

# JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:  
SEN. BILL CUNNINGHAM

CO-CHAIR:  
REP. KEITH R. WHEELER



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SEN. JOHN F. CURRAN  
SEN. DONALD P. DeWITTE  
SEN. KIMBERLY A. LIGHTFORD  
SEN. ANTONIO MUÑOZ  
SEN. SUE REZIN  
REP. TOM DEMMER  
REP. MICHAEL HALPIN  
REP. FRANCES ANN HURLEY  
REP. STEVEN REICK  
REP. CURTIS J. TARVER, II

## MINUTES

March 22, 2022

### MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Tuesday, March 22, 2022, 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 Bill Cunningham	X Representative Tom Demmer
X Senator John F. Curran	X Representative Michael Halpin
X Senator Donald DeWitte	Representative Frances Ann Hurley
Senator Kimberly A. Lightford	X Representative Steven Reick
X Senator Antonio Muñoz	X Representative Curtis J. Tarver, II
X Senator Sue Rezin	X Representative Keith Wheeler

### APPROVAL OF THE MINUTES OF THE FEBRUARY 15, 2021 MEETING

Rep. Reick moved, seconded by Rep. Tarver that the minutes of the February 15, 2022 meeting be approved. The motion passed unanimously (10-0-0).

### AGENCY RESPONSES

*Illinois Housing Development Authority – Homeowner Assistance Fund Programs (Emergency) (47 Ill. Adm. Code 302; 45 Ill. Reg. 13447)*

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

Co-Chair Cunningham announced that the following agency responses would be considered at a later meeting:

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

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

*Department of Public Health – Control of Communicable Diseases Code (Emergency) (77 Ill. Adm. Code 690; 46 Ill. Reg. 3434)*

## **REVIEW OF AGENCY RULEMAKINGS**

*Chief Procurement Officer for General Services – Chief Procurement Officer for General Services Standard Procurement (44 Ill. Adm. Code 1; 45 Ill. Reg. 20193)*

Ellen Daley, Chief Procurement Officer, agreed to the Committee's request for an Extension. Rep. Halpin moved, seconded by Sen. Curran, that JCAR, with the concurrence of the Chief Procurement Officer for General Services, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

*Illinois State Police – Child Murderer and Violent Offender Against Youth Registration Act (20 Ill. Adm. Code 1283; 46 Ill. Reg. 848)*

Rep. Demmer moved, seconded by Sen. Rezin, that JCAR, with the concurrence of the State Police, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

*Department of Insurance – Notice of Non-Compliance With Workers' Compensation Act (50 Ill. Adm. Code 2915; 45 Ill. Reg. 16150)*

Joanna Coll, General Counsel, and Dana Popish Severinghaus, Director, represented the Department of Insurance. Sen. Cunningham said that it was the Committee's understanding that DOI was agreeing to an Extension to work on adding the standards and factors the Department will consider when deciding whether to issue a notice of noncompliance to a noncompliant employer. Ms. Coll confirmed this was the case.

Sen. Muñoz moved, seconded by Sen. DeWitte, that JCAR, with the concurrence of the Department of Insurance, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (10-0-0).

*Department of Insurance – Review of Implementation of the Network Adequacy and Transparency Act [215 ILCS 124]*

Co-Chair Wheeler: Per the Network Adequacy and Transparency Act, the Department of Insurance is responsible for enforcing the provisions of that law and adopting rules to enforce compliance with the law as necessary. The Department has repeatedly said that it is addressing compliance through a Network Adequacy Checklist, which must be submitted to the Department along with required filings by health insurers. Please tell us why the Department has chosen to rely on this checklist, which appears to be policy outside of rule, rather than adopting rules so far.

Ms. Coll: The Network Adequacy and Transparency Act went into effect in 2017 for plan years effective in 2019. The Act gave the Department the option to initiate State-based rulemaking to the extent necessary to effectuate the law. For the last 3 years, the Department has been

enforcing State and federal network adequacy requirements and we remain confident in our ability to enforce network requirements and filings under the current law. However, we have been working on our own State-based rule. The delay in a State-based rule has been, in short, a calendar conflict between the federal calendar and our own JCAR process.

The Feds update their requirements every year and they send us the finalized rule for network adequacy requirements in April. All of the health insurance plans that go on the Affordable Care Act marketplace have to file their filings with our Department in May. That means there is a 30-day turnaround for us to implement our State-based rules. We already enforce all the federal requirements for these plans, but if they were to specifically cite to our rules we would have to get the entire rule through the JCAR process in 30 days. About a month ago, we met with JCAR to brainstorm how we can do this. Initially the staff here thought we would need two different filings to do one proposed rule, but in talking with them they thought we might actually be able to do an emergency rule in order to move this forward. What happens with the timeline is not only is the timeline short but even if we did it any rule that was from our State—even if it was the same as the federal requirements—would always be 6 months behind the Feds when they update their rule every year. However, given the recent experience with Blue Cross Blue Shield, which I assume everyone is aware of – That is the first time since the adoption of the Network Adequacy and Transparency Act that there has been any mid-year disruption in coverage like this ever. We've never had a material change like this. And so we have been very stridently enforcing the letter of the law against the insurer, as we will discuss in another hearing this afternoon. But for now, I think what has been incredibly illuminative in this experience is that we have been able to see other aspects of this law that other companies have been fine with complying with until now. We are able to see how an insurer might deliberately misinterpret this law and how it's time for regulations that go past the federal rules. And so we're so excited to work with JCAR, potentially through an emergency rulemaking process if we get staff's blessing for that, to get a stronger regulation on the books and work with stakeholders on that.

