

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. DON HARMON

CO-CHAIR:
REP. RON SANDACK

EXECUTIVE DIRECTOR:
VICKI THOMAS



700 STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217/785-2254

SEN. PAMELA ALTHOFF
SEN. BILL BRADY
SEN. KAREN McCONNAUGHAY
SEN. TONY MUÑOZ
SEN. IRA SILVERSTEIN
REP. GREG HARRIS
REP. LOU LANG
REP. DAVID R. LEITCH
REP. ANDRÉ THAPEDI
REP. MIKE TRYON

MINUTES

November 17, 2015

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, November 17, 2015 at 11:00 a.m. in Room 600C of the Michael A. Bilandic Building, Chicago IL. Co-Chair Harmon 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 to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Pamela Althoff	X Representative Greg Harris
X Senator Bill Brady	Representative Lou Lang
X Senator Don Harmon	X Representative David Leitch
X Senator Karen McConnaughay	X Representative Ron Sandack
X Senator Tony Muñoz	X Representative André Thapedi
Senator Ira Silverstein	X Representative Mike Tryon

APPROVAL OF THE MINUTES OF THE OCTOBER 13, 2015 MEETING

Senator McConnaughay moved, seconded by Representative Tryon, that the minutes of the October 13, 2015 meeting be approved. The motion passed unanimously (10-0-0).

REVIEW OF AGENCY RULEMAKINGS

Department of Labor – Equal Pay in Employment (56 Ill. Adm. Code 320; 39 Ill. Reg. 11199)
and *Job Opportunities for Qualified Applicants Act (56 Ill. Adm. Code 340; 39 Ill. Reg. 11206)*

Senator Althoff moved, seconded by Senator Muñoz, that JCAR, with the concurrence of the Department of Labor, extend consideration of these rulemakings for an additional 45 days. The motion passed unanimously (10-0-0).

Capital Development Board – Illinois Energy Conservation Code (71 Ill. Adm. Code 600; 39 Ill. Reg. 12425)

Representative Tryon moved, seconded by Representative Leitch, that JCAR, with the concurrence of the Capital Development Board, extend consideration of this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

State Board of Education – Special Education (23 Ill. Adm. Code 25; 39 Ill. Reg. 8906)

Representative Harris moved, seconded by Representative Thapedi, that JCAR, with the concurrence of the State Board of Education, extend consideration of this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

Department of Financial and Professional Regulation – Nurse Practice Act (68 Ill. Adm. Code 1300; 38 Ill. Reg. 22373)

Craig Cellini, Rules Coordinator, and Mark Thompson, General Counsel, represented the Department. Senator Harmon noted that it was his understanding that the only remaining contested issue with these rules pertained to the curriculum associated with the pilot program, and that he understood the Department's interpretation of the rules to be that the curriculum published by the National Council of State Boards of Nursing (NCSBN) was an acceptable curriculum, but not the only one acceptable to the Department, and that someone trained using the NCSBN curriculum would be eligible to participate in the pilot program.

Mr. Cellini confirmed that this understanding was correct.

Department of Human Services – Child Care (89 Ill. Adm. Code 50; 39 Ill. Reg. 9731)

Greg Bassi, General Counsel, and Corey-Anne Gulkevich, Deputy General Counsel, represented the Department.

Mr. Bassi: Confirmed that the emergency rule adopted by the Department on November 9 was not at issue in this meeting; rather, JCAR is considering the proposed permanent rule for the Child Care Assistance Program (CCAP) that accompanied the emergency rule effective on July 1. Originally, this proposed rule set an eligibility level of 50% FPL (was 185%), but now reflects the November 9 emergency rule modification raising the level to 162% FPL. DPH also removed the requirements for criminal history fingerprint background checks on relatives and for participants to apply for child support.

Representative Thapedi: What is the source of the 162% FPL threshold.

Mr. Bassi: 162% FPL was the result of bipartisan discussions between the Governor's office and members of the legislature. He referred any further questions about this process to the Governor's office, as he was not involved in those discussions.

Representative Thapedi: Expressed surprise that an agency's General Counsel would not have been involved in a discussion of this magnitude. Are people between 50% and 162% FPL are back in the program?

