly papers, which can slow down unfortunately hearings. But hearings are where we would get the input for the Board's purposes on the rulemaking. That's public comment and hearings are our source; that's where we get all our information and we encourage public comment. We encourage testimony. So those would be the steps and as soon as the Board completes its hearings it would move quickly to go to Second Notice with whatever if there is something to go to Second Notice with at that time. And I'm sure you're aware that the board did do an order on July 6th where API (the American Petroleum Institute) had asked us about a couple of regulatory relief mechanisms that are available under the Environmental Protection Act. While the board can't comment on what impact those regulatory relief mechanisms might have, that is something that certainly industry is aware of and could potentially make use of. But the board would move as expeditiously as we possibly can under our statutory limits to move forward with this rule and it would be a priority for us to settle

this. As I indicated last month, we don't disagree that there needs to be more work on this; that's why we created the subdocket but because of the 28.5 rulemaking (fast-track rulemaking under Section 28.5 of the Environmental Protection Act) box that we're in here the Board doesn't have the ability to do as much as it might have liked to if it wasn't a 28.5 rule. So, the way to address that for the Board was to do the subdocket and to commit to moving forward in the subdocket for industry.

Co-Chair Spain: I appreciate the stated intention here on the record for the Board to move forward expeditiously in reviewing these alternatives. I think that's the major concern with regulated industry is this limbo period that they may find themselves in and so working of course through the process with appropriate and aggressive public outage and public comments needing notifications, I think we understand all of that, but making sure that the subdocket is a useful tool to bring these questions to resolution so that we don't continue to remain in limbo. One of the things that has been a concern for our committee—certainly the timeframe that we found ourselves in—the use of fast track rulemaking was a place that we didn't need to be in and I think as you've heard other members say the theme of a discussion today on a variety of topics is the need in many of our agencies for better stakeholder engagement in a number of topics so that we don't find ourselves in these situations or requiring JCAR to compel some gathering of stakeholders. I feel like that's what we had to do after our June meeting, and so I'm glad that there was a discussion held with the Board, with IEPA, with USEPA, and with regulated industry, but those things I would hope could be happening more often without the intervention and direction of JCAR to do so. Would it be unreasonable to ask IEPA in this instance: Could you commit to convening some regular discussions with these regulated industry stakeholders so that you can offer "here's the view over the horizon; here are some of the policy changes that we need to consider, what the timeframe is." We can start gathering and preparing folks well ahead of time. Is that something that the Department could commit to going forward?

Mr. Jennings: In short, yes. And your point is well taken as is the point that we've heard for some of the previous rules. From the Agency's perspective, we agree that additional and robust outreach is generally the preferred practice and something that we would seek to do going forward. Following the June meeting I spoke with my colleagues at (USEPA) Region 5 to try to make sure that we could coordinate this with ourselves but with also the regulated community going forward. And so, we're working with a series of outside groups to help and set up a structure where we do have those updates and so the needed parties are in the room, including the federal government, so we can make that commitment.

Co-Chair Spain: Good. I appreciate that. I think that's something that should become a biennial tradition to be able to bring people together. We could greatly avoid the situation that we found ourselves in and so I would recommend, Mr. Chairman, I requested in our motion we establish um a need for the PCB and the EPA to return to us at our next meeting to update. What are these next steps in terms of the alternative emissions considerations, and then I'd really recommend that you come forward with "here's the date that we plan on convening these stakeholders again" so that we can see some evidence of that interaction, and we'll use it as a way to check the progress on this issue? ■ One final item that was new to me, and I think this would be a question for the Pollution Control Board, but as we've had discussions with some of these regulated industry groups—refineries, power plants, etc.—I represent a downstate district where agriculture is the predominant industry and we rely on ethanol facilities to be the means for which our farmers can be successful in their production. Ethanol facilities have posed a question to me that I'd like to understand how

they resolve this question going forward, and from many times throughout the year they will receive visits from the State Fire Marshal, which in the conducting of an inspection will require their facilities to shut down and then start up, thereby triggering through a State of Illinois action some problems within this topic. So, as we see what some of the other regulated industries are doing for alternative emissions proposals, what do we do with these important ethanol facilities that are so critical to the agricultural economy in the State of Illinois?

Ms. Tipsord: I'll answer that question first and then I need to go back to something else you commented on. To me, you have described exactly what the adjusted standard procedure is for under the Environmental Protection Act. The adjusted standard procedure is "we cannot comply with the rule of general applicability because we're different." One of my first cases at the Board quite honestly was a foundry here in the City of Chicago that couldn't comply with air regulations because it had nowhere to build a stack. There's no way it could comply and so it requested and received an adjusted standard. And so, to me that would be one way for ethanol facilities to address this issue is to say "we're different and here's why we're different." And there are statutory provisions that says how you do that. And so, to me that would be one way for them to address that and get a built-in protection because an alternative standard may not actually work for them, but what they may need is "when we have to shut down because the State requires us to, we have an amount of time to get up to the standard" but that that would be one way they could they could address that.

Co-Chair Spain: Thank you very much, Ms. Tipsord, and just to guide the rest of the way, is that done on a one-by-one or facility-specific exercise? Is that something that industry could bring forward as a proposal? Is it within the subdocket? Is it to the regular Board meeting? Maybe offer a little further guidance.

Ms. Tipsord: Let me double-check.

Mr. McGill: Generally, an adjusted standard is a petition that is site-specific. It's under Section 28.1 of the Environment Protection Act. There would be nothing preventing an industry from filing a proposal by the Board's deadline for alternative emission standards during startup and shutdown or malfunction. There are a range of regulatory relief options there. You could propose rules that would be applicable to a given industry, which we've already seen from IERG (Illinois Environmental Regulatory Group) and Midwest Generation and Dynegy. That is what the Board will be compiling into a single proposal and sending to First Notice at its August 17 meeting. So, one option would be rule language—it could be a statewide rule, it could be a site-specific rule. Separate from that is an adjusted standard under 28.1 of the Act, which typically is a site-specific petition filed by an individual facility.

Ms. Tipsord: And I just wanted to back up a second. When you were asking for a commitment to meet with stakeholders, the Board can't do that. We have a rulemaking before us, we have ex parte concerns, so what we can do is have our hearings. We can also have informational hearings but they would have to be public hearings noticed just like every other public hearing. We have the ex parte concerns that we can't meet one on one or meet with a group. It's generally done through either a rulemaking process or a request for an informational hearing. That could also be a formal hearing, and we have had those in the past. But our interaction with stakeholders and with environmental groups and industry groups is to do it through the rulemaking process and hearings.

Co-Chair Spain: Sure, and I absolutely understand that. That was more directed for Illinois EPA. Thank you, let's continue to work on this. We're going to ask that we hear from you again. I might take you up separately on working through some of those details that are ethanol-specific, but I appreciate everyone being here and the commitment that we can do this better going forward

Ms. Tipsord: Just one more follow-up. The Board has a policy—we have attorneys who take turns answering questions every day, so if someone from the ethanol group wants to call us at any time they'll be connected with an attorney and we can point them where they need to go.

Co-Chair Cunningham: If there are no other members seeking recognition, I would just add that I'm in full agreement with Senator Rezin and Co-Chair Spain on the need for collaboration with these industry groups. We're about to entertain a motion. You'll hear within that motion to object that there's very little about the substance of the rule but a lot about the process, and that's where we really need to see progress in the future.

Sen. Fowler moved, seconded by Rep. Vella, that JCAR object to these rulemakings for failure to consider the economic effects of the rulemaking upon those regulated and for failure to consider less costly alternatives as required by 1 Ill. Adm. Code 220.900(a)(2)(B) and (C). They moved that JCAR also object to the Illinois Environmental Protection Agency's use of fast-track rulemaking to correct a deficiency the U.S. Environmental Protection Agency identified on June 12, 2015. USEPA first indicated that Illinois' start-up, shutdown, and malfunction provisions were inconsistent with the federal Clean Air Act in 2015, but the current rulemaking was not released to the impacted industry representatives until November 2022. Throughout the process, the Illinois Environmental Protection Agency and Pollution Control Board have cited the impending federal deadline and associated sanctions as reasons that stakeholders' alternative emissions limitation proposals cannot be considered. However, IEPA had more than enough time to address this situation and engage fully with commenters and their alternative proposals. By waiting to comply with the federal requirements until 2022, the Agency created a situation that could only be remedied in time to meet the federal sanctions deadline by using the fast-track process, and prevented the consideration of less costly alternative proposals. JCAR recommends IEPA respond to federal deficiency findings in a timely manner, well before mandatory sanctions are imposed, by proactively engaging stakeholders on solutions and providing stakeholders sufficient time to review compliance proposals without using the fast-track process. JCAR asks that the Board and IEPA report back to JCAR at JCAR's August meeting in Springfield on the progress of the subdocket for stakeholders' alternative proposals. The motion passed unanimously (11-0-0).

***Department of Children and Family Services – Licensing Standards for Day Care Centers (89 Ill. Adm. Code 407; 47 IR 8756)***

Jeff Osowski, Administrative Rules Coordinator, Jennifer Cohen-Deihl, Acting Assistant Chief of Policy, Shontée Blankenship, Deputy Director of Licensing, and Jassen Strokosch, Chief of Staff, represented DCFS.

Rep. Vella: So, one month ago we were here to discuss the rules that I think a lot of people had problems with. I think you understood from our questions that we are a rulemaking body or rule discussion body had questions with this rule, correct? You understood that. And we talked about the 3-hour rule, the two-year-old restrictions, the different restrictions that were placed on it and I



felt that we were assured by you that you would be proposing new rules very soon after that meeting. Was that your intention?

Mr. Strokosch: Yes.

Rep. Vella: All that I have seen and then maybe I'm missing something but all I've seen is that a draft was filed at five o'clock yesterday. Is that that's the only thing you have filed since the last hearing?