Co-Chair Wheeler: Thank you for that. The concern that we have is that the Department does not have rules in place already. Having this discussion 3 years ago would have maybe alleviated some of the concerns we are addressing now. Hindsight's always better than foresight, but if there's further legislation needed to authorize emergency rulemaking for this actually to work properly, we are in session now and this is an important thing for us to discuss going forward. I want to make sure that if there's any other statutory authority that you need in discussions with JCAR that we have the opportunity to address it legislatively during the session.

Ms. Coll: That's incredibly exciting, and I think that our Department would look forward to anything that would make this run more smoothly. And I would like to emphasize that this breakdown in contract negotiations between two private entities – it's not necessarily that the law didn't work. There has been some misinterpretation of the law that we might be able to tighten up, but the law is still able to play out and apply to this change, but we have to let that process occur.

Co-Chair Wheeler: I am an advocate for avoiding policy outside of rule, and the checklist to me is policy outside of rule. Therefore I'm going to reemphasize that rulemaking is way more adequate in this situation than not having it.

Ms. Coll: Absolutely. We 100% agree.

Rep. Demmer: Thank you for the explanation. I just want to make two points. One, to reemphasize the importance of rulemaking. You mentioned that now it has become apparent that there may be a need for State regulation in addition to the federal regulations. I would just make the point that the General Assembly saw that need when we passed this bill and it was signed into law, and it's not the discretion of the agency to determine when it's appropriate to have a State law that applies to network adequacy only when you recognize that there is a shortcoming in the federal law. We passed that, we debated it, it was signed into law, we put various specific parameters in there, and it is incumbent on the agency to then carry out that law that was passed by the General Assembly. The other point I'd make is I believe that the fine has now been assessed against Blue Cross in the case that you cited. Was that fine assessed under the specific network adequacy law that the General Assembly passed in the 100<sup>th</sup> General Assembly?

Ms. Coll: Yes, but it's also using the authority of the Illinois Insurance Code. So it is a violation of the Network Adequacy and Transparency Act. And may I also respond to your first point, because I think it's a really important one. Part of the issue is that under the previous administration our understanding is that there were lots of negotiations in terms of how much should be put into the law vs. how much should be put into the regulations. My understanding is that the previous administration was not a fan of regulations, so there might not have been as much desire to move forward with that. After that administration left, and we now have a new one, there is also overturn at the federal level. So the federal CMS (Centers for Medicare and Medicaid Services) initially under the previous administration did not want to engage in network adequacy at all. And it actually forced the feds to backtrack on the situation. Under President Biden, there has been renewed interest in federal regulations on this topic. So we have been very actively trying to dance to keep up with the updates in federal regulations and making sure that they are enforced in full under the Illinois law that you all worked so hard to pass. And so we are absolutely committed to making sure there is a rule on the books. We have been working on our current regulation for the last year, long before Blue Cross Blue Shield and Springfield Clinic became an issue.

Rep. Demmer: I appreciate that. I think the point remains that when a State law is passed, the Department is charged to carry out that law, and we as members of JCAR feel very strongly that there should be administrative rules to govern that, especially when the law could be used to enforce fines. That's one of the fundamental protections that administrative rulemaking offers, that if you're going to award something or assess a penalty on someone there is a clear understanding of the process that you follow and how it can be uniformly applied and not applied at the discretion of the agency or the discretion of a case-by-case basis. So I appreciate your efforts toward this and reassert their importance of rules.

***Department of Public Health – Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300; 45 Ill. Reg. 15216)***

Rep. Reick moved, seconded by Rep. Halpin, that JCAR recommend the Department revisit the requirements for Infection Preventionists in 6 months to evaluate whether additional details regarding the submission of infectious disease surveillance testing and outbreak response can be added to Section 300.696, and whether commenter-suggested changes to the rule could be made without jeopardizing the quality of resident care if facilities are having a difficult time complying with the detailed requirements of this rule. The motion passed unanimously (10-0-0).

***Department of Public Health -- Skilled Nursing and Intermediate Care Facilities Code (Emergency) (77 Ill. Adm. Code 300; 46 Ill. Reg. 3243); Intermediate Care for***

***Developmentally Disabled Facilities Code (Emergency) (77 Ill. Adm. Code 350; 46 Ill. Reg. 3315); and Medically Complex for the Developmentally Disabled Facilities Code (Emergency) (77 Ill. Adm. Code 390; 46 Ill. Reg. 3387)***

Rep. Tarver moved, seconded by Sen. Curran, that JCAR recommend that DPH review the COVID-19 testing and vaccine requirements contained in these emergency rulemakings and consider (1) aligning the requirements to the current CDC guidance for long term care providers; (2) incorporating the suggestions of public commenters; and (3) the impact testing and vaccine requirements have on long term care provider staffing and costs. The motion passed unanimously (10-0-0).

#### **CERTIFICATION OF NO OBJECTION**

Rep. Demmer moved, seconded by Sen. Rezin, 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 (10-0-0).

#### **ANNOUNCEMENT OF FEBRUARY MEETING**

Co-Chair Cunningham announced that the next JCAR meeting will be Tuesday, April 19, 2022, at 11:00 in Room C600 of the Bilandic Building, Chicago, Illinois.

#### **ADJOURNMENT**

Co-Chair Wheeler moved, seconded by Rep. Halpin, that the meeting stand adjourned. The motion passed unanimously (10-0-0).

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