

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. STEVEN REICK
REP. CURTIS J. TARVER, II
REP. DAVE VELLA

MINUTES

March 21, 2023

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, March 21, 2023, at 10:30 a.m. in Room C-1 of the Stratton Building, Springfield. Co-Chair Cunningham 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 meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Cristina Castro	X Representative Eva-Dina Delgado
X Senator Bill Cunningham	X Representative Jackie Haas
X Senator Donald DeWitte	X Representative Steven Reick
X Senator Dale Fowler	X Representative Ryan Spain
Senator Kimberly A. Lightford	X Representative Curtis J. Tarver, II
X Senator Sue Rezin	X Representative Dave Vella

APPROVAL OF THE MINUTES OF THE FEBRUARY 14, 2023 MEETING

Rep. Haas moved, seconded by Rep. Tarver, that the minutes of the February 14, 2023 meeting be approved. The motion passed unanimously (11-0-0).

AGENCY RESPONSE

Board of Examiners – Certificate of Education and Examination Requirements (23 Ill. Adm. Code 1400; 47 Ill. Reg. 1510)

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

REVIEW OF AGENCY RULEMAKINGS

State Board of Education – Tutoring Services (23 Ill. Adm. Code 670; 46 Ill. Reg. 18445)

Sen. Rezin moved, seconded by Sen. Fowler, that JCAR recommend that the State Board of Education be timelier in adopting rules in response to statutory changes. Sec. 4 of the Educational Partnership Act [110 ILCS 40] required the Board to establish basic requirements for student tutors in 1985, and these requirements are just now being added to administrative rule 37 years later. The motion passed unanimously (11-0-0).

State Board of Elections – Campaign Financing (26 Ill. Adm. Code 100; 46 Ill. Reg. 5464)

Sen. Castro moved, seconded by Rep. Reick, that JCAR recommend that the State Board of Elections keep contribution limits found in 26 Ill. Adm. Code 100.APPENDIX A, TABLE A up to date with the currently updated limits. Sec. 9-8.5 of the Election Code [10 ILCS 5] requires the Board, on January 1st of each odd-numbered year, to update contribution limits for inflation. This table was last amended in 2018. The motion passed unanimously (11-0-0).

Department of Revenue – Parking Excise Tax (86 Ill. Adm. Code 195; 46 Ill. Reg. 17865)

Rep. Tarver moved, seconded by Rep. Delgado, that JCAR, with the concurrence of the Department of Revenue, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (11-0-0).

Department of Healthcare and Family Services – Hospital Services (89 Ill. Adm. Code 148; 46 Ill. Reg. 16331)

Omar Shaker, Interim Chief of Administrative Rules, and Dan Jenkins, Deputy Administrator for Rates and Finance, represented the Department of Healthcare and Family Services.

Rep. Vella: This is in regard to a Public Act to authorize payments to hospitals for long-acting injectable medications. Is that correct?

Mr. Shaker: Yes, it is.

Rep. Vella: What kind of medications are we talking about?

Mr. Shaker: There is a bevy of medicines that are available. Some are for treatment of psychiatric conditions. Others include insulin and things like that.

Rep. Vella: And your proposed rule would be that only psychiatrists would be able to administer this medication or prescribe this medication?

Mr. Shaker: For the treatment of a psychiatric condition, given the fact that these medicines are concentrated forms of medicines that are traditionally taken orally, so that the medicine can slowly be absorbed by the body over a long period of time, giving an individual who has a psychiatric condition that may make it difficult to take a pill on a daily basis the security that for this set period of time they can have this specific medicine administered to them in a condition that is best for them for the condition they have. The administering of it should be in hand with a holistic psychiatric treatment that you're getting so that we can both track how your body is absorbing it and how effective it is and ultimately adjust based on any necessity. It is simply not like a normal

medicine where you are just given it, primarily because once you receive the medicine there is no way of getting it out, so if you're having an adverse effect to a long-acting injectable it's going to require some additional medical treatment to try to resolve it.

Rep. Vella: And is this typically given in a hospital or a psychiatric wing?

Mr. Shaker: It is required to be given in an inpatient setting for a psychiatric patient in which a psychiatric professional is administering it.

Rep. Vella: In your mind, "psychiatric professional" is a psychiatrist, not an APRN?

Mr. Shaker: No, it would have to be a psychiatrist. I think we also expanded it to Board-eligible psychiatrists or clinicians who are waiting for their certification.

Rep. Vella: Now the intent of the statute, I think, was to get this medication to as many people who need it as possible. Is that correct?

Mr. Shaker: Yes.

Rep. Vella: I'm sure you're aware that there aren't a lot of psychiatrists in the State of Illinois right now. In fact, I think the last I saw from DHS there's one for maybe every 10,000 people in the State of Illinois. Are you concerned that because you are limiting it just to psychiatrists that people aren't going to get what they need to get?