Mr. Strokosch: We have shared drafts with JCAR between those dates, and there was some disagreement about whether those drafts reflected what was discussed in the meeting. And so, there's been back-and-forth numerous times between the last meeting and this meeting over the last month.

Rep. Vella: So, you've met with JCAR. Have you met with anybody else? Have you met with members of the ILDOCC (Illinois Directors/Owners of Child Care Centers) about their concerns at all or any other advocacy groups at all?

Mr. Strokosch: We've heard from many advocacy groups, had lots of conversations, both through our daycare representatives across the State and in other forums, but yes.

Rep. Vella: And this has been mostly advocates that are against the rule, is that correct? Have there been advocates in favor of the 3-hour rule to your knowledge?

Mr. Strokosch: I'm sorry, in terms of continuing the emergency rule? I think there's many advocates, yes, as we are; we're in favor of the continuation of the 3-hour rule. You're asking about the rule in general or elements of the rule? I think our conversation back and forth between last meeting and this meeting has particularly centered around one or two elements of that emergency rule so I want to be clear about characterizing the rule as a whole vs. pieces of the rule.

Rep. Vella: So, my main concern is you have a group of people who are running daycares and I think we can all acknowledge that there are definitely staffing issues across the state, especially relation to daycare, and they're watching waiting for a new emergency rule to come out and nothing has dropped this month. And that has put people in—I believe we were all fairly clearly concerned about these business owners being set there in limbo and they were stuck again in limbo for a month and I guess my question is why did you wait to file this draft with us until five o'clock yesterday? Because there really is no actual rule in place right now, is that correct?

Mr. Strokosch: That's incorrect. We filed an emergency rule last month, so there is an emergency rule and a permanent rule both which remain in effect since last month.

Rep. Vella: But when we talked last month, we said we were not okay with that emergency rule; you told us you're going to come make a new draft and put that on file. Why did you wait until five o'clock yesterday? Why didn't you file it a week later? Two weeks later? Because again I think it puts daycare places in limbo.

Mr. Strokosch: I agree. There's no disagreement over that. We prepared a draft that was sent to JCAR on the administrative side to look at it, and we've had a lot of correspondence back and

forth, and there is not agreement right now on whether the draft we proposed reflects what was proposed in this hearing. So, I want to be clear: there has been lots of communication over the last month with JCAR on trying to arrive at a draft that reflects what DCFS' intentions are and what the Committee's intentions are.

Rep. Vella: Were you aware that there was legislation in the House and Senate in relation to this issue?

Mr. Strokosch: Yes.

Rep. Vella: Okay. And it seems like we were fairly clear as to what our objections were and it's my understanding there was an understanding. But what it sounds like you're telling me is there was not an understanding. And that JCAR staff is the one that's slowing it down?

Mr. Strokosch: I'm not blaming JCAR staff. I'm just saying there's a disagreement. I think the primary disagreement if I was to characterize it resides over the issue of does a 3-hour rule extend to classrooms with 24-month and younger children or does it cover all ages, and DCFS' position on this we thought was clear and I apologize if that wasn't clearly stated in a way that everyone understood. The Department is opposed to extending the 3-hour rule to cover 24-month and younger classrooms. We believe there's a safety issue there, but every other aspect of what was discussed in the meeting which was to change the 90 minutes at the beginning and the end of the day, there was also in addition no piece around posting notice on the door of who is covering the classroom. We agreed to remove that element from it as well so the last remaining issue is over the 24-month and younger classrooms and there's just a disagreement at this point between DCFS' position on that and what is being asked from us. Our position is clear on that and I'm not sure how to resolve that if that's you're asking. That's been the main gist of the back-and-forth over the last month.

Rep. Vella: So, who besides DCFS—what other advocacy groups are in favor of your 24-month rule? Do you know off the top of your head? Because I haven't seen anything. I have not gotten an email from anybody saying that or white papers saying that. Is it just DCFS' position that the 24-month—

Mr. Strokosch: Well, the 24-month rule is permanent rule. It's in rule now. It's been in rule for a while. We could have daycare experts come in to talk about the fact that having a qualified teacher for our youngest and most vulnerable population of children 24 months and younger is best practice and there's a great deal of expertise around that. Again, that is currently in rule as it stands, so I appreciate that there is a perspective from some providers that having someone with a high school degree is enough for managing a classroom of 24 months and younger but the Department's position on this is the balance between staffing and safety this is one that we're not in agreement on. We believe that 24-month and younger classrooms should be staffed other than during cot time which is what's in rule by a qualified teacher vs. an assistant.

Rep. Vella: But now we're in a situation where we have a draft; we don't have an actual emergency rule now with all the agreed points, and we're to trust that you're going to file this when? Tomorrow? When is the intention to file the draft?

Mr. Strokosch: Again, the emergency rule is in place currently.

Rep. Vella: I understand but—

Mr. Strokosch: Replacement with this emergency rule the Department is prepared to file. I think we were trying to be good partners and have a conversation around trying to resolve the issues that we could. Again, we did incorporate some edits that were suggested and also, I don't want to characterize for staff here who could speak as well on this but we removed some suggested language. For example, there was some language around posting the name of who is responsible for the classroom on the door. We agreed to that, so there's been some changes there. But we could file another emergency rule at any time. We have a draft of that. But there is disagreement over the 24 months and younger.

Rep. Vella: I guess from my perspective I would have preferred you file the emergency rule—the new one—so we can talk about it here, because right now we are just talking about a draft. Because now we're going to have to come back. We're going to have to trust you. I guess I'm frustrated. I'm not the only one. I was under the impression a month ago that we were on the same page. It sounds like we weren't on the same page. And now we're going to be filing a new draft let's say today or tomorrow with the emergency rule and next month we're going to have to come back and deal with it again, and then I don't know how long it's going to take until these daycares have clarity. It is frustrating. And I understand your position that 18-year-olds are too young to take care of two-year-olds. There's probably a discussion we can have about that, but it's just frustrating from our perspective that we're being asked to trust that this draft is going to be what you are going to file and it feels as though for some of us that there have been some prevarications from DCFS and I'm just a little frustrated so I'll leave it at that.

Rep. Reick: I think we first of all have to overcome a certain procedure is the fact that if we're going to move from one emergency rule to another we do have IAPA regulations that require a 24-month holding period or waiting period before we issue new emergency rules on similar matters, so I'm not sure that we first of all would be in compliance there but I guess the point I want to go to is to discuss more of what Rep. Vella talked about is the fact that we did have a conversation last month about changes that needed to be made to this rule as it currently is in place and we received assurances from the agency that there would be a rapid response to that and of course only five o'clock yesterday afternoon we received the revised emergency rule. I guess my question is first of all to Rep. Vella's question: were there any stakeholders who were in favor of the emergency rule that is in place right now?

Mr. Osowski: To my knowledge, we haven't received anything like that, but in my experience working with administrative rules you generally don't hear from those who are in favor of the rule; you generally here from those who have opposition positions. We engage with our stakeholders through a proposed policy review process before we ever go into a rulemaking to allow them an opportunity to comment. The rules remain out there. The permanent rules are out there. The emergency rooms are out there. We welcome any comments with providers. We just don't always hear from those who think it's a good idea—

Rep. Reick: Okay, then I'm going to ask you: in the last 30 days when you stated publicly here at last month's meeting that you were going to make changes, who specifically did you speak of in the stakeholder community about the changes that they requested in this rule? Who specifically did you talk to in the stakeholder community? I know you said that you talked to JCAR staff about

changes to the rule that DCFS wanted. Who did you talk to in the stakeholder community as to what they wanted, as to what they need? Who did you talk to specifically? I want to know.

Ms. Blankenship: From the last time we met the aim when we all got together was to make those changes to the rule that was asked of us last month. Immediately when we left here, we took everything that was said into consideration. The only thing we stood on dealt with the supervision of children under two years of age. When we left here, we took those things in consideration and we began to create a draft based on what those concerns were. We made some concessions in those areas, as we just mentioned: removing the sign off the door and also removing the 90 minutes before and 90 minutes after. Those were the concerns that was brought to our attention that we made concessions on. We worked on that immediately.

Rep. Reick: Did you solicit input from any of the stakeholders as you went forward with these changes?

Ms. Blankenship: That was the input that we received that they were concerned about that we made concessions on.

Rep. Reick: So, the concerns came from us rather than the stakeholders themselves. Is that what you're saying?

Ms. Blankenship: Yes. It was brought to our attention by you. But then also was brought to our attention by other means through information, through Facebook of concerns and other things—

Rep. Reick: Who specifically contacted you regarding these changes?

Ms. Blankenship: We have not received a specific contact. Everything was dealt with in the Facebook and among their own community.

Rep. Reick: So obviously you knew what was going on out there. Can you tell me who those people were—who those Facebook posts were made by?

Mr. Strokosch: I think that if what you're looking for is the specific list of every provider that's contacted us on this issue we can go back and provide some of those—

Rep. Reick: Did you have any contact with the ILDOCC, which is the organization that represents childcare centers here in Illinois?

Ms. Blankenship: No contact was made specifically to Licensing.

Ms. Cohen-Deihl: We also have the prohibition on ex parte communication. We have filed to put our proposed permanent rule on our website for comment. We've actually not received any comments on the proposed permanent rule that has the three hours in it, so no, we have not spoken directly to IDOCCC but we are aware of their concerns. We have also spoken with our other stakeholders in other State agencies regarding the protection of children who are two. And so, our understanding the last time was that we would work on this rule and we have gone back and we have drafted this rule, we have shared it with stakeholders, and we have had discussions pretty much daily since the last meeting. We are ready to file our proposed emergency rule. It takes out

everything that we had that was objected to except for again the protection for the children who are two and under. And we believe and so to our safe holders that that is a safety issue and that's the position that we have.

