

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. MAGGIE CROTTY

CO-CHAIR:  
REP. ANGELO "SKIP" SAVIANO

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SEN. DAN RUTHERFORD  
SEN. IRA SILVERSTEIN  
REP. JOHN FRITCHEY  
REP. LOU LANG  
REP. DAVID MILLER  
REP. DONALD L. MOFFITT  
REP. ROSEMARY MULLIGAN

## MINUTES

**March 17, 2009**

### Meeting Called to Order

The Joint Committee on Administrative Rules met on March 17, 2009 at 11:00 a.m. in Room C-1 of the Stratton Building in Springfield, Illinois.

Co-Chair Saviano 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

X Senator Bradley Burzynski	X Representative John Fritchey
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Miller
X Senator Mattie Hunter	X Representative Donald Moffitt
X Senator Dan Rutherford	X Representative Rosemary Mulligan
X Senator Ira Silverstein	X Representative Angelo "Skip" Saviano

### APPROVAL OF THE MINUTES OF THE FEBRUARY 18, 2009 MEETING

Representative Lang moved, seconded by Representative Mulligan, to approve the minutes of the February 18, 2009 meeting. The motion passed unanimously.

### REVIEW OF AGENCY RULEMAKINGS

**Department of Public Health – Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 32 Ill. Reg. 14644); Sheltered Care Facilities Code (77 Ill. Adm. Code 330; 32 Ill. Reg. 14658); Illinois Veterans' Homes Code (77 Ill. Adm. Code 340; 32 Ill. Reg. 14670); Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350; 32 Ill. Reg. 14678); and Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390; 32 Ill. Reg. 14691)**

Senator Burzynski moved, seconded by Representative Mulligan, that JCAR and the Department of Public Health agree to extend the Second Notice period for these rulemakings for an additional 45 days to give the agency the opportunity to better define what constitutes a serious incident or accident that must be reported and to respond to other JCAR questions. The motion passed unanimously.

***Department of Public Health – Health Care Worker Background Check Code (77 Ill. Adm. Code 955; 32 Ill. Reg. 4529)***

Senator Crotty moved, seconded by Senator Hultgren, that JCAR recommend that the Department be more timely in updating its rules to reflect statutory changes. The motion passed unanimously.

Co-Chair Saviano asked if any member desired to discuss any other proposed rulemakings and indicated that he wanted to address a rulemaking of the Department of Financial and Professional Regulation. Representative Lang asked to consider a rulemaking of the Department of Healthcare and Family Services and Representative Moffitt asked for a rulemaking of the Office of the State Fire Marshal.

***Department of Financial and Professional Regulation – Medical Practice Act of 1987 (68 Ill. Adm. Code 1285; 32 Ill. Reg. 4127)***

Co-Chair Saviano moved, seconded by Senator Crotty, that JCAR recommend that, if the Department of Financial and Professional Regulation believes that physicians' delegation of the use of light emitting devices for treatment of certain dermatologic and/or cosmetic conditions should be limited by the State, the Department seek specific statutory change allowing it to limit this delegatory authority. The motion passed unanimously.

***Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 32 Ill. Reg. 14003)***

Representative Lang moved, seconded by Representative Moffitt, that JCAR object to and prohibit filing of the Department of Healthcare and Family Services' rulemaking titled Medical Payment (89 Ill. Adm. Code 140; 32 Ill. Reg. 14003) because the Department lacks specific statutory authority to deny medical providers' applications for participation in the medical assistance program if the provider owes a debt to the Department. The Committee finds that adopting this policy without specific statutory authority is not in the public interest.

The Department was represented by Tamara Hoffmann, Chief of Staff, and Kathleen McGinty, Chief of the Bureau of Administrative Litigation.

Representative Lang pointed out that the Committee still has a question about the statutory authority for one provision of the proposed rulemaking. JCAR Staff has attempted at least 3 times to get the Department to indicate its specific statutory authority to deny Medicaid participation to a provider who has a past debt with HFS.

Ms Hoffmann indicated that she thought this issue had been resolved and indicated the Department's willingness to continue to work toward a resolution.

Representative Lang indicated that he does not believe it advisable for any agency to ignore JCAR Staff questions. Staff has reported to the Representative that they have brought this lack of specific statutory authority to HFS' attention at least 3 times, with no answer. That is

unacceptable and unwarranted. The Representative indicated that he would continue to make these motions as long as he sits on this Committee, but will do so in an angrier tone, if that will help.

Ms McGinty responded that HFS did report to JCAR Staff on what it considered to be its best statutory authority for each provision of the rulemaking. She thought the agency's response to JCAR Staff had been adequate. She apologized to the Committee if it was not. Many of the provisions had direct, word-for-word statutory authority. She did understand that there were additional concerns about a provision in Section 140.14 denying Medicaid participation to a provider when there is an established past debt. In this case, the statutory authority cited had been relied on in past rulemaking. The statutory authority for that action is Section 12-4.25 of the Public Aid Code that allows HFS to deny eligibility to participate as a vendor to any entity that does not comply with Department policy or rules. This would include having an unpaid debt. Ms McGinty stated that she considers this rulemaking as curing a deficiency in the existing rules. When HFS does provider audits, it sometimes finds there have been overpayments. The Department has 2 things it can do in this case. The first is to terminate the provider from the Medicaid program. The second option is to bring an action for recovery only. However, the rule as originally drafted omitted any mention of recovery. What this rulemaking does is, when a terminated provider attempts to come back into the program, HFS can say you can't come back in until you pay your debt. When HFS only takes the recovery action, what happens is, if the provider doesn't show up, and HFS has heard providers say "my lawyer says I don't need to show up; I'm just going to close my doors", HFS has no recourse when the provider tries to come back in still owing that debt. The statutory authority is the same as for the original rule, which didn't cover the full picture. This rulemaking responds to a pattern of abuse HFS has observed. The corporation that owes the State a debt will transfer its assets to the next corporation.

