

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. LOU LANG
REP. DAVID MILLER
REP. DONALD L. MOFFITT
REP. ROSEMARY MULLIGAN

MINUTES

June 16, 2009

Meeting Called to Order

The Joint Committee on Administrative Rules met on June 16, 2009 at 10:30 a.m. in Room 16-503 of the James R. Thompson Center 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

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|---------------------------|---|--------------------------------------|
| Senator Bradley Burzynski | X | Representative John Fritchey |
| 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 MAY 19, 2009 MEETING

Representative Lang moved, seconded by Senator Hunter, to approve the minutes of the May 19, 2009 meeting. The motion passed unanimously.

REVIEW OF AGENCY RULEMAKINGS

Department of Natural Resources – Dam Safety Requirements (17 Ill. Adm. Code 3703; 32 Ill. Reg. 14445)

Senator Rutherford moved, seconded by Representative Mulligan, that JCAR and the Department of Natural Resources agree to extend the Second Notice period for an additional 45 days to allow time for further consideration of rule details. The motion passed unanimously.

Co-Chair Saviano asked if any member desired to discuss any other proposed rulemakings. Senator Silverstein and Representative Lang asked to consider 2 rulemakings of the Department of Healthcare and Family Services.

Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 32 Ill. Reg. 13761)

Senator Silverstein moved, seconded by Representative Lang, that JCAR object to and prohibit filing of the rulemaking because HFS, in its efforts to prevent medical assistance abuse, is restricting physician reimbursement for group psychotherapy to psychiatrists and regulating clinical practices, which commentators maintain is an indirect and likely ineffectual way to address abuse. JCAR finds that this policy presents a threat to the public interest.

The Department was represented by Tamara Hoffman, Chief of Staff, and Teresa Eagleson, Administrator, Division of Medical Programs.

Representative Mulligan asked how many group psychotherapy sessions per week an individual can receive under the current medical assistance reimbursement program.

Ms Eagleson indicated that there is currently no limit on the number of sessions per week. This rulemaking attempts to set such a limit, as do the rules of many other medical assistance programs.

Representative Mulligan asked, for comparison, if there is a limit on the number of group psychotherapy sessions that can be reimbursed under the State employees' group insurance program.

Ms Eagleson responded that there is currently a limit of 20 of these sessions per year.

Representative Mulligan asked how many sessions, approximately, are being reimbursed for medical assistance recipients participating in nursing home-based mental health programs.

Ms Eagleson indicated that under this program, which is limited to physician-billed services, these rule changes will result in a cap of 2 sessions per week.

Representative Mulligan stated that this would total 104 per year, compared to 20 under State employees' insurance. She asked what amount the group insurance program pays for each session.

Ms Eagleson indicated that she did not know.

Representative Mulligan asked for total amount expended for this reimbursement over the past year.

Ms Eagleson responded that almost \$24 million was spent in FY 08. She stated that the purpose of this rulemaking is to guarantee that the funds allotted to this program are spent in a responsible manner. The rulemaking would require that the physician providing the service has adequate credentials and would limit the amount of service, just like HFS limits the quantities of medication that can be reimbursed.

Representative Mulligan asked if the current rules place any cap on the size of a psychotherapy group.

Ms Eagleson indicated that there is currently no limit on group size. This is another problem this rulemaking is attempting to resolve. A physician could fill Soldier Field and bill HFS for group psychotherapy for every client in attendance. HFS is now establishing a group limit of 10 and allowing an individual only 2 sessions per week.

Representative Mulligan asked if these proposed numbers reflect the norm for group psychotherapy.

Ms Eagleson agreed that they do.

Representative Mulligan asked if this is a program that may be receiving only 50% funding for the upcoming year.

Ms Eagleson indicated that the budget bill that went to the Governor funds physician payments at 100% and medical transportation at 50%.

Representative Mulligan indicated that she had heard there was supposed to be a further meeting of interested parties with respect to this rulemaking later in the week.