Rep. Reick: Given a longstanding position and a concern of the stakeholders themselves, many of which are daycare centers which specifically deal with children under the age of two and exclusively, what—You go ahead, okay, you've got concerns about under the age of two. I understand that; I do too. But the fact is what's your solution because they are screaming for people to be able to do this job. What's your solution other than denying them the ability to have the flexibility to do the kinds of things that they need to do in order to keep their doors open?

Ms. Blankenship: We have not denied them the flexibility. Instead, we have just ensured safety for children under the age of two. This is the rule that has been in existence for years. This is not anything new. It is a permanent rule that under the age of two, that most vulnerable age group, must remain under the supervision of qualified staff at all times. That is nothing new in permanent rule. We have been enforcing it before COVID and we're still enforcing it today.

Rep. Reick: But you didn't enforce it during COVID because of the emergency and that kind of stuff?

Mr. Strokosch: That's actually not true. Again, there's disagreement over this and I don't know that we need to go back over all of that, but there were multiple enforcements every year during COVID on the specific issues around supervision of children in classrooms 24 and under. The vast majority of those citations has resulted in putting in place corrective action plans with them with the daycares that have been cited. Since 2019 there have been 305 citations of daycare specifically on rule related to the supervision of 24-months-and-younger classrooms. That was part of the information we shared with JCAR over the last month. And so, I would characterize that a little differently than to say we weren't enforcing it. We absolutely were, but part of it—you asked how we do it to support those daycares—one of the reasons that citing of these instances results in a corrective action plan and a non-need to have a licensing report there is that we work with them to get their staffing levels back up. Just because we've observed something that's out of compliance doesn't mean it's necessarily a violation. We work with them on a corrective action plan to make it correct. And I think I also reiterate some of the things we talked about last time, which is as you know the State has put in place some salary increase numbers for additional funding for daycares which is the long term solution here. There's also a number of scholarships have been put in place specifically to ramp up the educational level and access to educational level for folks that are interested in doing this work. There's a number of long-term solutions there that are not part of licensing but part of the long-term commitment by the State of Illinois to daycare and making sure those are qualified workers in that setting. It's a combination of things there, and the Department has done a lot from the licensing standpoint to work hand in hand with those providers, and again I think the data, which again we're happy to share here with folks on that, reflects what it is, which is we see those violations, we talk to the providers about it, and we put in place corrective action plans.

Rep. Reick: I don't have a problem with the idea of expanding funding and things like that for these necessary jobs. I think that that's probably something we need to do—and I'm not saying probably—that is something we need to do. However, I'm going to finish by saying exactly what I said in the last JCAR meeting: I don't think you folks belong in this business. This is not part of your portfolio. Your portfolio is to protect the safety of children, not to license daycare centers.

These people are all mandated reporters. If there is a safety issue with regard to it, they're required to report to you and that's where you come in into play, but until that happens, I don't believe you belong in this business and I believe somebody else is. I think an examination of the licensing requirements from a fresh set of eyes is a very, very needed thing in this State. Thank you.

Co-Chair Spain: Thank you very much. I would like to have some clarification from the Department going back to the 24-month children and below. I heard what you said today under your testimony and I'm trying to reconcile that with what is written in your latest draft. And so, is there a differentiation between a recommendation from DCFS versus a requirement? The Department recommends that classrooms with children under the age of 2 maintain qualified staff at all times, including an early childhood teacher.

Ms. Blankenship: We do not recommend that assistants supervise children under the age of 24 months. That is not our recommendation. We will stand firm on the rule that children two years of age and older can be supervised with the flexibility that we had discussed last month.

Co-Chair Spain: So, will you prohibit children under the age of two from being staffed by an assistant?

Ms. Blankenship: According to the rule, the permanent rule, and now, we prohibit assistants from being left alone with the direct responsibility of caring for children under 24 months of age.

Co-Chair Spain: So, let me understand then, backing up to a different topic that we've discussed, which is the 90 minute issue. I read also that the Department recommends that usage of an early childhood assistant without the presence of an early childhood teacher in the classroom be utilized during the first 90 minutes of the program hours and for the last 90 minutes of the program hours. That's a recommendation, which I understand if you're offering a best practice recommendation, a preference. I need to understand though: is a recommendation going to be reviewed by the Department as a prohibition from doing something outside of those recommendations.

Mr. Strokosch: No, we certainly don't envision—again, it's a recommendation, best practice. No one would be cited for not using the ninety minutes at the beginning and end of the program. It's simply a recommendation.

Co-Chair Spain: So then, likewise, the recommendation for the staffing requirements for those under 2: no one would be cited for use of assistants for providing supervision then for children under the age of two? Am I correct?

Ms. Blankenship: They will be cited if there's an assistant left alone caring for children under two years of age.

Co-Chair Spain: Okay, so I think what we have here is a real mess. I mean, we're right back to where we started here 30 days ago and I don't know what it's going to take to get on the same page here, but if you are outlining a series of recommendations within the latest draft and some of them will be requirements that could trigger citations and violations and others are just best practice advice, this is not ready to go here and we continue to have some significant issues. I certainly do.

Ms. Blankenship: We received complaints and I'm just going to give a description. From 2019

until now we've had over 300 complaints involving assistants left alone with children. Of those, 292 of these complaints—these are licensing complaints; this does not involve regularly monitoring, renewing, annual visits; these are complaints that have been made to the Department where either Child Protection and/or Licensing have to go out to investigate the complaints. Of those, 292 of the complaints were substantiated. These numbers clearly show that leaving an assistant alone without a qualified teacher is a safety concern that cannot be ignored. Licensing has always enforced this rule. According to the rules assistants are not required to demonstrate skill and competence necessary to assume direct responsibility for childcare which includes the skills to help children meet their developmental and emotional needs—

Co-Chair Cunningham: I'm sorry. I'm going to cut you off. A sort of a Pandora's box has been opened here a little bit and I think it's created a situation where several other members have questions. In respect for everyone's time I'd like to move to some of those questions. Representative Tarver.

Rep. Tarver: I'm more confused when we started. Nothing about 300 investigations says anything about the fact that part of the rule—and I'm just going to hope this is a scrivener's error—there talks about recommendations and you're saying people are going to be cited for something that you recommend and other parts are recommendation and it sounds like there's no associated citations. Is that a scriber's error, because it doesn't say required, it says recommended.

Ms. Cohen-Deihl: Yes. That is. I apologize for that. We will correct that. So yes, the 90 minutes and 90 minutes is a recommendation. Daycare centers will not be cited for that. The use of assistants as the only in charge of a classroom for children two and under will be a violation, not a recommendation. So, I apologize for that confusion and we will correct that.

Rep. Tarver: I just want to understand; I'll be done after this: I'm not being sarcastic. I really just don't understand; it's not my space: what changes at two years and one day about an assistant's ability to be alone with a child? Because it's 24 months and under but it's 24 months and one day. What's the difference cognitively? What am I missing?

Ms. Cohen-Deihl: Verbal skills; ability to communicate with the head of the classroom. And again, the proposed rules are on the website. The prohibition against assistants supervising infants and toddlers has been in Rule 407, our permanent rule, for a long time. So, if we receive comments about the age ranges we're happy to entertain them. That's just how it has been in our permanent Rule 407. And again, I think the concern that we have is the verbal communication. If something happens to an infant, they can't communicate that. If they're hungry, they cry. If they have an accident, they cry. Our concern is the qualifications for the assistant are minimal. They are the minimum standards. You have to be 18 years old. You have to have I believe a GED or high school degree. And that is left in a room where you are responsible for four infants. That is just a large responsibility to give someone who just needs meets those minimum qualifications. And we understand your frustration. Just it is our job at the end of the day to protect children. And that group—the two and under—those are the most vulnerable children. We also understand that some of the individuals and providers that you all have been hearing from, that they're good providers. But we have to protect children whose parents maybe can't afford the top daycare in their area. So that's why we are trying to keep the prohibition on assistants for two and under.

Rep. Tarver: So, to be clear, I'm not quarreling with you about that specific thing. The

recommendation and the citation, that was definitely a concern. I guess what would be helpful for me—I don't want to for others—is a little bit better understanding because ultimately these rules come to us. People are going to comment in public, they're going to come to us to vote on. And so, I wasn't being sarcastic when I say what's the difference between two years and one day. I appreciate the answer. The other thing I'll just say, and I really will close. I'd like a little more information about those investigations; you said that 292 substantiated many of us are lawyers we don't know what the standard is, right? We don't know what happened after they were substantiated. Was there an opportunity to teach these individuals who may only have a GED and so on or whatever, or were they summarily fired, you know, daycare shut down? Again, that has nothing to do with this specifically but I appreciate you bringing it up, but I'd like to learn a little bit more so I can be more educated when these issues come before so thank you very much.

Sen. Rezin: I'll be brief. Again, I just feel as we're sitting here trying to figure out what's going on and to express our frustration with what we're hearing when you say you haven't heard from people. JCAR staff has received comments regarding the concerns from—you say you're experts? They're experts too. Their job is to provide a safe daycare for their students so they are commenting to the JCAR staff about their concerns. I guess my frustration is what we're starting to see, not only with this bill but with numerous bills, is the legislative process played out in JCAR. We're not here to legislate. So, this conversation we had—What's good? What's not? Who's the expert?—that is for the legislative process in our opinion. That we had bills regarding this issue and it's my understanding that the representative who carried the bill was asked to pull the bill back because you would handle this through JCAR and regarding her concerns. In this particular topic that hasn't happened. I'm just saying that I'm seeing departments go down a pathway that I feel through the emergency rule, many departments are being given great latitude to make decisions that need to go through the legislative process, in the debate and more importantly the education. As you can tell some of us aren't experts in this field, so for you to sit and explain why it's important, that's for me a legislative process with a committee hearing and a debate. So that's just a comment that I'd like to make; there's no question in there, but as we're moving forward, we're going to have another department with the same problems that we've seen in this JCAR meeting today.