Mr. Shaker: Absolutely, there's a concern for it in the part of the agreement that we had with stakeholders when we met with them. They expressed some of these concerns, and were more than willing to provide information as we gather it as to who is receiving these types of treatments and whether there have been any denials based on circumstances that prevented someone from being inpatient for psychiatric reasons.

Rep. Vella: So you are going to keep track of how many psychiatrists are in the region to see how many people can and cannot take this medication? I guess my concern is right now we let APRNs prescribe psychiatric medications of all kinds, right?

Mr. Shaker: Yes.

Rep. Vella: And this is at least in some kind of controlled setting that we are giving this. So what additional danger is somebody in if they are in a controlled setting with an APRN there under the supervision of a psychiatrist? The psychiatrist isn't actually there, the APRN is there, what is the additional danger that the patient is being placed in?

Mr. Shaker: Potentially, that they are receiving a medicine that cannot be removed from their body and therefore their conditions and types of reaction that they are having could be much more significant, so we are trying to create these scenarios so that a treating physician is part of the process from beginning to end and continuing. One of the requirements that this has is that it's not only the initial administration but every subsequent administration, so that we can keep the patient on the proper schedule in order to receive follow-up medications. When you receive your initial inoculation, you are automatically scheduled for the next inoculation.

Rep. Vella: So why can't APRNs do that, is my question? I understand you want that done, but why can't they. APRNs are very well-trained and they're in a lot of places. And again, in the Rockford area I think we have only a few psychiatrists. Why can't APRNs do what you want them to do? They are very well-trained.

Mr. Shaker: I appreciate the concern, and I think we spoke to our medical advisor Dr. Arvind Goyal and he was very adamant that the type of medications that we're dealing with and the intensity of the medications that we're dealing with require a psychiatrist to prescribe and also to distinguish the intensity of the medicine that is required and also the continued process to make sure that the medicine is being effective and not having an adverse effect.

Rep. Vella: I have some concerns, and this rule is not in the spirit of the law, which was to try to get this medication to as many people as possible. APRNs are becoming more and more a part of the medical system. The lack of psychiatrists in the State of Illinois to put this into effect would really limit who can receive this medication.

Rep. Haas: I want to tag onto some of the questioning that has been asked as well. So we are talking about antipsychotic medications, injectables only, correct?

Mr. Shaker: Yes, for the psychiatric inpatient care.

Rep. Haas: And if I'm understanding it correctly, you're asking that the rule be that the long-acting injectables would only be ordered by a psychiatrist and administered by a psychiatrist in an inpatient setting?

Mr. Shaker: The injectables do require an inpatient setting and our position is that that the psychiatrist should be part of the prescribing process, yes.

Rep. Haas: Prescribing process or only prescribed by a psychiatrist and administered by a psychiatrist?

Mr. Shaker: Only prescribed by a psychiatrist.

Rep. Haas: And administered by a psychiatrist?

Mr. Shaker: I'm not 100% certain because I'm not a medical professional about how that is administration process works. I believe that the injections themselves are not required to be given by a psychiatrist; however, they are the ones that order them.

Rep. Haas: Only in an inpatient setting?

Mr. Shaker: Only in an inpatient setting.

Rep. Haas: So Haldol (haloperidol) would be one of those medications, correct?

Mr. Shaker: I'm unfamiliar with that medicine.

Rep. Haas: It's a long-acting injectable antipsychotic. Are you familiar with how long that's been around?

Mr. Shaker: I do know some of these medicines have been around for quite a while.

Rep. Haas: And is it allowed to be administered on an outpatient basis right now?

Mr. Shaker: I don't believe so, but I will say this—

Rep. Haas: It is.

Mr. Shaker: We built our rules specifically around authorizing Medicaid to cover some of these medicines. Some of these medicines have been administered for a long time and have simply not been part of the Medical Assistance Program.

Rep. Haas: Right. So Haldol can be administered in an outpatient setting now. Folks who have chronic and persistent mental illnesses who have been maintained in the community for a very long time—which is our goal, correct?

Mr. Shaker: Yes.

Rep. Haas: If we're saying now that they have to go into an inpatient setting to get their long-acting injectables, the mental health community has really been focused on a recovery community-based treatment program for a very long time. We've closed our state institutions, we've been working on closing a lot of them for a very long time, and the goal was then community-integrated treatment. To again tag onto what my colleague was earlier saying, it feels like this rule is setting us back by focusing on going back to inpatient care. I've worked in behavioral health for 33 years, and I feel like we're kind of going backwards by going back to inpatient treatment for some of these long-acting injectables. Some of the newer long-acting injectables are focused on keeping people in community-based outpatient care. Much of that is prescribed by psychiatrists. Again, what my colleague was saying, community-based treatment is lacking in psychiatry so we are focused on getting advanced practice nurse practitioners prescribing. And I think enacting this rule is going to hinder what the intent is and that's getting more people the treatment that they need to stay in the community, so I do have significant concerns with that. Some of these long-acting injectables, such as Haldol and Risperdal (risperidone) have been given to people in the community and administered in the community for probably longer than I've been practicing, Haldol in particular. So those are some of my concerns with this, and I think we need to continue working on this.