Ms Eagleson indicated that HFS has been working with several interested parties and JCAR Staff. The Department is willing to continue this work. This is an extremely important rulemaking. In the past year, over 900,000 individual services were billed under this program; almost 1/3 of that number was billed by 9 physicians.

Representative Mulligan asked if this didn't signal that something was wrong.

Ms Eagleson agreed. HFS has been working with the Medicaid Fraud Control Unit of the Department of State Police and other law enforcement officials on this issue for a couple of years.

Representative Mulligan asked whether the pending Prohibition motion would allow HFS to continue its work on this rulemaking. She suggested that the State cannot enter the new fiscal year with a program that continues to open the checkbook and let the money flow out while totally ruining other social services programs.

Ms Hoffman indicated that the Department will continue to work with the interest groups. Some of the parties providing these services are doing good work, and HFS doesn't want to unintentionally harm those efforts. A 45-day Extension has already been voted on this rulemaking, so another Extension is not possible.

Senator Silverstein stated that the interested parties who have been meeting on this rulemaking want to stop the fraud and abuse that is occurring. However, there are several issues that still need to be resolved. At a meeting he attended the previous Friday, Senator Silverstein believed

that considerable progress was made. With a little more time, he believes more issues can be resolved. The only way to get that time at this point is with a Filing Prohibition. He is hopeful that, with another meeting scheduled for the upcoming Friday, agreement can be reached and this issue can be acted on by JCAR at its July meeting. He can't in good faith say this matter is ready to be addressed today.

Representative Lang commented that, if this rulemaking were only about fraud and abuse, it would have been resolved already. It goes well beyond fraud and abuse. It takes a whole category of providers and says "You're out". This would mean that many who now get services in areas of the State where abundant numbers of psychiatrists are not available will get no services at all. Of course we want to stop fraud and abuse, but there are good people now providing these services who will not be able to continue to do so under this revised rule. He urged the Department to find a way to stop the abuse without curtailing legitimate services.

The motion passed on a rollcall vote of 8-1-0 (Mulligan: No; Fritchey: Not Present).

Ms Hoffman indicated that the Department is prepared to work tirelessly on this issue and is hopeful that it will be on the next JCAR agenda.

Representative Moffitt indicated that this was the first he had heard that the State Police have also been involved in this matter and that he hopes they will be included in any further discussions.

Ms Hoffman indicated that would be the case.

Department of Healthcare and Family Services – Specialized Health Care Delivery Systems (89 Ill. Adm. Code 146; 33 Ill. Reg. 3822)

Representative Lang moved, seconded by Senator Hultgren, that JCAR and the agency agree to extend the Second Notice period on this rulemaking for an additional 45 days. The motion passed unanimously.

Representative Saviano asked if any member desired discussion of any emergency or preemptory rulemaking. Senator Rutherford asked for consideration of a rulemaking of the Department of Human Services.

Department of Human Services – Provider Requirements, Types of Services, and Rates of Payment (89 Ill. Adm. Code 686; 33 Ill. Reg. 7017) (Emergency)

Senator Rutherford moved, seconded by Representative Moffitt, that JCAR object to and suspend the emergency rule, which implements enhanced rates to assist qualifying homemaker agencies providing healthcare coverage to their direct service employees, because the agency offered no satisfactory rationale for its use of emergency rulemaking. JCAR finds that the rulemaking presents a threat to the public interest.

The motion passed unanimously on a rollcall vote of 10-0-0.

CERTIFICATION OF NO OBJECTION

Senator Hunter moved, seconded by Representative Lang, 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.

AGENCY RESPONSE

Department of Public Health – Loan Repayment Assistance for Dentists (77 Ill. Adm. Code 580; 32 Ill. Reg. 14455)

Due to the appropriateness of the Department's response, no further action was taken.

JULY MEETING DATE

Co-Chair Saviano announced that the next monthly meeting is scheduled for Tuesday, July 14, 2009, 10:30 a.m., Room 16-503 of the James R. Thompson Center in Chicago.

ADJOURNMENT

Senator Silverstein moved, seconded by Representative Mulligan, that the meeting be adjourned. The motion passed unanimously.

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