

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. LOU LANG
REP. DAVID R. LEITCH
REP. DAVID MILLER
REP. ROSEMARY MULLIGAN

MINUTES

December 16, 2008

Meeting Called to Order

The Joint Committee on Administrative Rules met on December 16, 2008 at 8:00 a.m. in Room C-1 of the Stratton Building in Springfield, Illinois.

Co-Chair Hassert 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	Representative John Fritchey
X Senator James Clayborne, Jr.	X Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
Senator Ira Silverstein	X Representative Rosemary Mulligan

APPROVAL OF THE MINUTES OF THE NOVEMBER 19, 2008 MEETING

Senator Rutherford moved, seconded by Representative Lang, to approve the minutes of the November 19, 2008 meeting. The motion passed unanimously.

WITHDRAWAL OF SUSPENSION

Department of Human Services – Food Stamps (89 Ill. Adm. Code 121; 32 Ill. Reg. 16905) (Peremptory)

Representative Lang moved, seconded by Senator Rutherford, that JCAR withdraw the Suspension of the peremptory rule contingent upon DHS repealing the peremptory rule.

The withdrawal will be effective upon filing of the repeal. The motion passed on a unanimous rollcall vote of 10-0.

REVIEW OF AGENCY RULEMAKINGS AND EXISTING RULE

Department of Human Services – Temporary Assistance for Needy Families (89 Ill. Adm. Code 112; 32 Ill. Reg. 18051); Aid to the Aged, Blind or Disabled (89 Ill. Adm. Code 113; 32 Ill. Reg. 18065; General Assistance (89 Ill. Adm. Code 114; 32 Ill. Reg. 18076); Refugee/Repatriate Program (89 Ill. Adm. Code 115; 32 Ill. Reg. 18088; Food Stamps (89 Ill. Adm. Code 121; 32 Ill. Reg. 18092) (Peremptories)

Representative Mulligan moved, seconded by Senator Hultgren, that JCAR object to the 5 rulemakings because the 11/10/08 filing of peremptory rules implemented federal law effective 12/26/07 and 1/28/08. This violates the IAPA Section 5-50 requirement that adoption of federal changes by peremptory rule occur within 30 days after the federal action. The motion passed unanimously.

Co-Chair Hassert asked if any member desired to discuss any other rulemakings. Senator Crotty asked for consideration of a rulemaking of the Department of Financial and Professional Regulation and Senator Rutherford requested a rulemaking of the Department of Healthcare and Family Services.

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

The agency was represented by Brent Adams, Deputy Secretary and Chief of Staff. Co-Chair Hassert announced that consideration of this rulemaking would be postponed to the January JCAR meeting.

Department of Healthcare and Family Services – Hospital Services (89 Ill. Adm. Code 148; 32 Ill. Reg. 9789)

The agency was represented by Tamara Hoffman, Chief of Staff, and Joseph Holler, Bureau Chief for Rate Development.

Senator Rutherford: What objective criteria does HFS use to award hospital grants?

Ms Hoffman: We look at utilization rates, obstetrical-gynecological services, the State Plan, etc.

Senator Rutherford: How often do you change the State Plan?

Ms Hoffman: As needed.

Senator Rutherford: JCAR needs to further consider this rulemaking. Will HFS agree to an Extension?

Mr. Holler explained payment streams for both assessments and hospital payments.

Senator Rutherford: Does this rulemaking deal with both assessments and payments?

Mr. Holler: No, it deals only with payments, not assessments.

Senator Rutherford: Is the rulemaking strictly about grants? Can you give JCAR a copy of the State Plan?

Ms Hoffman: Yes, but what will an Extension do to payments?

Mr. Holler: Will the effective date be delayed by an Extension? If so, CMMS may have a problem with that.

Senator Rutherford: The emergency rule has already expired.

Ms Hoffman: That emergency rule expiration was my fault.

Senator Rutherford: The problem is that HFS does not have objective written criteria for making these hospital grants. In light of last week's revelation, doesn't that sound and smell a little bit suspect? JCAR has never been given a copy of the State Plan.

Mr. Holler: We thought JCAR had the State Plan amendment. CMMS approved the amendments on which this rulemaking is based on 12/4.

Ms Hoffman: We will forward JCAR the State Plan amendments today or tomorrow.