Mr. Bassi: Recipients who were enrolled in the program prior to 7/1/15 and had not left due to aging out or exceeding the original 185% FPL threshold are still enrolled in the program. People in the 50-162% FPL range whose applications were rejected after July 1 should reapply at one of DHS' designated Child Care Resource and Referral Centers. The application process should normally take 10 days, but, with the backlog, some Centers are running up to 60 days behind. Most of them are keeping up with the schedule and DHS is prioritizing reapplications.

Representative Thapedi: How many children were excluded from the program at 162% FPL?

Mr. Bassi: The number fluctuates from month to month, but around 10,000-15,000.

Representative Thapedi: How much money was saved by barring individuals in the 162-185% FPL range?

Mr. Bassi: I'm not prepared to talk about specifics, but I think overall program costs have been reduced and should be much more manageable through the rest of this year.

Representative Thapedi: Do you have the statutory authority to reduce the eligibility threshold below 185% FPL, considering that the 185% FPL threshold was enacted by the legislature in 2007?

Mr. Bassi: We have that authority at Section 9A-11B of the Public Aid Code: "The Illinois Department is authorized to lower income eligibility ceilings, raise parent co-payments, create waiting lists, or take such other actions during a fiscal year as are necessary to ensure that child care benefits paid under this Article do not exceed the amounts appropriated for those child care benefits. These changes may be accomplished by emergency rule under Section 5-45 of the Illinois Administrative Procedure Act."

Representative Thapedi: Where's the 185% FPL provision?

Mr. Bassi: It's in a different portion of the statute.

Representative Thapedi: It sounds like the answer to my question is that you believe that the authority you have to reduce the 185% FPL threshold is by virtue of having the authority to promulgate emergency rules. Is that a fair statement?

Mr. Bassi: It is a fair statement. But as you can see, explicit statutory authority allows budgetary considerations to require emergency rulemaking, which is what preceded the actions that were taken by our agency on July 1.

Representative Thapedi: Understood. The statute you just read was adopted about 1997, right?

Mr. Bassi: Correct.

Representative Thapedi: This month the House of Representatives considered SB 570, correct?

Mr. Bassi: Correct.

Representative Thapedi: SB 570 was not successful, correct?

Mr. Bassi: Correct.

Representative Thapedi: A portion of SB 570 actually amended the provision you just spoke of that really dealt with the authority to invoke emergency rulemaking, right?

Mr. Bassi: Yes. It's my understanding that SB 570 endeavored to strike that language.

Representative Thapedi: Wouldn't it be fair to say that you are inviting litigation as to the question of whether you can promulgate rules, emergency or permanent, that reduce the threshold below 185% FPL?

Mr. Bassi: No, I would not say that. I think that plain statutory construction would suggest that we look to the language of the statute and use that as our authority, and I don't think it can be stated much more clearly than it is.

Representative Thapedi: It's also my understanding that your Department is required to implement a State plan in order to receive federal dollars. Is that correct?

Mr. Bassi: Correct.

Representative Thapedi: And have you begun formulating that State plan?

Mr. Bassi: There are a number of individuals within DHS who are working on the plan.

Representative Thapedi: And when do you anticipate being finished with that?

Mr. Bassi: We are on pace to submit it under the timeline provided.

Representative Thapedi: My last question, and this is perhaps the most important question for people at home to get clarification. It's my understanding the Governor has stated that when an FY 2016 budget is passed, the child care assistance program will go back to 185% FPL. Is that true?

Mr. Bassi: I really can't comment on that. I know the Governor's office is working on putting in place a bipartisan, bicameral task force that will be taking on the responsibility to determine the appropriate structure of the program. I suspect that part of their task will be figuring out what the appropriate number is.

Representative Thapedi: I don't want to mischaracterize your testimony. I just want to ensure that I understand your testimony so that when I'm in my district in Englewood, in which a large percentage of the affected population resides, I know how to answer that question. What I've heard from this testimony is that you can't say whether this program will ever, ever get back to 185% FPL. Is that inaccurate?

