

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. DON HARMON

CO-CHAIR:
REP. MIKE TRYON

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SEN. BILL BRADY
SEN. KAREN McCONNAUGHAY
SEN. TONY MUÑOZ
SEN. IRA SILVERSTEIN
SEN. CHUCK WEAVER
REP. TOM DEMMER
REP. GREG HARRIS
REP. LOU LANG
REP. ANDRÉ THAPEDI
REP. KEITH WHEELER

MINUTES

November 15, 2016

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, November 15 at 10:30 a.m. in Room C-1 of the Stratton Office Building, Springfield IL. Co-Chair Tryon 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 Bill Brady	X Representative Tom Demmer
X Senator Don Harmon	X Representative Greg Harris
X Senator Karen McConnaughay	X Representative Lou Lang
X Senator Tony Muñoz	X Representative André Thapedi
Senator Ira Silverstein	X Representative Mike Tryon
X Senator Chuck Weaver	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE OCTOBER 11, 2016 MEETING

Representative Lang moved, seconded by Representative Demmer, that the minutes of the October 11, 2016 meeting be approved. The motion passed unanimously (11-0-0).

REVIEW OF AGENCY RULEMAKINGS

Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 40 Ill. Reg. 9909)

Representative Demmer moved, seconded by Representative Harris, that JCAR and the Department of Healthcare and Family Services agree to extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (11-0-0).

Illinois Student Assistance Commission – Illinois Prepaid Tuition Program (23 Ill. Adm. Code 2775; 40 Ill. Reg. 12942)

Senator McConnaughay moved, seconded by Senator Harmon, that JCAR recommend ISAC seek a statutory resolution to the conflict between Section 10 and Section 25(2) of the Illinois Prepaid Tuition Act [110 ILCS 979]. While one of these Sections allows ISAC to set a reasonable length of State residence for qualified beneficiaries, the other defines a qualified beneficiary as having been a resident of Illinois for at least 12 months. ISAC has removed from this rulemaking a provision that could be considered

contrary to the more specific of these two statutes. However, a statutory clarification could help avoid similar issues in the future. The motion passed unanimously (11-0-0).

AGENCY RESPONSES

Chief Procurement Officer for the Capital Development Board – Chief Procurement Officer for the Capital Development Board (44 Ill. Adm. Code 8; 40 Ill. Reg. 6294)

Due to the appropriateness of the agency's response, no further action will be taken.

CONSIDERATION OF OTHER RULEMAKINGS

State Universities Civil Service System (SUCSS) – State Universities Civil Service System (80 Ill. Adm. Code 250; 40 Ill. Reg. 7537)

Jeff Brownfield, Executive Director, and David DeThorne, Legal Counsel, represented SUCSS. Representative Lang noted several JCAR members were concerned that this rulemaking's furlough provision would bypass collective bargaining agreements already in place and wanted SUCSS to state, on the record, that this was not the case. SUCSS replied this rulemaking would apply to non-union employees, but any furloughs for union members would have to be provided for in the appropriate collective bargaining agreement.

Co-Chair Harmon asked if it was SUCSS' view that, were these rules to be adopted, a university could impose furloughs on employees represented by a union subject to an existing collective bargaining agreement that is silent as to furloughs. SUCSS said it was not.

Representative Thapedi asked about alternative proposals provided by some of the parties involved. SUCSS responded that it is SUCSS's goal to stay as neutral as possible and noted that it had amended the text to address some union concerns, but that the core issue remains: given the budget situation, the two available options are layoffs or furloughs. Since furloughs involve taking workers' pay away from them, SUCSS said furloughs should be a mandatory subject for collective bargaining.

Department of Human Services – Developmental Disabilities Services (Emergency) (89 Ill. Adm. Code 144; 40 Ill. Reg. 14366) and Developmental Disabilities Services (Emergency Amendment to Emergency Rule) (89 Ill. Adm. Code 144; 40 Ill. Reg. 15181)

Gary Kramer, Chief of Bureau of Reimbursements and Program Support, and Tracie Drew, Chief of the Bureau of Administrative Rules, represented DHS.

Representative Lang asked why these rules are emergencies. Mr. Kramer replied that, without emergency rulemaking, 2 of the 4 facilities would have to close, displacing about 150 residents. Representative Lang asked why these facilities were not included in the last emergency rulemaking on this Part. Mr. Kramer replied that, at the time, DPH was not aware of these facilities' problems.