Co-Chair Cunningham: Just to maybe recap and clarify, first clarify: *ex parte* communications: You are not forbidden from having *ex parte* communications. You just need to disclose them, okay? Any state agencies within the sound of my voice I would hope they'd heed that. This is a common crutch that agencies offer that is of great frustration to the members of JCAR. Pollution Control Board, quasi-judicial body, different story, more restrictive *ex parte* communications requirements in place. There is nothing that stops DCFS and most other agencies from engaging in robust discussions on an *ex parte* basis as long as it is disclosed. I just really want to underline that. ■ Secondly, at the very least there's been a failure to communicate here between DCFS and JCAR. We thought there was a working agreement last month on how the rules were going to be amended. Again, this is focusing on one aspect of the rule: the three-hour portion of it. There was also a miscommunication as Senator Rezin mentioned between the Department—and I'm using the term miscommunication charitably—but that also happened between the Department and Representative Mason and former Senator Pacione-Zayas who had a bill on this topic that they held based on representations that were made to them by the Department. The members of this body were given a letter to that effect from Representative Mason. These communications went on, we thought certain guarantees/assurances were made, the Department shared a number of drafts with JCAR staff. None of the language in those drafts reflected what we thought the agreement was until five o'clock yesterday when this latest draft was presented, which was much more on the



line I think that what we believe we agreed with and what Rep. Mason and Sen. Pacione-Zayas thought had been agreed to. Now we've heard testimony that doesn't seem to quite align with what is in this latest draft. Maybe there's some confusion here, as I said. Maybe there's been poor communication. But I think we really need to take a reset at least on this specific portion of the rule—the three-hour rule—and with that in mind I'm going to ask the staff to read a motion.

Sen. Castro moved, seconded by Rep. Reick, that JCAR object to and suspend portions of the Department of Children and Family Services' emergency rule titled Licensing Standards for Day Care Centers (89 Ill. Adm. Code 407; 47 Ill. Reg. 8756) because they fail to meet the criteria for emergency rulemaking in 1 Ill. Adm. Code 230.400(a)(1)(C) and (a)(3)(B) and meet the criteria for suspension in 1 Ill. Adm. Code 230.550(a)(3)(A). Suspended portions of the emergency rule include: (1) Section 407.90(e)(3)(A) and (e)(3)(B)(i), (ii), and (iii); (2) provisions in Section 407.90(e)(3) and 407.190(f) that limit early childhood assistants' supervision of day care center classrooms in the absence of early childhood teachers to classrooms of children age 2 and older, for only the first and last 90 minutes of the center's licensed program hours; and (3) provisions in Section 407.90(e)(3)(B) that allow no more than 50 percent of licensed classrooms in operation to be supervised by early childhood assistants. This emergency rule implements previous Department policy, with additional unjustified restrictions, that allowed day care center classrooms to be supervised for up to 3 hours a day by early childhood assistants when an early childhood teacher is not available and this substitution is included in the center's staffing plan. The Department initially implemented this 3-hour policy in 2020 via emergency rules that were allowed to expire and never adopted companion proposed amendments that would have made this policy permanent. The Department then revived this policy as guidance that was in effect from September 23, 2022, through May 31, 2023. This emergency is agency created because the Department previously implemented the 3-hour policy outside of rule and passed up previous opportunities to adopt it in rule despite multiple requests from day care providers. Additionally, this emergency rule imposes new restrictions, without adequate justification, on the use of early childhood assistants that the previous emergency rules and Department guidance did not include. By limiting the times of day when assistants can substitute for teachers and the number and age range of classrooms that can be supervised by assistants, this rule imposes unreasonable and unnecessary economic costs on day care providers, many of whom have relied on this policy for the past 3 years and may be forced to curtail their hours or reduce their number of classrooms as a direct result of this emergency rule. JCAR finds that these specified provisions of this emergency rule pose a threat to the public interest and welfare.

### **SUSPENSION ROLL CALL**

Y Senator Cristina Castro	Y Representative Eva-Dina Delgado
Y Senator Bill Cunningham	Y Representative Jackie Haas
Y Senator Donald DeWitte	Y Representative Steven Reick
Y Senator Dale Fowler	Y Representative Ryan Spain
Senator Kimberly A. Lightford	Y Representative Curtis J. Tarver, II
Y Senator Sue Rezin	Y Representative Dave Vella

The suspension passed 11-0-0.

***Department of Healthcare and Family Services – Special Eligibility Groups (Emergency) (89 Ill. Adm. Code 118; 47 Ill. Reg. 9114)***

Ben Winick, Chief of Staff, Theresa Eagleson, Director, Laura Phelan, Policy Director, and Omar Shaker, Attorney, represented the Department.

Rep. Delgado: Thank you all for joining us this afternoon and it's good to see you, Ms. Eagleson, thank you for coming here; I think that that signifies how important this conversation is going to be today. And I know that you weren't in the room but I'm sure you've been hearing kind of the theme of today's meeting is about engagement with outside parties, stakeholders, advocates. And so that's kind of the theme of some of the questions that I have today. I know there are other members who want to talk about additional issues but that's where we're going to start. ■ One of the things that has been brought to my attention and it's kind of been something that's a concern to me is how broadly written these rules are and how little guidance seems to have been put out to providers. That's I think leading to some uncertainty, some confusion, especially as we go into the other phase of this, which is the permanent rule cycle. My first question is about copayments and coinsurance, which is one of the things that's part of these rules. At what point will a provider and a client get the information about their copays and their expectation for when they're going to have to put forth copays. Is there any guidance that you've issued to providers or folks that are currently enrolled on this question?

Ms. Eagleson: I believe to date we have only put out a public notice; however, we have in the works both a provider notice explaining under what circumstances they could charge copays as well as a customer notice.

Rep. Delgado: That again is one of those things that I think hearing from the folks who have been impacted or are going to be impacted by this. It's something that's causing a lot of uncertainty. They don't know what to expect. And so, it's affecting individuals who are currently enrolled in the program and so I would highly recommend that this information be shared. We've also talked today about communication, and I think that's really important particularly for this population. So, we're talking about a population of folks that tend to be low-English-proficient. They may not be easy to communicate with, and so when you make changes that are this significant that communication is really important. So on from the copay questions: the pauses. So, the pause for HBIA and the possible future pause for HBIS. What kind of communication will be made to providers with HBIS in particular when we start to approach that 16,500 limit? Because I think we're relatively close to it at this point.

Mr. Winick: As of today, the enrollment is around 14,900 so we still do have a way to go with no necessary projection of when that day may be hit, but as the rule states we would anticipate putting out the 14-day notice before that enrollment freeze would take effect.

Rep. Delgado: So, let's talk about the 14-day notice, because I'm also concerned that this population may not have access to computers and that kind of stuff so they may not be plugged into a 14-day notice that's put on the website. So, again, in the interest of engaging with the folks who are going to be impacted by this, I have a real concern with whether that is going to be practical moving forward. I understand that we're talking about emergency rules today, but knowing that the next step is going to be on the permanent rules I think that issue is something that I'd like you all to take public comment on, I'd like you all to engage with those that are impacted, because I just don't know that that's going to be workable. If you change somebody's healthcare every two weeks and then expect them to follow along even if they are fully language-proficient I think you're just asking for problems in terms of just making the program work. Let me see—do I have more

questions that are specific? I think I'm going to stop there. I'll let some of my other colleagues speak, but I do want to just make a couple of other comments, I think today you've heard us talk to agencies about how there hasn't been sufficient communication. I understand that there has been a request for the permanent rule for there to be a public hearing. Will you all conduct that public hearing moving forward in that process?

Ms. Eagleson: Yes. We will absolutely be doing that public hearing.

Rep. Delgado: Excellent. I would also really encourage you all to sit down and open the door and start having those communications right now with advocates and stakeholders. At this point I'm not sure what kind of communication has been going on back and forth. I've been hearing that there hasn't been a whole lot, and again I think that that is adding to the confusion, so having those communications sooner rather than later would certainly make me more comfortable as a member of JCAR. I think you'll also hear that from other folks here on the committee as well. We'd like to see immediate action on that front, so immediate conversations as soon as you possibly can with the stakeholders. And I would also love to have a report back for our next meeting to hear from you all about how those conversations are going. Again, this is an emergency rule. Emergency rules are always active as long as they're in place before this this body so I just want to make sure that you all are checking back in with us so that we can see what's happening and how it's moving forward. I really hope that as an agency you all understand how important it is to have that kind of engagement.

Ms. Eagleson: We'd be happy to sit down with the advocates um and even maybe run that copay notice by the same group of advocates before we send it out.

Rep. Delgado: I think that would be extremely helpful. I think it's a good first step.

Sen. Castro: I'm going to go back all over the place. I have questions on various topics so just bear with me. How will overpayments to large public hospitals be calculated and recouped. Can you describe that process?

Mr. Winick: The way that we are currently permitting ourselves to set it up is to basically make a calculation based on what was paid to the large public hospitals compared to what would be paid for any other hospital and send an invoice to those two providers kind of on the backend notifying them of what that difference is with an ability to withhold funds from those providers if necessary. That's the way that it could go. We are currently having conversations with Cook County—primarily Cook County as well as the University of Illinois—on how to actually implement this change and see if we can come to some sort of arrangement that would be beneficial for the State as well as having as less of an impact on those providers as possible.

Sen. Castro: And why those two providers? Are they the ones that are the bulk of the expenses?

Mr. Winick: Those are the only two large public hospitals in the State: the University of Illinois and Cook County Health and Hospital System.

Sen. Castro: Got it. How are individuals going to be informed that they're no longer eligible for backdated medical coverage? How do you intend to communicate with them?

Ms. Phelan: We're not implementing that yet. That would be for example if we were able to reopen enrollment in the HBIA program, if we determined that in order to stay within the available funds we could not provide the three months of backdated coverage it would be announced with that notice, or in the future if it was determined that continuing to provide three months of backdated coverage could not be—we would not stay within our available funds—we would provide that notice, but that's not something we're implementing right now and it would only be prospective for new applicants after it was announced.

