

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. BILL CUNNINGHAM

CO-CHAIR:
REP. KEITH R. WHEELER



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SEN. DONALD P. DeWITTE
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SEN. SUE REZIN
REP. TOM DEMMER
REP. MICHAEL HALPIN
REP. FRANCES ANN HURLEY
REP. STEVEN REICK
REP. CURTIS J. TARVER, II

MINUTES

December 15, 2021

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, December 15, 2021, at 11:00 a.m. in Room C600 of the Bilandic Building, Chicago. Co-Chair Wheeler 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 Bill Cunningham	X Representative Tom Demmer
X Senator John F. Curran	X Representative Michael Halpin
X Senator Donald DeWitte	X Representative Frances Ann Hurley
Senator Kimberly A. Lightford	X Representative Steven Reick
Senator Antonio Muñoz	Representative Curtis J. Tarver, II
Senator Sue Rezin	X Representative Keith Wheeler

APPROVAL OF THE MINUTES OF THE NOVEMBER 16, 2021 MEETING

Rep. Hurley moved, seconded by Sen. DeWitte, that the minutes of the November 16, 2021 meeting be approved. The motion passed unanimously (8-0-0).

REVIEW OF AGENCY RULEMAKING

Department of Financial and Professional Regulation – Orthotics, Prosthetics and Pedorthics (Emergency) (68 Ill. Adm. Code 1325; 45 Ill. Reg. 14508)

Sen. Curran moved, seconded by Rep. Halpin, that JCAR object to this rulemaking because the Department did not meet the criteria established under 1 Ill. Adm. Code 230.400 (Criteria for Review) by not clearly and completely stating, in writing, that the emergency situation has arisen through no fault of the agency. The Department's statement of emergency states the COVID-19 pandemic as the reason for emergency and further relies on the Director's 8/31/21 variance, which extended the deadline for license renewal, as for the timing of the emergency situation. The Department, throughout the COVID-19 pandemic, has permitted numerous other professions to complete continuing education online by utilizing the regular rulemaking process. The

variance that the Department contends aided the emergency situation was filed on 8/31, while this emergency rule was not filed until 11/1/2021. Emergency rules are appropriate when an emergency situation arises that creates an immediate need for a rule change, that precludes the use of the regular rulemaking process, and that arises through no fault of the Department. Filing emergency rules based on an extension that was issued two months prior and to address an issue the Department has historically addressed through the regular rulemaking process does not meet this standard.

The motion also provided that JCAR object to the Department's use of blanket variances as a tool to waive requirements promulgated in the Illinois Administrative Code. On 8/31/21, the Department issued a variance extending the renewal deadline for all licensees under this Part to 12/31/21. 68 Ill. Adm. Code 1325.55(a) sets the renewal deadline at 9/30 of each odd-numbered year. 68 Ill. Adm. Code 1325.75 grants the Department the authority to grant variances to licensees on an individual basis. Policy of general applicability, especially when it is contrary to adopted rule, should not be changed through variance but should rather utilize the regular rulemaking process to allow the public the opportunity to comment. JCAR further recommends that the Department be thorough in explaining the emergency situation at hand that reasonably constitutes a threat to the public interest, safety or welfare when adopting an emergency rule. Any explanation of emergency should provide sufficient facts and reasoning to clearly demonstrate that an emergency situation exists and that the emergency situation requires the adoption of a rule upon fewer days than is required by the regular rulemaking process.

The motion passed unanimously (8-0-0).

Department of Financial and Professional Regulation – Clinical Social Work and Social Work Practice Act (Emergency) (68 Ill. Adm. Code 1470; 45 Ill. Reg. 15104)

Rep. Demmer moved, seconded by Co-Chair Cunningham, that JCAR object to this rulemaking because the Department did not meet the criteria established under 1 Ill. Adm. Code 230.400 for use of emergency rulemaking. The Department has not clearly and completely stated, in writing, its reasons for finding that an emergency exists and has not demonstrated that the emergency situation has arisen through no fault of the agency. The Department has been facing this situation with numerous other licenses throughout the COVID-19 pandemic. This emergency rule was filed on 11/9/2021.

The motion also provided that JCAR object to the use of variances as a tool for blanket amendments to the Illinois Administrative Code. On 10/20/21, DFPR issued a variance extending the renewal deadline for all licensees under this Part to 2/28/22. 68 Ill. Adm. Code 1470.90(a) sets the renewal deadline at 11/30 of each odd-numbered year. 68 Ill. Adm. Code 1470.100 grants DFPR the authority to grant variances to licensees on an individual basis. Policy of general applicability, especially when it is contrary to adopted rule, should not be changed through variance but should rather utilize the regular rulemaking process to allow the public the opportunity to comment. JCAR further recommends that the Department be thorough in explaining the emergency situation at hand that reasonably constitutes a threat to the public interest, safety or welfare when adopting an emergency rule. Any explanation of emergency rule should provide sufficient facts and reasoning to clearly demonstrate that an emergency situation exists and that the emergency situation requires the adoption of a rule upon fewer days than is required by the regular rulemaking process.

The motion passed unanimously (8-0-0).

CERTIFICATION OF NO OBJECTION

Sen. DeWitte moved, seconded by Rep. Reick, 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 (8-0-0).

ANNOUNCEMENT OF JANUARY MEETING DATE

Co-Chair Wheeler announced that the next JCAR meeting is scheduled for Tuesday, January 11, 2022, at 10:30 a.m. in Room C-1 of the Stratton Office Building, Springfield, IL.

ADJOURNMENT

Co-Chair Cunningham moved, seconded by Rep. Demmer, that the meeting stand adjourned. The motion passed unanimously (8-0-0).

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