Representative Lang asked why, given all of the social service agencies that supposedly receive money from the State and the number of them that have had to downsize or shut down, these facilities should be saved while so many other organizations have not. Mr. Kramer said he could not address the larger question, only the providers at issue here.

Representative Lang asked whether this was a Department-created emergency, and if DHS could have figured out these needs previously and gone through the regular rulemaking process. Mr. Kramer doubted it would have been possible to foresee the need that early.

Representative Thapedi asked how DHS established the new threshold under which a facility can qualify for enhanced rates (from 60% to 50%). Mr. Kramer said DHS looked at the rate methodology and what it would take to increase the rate to an amount that would keep these facilities operational. There were two components to that. One was the adjustment factor and the other was the initial threshold. DHS determined what the facilities needed and then worked backwards to develop a formula that ensured inclusion of the particular facilities.

Representative Thapedi asked whether this was not somewhat arbitrary. Mr. Kramer conceded the methodology was arbitrary, but the amount DHS needed to raise the rate for these two providers was very specific; no other providers were close to meeting that threshold. He did note, however, that the only facilities from whom they had received updated rate information were the ones being helped by this rulemaking.

Representative Thapedi clarified he was in favor of providing additional support to these facilities and their residents, but feared DHS may have put itself in a position of picking winners and losers by using arbitrary rules and formulae. He asked whether other facilities would receive the same help from DHS when they asked for similar assistance. Mr. Kramer agreed that once these facilities passed the 50% threshold, they would be covered too.

Representative Thapedi said that this might create an incentive for other facilities that haven't reached the 50% threshold to manipulate the number and type of residents they have in order to reach it. He concluded that DHS appeared to be setting these rates on a case by case basis and that, based on Mr. Kramer's testimony, he did not believe that this was a proper use of emergency rulemaking. He asked that DHS use a similar lack of scrutiny when other facilities in similar straits ask for help.

Representative Lang added that he did not believe this was a governmental emergency. Although JCAR wants to save these facilities, just like it would like to help all of the hundreds of not-for-profits that have been closing down as result of the budget emergency and have not had emergency rules adopted on their behalf, it is bound to follow the law. Based on the testimony from DHS, the criteria employed in this emergency rulemaking are arbitrary.

Representative Lang moved, seconded by Representative Thapedi, that JCAR object to these emergency rulemakings because the Department has failed to prove the existence of a situation warranting the use of emergency rulemaking. Any emergency situation that exists is agency-created.

OBJECTION ROLL CALL

N	Senator Bill Brady	N	Representative Tom Demmer
Y	Senator Don Harmon	N	Representative Greg Harris
N	Senator Karen McConnaughay	Y	Representative Lou Lang
Y	Senator Tony Muñoz	Y	Representative André Thapedi
A	Senator Ira Silverstein	N	Representative Mike Tryon
N	Senator Chuck Weaver	N	Representative Keith Wheeler

The motion failed 4-7-0.

CERTIFICATION OF NO OBJECTION

Senator Brady moved, seconded by Senator Weaver, 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 rulemakings made by the agencies, no Objections will be issued.

The motion passed unanimously (11-0-0), except for the SUCSS furlough rule, which passed 6-5-0 (No: Harmon, Muñoz, Harris, Lang, Thapedi).

CONSIDERATION OF OTHER RULEMAKING ISSUES

Department of Public Health – Compassionate Use of Medical Cannabis Patient Registry (77 Ill. Adm. Code 946; 40 Ill. Reg. 10751)

Conny Moody, Deputy Director, and Elizabeth Paton, Assistant General Counsel and Rules Coordinator, represented DPH.

Representative Lang noted that there are several court cases newly decided or pending regarding the admission of new conditions to the medical cannabis eligibility list, and asked what DPH is doing to ensure that the conditions that the courts have ordered to be added are actually added to the list. Ms Paton said that an emergency rulemaking to add one of these conditions (irritable bowel syndrome) has been pre-filed with the Secretary of State and will be adopted if the court rules against DPH's motion for a stay of that court order. Representative Lang asked for a full written report on when that emergency rule was filed (and whether it occurred within the court-ordered 14 days), as well as any other court orders requiring DPH compliance.

ANNOUNCEMENT OF DECEMBER MEETING DATE

Co-Chair Tryon announced that the next JCAR meeting would be at 11:00 a.m. on Tuesday, December 13, in Room 600C of the Michael A. Bilandic Building, Chicago IL.

ADJOURNMENT

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

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