Sen. Castro: So, this wouldn't impact current applicants?

Ms. Phelan: It does not impact current applicants.

Sen. Castro: So, you might have just answered this question. The Department will determine when to stop or eliminate, so how are you going to determine when to stop and eliminate. What is the threshold? Is there like a dollar threshold? When you talk about backdated coverage, what criteria are you using to determine that?

Ms. Eagleson: It's one of the options as we proceed. As Laura said, if we are able to open up enrollment again you might consider depending on what funds appear to be available at that point in time, we might consider opening up without backdated coverage to give more stability or predictability to the costs going forward, but just continual monitoring.

Sen. Castro: I understand continual monitoring but again to Representative Delgado's point, it can't be something that's arbitrary that changes every two months, right? And I think that when we're talking about the emergency rule one of the biggest concerns I've heard from advocates is why an emergency? What constituted this emergency, because I think there's a difference of opinion I have between myself and the representative Delgado as well as advocates. You quickly filed both the emergency rule and the permanent rule. There's obviously been no discussions with advocates on either it seems and I appreciate the willingness to talk as we move forward through the permanent rule process, which is one of the things that I'm going to encourage you all to do is to sit at the table and talk about that because there is no collaboration and we're going into the theme of collaboration here. So, walk me through what made this constitute the need of an emergency rule. What monetary issue constituted that, because I think that's the biggest question we have from advocates right now.

Mr. Winick (?): I think what one of the things that obviously conceived you know the emergency rulemaking process was just the status of the legislation passed by the General Assembly which did provide emergency rulemaking authority in Senate Bill 1298. Then on top of that we have projected liabilities of about \$1.2 billion for the program if no changes are made. The resources that were made available to the Department by the General Assembly through the budgetary process was \$550 million. Spending \$120 million a month gets us to about November and I think our concern is being able to protect those individuals already enrolled in the program to make sure that the changes that they see to the benefits that they've already enrolled for and have come to expect, that the disruption to those benefits can be minimized as much as possible in order to protect you know their health and welfare. So, I think, with that objective in mind, the longer we wait the more difficult it becomes to keep those existing benefits for our existing customers intact.

Sen. Castro: Are there just outstanding invoices or is it the unpredictability that you don't know

what invoices are going to be submitted to the Department for payment? I understand that and I understand we the General Assembly gave you that authority, but does it constitute an emergency? And I guess that's the question we're having, like what constituted the emergency? Do you have something that's triggering that that you're foreseeing budgetary-wise that you're like "we don't have enough money"? You're saying "we don't have enough money" but you said you ran out in November. Okay, I get that, so are there some other pressures we're missing, because we are in July, these were filed in mid-June as soon as the Governor signed a budget, so I guess I'm trying to understand from your perspective where is the emergency? Is there a dollar pressure that we're unaware of and should be aware of?

Mr. Winick: So, I think it was really just looking at our monthly expenditures within FY23 and knowing that we're continuing to see double-digit percentage growth in enrollment every month. That led us to the conclusion that the sooner we're able to implement the changes, as I mentioned before, the less dramatic impact on those existing customers going forward.

Sen. Castro: And so, let's go back to closing both enrollments and hypothetical conversation. What would constitute reopening those enrollments? Would you open both? Would you open one over another? What is the Department's criteria on determining when and how they're going to reopen that? Has that even been developed yet?

Mr. Winick: I would say like what specific criteria we're looking at it has not been developed yet. It is going to be a combination of what we're seeing in enrollment, particularly with HBIS going forward, as well as how medical utilization is coming in for the group. I mean we're talking about healthcare, so I hate to just make it about the money, but it is unfortunately about the money and just making sure that we can reopen enrollment and stay within those budgetary parameters that we have to live with.

Sen. Castro: So, let me go back to the enrollment. So, in the emergency rule you set a deadline of when you would be closing. I think there's roughly if I understand correctly about a thousand enrollees that enrolled from the point of the emergency order to July 1. What is the status of these enrollees? Are they going to get notice whether they have been accepted or not? There seems to be some limbo/lack of communication amongst those folks in regards to what's going on with their status.

Ms. Eagleson: Any application that we had in house prior to July 1 will be acted on as normal—that is, approved or denied under the criteria that are in place. Yesterday I think we still had about 800 pending applications to work through.

Sen. Castro: And when will the final FY23 enrollment numbers be available once you've processed those 800? When do you anticipate those would be available to the advocates, the public, members of the General Assembly, JCAR?

Mr. Winick: Hopefully within a week or two those remaining 800+ applications will be worked through. I'm happy to give you the enrollment numbers as of yesterday.

Sen. Castro: And I think the reason I ask that question is when we know what the enrollment or is for 2023 it helps in projection, right? And helps not only members of the General Assembly, members of JCAR, or others to be able to project what anticipated cost we're going to look for this

upcoming year and then the following year. Let me go back to the copays for a minute. How do you expect the \$100 and \$250 copay implementation to work in practice? Can you walk me through how you expect that to work?

Mr. Winick: So, in practice, and I'm just speaking from very practical—talking to numerous hospital executives over the years on copays, especially as it relates to some of the other programs we run as well as for individuals that are enrolled through the federal marketplace. So, from the State's perspective, basically the copays get programmed into our system and those amounts of the copays are then deducted from the amounts we pay providers. Providers have the ability to collect that difference from the individuals. Talking to many hospitals over the years, many of them do not collect at the end of the day. It's just written off as bad debt and it is what it is, but I'm sure you've experienced sometimes when you go to the hospital that they'll ask for some payment upfront but when you check in at the desk other times they may send you a bill or get notices on MyChart or whatever that there's a payment out.

Sen. Castro: And can I say for—and I'm familiar with that. I know some hospitals have gotten away with, depending on where they're at, and I can't speak for every hospital—every hospital operates differently—some hospitals are more forceful than others, which could be a turnoff to a community who's seeking to get medical treatment if the hospital is forceful. And while I recognize that you can deduct it from the provider, could the provider decide they're not going to treat these folks? Could a provider decide "I don't want to go through this hassle" and decline?

Mr. Winick: It would depend on the service. If it is an emergency—

Sen. Castro: An emergency is an emergency; people can't deny folks for an emergency. I understand that. But they could if they wanted to—

Mr. Winick: For other types of hospital base services.

Sen. Castro: Okay. Let's go down this slow train for a minute. How is a patient who is covered under this going to know that going into a medical provider?

Mr. Winick: I don't know if you're going to go down this road later. That is one of the advantages and one of the reasons why we are moving the population managed care because under those arrangements of providers they have contractual agreement with the plan to accept those patients. In a fee-for-service world, unfortunately we don't have that ability to. It's unfortunate but the problem that you're outlining is legitimate and it's not just with copays; it's our entire program.

Sen. Castro: So, I wasn't going to go there but now... Now that we've gone there, I'm assuming the emergency rule at least—based on how you're walking down this route—is actually when you're talking about the managed care system. Is that what you're going to apply in permanent rule? Are you going to go back to the GA? Or walk me through that process if you don't mind.

Mr. Winick: So, we already have the authority to move the population to managed care, so that's not in the rule and there's not a request forthcoming of the General Assembly.

Sen. Castro: Then, if you're already moving them into managed care and you have that authority, and I asked this question previously, then why the emergency? Why do you need the emergency

rule for that? Why do you need the permanent rule for that? If you're already going to move this population into managed care, why did you need that?

Mr. Winick: So that is just for that one piece of the many different changes to the program. For implementing copays, providing some notice for ceasing new enrollments after a period of time, those types of changes were things that we determined were outside of our existing authority.

Sen. Castro: When do you anticipate or are you hoping to move this population into managed care?

Ms. Eagleson: January 1.

Sen. Castro: Okay, and what does that look like? How does that transition look? Again, we are talking about communication with a population that does not personally speak English, right? Prior to your time, Director, when we moved to managed care there were a lot of bumps and bruises. What is that transition going to look like and how are we going to communicate with the people who actually need the services the most?

Ms. Eagleson: Part of the reason that we're going to take a little bit of time in making that transition is exactly what you're pointing out, Senator: that we need to have conversations about how that process goes, how best to allow people to know what's coming, and what the new system of care for them will look like. We have to negotiate agreements as well with various managed care plans.

Sen. Castro: So, I'm assuming at this moment you're in negotiation with the MCOs (managed care organizations). Are you negotiating any of these agreements right now?

Ms. Eagleson: We have not begun that yet. We've voiced that it's coming, but we haven't.

Mr. Winick: Our actuaries are coming up with updated member per month fees, which—

Sen. Castro: Which was going to be my next question. What anticipated savings are you going to see or what roughly are you thinking you're going to see in moving this population into managed care?

Mr. Winick: The two primary benefits from a fiscal perspective of the move to managed care is one, passed by the General Assembly in 2019, all managed care organizations pay a tax to the State that's roughly about 6 percent of premium revenue, so I think it's \$20 million or so in the first year of additional tax avenue to the State to reduce our liability. The other benefit from a fiscal perspective is it does provide much greater certainty for both the Department and for members of the General Assembly because we will be paying the plans basically a set rate to cover each individual that they have enrolled. So, while the enrollment—assuming that we do reopen enrollment at a future date—will fluctuate, at least we'll have greater certainty on what the cost of serving that population will look like.

Sen. Castro: Let's go back to the closure. Were there other ideas thought of instead of straight closing of the enrollment? Have there been discussions on possible other methods where—I recognize you might want to have—it sounds like the Department needs more predictability, right, to help project for budgetary purposes. While I do think closing the enrollment completely is harsh, have there been other discussions of maybe a staggered enrollment or something different?

Obviously, there's budgetary reasons why you're doing this, but I think for this population the closure is very difficult for many of them and I think some of them want to know that this is not the Department ending the program, right? Because right now some view it as you're ending the program, it's a back-door way to end it. So any discussions on other avenues, ideas, thoughts?

