

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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SEN. TONY MUÑOZ
SEN. SUE REZIN
SEN. PAUL SCHIMPF
SEN. CHUCK WEAVER
REP. TOM DEMMER
REP. MIKE HALPIN
REP. FRANCES HURLEY
REP. STEVEN REICK
REP. ANDRÉ THAPEDI

MINUTES

January 14, 2020

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, January 14, 2020 at 11:00 a.m. in Room C600 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 meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

X Senator Don Harmon	X Representative Tom Demmer
Senator Kimberly Lightford	X Representative Mike Halpin
X Senator Tony Muñoz	X Representative Frances Hurley
Senator Sue Rezin	Representative Steven Reick
X Senator Paul Schimpf	Representative André Thapedi
Senator Chuck Weaver	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE DECEMBER 17, 2019 MEETING

Sen. Muñoz moved, seconded by Rep. Halpin, that the minutes of the December 17, 2019 meeting be approved. The motion passed unanimously (7-0-0).

REVIEW OF AGENCY RULEMAKINGS

Department of Natural Resources – Illinois Natural Areas Stewardship Grant Program (17 Ill. Adm. Code 3051; 43 Ill. Reg. 8657)

Co-Chair Harmon announced that consideration of this rulemaking would be postponed to the next monthly meeting under the current Extension of Second Notice.

Department of Human Services – General Grantmaking (DHS) (44 Ill. Adm. Code 7060; 43 Ill. Reg. 11812)

Department of Human Services – Supplemental Nutrition Assistance Program (SNAP) (89 Ill. Adm. Code 121; 43 Ill. Reg. 11905)

Rep. Hurley moved, seconded by Sen. Schimpf, that JCAR, with the concurrence of the Department of Human Services, extend the Second Notice periods for these rulemakings an

additional 45 days. DHS had concurred in the Extension in advance. The motion passed unanimously (7-0-0). *Department of Healthcare and Family Services – Medical Assistance Programs (89 Ill. Adm. Code 120; 43 Ill. Reg. 7599)*

Ben Winick, Chief of Staff, and Kim Schultz, General Counsel, represented HFS.

Sen. Schimpf: A couple of commenters were concerned that a provision of this rule would give abortion providers a financial incentive to allow non-IL patients to claim IL residence, obtain presumptive eligibility, and thereby obtain abortion services at State expense. I don't believe their concerns are irrational or unfounded because there is a huge disparity between the laws of IL and those of our neighboring states regarding abortion. I would have liked to have seen some safeguards or performance standards put in place to insure that we do not spend IL Medicaid dollars on individuals who are not IL residents. During our discussions with the Department, we mentioned the hospital presumptive eligibility performance criteria in 89 IAC 120.68, which state that hospitals making presumptive eligibility determinations should aspire to have at least 90% of their PE enrollees follow up with a Medicaid application. My understanding is that this rule is not being enforced, can you tell us why?

Mr. Winick: The rules surrounding hospital provider eligibility have not been approved by the federal government up to this point. We have now submitted a waiver application to federal CMMS for an exemption from enforcement of those rules going forward.

Sen. Schimpf: So we are not enforcing that rule that is on the books because the federal government has objected to it, or because they have not approved it?

Mr. Winick: They have not approved it up to this point. We are actually seeking to just not implement hospital provider eligibility going forward.

Sen. Schimpf: Is there a requirement that the federal government approve these rules for presumptive eligibility?

Mr. Winick: On hospitals, yes, and for pregnant women as well. We've had that as part of our State Plan since January 1989. Those types of proposals do require federal approval.

Sen. Schimpf: Is there a requirement for the federal government to approve the rule that is on this agenda?

Ms Schultz: The details are contained in our State Plan.

Sen. Schimpf: JCAR is looking at this on a State level, but have you sought federal approval for this rule yet?

Ms Schultz: It's my understanding that it was approved.

Sen. Schimpf: I would like to clarify and put on the record that I felt we needed some type of safeguards, some type of performance standards, and the Department is not willing to include any safeguards or performance standards that I suggested in the rule, is that correct?

Mr. Winick: We are not looking to amend the rule to include those safeguards. We have had conversations with our Office of Inspector General. As this program is rolling out and we get new providers in, especially in communities along the State's borders, the integrity of the program is extremely important to us, not just in regard to some of the services that you mentioned, but all Medicaid services covered by the State. We want to insure that IL providers providing these services are only seeking reimbursement from the State for residents of the State.

Sen. Schimpf: Thank you for your commitment to do that, I appreciate that. As I said earlier, I don't think the concerns that were raised were unfounded. I think they were legitimate concerns. I would have liked to have seen some safeguards or performance standards put in for all of these presumptive eligibility determinations. I understand the Department is unwilling to do that and wants to move forward. If we had enough members present – we need 8 members to approve a Prohibition but we only have 7 here – I would be filing a motion for a Prohibition. But since we do not have 8 members present, I will wrap up my questioning and thank the Chairman for his indulgence.

The rulemaking remained on the No Objection List.

Department of Public Health – Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395; 43 Ill. Reg. 10275)

Rebecca Gold, General Counsel, represented DPH.

Co-Chair Wheeler: Thank you for coming forward, I have a couple of questions regarding the Certified Nursing Assistant II rule that is being promulgated. I know a lot of dialogue has occurred involving stakeholders, the Department, and JCAR Staff. We always appreciate that kind of communication. I'd like to better understand the gap between curriculum and practice and how this rulemaking is going to move us forward in that direction. Could you describe the difference between practice and curriculum with respect to this rule?

Ms Gold: The Department is prescribing the curriculum for training CNAs. There is no authority in statute for DPH to specifically outline the scope of duties for the advanced CNA.

Co-Chair Wheeler: With respect to the scope of duties, that would be a policy established by the provider, is that accurate?

Ms Gold: Yes. The Department will continue to conduct surveys of the underlying rules and the facility's policies to insure that facilities and agencies are complying with their own policies.

Co-Chair Wheeler: My final question has to do with inspections. Will they be strictly focusing on what DPH has explicit statutory authority to regulate?

Ms Gold: That's correct.

The rulemaking remained on the No Objection List.

CERTIFICATION OF NO OBJECTION

Rep. Demmer moved, seconded by Sen. Schimpf, 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 (7-0-0).

ANNOUNCEMENT OF FEBRUARY MEETING DATE

Co-Chair Harmon announced that the next JCAR meeting is scheduled for Tuesday, February 18, 2020, in Room C-1 of the Stratton Building, Springfield IL, at 10:30 a.m.

ADJOURNMENT

Co-Chair Wheeler moved, seconded by Sen. Muñoz, that the meeting stand adjourned. The motion passed unanimously (7-0-0).

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