Representative Lang stated that the Committee understands what Ms McGinty is saying, but the part of the rule that concerns JCAR is written more broadly than what Ms McGinty just described. That is what the Committee wants HFS to work on with JCAR Staff. He stated that his motion would be to prohibit filing of the rulemaking, but the Department has the Committee's commitment that when the specific problem is resolved, the Committee will lift the Prohibition.

Representative Mulligan asked if, because of some of these unpaid debts, the State has to reimburse the federal government.

Ms McGinty responded in the affirmative.

Representative Mulligan asked if these incidences are considered fraud.

Miss McGinty: Sometimes this is the case. When there is an unrecovered overpayment, HFS must decide if there has been fraud. There are certain things the Department does when it considers the lack of repayment to be fraud. It may terminate a provider. This rulemaking addresses lack of repayment that HFS does not categorize as fraud.

Representative Mulligan: If the provider transfers its assets to a new entity and does not repay HFS, does the State have to reimburse the federal government for the Medicaid funds?

Ms McGinty: We do in some circumstances. We are also concerned about the use of additional State resources when the Attorney General has to attempt to recover the debt.

Representative Mulligan: Does HFS discriminate between when someone intentionally provides wrong information and when the Department accidentally overpays a provider, but the provider cannot reimburse the State right away because of its financial situation?

Ms McGinty: HFS has discretion in making that decision. There are very legitimate circumstances in which an entity has to close its business because of financial hardship. Those are recovery situations; HFS does not want to use the termination option in these cases.

Representative Mulligan: I think the problem here is that HFS and JCAR do not get along anymore.

Ms Ginty: I'm new.

Representative Mulligan: Let's hope this attitude doesn't pass on to you. It would be good if you document that you have provided requested information to JCAR.

Ms Hoffmann: I'm old, and I'm committed to moving forward in a spirit of cooperation.

The motion passed on a vote of 10-0-0 (Rutherford and Silverstein not present).

***Office of the State Fire Marshal – Policy and Procedures Manual for Fire Protection Personnel (41 Ill. Adm. Code 141; 32 Ill. Reg. 18485)***

Representative Moffitt moved, seconded by Senator Crotty, that JCAR recommend that the Office of the State Fire Marshal not proceed with the rulemaking at this time and, instead, work with the Law Enforcement Training and Standards Board, the Department of Natural Resources and the affected parties, such as sheriffs, coroners, local law enforcement, ILEA, etc., in their effort to establish a Statewide policy for water rescue.

Representative Moffitt commended OFSM for its leadership in developing a statewide standard for water rescue. However, there are several stakeholders in the issue. There are different objectives for each involved party, such as crime scene investigators, law enforcement, fire departments and other rescue personnel who want to avoid duplication of training and expense. A statewide policy is probably a good idea, but its development should not exclude any of the affected parties. There needs to be some more work involving all the affected parties.

The agency was represented by Chief of Staff Dave DeFraties and Deputy General Counsel Maureen Cunningham.

Mr. DeFraties pointed out that State certification for fire personnel in Illinois is totally voluntary. These certifications do not cross over into law enforcement or any other area. OSFS is working

with Representative Moffitt and the other agencies to try to come up with standards that will appease everyone. We intend to continue to do so.

The motion passed unanimously.

Co-Chair Saviano asked if any member desired to consider any emergency rulemaking. No member responded in the affirmative.

### **CERTIFICATION OF NO OBJECTION**

Representative Mulligan moved, seconded by Senator Hultgren, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, 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, except that Representative Miller voted Present on a rulemaking of the Department of Financial and Professional Regulation titled Managed Care Dental Plans (50 Ill. Adm. Code 5425; 32 Ill. Reg 18117).

### **AGENCY RESPONSES**

*Department of Children and Family Services – Office of the Inspector General (OIG) (89 Ill. Adm. Code 340; 32 Ill. Reg. 6962)*

Based on the appropriateness of the agency's response, no further action was taken.

*Department of Financial and Professional Regulation – Consumer Installment Loan Act (38 Ill. Adm. Code 110; 32 Ill. Reg. 13127)*

*Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 32 Ill. Reg. 18889)*

Senator Crotty moved, seconded by Representative Mulligan, that JCAR publish a Notice of Failure to Remedy. The motion passed unanimously.

### **APRIL MEETING DATE**

Co-Chair Saviano announced that the next monthly meeting is scheduled for Tuesday, April 21, 2009, 11:00 a.m., Room C-1 of the Stratton Office Building in Springfield.

### **ADJOURNMENT**

Representative Fritchey moved, seconded by Representative Miller, that the meeting be adjourned. The motion passed unanimously.