Mr. Bassi: I look forward to the recommendations of that bipartisan, bicameral task force, which will set out an appropriate path for the program that recognizes the importance of providing quality, safe child care in a cost-effective manner.

Representative Thapedi: Who's going to be a part of this task force?

Mr. Bassi: I think that's still being worked out, and I would refer you to the Governor's office.

Representative Thapedi: Are they here? Is anyone from the Governor's office here to provide you with some answers to those questions?

Mr. Bassi: I do not think so.

Representative Thapedi: I did note that neither the proposed nor emergency rule, mentions a time period in which eligibility may revert to the 185% FPL floor. Is that accurate?

Mr. Bassi: That's accurate.

Representative Thapedi: Was there a reason why that was left out of these 2 rulemakings?

Mr. Bassi: Since no one can tell the future, it wouldn't be a responsible approach.

Co-Chair Harmon: Other questions for these witnesses? Could you please clarify one thing? Maybe I misunderstood, but I thought it was a fundamental part of the agreement reached between the Governor's office and the legislators who were involved in the negotiations that, if and when a budget is approved for the current fiscal year and adequate resources are approved, eligibility would, by operation of law, automatically be restored to 185% FPL. Are you telling me that our understanding of this is incorrect?

Mr. Bassi: No. What I'm saying is that it's the responsibility of this bipartisan task force to determine what that number is going to be. That's all I can answer today.

Co-Chair Harmon: Then you're not telling me exactly what I'm asking: whether by operation of law or rule it will return to 185% FPL.

Mr. Bassi: That is not what I said. What I said is that I look forward to the recommendations from this task force. I think it's likely that the people who are part of this task force will be the same people who were part of the initial discussions. That's my answer.

Co-Chair Harmon: Does the Governor's office offer a course to everyone interacting with the legislature to answer the question you wish had been asked, not the question that we had asked? I'm asking: does the rule provide for an automatic return to 185% upon adoption of a budget with adequate resources? This is a yes or no question.

Mr. Bassi: There is no language in this rule to that effect.

Co-Chair Harmon: Thank you. What are you doing to roll out this rule, in terms of reaching out to the families whose applications were denied during the 50% eligibility threshold?

Mr. Bassi: As I mentioned, last week we had a very broad call with the Centers as to how these applications should be processed and explaining changes to the rules. We provided notice to all the Centers. Today (I apologize; I thought it was going out yesterday) a notice is being distributed widely to providers and families. It's essentially a 2-page notice that goes through the rule changes and attempts to provide some guidelines so that those in the community understand what is happening and how they are now eligible. The notice will also be posted on the DHS website.

Co-Chair Harmon: So a letter will go to everyone who was denied?

Mr. Bassi: It depends on each Center, but most likely.

Representative Thapedi: Expressed his displeasure that this proposed rule failed to include explicit assurances from the agreement between the Governor and members of the legislature that the

threshold would be moved back to 185% FPL in the near future. He moved, seconded by Representative Harris, that JCAR object to this rulemaking based on undue economic impact on affected populations.

N	Senator Althoff	Y	Representative Harris
N	Senator Brady	A	Representative Lang
Y	Co-Chair Harmon	N	Representative Leitch
N	Senator McConnaughay	N	Co-Chair Sandack
Y	Senator Muñoz	Y	Representative Thapedi
A	Senator Silverstein	N	Representative Tryon

Co-Chair Harmon and Representative Harris noted that their Aye votes were based solely on the fact that the rule failed to include the agreement to move back to 185% FPL when the FY16 budget is adopted. The motion failed on a 4-6-0 rollcall vote.

Department of Public Health – Home Health, Home Services, and Home Nursing Agency Code (77 Ill. Adm. Code 245; 38 Ill. Reg. 23298)

Kyle Stone, General Counsel, and Karen Singer, Program Supervisor, represented the Department. Representative Harris stated that it was his understanding that, as the health care industry has evolved over several decades, the regulatory environment has changed, and a regulatory conflict has developed between the applicable DPH and Department of Labor rules. He asked whether the Department would continue to work through these outstanding issues and determine whether any revisions are needed to its own rules. The Department agreed.