Mr. Winick: Yes, but none of them—going back to what I mentioned earlier—we determined that our main objective is protecting the benefits for our current customers as much as possible, and when we're talking about healthcare, it's often referred to as a three-legged stool: you've got enrollment, utilization, and rates. I think utilization we're really talking about, especially in a fee-for-service world, changing the benefit package that is available. So we did talk about what it would look like if we just eliminated non-emergency hospital services. That would also bring significant savings but it would also mean that it's going to be much harder for individuals to get the care that they're seeking, as well as put even greater burdens on providers because that's going to increase uncompensated care into the system.

Sen. Castro: Can you talk about those cost drivers? What are the highest ones? What are the ones that are driving this program really high right now?

Mr. Winick: Right now, it really is hospital services, and it's especially with the population—65 percent of the population that's currently enrolled in the program resides in Cook county—it's a population that has historically used the Cook County Health and Hospital System, who, as we mentioned, we pay a higher rate to than every other hospital in the State. So hospital costs are a much greater cost of the program than it is in the broader population currently. As I'm sure you'll appreciate, it is also a population that has historically not had access to a lot of healthcare services that we take for granted, so, as these programs have rolled out, the population tends to be sicker and have a lot of untreated prior conditions that we were not aware of because we had not been covering the population. So there are a lot of high costs, especially on the front end for untreated cancer, untreated diabetes, that we do believe over time as these conditions get managed those costs will go down. So that is something that we are hoping to see. And then another issue that we are working on is not addressed in the rule but that we are working on is the high cost of prescription drugs. There are a number of agreements—negotiated pricing with manufacturers—a lot of that's led by the federal government. Because this is not a federally funded population those agreements don't apply here. But we are negotiating with drug manufacturers on reducing the cost of insulin and some of those things that are really driving much higher prescription costs. So being able to make changes like that will reduce the overall cost of the program but without having any sort of impact on the customer. They're not going to know what we're paying for the medication.

Sen. Castro: Cost savings. One more question and then I'll turn it back over to Rep. Delgado. With President Biden sending the edict about DACA students, have you begun the process to identify within the enrollment which individuals wouldn't qualify? And how have you begun that process to talk through that, because obviously we're still waiting for the federal government rules on that, right? It is going to impact HFS as well as far as how we enroll these students? Just a thought that came into my head.

Mr. Winick: So there are a couple different—so the rule is out there but the specifics of how it's actually going to be implemented we're still waiting for additional guidance from federal HHS on. For those individuals that are under 19 we have already been covering them, so that coverage is not going to change. What we need to get in place is a change to our system, because currently we



don't indicate whether someone is involved in DACA or not. So that will allow us to get for the individuals under 19 a federal match for those individuals for the first time which was very good news. For those individuals over 19, the only expanded coverage from a Medicaid perspective is for pregnant women whom we also cover.

Sen. Castro: Yeah, I think that was a bill of mine.

Mr. Winick: Everyone else who's over 19 will now have access to the federal subsidies to buy plans on the Exchange, but at least as of right now would not be enrolled in Medicaid.

Sen. Castro: And one last question—sorry, Representative—I think the one question I had was in regards to privacy and I think one of the things that I would—just more of a comment, right? If we're going to fold them into the MCO system I would be cognizant of how they're coded too. Things change, not only administrations change State and federally. I want to be cognizant that we don't leave people exposed if we do that.

Mr. Winick: Fully appreciate that and we do have indications from our lawyers that any violation of someone's privacy based on that—that's protected medical health information and that is a HIPAA violation, and we take that very seriously.

Sen. Castro: And I will close with this, and I will turn it back over to the chair, but I think one of the things that I will say is collaboration is key. We talked about that theme. There is disappointment amongst the members here that there's not been collaboration with the advocates. And I would like to see, and we'll have JCAR again next month, that you all again come sit before us and tell us of the progress of this. This is something that impacts a lot of lives and it matters to Rep. Delgado and me and others here that it needs to be addressed and they need to be more collaboration than less. And I am very disappointed that there has not been begun discussions already as the rule's been filed that we have to ask questions and, on behalf of the advocates, they should be able to sit down at the table and talk to all of you and ask these questions in a collaborative manner, right? In a constructive manner, and so my harshness is that I want that beginning today. I don't care how, I don't give—whatever we decide to do today after we leave today that somebody pick up the phone and talk to the advocates to say "Hey, can we have a meeting to discuss these?" Especially the permanent rules, right? Because that that's going to help dictate the rest, but if we're having discussions on other things, I think you should also be transparent and have those conversations with them as well.

Co-Chair Cunningham: Representatives Reick, Tarver, and Haas are all seeking recognition for questions. We'll go to them in a second. Before then, I want to go back to Representative Delgado for a quick follow-up and then we'll go to Representative Reick.

Rep. Delgado: Thank you. I'll keep it quick but I wanted to close the circle here because I think the questions that you heard Senator Castro and myself ask, they're coming from a place of just—The providers don't know, right? And one of the things about JCAR, particularly when we see emergency rules, is that usually they've been fleshed out to where there's more specificity, and I think that what we're seeing right here right now, and part of what makes me a little uncomfortable is that there isn't a whole lot of specificity and that's why these questions are being brought up and so, number one, I think it's important to have the conversations which I think you've already heard ad nauseum. I think you got the message, right? And then in 30 days we want to hear back from

you to give us an update about what that looks like. I think also there's a question about transparency in terms of data that you have, and it just kind of came to me when Senator Castro was talking about it that I know you have a lot of information at your fingertips and you are making choices based on that data which is the way you should be making decisions, but I don't know that anybody outside of your agency has any clear understanding of what those numbers are, and so if it's possible to share that data or have that kind of communication, I think that would be helpful as well.

Ms. Eagleson: We have been sharing reports monthly all along that show enrollment by county and those types of things and costs, but we can probably be a little more user-friendly in our in our data sharing and recommit to—

Rep. Delgado: And I think I actually asked—I want to say it was two weeks ago, maybe three weeks ago—to get some data on district-level information, so like the 3<sup>rd</sup> district, which is the area that I represent, I don't know if you can break it down at that level but it would be helpful.

Ms. Eagleson: We are working on it in our data warehouse. We still have the old legislative districts prior to redistricting so we're working on getting that reprogrammed and we will be able to provide that information as soon as we can get that.

Rep. Delgado: I think that would be great. And you've been sharing those reports with who, at this point?

Ms. Eagleson: Budget leadership and Latino Caucus so far, but we can share that more broadly if desired.

Rep. Delgado: And I think that's what I've been hearing from stakeholders, that they'd like to have kind of a view of what that data looks like, so again I think that's part of the collaborative nature of what we expect you to do moving forward.

Rep. Reick: You were talking earlier about contacting people when you're bumping up against limitations of enrollment and things like that. Was I correct in—that's what I heard—you've got notices that are going out for various and sundry reasons as to eligibility and that kind of thing?

Ms. Eagleson: Yes, we always notify our provider community—hospitals, pharmacies, doctors, FQHCs, of changes to the program and that was the provider notice that I referenced and then we also notify our customers—the people who are receiving the care.

Rep. Reick: Are those things written up in this rule?

Ms. Eagleson: No, they're just standard practice.

Rep. Reick: I think that with something this large and something this—shall we say—controversial, I think what you're doing is you're flirting with the prospect of making policy outside of rule if you do not put this into the rulemaking, because how is a provider or a constituent or a customer going to know what their limitations are. I think especially in terms of providers; I think they need a lot more certainty as to what is going to be—where they can go and how far they can go with this. I think what we're saying here are practices that probably are more appropriate to the

rulemaking area and rather than just be common practice. "Common practice" often leads to policy outside of rule. We've seen that many times, and I think that what this rulemaking should do is tighten up on the requirements and the provisions by which these things are going to be communicated both to providers and to eligible recipients of the program so that they have something that they can rely upon in terms of knowing what their rights are, what their limitations are, and what their deadlines are, so I think what you're doing here is you're moving toward policy outside of rule and I would take a long, long look at what you're doing here and maybe revise that rule in order to accommodate that. Having said that, I think in a larger sense and I'll close with this is the fact that these rules were issued so closely after the passage of the budget with the implementation of emergency rulemaking, it's obvious to me that these rules probably were in the hopper a long time before we voted on the budget back in whenever it was we voted on the budget in May. I think what we're looking at here is another abdication of the General Assembly of its responsibility to have hearings. We've heard a tremendous number of very pertinent and relevant questions from Senator Castro and Representative Delgado that were much better and were much more relevant had they been given in committee, had they been given on the floor, had we had this discussion before we just unilaterally gave the Governor the emergency rulemaking authority to do this. We don't know and it's obvious from the questions that were asked. Very simple questions. Very simple questions of why is it that we have to do this? What is going on? You're saying we're going to move them to MCOs as of January 1. That's great. Are we still dealing with people who are not eligible for Medicaid reimbursement? These are things that could have been asked and should have been answered in a committee hearing on a separate vote instead of having it buried in a budget implementation bill on the last day of session. And I'm not blaming you for this. The responsibility for this goes a lot higher than you folks. This is another instance of a Governor that thinks he can run this State on his own. First, he did it with his 40-some disaster declarations. Now he's doing it with emergency rule, not to mention the fact that the 24-month hiatus of issuing new emergency rules after the expiration of an emergency rule was voted on in the House as well. So basically, what we've done is we've turned this program into a one-man show and it's not your fault. It is not your fault. I'm not blaming you. But what I am blaming is the process by which so many things are being handed over to administrative agencies to handle, which basically puts it at the feet of the Governor to make these departments do what you're now doing. This is not where this belongs. This belongs in the General Assembly. This belongs in a vote of the people of the State of Illinois through their representatives. I said this on the floor when we were arguing this and I'll say it again in front of you and everybody else who might be listening: this is not the place to be doing this. The place to be doing this is on the floor of the Illinois House and the Illinois Senate and in a committee. And I find it to be extremely offensive by the fact that this Governor thinks that he can go ahead and take this this responsibility as it were on through the simple fact of waiving requirements and implementing emergency rules. It's an emergency of this administration's own making. It is not an emergency like a pandemic or a flood or something like that. This is an emergency of the making of this administration and I am totally offended by it.

