

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. MAGGIE CROTTY

CO-CHAIR:
REP. ANGELO "SKIP" SAVIANO

EXECUTIVE DIRECTOR:
VICKI THOMAS



700 STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
211/785-2254

SEN. J. BRADLEY BURZYNSKI
SEN. RANDALL HULTGREN
SEN. MATTIE HUNTER
SEN. DAN RUTHERFORD
SEN. IRA SILVERSTEIN
REP. JOHN FRITCHEY
REP. LOU LANG
REP. DAVID MILLER
REP. DONALD L. MOFFITT
REP. ROSEMARY MULLIGAN

MINUTES

July 14, 2009

Meeting Called to Order

The Joint Committee on Administrative Rules met on July 14, 2009 at 11:00 a.m. in Room C-1 of the Stratton Office Building in Springfield, 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

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 JUNE 16, 2009 MEETING

Representative Lang moved, seconded by Representative Saviano, to approve the minutes of the June 16, 2009 meeting. The motion passed on a vote of 11-0-0 (Senator Crotty abstained because she was not present at the June meeting).

REVIEW OF AGENCY RULEMAKINGS

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

Representative Lang moved, seconded by Representative Saviano, that JCAR object to, and prohibit filing of, the rulemaking because it poses a threat to the public interest by imposing significant costs on public landowners, imposing costs and property right restrictions on private landowners not specifically authorized by statute, greatly restricting recreational uses of some public waterways, and potentially exposing public and private landowners to increased legal liabilities.

The Department was represented by Robert Mool, Legal Counsel, and Gary Clark, Director of the DNR Office of Water Resources.

Representative Lang pointed out that JCAR still has some issues with this rulemaking, including the impact it would have on landowners, both public and private, and the impact on the public's enjoyment of the State's waterways. He asked if the Department would be willing to withdraw the rulemaking to provide more time to work on these issues.

Mr. Mool indicated that he was not authorized to agree to withdraw the rule, but indicated the Department is willing to continue working with JCAR. He pointed out that the one year deadline on this rulemaking expires in September, which does allow time for further consideration.

Representative Lang made inquiries of the JCAR Executive Director regarding the timeframes, then stated that, since an Extension has already been granted on this rulemaking, there appears to be 2 means of getting more time for consideration of the rulemaking: either the Department can withdraw the rulemaking and begin again, or JCAR can prohibit filing of this rulemaking until issues are resolved.

Mr. Mool indicated that the Department is willing to accept a Prohibition.

The motion passed on a rollcall vote of 11-0-1 (Mulligan: Present).

Co-Chair Crotty asked if any member desired to discuss any other rulemaking. No member requested such consideration.

CERTIFICATION OF NO OBJECTION

Representative Miller moved, seconded by Senator Rutherford, 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 RESPONSES

Environmental Protection Agency – Permit Fees for Installing or Extending Water Mains (35 Ill. Adm. Code 690; 32 Ill. Reg. 19849)

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

CONSIDERATION OF FILING PROHIBITIONS

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

Representative Mulligan moved, seconded by Senator Burzynski, that JCAR withdraw the Filing Prohibition on this rulemaking contingent and effective upon the Department's removal of Section 140.14 authorizing HFS to deny participation in the medical assistance program if the provider owes a debt to the Department.

The motion passed on a rollcall vote of 12-0-0.

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

Senator Silverstein, seconded by Senator Hultgren, moved that, contingent upon the Department's agreement to modify the rulemaking as indicated in the Modifications in Response to JCAR Objection, JCAR withdraw its Filing Prohibition. The withdrawal is effective upon the Department filing the modified rulemaking with the Secretary of State for adoption.

The Department was represented by Tamara Hoffman, Chief of Staff, Theresa Eagleson, Administrator of Medical Programs, and James Parker, Deputy Administrator of Medical Programs.

Representative Lang: It is clear that a good portion of the rulemaking stems from the fact that there has been some abuse in this program, as identified by the State Police and the press. JCAR members are aware of this abuse and that it has to be addressed. Some of the rulemaking does that. However, the provision of the rule that caps the number of group psychotherapy treatments that can take place each week has nothing whatsoever to do with abuse, in my opinion. If there's abuse in the system, it can occur whether there's one visit or 2 or 7. So that provision is not about abuse; it's more about the Department trying to save some money, which, in these economic times, is perhaps a good thing to do. However, I believe it should be called what it is. At no time in any of this debate have I heard any talk about patient care. I have heard about comparison to what other programs do, but I have not heard about how many visits are appropriate for best patient care. I've not heard the Department say, "Let's do 2, but if a doctor says more are warranted, let's do more". While we want a rule in place to address abuse, I believe we should also zealously guard the care of patients. Would the Department please comment on these thoughts?

Ms Hoffman commented generally that the Department has worked with the providers on this issue and she agrees that there are some good providers out there. The Department is continuing to work with the providers to guarantee that there is continuity of care for the clients whose services may be impacted by these rule changes.

Ms Eagleson: The Department has done considerable research on the frequency of group therapy that is clinically indicated. A best-practices book, *Theory in Practice of Group Psychotherapy*, indicates that, in the majority of situations, one session/week is appropriate. In developing this rulemaking, the Department drew on a lot of Medicare standards. For instance, the length of a session was reduced from 1 hour to 45 minutes, and the group size was increased from 10 to 12. The Medicare standard for frequency of group psychotherapy is 2/week. The best practice standards say one to 2/week. Most healthcare plans allow for only 15-20/year. Group

psychotherapy is also usually limited to a specified duration, like 2/week for only 2 or 3 months. Nothing in the rulemaking limits this client group, approximately 97% of which are nursing home residents, from receiving additional group psychotherapy or psychosocial services through the nursing home, getting individual psychotherapy from a provider, or going to a community mental health program. The Department believes it is guarding the best interests of the client.