Senator Rutherford: What happens if you personally are not at HFS? Will JCAR still get a copy of the State Plan?

Senator Crotty: We need a copy of the State Plan today.

Representative Lang: We have never seen these criteria. If you received approval of the changed State Plan 2 weeks ago, why didn't JCAR get a copy?

Ms Hoffman: I believed it had been forwarded. Other staff did not realize that our policy about not releasing the State Plan had changed.

Representative Lang: Don't pass this off on people below you. How do we know after 6 years of the Blagojevich administration that we will get it? Eventually someone is going to use the word "cover-up". Staff has asked numerous times, and how can we believe you now?

Ms Hoffman directed Mr Holler to give Representative Lang a copy of the State Plan immediately.

Representative Lang: Don't you often change the Plan? If so, why? Is it because you have another hospital to add? Does the federal government change its policies?

Ms Hoffman: Our policy will be to make copies of the State Plan amendments available. The federal standards and the needs of Illinois hospitals do change.

Mr. Holler: We propose a methodology to the feds that they approve or deny. The feds then provide matching funds if they approve. The utilization methodologies change. We must tie all payments to utilization. The State Plan that I am giving you has 2 components, inpatient and outpatient.

Representative Lang: You can understand why this Committee views the Department with suspicion. I am not going to put up with this. It is outrageous that our staff can't get information. If hospitals lose payments or payment is delayed, they can beat on you, not me. This is outrageous.

Ms Hoffman: Two weeks ago, I revised the policy. I will speak to my staff.

Representative Mulligan: When were hospitals last paid?

Mr. Holler: They were all covered under the June 2008 assessment and paid. The State Plan Amendment approved by CMMS on 12/4 gives hospitals more money, but no money has been paid yet. Payments are retroactive to 7/1/08. I have explained payments and changes to JCAR staff at length. I have been working with them since June.

Representative Mulligan: But not until after the State Plan change was approved?

Mr. Holler: We work with CMMS to refine the payment methodology. These are technically not grants. These are payments for services rendered.

Representative Mulligan: Haven't hospitals been waiting a while for these payments?

Ms Hoffman: Yes. I worked with Representative Currie and Senator Schoenberg to get hospitals paid before the new General Assembly is seated.

Representative Mulligan: Haven't all hospitals agreed with these payment processes?

Ms Hoffman: Yes.

Mr. Holler: The federal government has already signed off on this, and hospitals will get their money.

Representative Mulligan: I feel comfortable with what you are doing in this area. I don't challenge your personal integrity on this.

Ms Hoffman: I have enjoyed working with all of you at JCAR....

Representative Leitch: Has Children's Memorial Hospital received the \$8 million that U.S. Attorney Fitzgerald mentioned?

Ms Hoffman: No. We have been talking about this for 3 years. Dialogue has continued. The \$8 million, however, is not part of this rulemaking.

Senator Rutherford: I want you to commit to giving JCAR staff and JCAR members the information we need. We need a real solution to this before the January 13 JCAR meeting. There is a real cloud out there and a real stink none of us like. Will HFS staff be at the January meeting?

Ms Hoffman: Yes.

Senator Rutherford: Will HFS agree to meeting with JCAR staff, inviting members as well, to further explain the process that produces these rate changes?

Ms Hoffman: Yes.

Senator Rutherford: I withdraw the request for an Extension. Please put this rulemaking back on the No Objection List.

Co-Chair Hassert announced that the rulemaking would be returned to the No Objection list.

CERTIFICATION OF NO OBJECTION

Senator Burzinski moved, seconded by Representative Leitch, 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

Department of Central Management Services – Standard Procurement (44 Ill. Adm. Code 1; 31 Ill. Reg. 14973)

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

Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 32 Ill. Reg. 10480) (Emergency)

Although the agency response did not adequately respond to JCAR's contention that the agency had no statutory authority for this program at the time it adopted the emergency rule, that statutory authority is now in place. The Committee determined that no further action is warranted at this time.

Department of Natural Resources – Special Wildlife Funds Grant Program (17 Ill. Adm. Code 3060; 32 Ill. Reg. 14413)

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

JANUARY MEETING DATE

Co-Chair Hassert announced that the next monthly meeting is scheduled for Tuesday, January 13, 2009, 9:00 a.m., Room C-1 of the Stratton Office Building in Springfield.

ADJOURNMENT

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

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