Rep. Tarver: A few things. I guess I'll just start with the overall. I'm glad that individuals besides Senator Castro and Representative Delgado are talking about this issue, although it may be a Latino Caucus initiative there are individuals that are not Latino who are undocumented as well and so when I hear the response that you provide numbers to the Latino caucus, there are other caucuses as well with individuals who are undocumented. And so, I would not so subtly say "get it to all the caucuses"—all of them, all of us, because ultimately we are the ones who take the votes on the budget and so on. So, for us not to have information would be relevant in making those decisions is a problem for me. So many things. I'm pretty sure but I'll just ask you and maybe Omar since

you're the attorney here on the record, was there a draft of these rules prior to us voting for the budget.

Mr. Shaker: No, I don't believe so. I started drafting the rules around the time everything was in Springfield so it was right at the end of the session.

Rep. Tarver: Okay. If I told you that I had in my possession a draft of the rules that were prior to us voting on the budget, would that shock you?

Mr. Shaker: Again, I'm not 100 percent certain what day what was happening when, so I can't really say whether it would shock me. I do know that this all happened very late in May from my part.

Rep. Tarver: And are you the author of the rules we have in front of us?

Mr. Shaker: I did assist in the drafting of them, yes.

Rep. Tarver: Okay, so you assisted. Who else assisted in the drafting of the rules?

Mr. Shaker: Mr. Ben Winick reached out to me and we sat down and started drafting the rules.

Rep. Tarver: Did Ann Spillane have any role in drafting these rules?

Mr. Shaker: No. Initiating drafting, no.

Rep. Tarver: We had a call. Ann was on that call. I asked Anne some very specific question, a couple questions, in fact, one of which was why there's an emergency and we'll get back to that. But the other question was why do we have permanent rules along with the emergency rules so quickly when you have 24 months to file. One of the things that Ann said and again if you don't know that's fine, I'm not saying that you do, but maybe Ben knows, was that JCAR told HFS to file them together. And I've been unable to figure out who from JCAR—and this is a very specific question—Kim's sitting here, others are—who from JCAR told you that you must file these rules simultaneously?

Mr. Winick: I would say on this particular issue I do not believe there was any conversation like that with JCAR staff or members. I think it's more expressed, and it may also be prior members of JCAR, prior staff with JCAR, that there is a preference if there is going to be an emergency rule and a permanent rule to file those items together.

Rep. Tarver: Okay. So just make sure that I'm clear, you were on the call, you heard my question, you are unaware of anybody who specifically spoke to a person at JCAR who told him that.

Mr. Winick: Other than just hearing that previously.

Rep. Tarver: All right. One of you said the reason why there's an emergency was because of the time in a session and so on. But one, they were drafting rules prior to us voting, so I think that kind of nullifies the fact that it is an emergency. The other thing you mentioned was that the legislature allowed for emergency rules. I don't think there's anything in the statute that specifically said "this

is an emergency, therefore emergency rules." I think it allowed for a series of emergency rules up to two years, but I don't know that anyone on the House floor or in the statute and the BIMP (budget implementation bill) said this is an emergency, so I want to be clear about that. The other thing is I want to be very, very clear. We know when it's an emergency, right? When the Governor comes out when white individuals are shockingly killed in Highland Park and says "give me a gun bill on my desk by this date or else I'll call a special session", that's an emergency. There was no such language here. At all. So, the Governor has the ability to at least insinuate to the public when something is an emergency and he seems to do it for a very specific demographic. Not this one. I think you all mentioned—I think it was Ben who mentioned it—not that we want to make it about the money but obviously it has to be about the money. I think everybody can agree with that. We have to be able to pay for the things that we profess to care about, although this is a miniscule amount in the overall budget. What is the budgeted amount? I asked this question, I called as well, I never got a straight answer, so maybe I can get an answer today.

Mr. Winick: The amount allocated for the program is \$550 million.

Rep. Tarver: And that's for FY24, is that correct? So essentially what we've done as a legislature is we voted on a program, we now have rules about the program that would say "Hey, you get the ability to keep the program and some parameters within a budget amount." Is that right?

Mr. Winick: Yes.

Rep. Tarver: Okay, but that budget amount changes on an annual basis, correct?

Mr. Winick: Yes.

Rep. Tarver: Because the Governor can say next year, and I'm not putting this on the Latino Caucus, but the Latino Caucus says next year we want \$3 billion. The Governor can put that into the budget, right?

Mr. Winick: Within the constitutional constraints, ok.

Rep. Tarver: So, we'd be voting now on rules that could potentially expand this program five- or six-fold? Because you don't have a number in here, do you?

Mr. Winick: We do not.

Rep. Tarver: So, if for some reason the governor next year—whoever's the governor in the future—decides instead of \$550 million he wants to go down to \$50 and cut a ton of people out of the program. Assuming that it's constitutional, that can happen as well, right?

Mr. Winick: If that's how much money's been allocated.

Rep. Tarver: So, essentially you're having us all vote on emergency and permanent rules without an actual dollar amount at all; there's nothing there. So, if next year I go back to my community and the dollar amount has been tripled now people are upset at me because I voted to triple the amount for these individuals. And if I go back to my community next year and the document is slashed, my people are upset because we slashed the dollar amount. I would just say you all should

think about some general number because where did the number \$550 million come from?

Mr. Winick: Just through the appropriations process and—

Rep. Tarver: Oh, I think we can do better than that. It wasn't just a general number just tossed out in the appropriations process. Someone had to—who proposed the 550?

Mr. Winick: I am honestly not sure how that was the number that was arrived at.

Rep. Tarver: Okay, I mean it's somewhere in between zero and \$1.1 billion and the program is going to be conveniently right in the middle of that so I'm assuming—maybe a presumption more than an assumption—that that's where that number came from. And so, that being the case, I think would be helpful for you all at least as we're putting in permanent rules—rules can be changed in the future if need be—as we're looking at permanent rules if this is a situation again where the Governor's taking a victory lap and then punt it specifically to JCAR to do the "dirty work". The problem in this is if we increase the program some of my constituents are going to get upset. If the program is decreasing at some point, a number of constituents are going to be upset. This seems to be a number that was arrived at through some process, I believe you sized up in the middle of the sky, you all should consider putting some kind of a number in here that folks can live with at least for this first year since you put your budget at that amount anyway. The last thing I'll say, and correct me if I'm wrong: you now as it stands have the ability to ensure that whatever program you're administered falls within a budgeted amount. Is that correct?

Mr. Winick: For all programs?

Rep. Tarver: Whatever programs you have; you have the ability to make sure that whatever programs you administer fall within a budgeted amount.

Mr. Winick: We do not.

Rep. Tarver: Ok, so I was told on the call with Ann Spillane that you were on that that exists, but you're telling me that you have no ability in any program that you're administering at all to ensure that those programs do not go outside of the budgeted amount. Is that correct? Cause all of you are nodding; it seems to be a universal answer.

Ms. Phelan: The Medicaid program generally is an entitlement and we have to follow federal guidance as well as State legislative guidance on the services that we provide and to whom we provide them so, we have some ability to try to manage costs—

Rep. Tarver: Talk to me about that ability. Because just a minute ago there was no ability. So, talk to me about some ability that you have.

Ms. Phelan: For example, Ben talked about supplemental drug rebates to try to keep down prescription drug costs. So, we have some ability to manage costs but we don't have an ability for the program at large to do something like what we're talking about here for the health benefits for immigrant adults and seniors program.

Rep. Tarver: I think it would be helpful for you to maybe just talk to Ann Spillane again because

I was told very specifically on a call and took notes that you all have the ability to make sure that things that are budgeted—the programs that are administered—stay within that budgeted amount. And if that's the case I don't understand why we have the emergency rules or the proposed rules. So when you come back in 30 days, and I appreciate you having a robust conversation with the communities, I'd like to have a better understanding of what authority you have right now to ensure the program is still within the parameters of the budget and why these rules are necessary for this specific population, because it seems to me and I can be wrong--I'm wrong about many things—that there's a disparity if either you have the ability to do so or you don't but it seems to be a disparity specifically based on this population as opposed to other populations, other programs. And if that's the case that is something that to use Representative Reick's words is "offensive" and probably a little beyond. But I appreciate your time and the ability to ask questions.

Rep. Haas: I'm going to try to be brief. So, this emergency rule does specify that this population will all be rolled into a fee-for-service Medicaid, correct?

Mr. Winick: The rules are silent on whether it will be a fee-for-service population or managed care.

Rep. Haas: I seem like I read in there that they would be rolled into at least initially fee-for-service.

Ms. Eagleson: They are currently in the fee-for-service program.

Rep. Haas: So, with that as it is now, is there going to be alignment then with current fee-for-service Medicaid recipients to have the same restrictions that this population will have with things such as copays, prior authorizations, things of that nature? And then, if not, can you explain to me why you're able to impose those type of restrictions on this population and not the general population that are enrolled in fee-for-service Medicaid?

Ms. Eagleson: Under the regular Medicaid program broadly, the federal government has limits on the copays that we can charge to individuals, and we have eliminated copays in the Medicaid program broadly. This population is not subject to federal Medicaid match or regulations, so we proposed as one of the cost-saving measures implementing copays as one of the cost-saving measures.

Rep. Haas: So that's the stipulation that allows you to treat this population a little bit differently is that it will not receive that federal match? Is that what I'm hearing?

Ms. Eagleson: That's correct.

Rep. Haas: So, when we roll this population then into the managed-care grouping, will that still be in effect? Will they still have all of those other restrictions placed on them as well?