Co-Chair Cunningham: Thank you for answering our questions. I think you've heard there's some concern about the rule from the Committee. We'd like to request that the Department report back to the Committee on the implementation of this rule. Is the Department willing to provide the Committee with a 6-month report and a 12-month report on the implementation of this rule so the Committee can monitor progress?

Mr. Shaker: Absolutely.

Co-Chair Cunningham: Thank you for your commitment to that. We look forward to continuing

to work with you on this.

Office of the State Fire Marshal – General Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 Ill. Adm. Code 174; 46 Ill. Reg. 16029) and Technical Requirements for Underground Storage Tanks and the Storage, Transportation, Sale and Use of Petroleum and Other Regulated Substances (41 Ill. Adm. Code 175; 46 Ill. Reg. 16068)

Katherine Nunes, Senior Policy Advisor, represented the Office of the State Fire Marshal.

Co-Chair Cunningham: Thank you to the Department for your work on this. We know you've taken a lot of stakeholder input. You've also heard some of the concerns that members of the Committee have voiced. These are specific to the portion of the rule regarding replacement of lines and piping for underground fuel tanks and the need to replace them. Given the fact that there's still some disagreement on this issue, is the Department willing to amend this rule, pull that particular portion out, and then work with the General Assembly on attempting to address this through legislation?

Ms. Nunes: Yes, you do have our commitment that we will remove the proposed date certain deadline for replacement. We do have other existing provisions about double-wall piping so I just want to be clear that we are not agreeing to change the existing provisions; but, for the proposal, of course. We are open to continuing that discussion and trying to find a way that all stakeholders can agree to.

Department of Financial and Professional Regulation – Consumer Legal Funding Act (38 Ill. Adm. Code 170; 46 Ill. Reg. 17173)

Francesco Menchaca, Director of the Division of Financial Institutions, represented the Department of Financial and Professional Regulation.

Rep. Tarver: My concern is that although there's been a good job of the Department and the industry on a lot of issues, this refinancing piece keeps coming up. Having been a part of the original discussions, which quite frankly I think were not the most timely, I think the Department came in toward the end when the bill was moving, one of the things I took from that and it sounds like some others as well was that refinancing would be discussed and contemplated in rules. And I guess I want to hear your perspective on that for starters.

Mr. Menchaca: The portion of the refinance for these funding proposals is something that we talked about when this Act was moving a couple of years ago. At the time, the Act itemized the amount of time for which the funding accrued interest, and it didn't give us enough to refinance beyond that term. And so it's set forth in the Act, so this is something that we've talked about with industry, and I think we're in agreement with that. It's not something that we're able to modify in rules.

Rep. Tarver: I don't think the industry shares that perspective, which is why we need more conversations about it. I guess what I'll say publicly is if it were the case that the Department said "we're going to do this in rules" and here we are in rules and the Department says "we can't do that in rules", that sets a bad precedent for working with the Department to move legislation. So that's a concern. If that's the case. I don't want to put words in your mouth or anyone else's, but if that were the case, it would be a concern for me. The other thing is if we are going to potentially pass

more legislation that relates to refinancing, it can't be this. It can't be "we can't have this in rules, so let's do this statutorily, but we won't support a bill potentially that codifies this." So, I would never actually sign a blank check, but I do want to say on the record that if we're going to go that route, I certainly expect the Department to step up in that capacity and work toward language that both sides can live with.

Mr. Menchaca: When we discussed a couple of weeks ago, we committed to continue having dialogue with the industry; we're happy to do so. That one aspect on the refinance, does provide a certain amount of consumer protection. It's one of the strongest pieces in that Act. And so I think that we are certainly willing to meet with industry and with yourself and are happy to continue to have a dialogue about that.

Co-Chair Cunningham: Given that commitment and given the Committee's concern with this particular rulemaking, which can be found at Tab 9, this rulemaking will be removed from the No Objection List and placed on the April agenda.

CERTIFICATION OF NO OBJECTION

Rep. Vella moved, seconded by Sen. Castro, that the Committee inform the agencies to whose rulemakings the Committee has not voted an Objection or 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 rulemaking made by the agency, no Objections will be issued. The motion passed unanimously (11-0-0).

ANNOUNCEMENT OF APRIL MEETING

Co-Chair Cunningham announced that the next JCAR meeting will be Tuesday, April 18, 2023, at 10:30 a.m. in Room C-1 of the Stratton Office Building, Springfield.

ADJOURNMENT

Co-Chair Spain moved, seconded by Rep. Delgado, that the meeting stand adjourned. The motion passed unanimously (11-0-0).

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