Department of Healthcare and Family Services – Hospital Services (89 Ill. Adm. Code 148; 39 Ill. Reg. 10334)

Mollie Zito, General Counsel, represented the Department. She confirmed that the permanent rules being discussed would replace an emergency rule about to expire, and that the Department refused JCAR's request for an Extension for an additional 45 days to explore some unanswered questions pertaining to the permanent rulemaking.

(The Committee recessed for five minutes.)

Co-Chair Harmon: The Department is still unwilling to agree to an Extension. Correct?

Ms. Zito: Correct.

Co-Chair Harmon: As you know, in the face of that failure to agree to an Extension, the only means JCAR has to extend its consideration of a rulemaking is to entertain a motion to prohibit the rulemaking.

Representative Thapedi: I need clarification regarding 2 specific affected hospitals, starting with Ingalls Memorial in Harvey IL. It's my understanding that there's currently some kind of acquisition or merger pending. Are you aware of that?

Ms. Zito: I personally am not, as I work in the Office of General Counsel, but the Director may be aware.

Representative Thapedi: As far as you know, that doesn't have anything to do with the position you're taking this morning?

Ms. Zito: That is correct, sir.

Representative Thapedi: With respect to Adventist Bolingbrook, it's my understanding that the facility pays \$3.25M in taxes per year.

Ms. Zito: I don't know the amount of the tax. I do know there is an assessment it pays.

Representative Thapedi: So that facility is paying both a tax of about \$3.25M and an assessment.

Ms. Zito: Our financial folks would be able to confirm that.

Representative Thapedi: Is there a reason why HFS does not send financially knowledgeable personnel to appear at JCAR meetings dealing with financial issue?

Ms. Zito: I know about the specifics of this rule and the amount of money that is going to each hospital this rule affects, but I do not know about their taxes or anything like that.

Representative Thapedi: In the future, and I'm sure that we'll be seeing each other quite a bit for the next 3 years, when you do have rules for this body that are financial in nature, please have someone from your financial team accompany you so that we don't put you on the spot with questions that are more appropriately asked to your financial team.

Ms. Zito: I'll certainly try, sir.

Representative Thapedi: Thank you very much. It's my understanding that, under this rulemaking, Adventist Bolingbrook will no longer receive Medicaid Facilitation and Utilization Payments. Is that accurate?

Ms. Zito: Correct.

Representative Thapedi: Thank you.

Representative Leitch: I am curious why you're not cooperating with our request for an Extension.

Ms. Zito: We are concerned about the lag time created by the emergency rule expiring on 12/6/15 and the next JCAR meeting on 12/15/15.

Representative Leitch: How much time is that?

Ms. Zito: 9 days.

Representative Leitch: The sky's going to fall in 9 days?

Ms. Zito: We're concerned that there may be an argument made that these payments need to be made if we have any lapse between the emergency rule and the permanent rule.

Representative Leitch: Have there been discussions to reach agreements that this would not occur?

Ms. Zito: Yes.

Representative Leitch: So why, then, aren't you cooperating? I'm just appalled, frankly. I've been on JCAR for a long time and, typically, we have a lot better communication for one thing and a lot better cooperation with the agencies.

Ms. Zito: I appreciate that, but we would feel much more comfortable if we did not have to wait.

Representative Thapedi moved, seconded by Senator Muñoz, that JCAR prohibit the filing of this rulemaking.

N	Senator Althoff	Y	Representative Harris
N	Senator Brady	A	Representative Lang
Y	Co-Chair Harmon	N	Representative Leitch
N	Senator McConnaughay	N	Co-Chair Sandack
Y	Senator Muñoz	Y	Representative Thapedi
A	Senator Silverstein	N	Representative Tryon

The motion failed on a 4-6-0 rollcall vote.

CERTIFICATION OF NO OBJECTION

Senator Brady moved, seconded by Senator Althoff, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection or an 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 (10-0-0).

DECEMBER MEETING DATE

Co-Chair Harmon announced that the next monthly meeting of JCAR is scheduled for 11:00 a.m. on Tuesday, December 15, in Room 600C of the Michael A. Bilandic Building, Chicago IL

ADJOURNMENT

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

Min:1115Nov