Ms. Eagleson: We will price what we pay a managed care entity according to the rules that we have in place for this population. So, we would pay a managed-care company less taking into account the copayments.

Rep. Haas: So, their PMPM (cost per member per month) will be based on that lower payment?

Ms. Eagleson: The population may have other expenditure differences based on utilization patterns or what providers they're using, those types of things, but as has been said earlier the actuaries are right now looking at those costs, but the copayments would be factored in.

Rep. Haas: So then when we talk about engaging stakeholders, have providers been engaged as well?

Mr. Winick: Especially hospitals.

Rep. Haas: Outside of hospitals.

Mr. Winick: The copays only apply to hospitals, so there are no other changes that any other provider should see with anything in the rule or other changes.

Rep. Haas: No other program differences, so that payment structure will remain the same and be negotiated the same with all other providers outside of hospitals?

Mr. Winick: Yes.

Rep. Haas: And hospitals will understand then that that negotiated rate may be adjusted because of that copay reduction being built in?

Mr. Winick: Yes.

Rep. Haas: Is HFS and your internal structure equipped right now to be able to register clients, be able to bill? We know historically that there's been a delay in providers being able to register, receive payment, that turnaround time—Can we have some kind of assurance that as we register this population that we providers won't have to experience delays in payment?

Ms. Eagleson: Several parts to that question. We are currently within a couple of weeks of people applying and getting through those applications. There have been some several-weeks delays in providers registering, and we're working through those backlogs. Delays in payment are created when the program costs more than has been appropriated to pay for the program, and so that's one of the reasons we're here today is to manage the cost of this program.

Rep. Haas: And as we talk about provider engagement, I just want to make sure that as we do that, we make sure that we have adequate provider capacity to address the needs of this population and communication needs and everything that is going to be involved in working with this group of customers as well, so that's going to be essential and pulling the provider group in as well.

Sen. DeWitte: Just a couple of brief questions. You should all be commended for being here today, I think. You've been issued a mission that is probably virtually impossible: taking \$650 million out of a program that's already projected to cost us over a billion. To Rep. Tarver's point, that \$1.1-1.2 billion number still scares the hell out of me just like it did during the budget discussions back in May. But I think it's going to be a number that's going to be very difficult to shave down. I think those numbers that are such a significant component of the FY24 budget—I think COGFA should be seeing those numbers on a monthly basis to be incorporated into the budget process. We're talking about potentially 2% of the State's \$50 billion budget; that's a significant amount of money,



and I would certainly make that as a recommendation that perhaps CGFA—a report that everybody in the system sees on a monthly basis—should have their eyes on. Regarding that \$650 million budget constraint assignment that you all have been given, again, I think Tom Cruise should be here because I see this as Mission Impossible, frankly. Has anybody done any kind of a framework on what some of the proposed rules currently being suggested as well as other items that you say you have the ability to implement—how much could moving everyone to managed care save in that \$1.2 billion? How much would negotiated drug pricing save within that \$1.2 billion? The limited services you've suggested that may be implemented is part of this process. Can you walk me through where all of those reductions in spending are going to come from and how these filed emergency rules current and future are going to help us get to that appropriated number of \$550 million in this process?

Ms. Eagleson: So, on the cost saving, well let's start with—yeah, they're all cost savings—we believe we're going to be able to bring in about \$65 million in a federal match on services that have already been paid for that will be deemed emergency because we can get federal match on emergency services, so that's for spending that's already occurred. We're estimating that because of that guidance from our federal partners that going forward on the program we'll get another \$75 million in match. We're estimating, and these are all estimates, so just to clarify we're estimating that we'll be able to bring in about \$60 million in cost savings from the supplemental prescription drug rebates so, lowering drug costs. As Ben talked about, transitioning people to managed care for half a year we think will bring in about \$20 million under the managed-care tax.

Sen. DeWitte: \$40 million for the year?

Ms. Eagleson: \$40 million annually. \$20 million for this year. And then the copayments and coinsurance will be about \$30 million in cost savings. The public hospital rates that we talked about, about \$150-155 million. And then we come to the pauses of enrollment, which are the bulk of the savings. Pausing the HBIA program enrollment on July 1 we estimate will save about \$185 million, and then if we get to \$16,500 on the senior program, pausing at that number would save about \$70 million.

Sen. DeWitte: Okay, and how would those numbers relate to that three-legged stool you mentioned previously, the enrollment being one of those legs? CGFA suggests that there are currently about 60, almost 64,000 people enrolled in both programs. You mentioned another thousand that you have received since the announcement that the July 1 restriction will be in place. What do you anticipate that enrollment number to end up at?

Mr. Winick: So, enrollment increased by a little over 3,000 in the month of June. Not all of that was in the last two weeks but just the 63,000 was the end of May number. End of June we're a little over 66,000 and again with a little over 800 applications that still need to be worked. Keep in mind it's not one application per individual. There could be multiple individuals on a single application so we'll likely end up between 66,500 and 67,000. The enrollment projections that our actuaries had put together—I don't know if you had those—but I think it was around 130,000 if nothing changed across those three buckets.

Sen. Rezin: Just a quick question. My colleague did hit upon that, though. You mentioned that there was budgeted for this program \$500 million, but the reality is that's a six-month cost. Correct? What are your projections for the cost of this program per year?

Mr. Winick: We're anticipating that the changes that we're making are going to allow us to live within that \$550 million for the entire fiscal year without any changes that would be approximately—

Sen. Rezin: For an entire fiscal year or the remainder of—

Ms. Eagleson: The entire fiscal year—

Sen. Rezin: Because this program begins on January 1.

Mr. Winick: So, the move to managed care will begin January 1 but a number of the other changes we're implementing immediately.

Sen. Rezin: So, move to managed care begins January 1 and it is your belief according to your actuaries that the cost of this program for a year, then, with the projected increase as well will be approximately \$500 million. Is that your testimony?

Ms. Eagleson: The cost of the program for the whole year—and this is what we discussed during the legislative session that just ended—would be about \$1.2 billion if we did nothing, if we just kept letting enrollment continue because we had pretty significant, greater than 10%, month over month enrollment growth in the 4210—

Sen. Rezin: In the program and you just mentioned you had 5,000 in the past month, so that's—even if it's 5% a month that's still—and I'm sorry to interrupt—but you believe the cost of this program as is will be for the year, what?

Ms. Eagleson: Had we not proposed this rule and stopped enrollment and undertaken all the cost containment measures that we just walked through, \$1.2 billion--\$1.19 billion was the estimate. Given everything that we've talked about, including pausing enrollment for the HBIA program effective July 1, we believe the annual cost we will be able to manage within the available funds that were given to us which is \$550 million.

Sen. Rezin: Okay, and I appreciate that. I mean I'm not advocating, I'm not having a more robust discussion on this, however, I think that when the bill was passed that the numbers when we asked "What's the cost? What do you feel this will cost?" were significantly lower numbers projections than what we're currently seeing, so that's why we're having this discussion, but thank you.

Co-Chair Cunningham: I want to thank you for coming, Director, and your staff. I'll remind you obviously we have policy and budgetary discussions here, but also with rulemaking process there are a lot of technical things we have to get right, so I just want to urge you to continue to work with JCAR staff on making sure and whether you take advantage of your ability to promulgate new emergency rules or choose to offer emergency amendments to emergency rules that you work with JCAR staff on that to make sure we get all the T's crossed and I's dotted. I know the Governor, I know you, Director, and the majority of the General Assembly—want to see as many residents in the State of Illinois with insurance coverage as possible. That is our goal, but we have to pay for it, and that's a balance that has to be struck and we've given you as Senator DeWitte said we've given you a very difficult job, and it's not lost on me. So, we appreciate that. To go back to the theme of this meeting, not only for your agencies but for others, I think that job is more easily done

if there is collaboration with stakeholders. Earlier this afternoon for the first time in this General Assembly we voted to suspend a rule, and that was in large part due to a lack of communication or a breakdown in communication, so I just really want to urge you to engage with the stakeholders. It's been my experience during my time on this committee that not only does that help us get to a better rule, it also increases public confidence in a program, and I think that's really important here. I don't think the Department is going to make everyone happy with whatever permanent rule is in place, but we certainly can make strides to ensure that the public is confident that a good process has been in place, and that only happens through collaboration. So, we're going to be in this together. This is been a job placed on the Department and also a job placed on JCAR, so we look forward to working with you continually on this over the next several months.

Ms. Eagleson: Thank you, Mr. Chairman. We hear you loud and clear and we will do our very best to get information out there more widely and we'll get something set up with our advocates here very quickly.

Sen. Fowler left the meeting.

*Department of Human Services – Electronic Prescription Monitoring Program (77 Ill. Adm. Code 2080; 46 Ill. Reg. 16961)*

*Department of Public Health – Assisted Living and Shared Housing Establishment Code (77 Ill. Adm. Code 295; 47 Ill. Reg. 356)*

*Department of Healthcare and Family Services – Special Eligibility Groups (Emergency) (89 Ill. Adm. Code 118; 47 Ill. Reg. 9114)*

Co-Chair Cunningham announced that these rulemakings were moved from the No Objection List and would be considered at the Committee's August meeting.

### **CERTIFICATION OF NO OBJECTION**

Rep. Haas moved, seconded by Sen. Rezin, that the Committee inform the agencies to whose rulemakings the Committee has not voted an Objection or Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemaking made by the agency, no Objections will be issued. The motion passed unanimously (10-0-0).

### **ANNOUNCEMENT OF AUGUST MEETING**

Co-Chair Cunningham announced that the next JCAR meeting will be Wednesday, August 16, 2023, at 10:30 a.m. in Room C-1 of the Stratton Building.

### **ADJOURNMENT**

Co-Chair Spain moved, seconded by Sen. Castro, that the meeting stand adjourned. The motion passed unanimously (10-0-0).

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