Representative Lang: If your doctor recommended 4 or 5 or 6 group psychotherapy sessions in a week, would you believe that's what you should receive?

Ms Eagleson: In my work and in experience with family and friends, I have not run into a situation in which 4 or 5 group psychotherapy sessions were indicated. If they are necessary, clients have options for care outside this particular program.

Representative Lang: This means the State will pay for 2 sessions; for the rest, the client is on his or her own.

Ms Eagleson: One/week is most frequently clinically indicated. Research shows that 2/week is generous.

Representative Lang: Do you believe the patient should get what the doctor says the patient needs?

Mr. Parker: There is abuse, and it's the providers who are abusing the program. To adopt a rule that says the provider determines how much service will be reimbursed would create a problem. I know we'd like to believe that whatever the doctor orders is right, but the targets of these investigations are the doctors. We have to create limits for this reimbursement program. Law enforcement wants us to create these enforceable standards.

Representative Lang: There are provisions in this rulemaking that deal with the abuse, correct?

Mr. Parker: All of these provisions deal with abuse.

Representative Lang: So what you're arguing is, we're not going to allow these providers to abuse the system 7 days/week, but only allow them to abuse it 2 days/week?

Mr. Parker: We are limiting sessions to 2/week. We're requiring the billing doctor to actually be there. We're requiring the session to be long enough to be a legitimate session. We're requiring that there be a diagnosis stating that group psychotherapy is appropriate treatment. We are requiring that the provider coordinate with the nursing home. All of these things put together are for the benefit of both the patient and the taxpayer.

Representative Lang: This is more about cost savings than anything else, and it would be better if you all just said that.

Ms Eagleson: I just came from across the street, from the Medicaid Managed Care Task Force meeting, and we are continually being asked to run this program in the most efficient way,

managing care for our clients, looking at what's clinically appropriate. This is one of the ways in which we are not only encouraging or requiring better care, but are seeking to save money. Those 2 things quite often work together.

Senator Hunter: Did you say that 97% of the clients under this program are in nursing homes? Who constitutes the other 3%?

Ms Eagleson: For 97% of the group psychotherapy services billed last year in this particular program, the client resided in a nursing home. The other 3% could be all across the board. Community mental health services are billed under an entirely different rule and are not affected by this rulemaking.

Representative Mulligan: Medicare pays for 20 sessions/year and this program pays for 104/year, correct?

Ms Eagleson: Medicare pays for 10-15/year.

Representative Mulligan: And the State employees group health insurance program?

Ms Eagleson: 20/year.

Representative Mulligan: Did you find any other programs that pay for more?

Ms Eagleson: We found at least one other state that paid for up to 2/week. I believe that was Virginia, but that was the maximum that we found.

Representative Mulligan: The medical assistance physician line item from which these services are paid is open-ended?

Ms Eagleson: You are correct. The physician reimbursement line is very large, over \$1 billion. HFS pays for thousands of physician services through that line, including office visits, screenings, procedures, etc. The \$25 million spent on this particular CPT (current procedure terminology) code last year came out of this line.

Representative Mulligan: So, for lack of restrictive rules, an unlimited amount could be billed by a physician?

Ms Eagleson: That is one of the reasons we are proposing to create these limits, yes.

Representative Mulligan: On the other hand, the State budget that was supported by some legislators cut community mental health to 50% of the prior year. I think it's appropriate to look at the abuse under this line. I believe this rulemaking is appropriate. We need some guidelines to control what could otherwise be an open-ended line. It's the taxpayers' money. At some point, the entire program collapses, and then no one gets any services.

Representative Moffitt: This rulemaking would tie us with the most generous state in the number of group psychotherapy sessions that are allowed in a week?

Ms Eagleson: That's correct, with respect to the states' policies we could locate on the internet.

Representative Moffitt: Is there any evidence that additional sessions result in better outcomes?

Ms Eagleson: We've not found any evidence of that in our research on this topic.

Representative Moffitt: Some procedures under this program are currently under investigation. Does this proposal provide the appropriate response to the current abuse, in the view of the State Police?

Mr. Parker: We have worked very closely with the State Police, the FBI, the U.S. Attorney and the Attorney General. They have indicated that this rulemaking gives them the tools they need to shut down the fraud they are investigating. The State Police are fine with the modifications we have agreed to with respect to this rulemaking.

Representative Lang (explaining his vote): I think we have to stop the abuse in this system, so I will vote aye on the motion. I'm not sure I appreciate the notion that we are not going to let medical providers decide what is best for patients, particularly those with mental illness. The State Police and others appear to believe this rule will address the abuse. I question whether limiting the number of sessions arbitrarily is necessary to deal with the abuse. I think this is not in the best interest of patient care, but, for now, I will vote aye.

The motion passed on a rollcall vote of 12-0-0.

AUGUST MEETING DATE

Co-Chair Crotty announced that the next monthly meeting is scheduled for Tuesday, August 18, 2009, 10:30 a.m., Room 16-503 of the James R. Thompson Center in Chicago.

ADJOURNMENT

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

Min:0907Jul