

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. MAGGIE CROTTY

CO-CHAIR:
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SEN. JOHN O. JONES
SEN. DALE A. RIGHTER
SEN. IRA SILVERSTEIN
REP. GREG HARRIS
REP. LOU LANG
REP. DONALD L. MOFFITT
REP. ROSEMARY MULLIGAN
REP. ANDRE´ THAPEDI

MINUTES

November 13, 2012

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on November 13, 2012 at 11:00 a.m. in Room 600C of the Michael A. Bilandic Building in Chicago, Illinois.

Co-Chair Crotty 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 hearings. Other persons are encouraged to submit their comments in writing.

ATTENDANCE ROLL CALL

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| X Senator Pamela Althoff | X Representative Greg Harris |
| X Senator Maggie Crotty | X Representative Lou Lang |
| X Senator Don Harmon | X Representative Donald Moffitt |
| Senator John O. Jones | Representative Rosemary Mulligan |
| Senator Dale Righter | X Representative Angelo "Skip" Saviano |
| X Senator Ira Silverstein | X Representative Andre´ Thapedi |

APPROVAL OF THE MINUTES OF THE OCTOBER 16, 2012 MEETING

Representative Saviano moved, seconded by Senator Harmon, to approve the minutes of the October 16, 2012 meeting. The motion passed unanimously.

CONSIDERATION OF OTHER RULEMAKINGS

Co-Chair Crotty asked if any members requested consideration of any rulemaking. Senator Althoff requested consideration of a CDB rulemaking and Representative Harris requested consideration of a WCC rulemaking.

Capital Development Board – Illinois Energy Conservation Code (71 Ill. Adm. Code 600; 36 Ill. Reg. 6784)

Senator Althoff moved, seconded by Senator Harmon, to place this rulemaking on the December 2012 agenda. The motion passed unanimously.

Workers' Compensation Commission – Miscellaneous (50 Ill. Adm. Code 7110; 36 Ill. Reg. 13012)

Representative Harris requested that the rulemaking be removed from the No Objection list.

Representative Harris iterated the importance of this issue to the JCAR members and affected parties, particularly pointing out that members have concerns regarding certain aspects of the rulemaking and the manner in which WCC has chosen to address those issues.

Mr. Mitch Weisz, Chairman, represented WCC.

Representative Lang expressed concern that WCC has not offered figures explaining the impact on businesses and whether WCC will save or lose money.

Mr. Weisz: Charging excess amounts for repackaged medications is not an appropriate way for medical practices to fill the gap created by the lower fees that are being paid to doctors. WCC was authorized under PA 97-18 to promulgate rules addressing drugs dispensed outside of a licensed pharmacy. This rulemaking established that those drugs are to be dispensed at the average wholesale price (AWP) for the underlying drug.

Representative Lang questioned the impact this rulemaking will have on patients, the medical community and the medical industry.

Mr. Weisz: The rulemaking is intended to save about \$6.7 million for the State; repackagers and doctors dispensing repackaged drugs will be negatively impacted.

Representative Lang: Every member of JCAR is opposed to price gouging. The members also realize that there is an imbalance here. JCAR applauds WCC's efforts to correct that imbalance. Was the industry active in writing the bill with WCC?

Mr. Weisz: Illinois has one of the highest WC prescription drug costs in the country.

Representative Lang surmised from Mr. Weisz's response that WCC did not sit down with the affected industry to formulate the bill but instead copied the model from another state.

Mr. Weisz: Agreed that WCC had looked at other states.

Representative Lang explained that, initially, he was neutral towards the rulemaking. However, he expressed concern with the Commission's procedures in drafting of the rulemaking.

Representative Lang: A concern was raised whether WCC has the authority to issue this rulemaking at all. Statute states that a prescription filled and dispensed by a non-pharmacist can be capped. If a doctor gives a patient medication in his or her office, does that constitute a prescription?

Mr. Weisz: PA 97-18 authorized WCC to subject prescriptions filled and dispensed outside of licensed pharmacies to a fee that shall not exceed the AWP, along with a dispensing fee.

Repackaged drugs are not specifically mentioned in the statute, but do fall within the statute's description of prescriptions filled outside of a pharmacy.

Representative Lang: If a doctor gives his or her patient a repackaged drug, does that constitute a "prescription" under statute?

Mr. Weisz responded that he believes this is correct.

Representative Lang questioned whether Mr. Weisz has the authority to make that determination and suggested that Mr. Weisz was just offering an opinion. Representative Lang expressed two problems with the rulemaking. First, there was limited negotiation, with WCC simply implementing a model from another state. Second, WCC's authority to issue the rulemaking is questionable.

Mr. Weisz reiterated that he believes the Commission does have this authority.

Representative Saviano: Echoed Representative Lang's concerns and pushed for further exploration and better cooperation.

Mr. Weisz: To achieve a reduction in the amount of premiums, more assertive action is necessary.

Representative Thapedi: Did the Medical Fee Advisory Board discuss this rulemaking?

Mr. Weisz: Yes.

Representative Thapedi: Who was present?

Mr. Weisz: I was present, along with members of the insurance industry, repackagers and doctors.

Representative Thapedi: Would it be fair to say that both sides were fairly represented at that Board meeting?

Mr. Weisz: Yes.

Representative Thapedi: What was the outcome of the meeting?

Mr. Weisz: The Board did not recommend the rulemaking, but the Board is merely advisory.

Representative Thapedi: Did the Board advise against this rulemaking?

Mr. Weisz: Yes, but the Board was divided on this issue.

Representative Thapedi: Why did WCC choose to implement this rulemaking against the Board's advice?

Mr. Weisz: WCC believes it is in the best interest of workers and businesses to promulgate the rulemaking. He could not speak as to why the Board advised against it.

Representative Moffitt: Is additional legislation needed to address problems in the fee schedule that limit access to care?

Mr. Weisz: The statute was meant as a cost savings, not access to care, measure.

Representative Harris moved, seconded by Senator Harmon, to remove the rulemaking from the No Objection list. The motion passed unanimously.

AGENCY RESPONSES

Illinois Commerce Commission – Obligations of Retail Electric Suppliers (83 Ill. Adm. Code 412; 35 Ill. Reg. 12996)

Representative Moffitt moved, seconded by Representative Lang, that JCAR withdraw the Filing Prohibition on this rulemaking, contingent upon and effective with adoption of the rule with the agreed modifications. The motion passed by roll call vote (9-0-0).

Department of Veterans' Affairs – Payment of Maintenance Charges and Income Management at the Illinois Veterans Homes (95 Ill. Adm. Code 108)

Based on the appropriateness of the agency's response, no further action. Staff will monitor.

CERTIFICATION OF NO OBJECTION

Representative Thapedi moved, seconded by Senator Althoff, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an 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 rulemakings made by the agencies, no Objections will be issued. The motion passed 7-0-0 (Senator Silverstein and Representative Saviano were not present).

DECEMBER MEETING DATE

Co-Chair Crotty announced that the next monthly meeting is scheduled for Tuesday, December 11, 2012, at 11:00 a.m., Room 600C, Michael A. Bilandic Building, Chicago IL.

ADJOURNMENT

Representative Harris moved, seconded by Representative Lang, that the meeting stand adjourned. The motion passed unanimously.

[Because the audio recording of the meeting was in several points unclear, these minutes are based in part on Staff notes.]